

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 David Ferrel Sullivan,) 02-GS-42-1612
7 Defendant.) November 18, 2002
8 Spartanburg, South Carolina
9

10 B E F O R E:

11 HONORABLE JOHN C. FEW, JUDGE
12
13
14

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

16 JENNIFER WELLS, ESQUIRE
17 CINDY SMITH, ESQUIRE
18 Attorneys for the State

19 CLAY ALLEN, ESQUIRE
20 Attorney for the Defendant
21
22

23 Linda D. Moffitt
24 Circuit Court Reporter
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5
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7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

Motion -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 MS. WELLS: Your Honor, these are defendant's motions.

2 THE COURT: All right. I think I have four motions
3 here.

4 Let's see, I've got a motion to disqualify Jennifer
5 Wells as assistant solicitor, a motion to require the
6 Spartanburg County Detention Center to make available
7 visitation forms. Is that right?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: A motion to stay the trial pending a
10 federal civil rights -- is that probe?

11 THE DEFENDANT: It's a --

12 THE COURT: What's that last word?

13 THE DEFENDANT: Hold on one second, Your Honor.
14 Pending the outcome of federal civil rights proceeding.

15 THE COURT: Okay. Then I've got a motion to dismiss
16 Clay Allen as attorney for the defendant.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: That's it?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Any argument on any of those
21 motions?

22 MR. ALLEN: Is the Court asking me?

23 THE COURT: Anybody.

24 MR. ALLEN: These are all pro se motions, so I don't
25 think I should be --

1 THE COURT: All right, sir. Is there anything you want
2 to say about the motion to disqualify Mr. Allen?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Let me hear you.

5 THE DEFENDANT: Okay. Your Honor, I have been -- this
6 case goes back to 2001, in March of 2001. It was dismissed
7 by the state.

8 I was arrested in June of this year, 2002, on an
9 alleged bench warrant on a revocation hearing. I was
10 supposed to come on one day. They arrested me a day earlier
11 and put me in pretrial detention on the basis of the
12 pretrial hearing.

13 I stayed in jail. I tried to make a deal with -- I
14 never spoken with the state on the case, what was
15 state-appointed defense counsel. He never could make any
16 kind of deal with me.

17 I was living with my wife at the time who is the
18 alleged victim. The charge went from a aggravated assault
19 to high and aggravated circumstances and some more
20 constructive charges in the charge under indictment.

21 And just dealing with Mr. Allen, with all due respect,
22 the South Carolina Bar Law Counsel Rule 1.3, I mean, he;
23 lacked, it was just, I just wasn't able to get anywhere in
24 the case. And so I was, had to go to trial looking at ten
25 years on some charges that I don't think I am guilty of.

1 I think I would be better suited to try to handle the
2 case myself, make an effort to, if I got to go to trial,
3 which it looks like in all likelihood we will, I would
4 rather dismiss him and stay in the trial and try to -- I
5 have been dealing with the client's assistant programs, the
6 South Carolina Bar, to try to get some procedural rules on
7 how to defend myself. I just didn't have adequate counsel.
8 He's ineffective. And I would just like to dismiss counsel.

9 THE COURT: Well, now, the -- let me go ahead and rule
10 on the other three motions then, and then that might help
11 you with your, in taking a position on the motion to
12 dismiss.

13 Mr. Allen.

14 Is there anything you want to say about the other three
15 motions? I have read the motions, and I think I understand
16 the grounds for the motions. Is there anything you want to
17 say on those three motions?

18 THE DEFENDANT: On the motion to comply, I would like a
19 written, because I don't know the status of the -- on a bond
20 hearing, which I wasn't present because I got a court order
21 to get out on bond based on the alleged bench warrant on
22 September the 25th, I was not present during the bond
23 hearing which enabled the state to set the circumstances of
24 a restraining order with the victim I was living with.

25 Now, I was restrained from going to my house, from

1 going to where I lived at from making --

2 THE COURT: Well, now, these are conditions that would
3 apply to you if you were released.

4 THE DEFENDANT: Right. I understand it.

5 THE COURT: And you were not released.

6 THE DEFENDANT: Well, I was at -- I was released.

7 THE COURT: But you are not right now.

8 THE DEFENDANT: No, sir, as a result --

9 THE COURT: Do you have a bond that you can make right
10 now?

11 THE DEFENDANT: Well, actually the bond went from --
12 during a mistrial. This case had been to trial.

13 THE COURT: Yes.

14 THE DEFENDANT: We mistried on October the 17th and
15 concluded it the next day on a mistrial. The bond went from
16 twenty-five hundred to fifty thousand with no new compelling
17 evidence.

18 THE COURT: Do you know anything about that?

19 MS. WELLS: Your Honor, when the, when the mistrial was
20 declared Judge Beatty had Mr. Sullivan held at that time and
21 said that he would hear a bond motion if the state -- he
22 would consider bond for Mr. Sullivan if the state did not
23 try the case within a week. However, he later recused
24 himself from trial in the case.

25 At that time Judge Cole was unavailable. He was in a

1 death penalty case in Gaffney. We could not try the case in
2 front of Judge Beatty. This is the first opportunity the
3 state has had to try this case. Judge Cole was available to
4 do bond hearings. And, Your Honor, and I can tell you --

5 THE COURT: When was the first trial?

6 MR. ALLEN: The first trial, I believe, was October the
7 14th and 15th.

8 MS. WELLS: The first trial was October the 14th and
9 15th, Your Honor.

10 THE DEFENDANT: No, sir. The first trial was
11 October the 17th and 18th, but they changed it. I stayed in
12 jail with no word from the public defender or the state
13 until November the 1st at the time they gave me that bond
14 hearing. They took it under advisement. They didn't rule
15 while I was in court.

16 THE COURT: So Judge -- what was Judge Beatty's order
17 regarding bond at the conclusion of the trial?

18 MS. WELLS: Your Honor --

19 MR. ALLEN: The judge ordered --

20 MS. WELLS: If I may, Your Honor, the judge ordered
21 that Mr. Sullivan be held until the case was tried but he --

22 THE COURT: So he didn't give him a bond.

23 MS. WELLS: He did not give him a bond at that time,
24 however, he allowed him to apply for bond if the case was
25 not heard. The case was not heard.

1 THE COURT: Okay.

2 MS. WELLS: Although we attempted to call it the next
3 week.

4 Your Honor, actually you were here that week, but we
5 were unable to call it in front of you.

6 He did appear in front of Judge Cole, Your Honor, on
7 November 1st of this year, and Judge Cole granted motion for
8 bond and set the bond at \$50,000. The defendant apparently
9 has not able to make that bond. He doesn't currently have a
10 bond, Your Honor.

11 THE COURT: Are there conditions on this bond?

12 MS. WELLS: There are conditions on this bond.

13 THE COURT: Are they the same conditions that he's been
14 talking about?

15 MS. WELLS: Your Honor, they are the same conditions
16 that have been a part of his bond since he was originally
17 arrested on this charge.

18 THE COURT: Are you --

19 MS. WELLS: Well, there are some additional.

20 THE COURT: Okay.

21 MS. WELLS: No, no, no, no, no. They are the same.
22 They are the same.

23 THE DEFENDANT: Judge, revisiting the 25th of
24 September, the reason that I'm wanting to separate myself
25 from counsel here is because my defense counsel knew that my

1 wife is present. As a matter of fact, she brought personal
2 attire to them so that I can appear in court.

3 Now, they scheduled the bond around me being in front
4 of the court without being able to offer a witness or
5 testimony, which is one of the basic elements of due
6 process.

7 They did not allow my wife -- counsel knew that she was
8 here with my mother. So they set the circumstances to put
9 that restraining order in place.

10 My contention is this. If my wife had testified at
11 that time this case would probably be resolved at this
12 point.

13 THE COURT: At the bond hearing?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Well, I don't know if there is anything I
16 can do about Judge Cole's bond order.

17 THE DEFENDANT: I understand.

18 THE COURT: And so I deny the motion to -- well, I'm
19 not sure which motion that would be. There is nothing I can
20 do about the bond.

21 Now, the motion to disqualify Jennifer Wells --
22 anything you want to say about that?

23 THE DEFENDANT: Well, I do have a federal complaint,
24 civil rights complaint, through the federal courts. I feel
25 like that either stay in the trial or disqualify Ms. Wells

1 as the prosecutor based on the complaint.

2 THE COURT: Okay. I deny that motion.

3 MS. WELLS: Your Honor, may we address it at this time?
4 I would like to have the number of that complaint, because
5 when we contacted the federal clerk of court they said there
6 was no such motion filed. If there is, I would like to have
7 the number of it, please.

8 THE COURT: What's this about making visitation forms
9 available?

10 THE DEFENDANT: Well, it's a credibility issue, Your
11 Honor. My wife visited me every day through jail procedure
12 up until they put the restraining order in place. She
13 visited me.

14 THE COURT: Well, the only -- if -- that's an order
15 from Judge Cole that was issued on November the 1st?

16 THE DEFENDANT: No. I never had an opportunity to file
17 a motion. I just wanted to -- I thought that might help me
18 in terms of when I went to trial. I just wanted the jail to
19 comply to make available the visitation forms that she had
20 visited me up until the time they put the restraining order
21 in place.

22 THE COURT: I think that in order to -- well, this case
23 is to be tried tomorrow?

24 MS. WELLS: That's correct, Your Honor.

25 THE COURT: Do you have any -- have you had any contact

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16 JENNIFER WELLS, ESQUIRE
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1	<u>INDEX</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3	CATHY SULLIVAN (SW)	
4	Direct examination by Mr. Wells	70
5	Cross-examination by Mr. Allen	88
6	Redirect examination by Ms. Wells	99
7	Recross-examination by Mr. Allen	101
8	DEANNA NICSINGER (SW)	
9	Direct examination by Ms. Wells	102
10	Cross-examination by Mr. Allen	113
11	SHANE DEDMON (SW)	
12	Direct examination by Ms. Wells	115
13	Cross-examination by Mr. Allen	120
14	Redirect examination by Ms. Wells	122
15	ROBIN DEMETERIA DAVIDSON (SW)	
16	Direct examination by Ms. Smith	124
17	Cross-examination by Mr. Allen	129
18	FRANCES DAWKINS (SW)	
19	Direct examination by Ms. Smith	130
20	Cross-examination by Mr. Allen	133
21	DR. JAMES LAMM (SW)	
22	Direct examination by Ms. Wells	138
23	Cross-examination by Mr. Allen	161
24	Redirect examination by Ms. Wells	167
25	Recross-examination by Mr. Allen	169

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

Jury qualification	22
Jury sworn	58
Opening statements	65
Closing arguments	177
Jury charge	189
Verdict	199
Sentence	200
Certificate	207

1		<u>EXHIBITS</u>		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	S-1	Photograph	78	79
4	S-2	Photograph	78	79
5	S-3	Photograph	78	79
6	S-4	Photograph	78	79
7	S-5	Photograph	78	79
8	S-6	Photograph	78	79
9	S-7	Photograph	78	79
10	S-8	Photograph	78	79
11	S-9	Photograph	78	79
12	S-10	Photograph	78	79
13	S-11	Photograph	78	79
14	S-12	Photograph	78	79
15	S-13	Photograph	78	79
16	C-1	Copy of instructions submitted to jury		198
17				
18				
19				
20				
21				
22				
23				
24				
25				

Motions

1 (Proceedings November 20, 2002)

2 THE COURT: Mr. Allen and Mr. Sullivan, how do we stand
3 on your motion to relieve your lawyer, Mr. Sullivan?

4 THE DEFENDANT: I re -- I'm sorry, Your Honor. I
5 reconsidered that. It is my best interest to go with
6 counsel.

7 THE COURT: You want Mr. Allen to represent you?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Any other motions?

10 MS. WELLS: Your Honor, at this time the state would
11 move to limit the testimony in this case to generally the
12 events that occurred on or about this date.

13 Your Honor, the defendant and the victim had a
14 relationship before this. They had been married for 19
15 months.

16 They were separated for a period of time, and then they
17 got back together, which is ultimately what led to
18 Mr. Sullivan's bond revocation, because there was a
19 violation of his bond order that he moved back in with the
20 victim, Ms. Sullivan.

21 Your Honor, there is a history. We would just say
22 under Rule 403 that we would ask that the testimony be
23 limited to what happened on this date and things that are
24 relevant to thereafter, but, Your Honor, we think the fact
25 that they got back together is irrelevant, that it goes to

Motions

1 confuse the issues to the jury. The case is about whether
2 or not he beat her that night.

3 THE COURT: The fact they got back together when?

4 MS. WELLS: It was a couple of months later before they
5 got back together. It was a period of time, Your Honor,
6 where she had been in Safe Homes.

7 THE COURT: Do you mean after this supposedly happened?

8 MS. WELLS: They got back together after this occurred,
9 yes, Your Honor, and were together on and off for a period
10 of time thereafter.

11 THE COURT: Do you have any response to that, Mr.
12 Allen?

13 MR. ALLEN: Yes, Your Honor.

14 Our contention is that they got back together in a
15 matter of a couple or three weeks after the event, and I
16 believe that that goes to the credibility of the witness.

17 She is making a number of accusations against my
18 client. They are going to try to portray this as a very,
19 very severe beating of sorts.

20 I believe that the testimony that they got back
21 together, again, while I don't intend to dwell on it, would
22 go to attack the credibility of the witness, and I believe
23 that this is relevant for that purpose.

24 THE COURT: What is the -- is it undisputed that the
25 victim was beaten by somebody?

Motions

1 MR. ALLEN: It is undisputed that she had a number of
2 wounds which makes it look like she was beaten by someone.

3 THE COURT: But exactly how those wounds occurred is a
4 matter in dispute?

5 MR. ALLEN: Yes, Your Honor.

6 THE COURT: Okay. Well, I don't think that I -- I'm
7 probably not going to rule that specific line of questioning
8 out, but I certainly can't do that until I have had a chance
9 to sort of get my feet on the ground in the case and figure
10 out what the issues are.

11 But, I mean, Mr. Allen makes what I think is a very
12 good point. If the accusation is that this man beat his
13 wife or girlfriend severely, and he claims that she is
14 lying, and they got back together three weeks later, then
15 that would in my opinion relate to her credibility. And I
16 would allow that in.

17 MS. WELLS: Your Honor, the state would then also put
18 the Court and the defendant on notice that if they intend to
19 get into the defendant and the victim getting back together
20 that the state would offer testimony from potentially the
21 Gaffney Police Department officers that were called to the
22 scene where Mr. Sullivan threatened to kill the victim,
23 threatened to send her to her mother and those type of
24 things, if they are going to open the door for us to talk
25 about the prior relationship, that the state intends to call

Motions

1 those type of witnesses. We just don't want the issue of
2 surprise to be, to arise later in the trial.

3 It has been difficult for the state to provide an
4 accurate witness list; not sure on how, exactly how, deep
5 the defense intends on getting into the prior, the
6 relationship, post assaults.

7 THE COURT: You are talking about that he threatened to
8 kill her after this event occurred?

9 MS. WELLS: After this event occurred.

10 We have incident reports from Gaffney that indicate the
11 police were called to Gaffney a number of times, at least 11
12 in the year, in this period of time that followed this
13 incident when they got back together starting in mid June.

14 The incident reports indicate that he threatened to
15 kill her, that he threatened those type, those types of
16 issues.

17 THE COURT: You are not sticking the incident reports
18 into evidence?

19 MS. WELLS: No, sir. We would offer the officers to
20 testify to what they -- the types of incidents they
21 responded to.

22 THE COURT: But wait a minute, now. How do, how do
23 they know what kind of incident they responded to?

24 MS. WELLS: Well, Your Honor, they have their call logs
25 to indicate that it was a -- the officers that were actually

Motions

1 on the scene that responded to incidents where domestic
2 violence were called in, Ms. Sullivan, you know, related to
3 them. Ms. Sullivan is going to be available. She's going
4 to testify. She'll be available for cross-examination.

5 THE COURT: All right. Well, this is all kinda
6 premature, but you can --

7 MS. WELLS: I can --

8 THE COURT: You perhaps could put up -- we are going to
9 get some ground rules straight here. When I am talking,
10 nobody is going to interrupt me. When you are talking, I am
11 going to try not to interrupt you.

12 MS. WELLS: Thank you, Your Honor.

13 THE COURT: All right. You perhaps could call the
14 victim to testify as to what happened on those events if I
15 determine them to be relevant, but the incident reports and
16 call logs and all of that stuff is going to be, is going to
17 be beyond, is probably not going to be admissible. I will
18 just have to hear it.

19 MS. WELLS: Okay. Thank you, Your Honor.

20 THE COURT: All right.

21 MR. ALLEN: Your Honor, now that I am back representing
22 the defendant for trial, I have prepared a requested voir
23 dire I'll pass up to the Court. I will hand a copy to the
24 solicitor.

25 THE COURT: Any other motions?

Motions

1 MS. WELLS: Your Honor, just briefly, and just to
2 clarify something.

3 As we indicated to you yesterday, this case has been
4 tried to completion once before. We would just simply ask
5 that any reference to the prior trial not be, as to the
6 prior trial which has prior sworn testimony or anything like
7 that, however the Court deems it appropriate for us to
8 address that issue, and I'm just to cover that --

9 MR. ALLEN: I agree, Your Honor, but if there does come
10 inconsistent testimony, I would probably refer to it as
11 prior sworn testimony.

12 THE COURT: Have you got a transcript of it?

13 MR. ALLEN: No, Your Honor, but I don't think that
14 there is going to be that particular problem.

15 THE COURT: Okay.

16 MR. ALLEN: But if there is, I should be allowed to at
17 least ask that question. Of course I will be stuck with the
18 answer.

19 THE COURT: Right. Any other motions?

20 MS. WELLS: None from the state, Your Honor.

21 THE COURT: From the defense?

22 MR. ALLEN: Your Honor --

23 THE COURT: How many jurors do we have sitting over
24 there?

25 THE CLERK: Sixty-seven.

1 with his wife, Mr. Allen? Has she tried to contact you?

2 MR. ALLEN: I have had contact with her, not recently,
3 but prior to the last trial. She came to me several times
4 in an attempt to ask me about getting him out of jail, that
5 sort of thing. This was like sometime before the initial
6 trial.

7 THE COURT: All right. Well, do you have any evidence
8 that the jail has denied your wife the right to see you?

9 THE DEFENDANT: Well, she didn't know if she could or
10 not based on --

11 THE COURT: How do you know that?

12 THE DEFENDANT: Because talking with my mother on a
13 regular basis. She said that Cathy can't come to see you
14 based on what the solicitor was telling her.

15 THE COURT: All right. Well, I'm not sure there is
16 anything I can do about that. I mean, I don't know, I just
17 don't know what, even if they, even if they had prohibited
18 your, your wife from coming up there, I think if there is a
19 restraining order that prohibits contact, then the jail
20 would probably be entitled to enforce that, that order and
21 so --

22 THE DEFENDANT: I am not saying that the jail is
23 enforcing the order. What I am saying is that there is no
24 clarity to what the order is.

25 THE COURT: All right. Well, that would have to be

1 addressed to Judge Cole.

2 In any event, since the trial is for tomorrow, I don't,
3 I don't see any need, I don't see anything that I can do
4 about that. So I deny the motion to require the jail to do
5 anything.

6 Now, anything you want to say about the motion to stay
7 the trial pending a federal civil rights?

8 THE DEFENDANT: Yes, sir, I do.

9 THE COURT: I'm not going to stay the trial because you
10 filed a civil rights complaint against the prosecutor.

11 THE DEFENDANT: Right.

12 THE COURT: I mean, if I try the case, the, the,
13 anything, anything that the prosecutor may have done in the
14 past would not be relevant anyway.

15 The only thing that would be relevant would be the
16 evidence that would be admissible that would relate to your
17 case.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And those would be the issues that would be
20 before me. And they would, even if the prosecutor had done
21 something in the past, the only way that that would affect
22 this trial would be in the way of the admissibility of
23 evidence, and I can address that tomorrow just as well as I
24 can any other day. So I deny the motion to stay the trial.

25 Now, understanding that the case is going to trial

1 tomorrow, do you still want Mr. Allen to be relieved as your
2 lawyer?

3 THE DEFENDANT: Well, yes, sir, I do.

4 THE COURT: And you understand that that that's not
5 going to get the case delayed.

6 THE DEFENDANT: I understand, yes, sir.

7 THE COURT: And so you want to go ahead and defend
8 yourself by yourself.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Well, I'll -- Mr. Allen, you
11 come on over here in the morning and we'll -- if there's
12 anything else we need to do on this hearing, then I will do
13 it then. And I will rule in the morning on that, on that
14 question.

15 THE DEFENDANT: Thank you, Your Honor.

16 MR. ALLEN: At 9:30, Your Honor?

17 THE COURT: At 9:00.

18 MR. ALLEN: At 9:00?

19 THE COURT: Yeah. The jury is coming at 9:30.

20 All right. Anything else?

21 MS. WELLS: You Honor, again I would just ask that the
22 defendant either serve the state with his federal civil
23 rights complaint -- I understand it is under 1983 or Rico
24 and provide the state with that number so that we can be
25 made aware of that.

1 THE COURT: I don't know how I can make him do that.
2 MS. WELLS: I don't believe, I just don't believe it's
3 been filed.
4 THE COURT: All right. Anything else on this case?
5 MS. WELLS: Not -- just wanted to handle these issues
6 this afternoon.
7 THE COURT: All right. I will be here at 9:00 to
8 readdress the question of whether or not Mr. Allen will
9 represent Mr. Sullivan, and then we will go from there.
10 END OF REQUESTED TRANSCRIPT OF RECORD.

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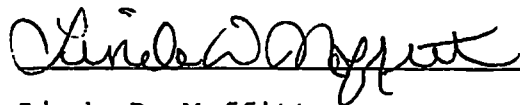
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh 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 trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 18th day of November 2002.

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

June 16, 2003

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", is written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

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12
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14
15
16
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18
19
20
21
22
23
24
25

INDEX

Jury qualification	22
Jury sworn	58
Opening statements	65
Closing arguments	177
Jury charge	189
Verdict	199
Sentence	200
Certificate	207

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
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21
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EXHIBITS

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S-6	Photograph	78	79
S-7	Photograph	78	79
S-8	Photograph	78	79
S-9	Photograph	78	79
S-10	Photograph	78	79
S-11	Photograph	78	79
S-12	Photograph	78	79
S-13	Photograph	78	79
C-1	Copy of instructions submitted to jury		198

Motions

1 (Proceedings November 20, 2002)

2 THE COURT: Mr. Allen and Mr. Sullivan, how do we stand
3 on your motion to relieve your lawyer, Mr. Sullivan?

4 THE DEFENDANT: I re -- I'm sorry, Your Honor. I
5 reconsidered that. It is my best interest to go with
6 counsel.

7 THE COURT: You want Mr. Allen to represent you?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Any other motions?

10 MS. WELLS: Your Honor, at this time the state would
11 move to limit the testimony in this case to generally the
12 events that occurred on or about this date.

13 Your Honor, the defendant and the victim had a
14 relationship before this. They had been married for 19
15 months.

16 They were separated for a period of time, and then they
17 got back together, which is ultimately what led to
18 Mr. Sullivan's bond revocation, because there was a
19 violation of his bond order that he moved back in with the
20 victim, Ms. Sullivan.

21 Your Honor, there is a history. We would just say
22 under Rule 403 that we would ask that the testimony be
23 limited to what happened on this date and things that are
24 relevant to thereafter, but, Your Honor, we think the fact
25 that they got back together is irrelevant, that it goes to

Motions

1 confuse the issues to the jury. The case is about whether
2 or not he beat her that night.

3 THE COURT: The fact they got back together when?

4 MS. WELLS: It was a couple of months later before they
5 got back together. It was a period of time, Your Honor,
6 where she had been in Safe Homes.

7 THE COURT: Do you mean after this supposedly happened?

8 MS. WELLS: They got back together after this occurred,
9 yes, Your Honor, and were together on and off for a period
10 of time thereafter.

11 THE COURT: Do you have any response to that, Mr.
12 Allen?

13 MR. ALLEN: Yes, Your Honor.

14 Our contention is that they got back together in a
15 matter of a couple or three weeks after the event, and I
16 believe that that goes to the credibility of the witness.

17 She is making a number of accusations against my
18 client. They are going to try to portray this as a very,
19 very severe beating of sorts.

20 I believe that the testimony that they got back
21 together, again, while I don't intend to dwell on it, would
22 go to attack the credibility of the witness, and I believe
23 that this is relevant for that purpose.

24 THE COURT: What is the -- is it undisputed that the
25 victim was beaten by somebody?

Motions

1 MR. ALLEN: It is undisputed that she had a number of
2 wounds which makes it look like she was beaten by someone.

3 THE COURT: But exactly how those wounds occurred is a
4 matter in dispute?

5 MR. ALLEN: Yes, Your Honor.

6 THE COURT: Okay. Well, I don't think that I -- I'm
7 probably not going to rule that specific line of questioning
8 out, but I certainly can't do that until I have had a chance
9 to sort of get my feet on the ground in the case and figure
10 out what the issues are.

11 But, I mean, Mr. Allen makes what I think is a very
12 good point. If the accusation is that this man beat his
13 wife or girlfriend severely, and he claims that she is
14 lying, and they got back together three weeks later, then
15 that would in my opinion relate to her credibility. And I
16 would allow that in.

17 MS. WELLS: Your Honor, the state would then also put
18 the Court and the defendant on notice that if they intend to
19 get into the defendant and the victim getting back together
20 that the state would offer testimony from potentially the
21 Gaffney Police Department officers that were called to the
22 scene where Mr. Sullivan threatened to kill the victim,
23 threatened to send her to her mother and those type of
24 things, if they are going to open the door for us to talk
25 about the prior relationship, that the state intends to call

Motions

1 those type of witnesses. We just don't want the issue of
2 surprise to be, to arise later in the trial.

3 It has been difficult for the state to provide an
4 accurate witness list; not sure on how, exactly how, deep
5 the defense intends on getting into the prior, the
6 relationship, post assaults.

7 THE COURT: You are talking about that he threatened to
8 kill her after this event occurred?

9 MS. WELLS: After this event occurred.

10 We have incident reports from Gaffney that indicate the
11 police were called to Gaffney a number of times, at least 11
12 in the year, in this period of time that followed this
13 incident when they got back together starting in mid June.

14 The incident reports indicate that he threatened to
15 kill her, that he threatened those type, those types of
16 issues.

17 THE COURT: You are not sticking the incident reports
18 into evidence?

19 MS. WELLS: No, sir. We would offer the officers to
20 testify to what they -- the types of incidents they
21 responded to.

22 THE COURT: But wait a minute, now. How do, how do
23 they know what kind of incident they responded to?

24 MS. WELLS: Well, Your Honor, they have their call logs
25 to indicate that it was a -- the officers that were actually

Motions

1 on the scene that responded to incidents where domestic
2 violence were called in, Ms. Sullivan, you know, related to
3 them. Ms. Sullivan is going to be available. She's going
4 to testify. She'll be available for cross-examination.

5 THE COURT: All right. Well, this is all kinda
6 premature, but you can --

7 MS. WELLS: I can --

8 THE COURT: You perhaps could put up -- we are going to
9 get some ground rules straight here. When I am talking,
10 nobody is going to interrupt me. When you are talking, I am
11 going to try not to interrupt you.

12 MS. WELLS: Thank you, Your Honor.

13 THE COURT: All right. You perhaps could call the
14 victim to testify as to what happened on those events if I
15 determine them to be relevant, but the incident reports and
16 call logs and all of that stuff is going to be, is going to
17 be beyond, is probably not going to be admissible. I will
18 just have to hear it.

19 MS. WELLS: Okay. Thank you, Your Honor..

20 THE COURT: All right.

21 MR. ALLEN: Your Honor, now that I am back representing
22 the defendant for trial, I have prepared a requested voir
23 dire I'll pass up to the Court. I will hand a copy to the
24 solicitor.

25 THE COURT: Any other motions?

Motions

1 MS. WELLS: Your Honor, just briefly, and just to
2 clarify something.

3 As we indicated to you yesterday, this case has been
4 tried to completion once before. We would just simply ask
5 that any reference to the prior trial not be, as to the
6 prior trial which has prior sworn testimony or anything like
7 that, however the Court deems it appropriate for us to
8 address that issue, and I'm just to cover that --

9 MR. ALLEN: I agree, Your Honor, but if there does come
10 inconsistent testimony, I would probably refer to it as
11 prior sworn testimony.

12 THE COURT: Have you got a transcript of it?

13 MR. ALLEN: No, Your Honor, but I don't think that
14 there is going to be that particular problem.

15 THE COURT: Okay.

16 MR. ALLEN: But if there is, I should be allowed to at
17 least ask that question. Of course I will be stuck with the
18 answer.

19 THE COURT: Right. Any other motions?

20 MS. WELLS: None from the state, Your Honor.

21 THE COURT: From the defense?

22 MR. ALLEN: Your Honor --

23 THE COURT: How many jurors do we have sitting over
24 there?

25 THE CLERK: Sixty-seven.

Motions

1 THE COURT: Get me -- the strikes are five
2 right?

3 MR. ALLEN: Yes, Your Honor.

4 THE COURT: Get me 30 names, please, and get that panel
5 of 30 ready to come on up here.

6 MS. WELLS: Your Honor, may I approach with the
7 information on the jurors that you requested yesterday?

8 THE COURT: Oh, yes. Thank you.

9 MR. ALLEN: Your Honor, if it please the Court, the
10 solicitor has alleged a number of matters which they believe
11 to be aggravating circumstances in connection with criminal
12 domestic violence, and specifically the last one they have
13 alleged, and/or the purposeful infliction of shame and
14 disgrace, I would contend it is not appropriate.
15 Aggravating circumstance such as to constitute --

16 THE COURT: Can I see the indictment?

17 MS. WELLS: Yes, Your Honor.

18 MR. ALLEN: I believe that those words are so broad
19 that they do not adequately put an individual on notice of
20 that which he must defend or that particular conduct which
21 he must avoid in order to stay within the bounds of the law.
22 I am not even sure what the purposeful infliction of shame
23 and disgrace are.

24 You will also hear testimony, Your Honor, that the
25 assault -- during the -- I might be getting ahead of myself

Motions

1 a little bit, but the Court will be hearing testimony during
2 the presentation of the state's case that at least what they
3 would allege was an assault committed by my client on the
4 alleged victim was committed essentially in private, that is
5 those were the only two individuals the state will contend
6 were present.

7 Hence there cannot be an infliction of shame and
8 disgrace if there were no other persons, under the state's
9 theory, present to watch. Therefore I believe that --

10 THE COURT: Where -- is there a list of the aggravating
11 circumstances?

12 MR. ALLEN: There is no general list, Your Honor.

13 The statute, of course, simply says that if all of the
14 elements are present for assault and battery of a high and
15 aggravated nature, are present during a criminal domestic
16 violence situation, that it becomes criminal domestic
17 violence of a high and aggravated nature.

18 I will concede then that the aggravating circumstance
19 for assault and battery of a high and aggravated nature will
20 therefore be an aggravating circumstance for criminal
21 domestic violence high and aggravated. Again --

22 THE COURT: Well, is infliction of -- the purposeful
23 infliction of shame and disgrace an aggravating circumstance
24 under assault and battery of a high and aggravated nature?

25 MR. ALLEN: I'm not aware of a case which indicates

Motions

1 that it is.

2 MS. WELLS: Your Honor, State vs. Jones is the case
3 that covers this issue.

4 Your Honor, I do not have a copy of State vs. Jones in
5 the courtroom with me. I will be happy to provide it to the
6 Court, but it does lay out certain aggravating
7 circumstances, and it does include in that list of
8 aggravating circumstances the infliction of shame or
9 disgrace on the victim.

10 And Your Honor just to reply to something that
11 Mr. Allen noted about shame, he said it could not be felt or
12 couldn't be, you know, quantified unless there was someone
13 around. Certainly I think that that would be from the
14 standpoint of the victim, whether she felt shame, although I
15 don't think that there is a requirement that other people
16 witness the beating or shame to her.

17 MR. ALLEN: My response to that, Your Honor, if that is
18 to be the interpretation to be placed, that is that it's up
19 to the victim to determine if she felt or if any victim felt
20 shame, that would constitute an aggravating circumstance,
21 then that, again, is not placing any individual on notice of
22 the conduct which they must avoid in order to stay within
23 the bounds of the law.

24 I just think that this term is so broad that it
25 practically has no meaning as far as what actions constitute

Motions

1 the particular course of conduct that they have alleged my
2 client had engaged in. And it would therefore be in a way
3 unconstitutional.

4 MS. WELLS: Your Honor, if I may, I do have State vs.
5 Toddley and Wright, which is -- I have a copy of it. It's
6 349, South Carolina, 310, 563, S. E. 2d., 311, which states
7 that circumstances of aggravation for the purpose of the
8 offense of criminal domestic violence of a high and
9 aggravated nature include the use of a deadly weapon, intent
10 to commit a felony, infliction of serious bodily injury, and
11 it goes on. And it also states --

12 THE COURT: Let me see that case.

13 MS. WELLS: -- the purposeful infliction of shame and
14 disgrace.

15 THE COURT: Well, I think that you are asking me to
16 overrule the general assembly, or/and the general assembly
17 has said that the purposeful infliction of shame and
18 disgrace is an element, a potential, an alternative element
19 of criminal domestic violence. And they did so by, when
20 they incorporated the, they incorporated the aggravating
21 circumstances of ABHAN into the statutory offense of
22 criminal domestic violence. And when they did that, there
23 were, there were cases on the -- that was done in 1994.

24 The offense of criminal domestic violence of a high and
25 aggravated nature was created by statute in 1994, and it

Motions

1 says the provisions of this section create a statutory
2 offense of criminal domestic violence and must not be
3 construed to codify the common law of assault and battery of
4 a high and aggravated nature.

5 At least as early as 1977 in the State vs. Foxworth the
6 Supreme Court had held that the purposeful infliction of
7 shame and disgrace is an element, an alternative element, of
8 assault and battery of a high and aggravated nature.

9 And so unless I'm misunderstanding the grounds of your
10 motion, it would be beyond my power to rewrite the statute
11 to exclude that alternative element.

12 MR. ALLEN: Well, I did not, I mean, I see the Court's
13 reasoning. And I did not initially consider my motion as
14 one in which I am asking you to rewrite the legislation for
15 the general assembly in as much as the individual --

16 THE COURT: Unless you are claiming, unless you are
17 claiming that it violates the state or federal constitution
18 to have included that alternative element in the definition
19 of criminal domestic violence of a high and aggravated
20 nature, then I will be without power to offer you any
21 relief.

22 MR. ALLEN: I believe that it does violate the state
23 and the federal constitution in the right of due process,
24 because, again, the general phrase, intentional infliction
25 of shame and disgrace, does not really properly advise

Motions

1 anyone of that conduct which they must avoid in order to
2 stay within the bounds of the law or that conduct, which if
3 they commit such conduct, that it is a violation of law. I
4 mean --

5 THE COURT: Okay. I deny that motion.

6 MR. ALLEN: Yes, sir.

7 THE COURT: Anything further?

8 MR. ALLEN: No, Your Honor.

9 THE COURT: Anything else from the state?

10 MS. WELLS: Your Honor, briefly just to cover the
11 defendant's requested voir dire, Your Honor, we would ask
12 under number three that you include the public defender's
13 office in that list -- are you related by blood or marriage.

14 THE COURT: I will ask about Mr. Allen. I generally do
15 not point out to the jury that the defendant is being
16 represented by the public defender's office.

17 If Mr. Allen chooses to do that, then I would not
18 prevent it, but I am not going to do that just on my own.

19 MS. WELLS: Thank you, Your Honor.

20 As to number five, I think that I am not sure how that
21 is relevant considering we have asked number six, and we
22 would ask that number five not be asked.

23 THE COURT: Okay. I will take a look at number five.

24 MS. WELLS: Thank, Your Honor.

25 THE COURT: Anything else?

Motions

1 MS. WELLS: There are a couple of other things, Your
2 Honor.

3 Number seven, is my initial gut feeling was that is
4 awfully vague, but then we have number ten, 11 and 12 and
5 13. Particularly number ten raises some concern for the
6 state. "Did you read the Spartanburg Herald-Journal for
7 Wednesday, October the 16th? If so, did you read the
8 article entitled domestic abuse case, called mistrial?"

9 Your Honor, I think that that puts the jury on notice
10 this case has been tried before and has been mistried. They
11 are going to be -- certainly they can speculate a lot of
12 different reasons why it has been mistried.

13 Perhaps in the alternative of asking ten, 11, 12 and
14 13, number seven could just simply be asked. "Have you read
15 any news articles about domestic violence," or there's
16 some -- there has to be some other way. It seems certainly
17 the inclusion of that particular language under number ten
18 that is in quotations is a concern. Obviously that is the
19 title of the article but --

20 THE COURT: Mr. Allen.

21 MR. ALLEN: Your Honor, I shared the solicitor's
22 concern, and I'm trying to, and I have been trying to figure
23 out a way to draw attention to that article without drawing
24 attention to this case.

25 The reason I think it's important that I know whether

Motions

1 or not a potential juror has read that article, because it
2 is the article about this case, about the mistrial in this
3 case, but/and I've got a copy of the article if the Court
4 wants to see it, but in this article it has what I
5 believe --

6 THE COURT: Let me see the article.

7 MS. WELLS: I am familiar with it.

8 MR. ALLEN: I've got the paper folded to the article,
9 Your Honor.

10 But it has what I believe to be a comment from the
11 presiding judge at that time who said -- this is in the
12 third paragraph on the first column of that article -- "That
13 the judge would later say that the defendant," and would
14 identify my client, "was headed for almost certain
15 conviction."

16 So in a way I need to know if they've read this
17 article, because at some point during this trial, especially
18 if they have read the article, it might begin to click, hey,
19 I remember reading about this about a month ago.

20 And I don't want them to be prejudiced unfairly against
21 my client by something they may have read by having a member
22 of the judiciary being quoted in the paper that has
23 indicated he was basically going to be convicted.

24 And I didn't know any other way other than to identify
25 the article by title. And the only way, I mean, the article

Motions

1 does not identify this case, the title that is does not
2 identify this case, or identify this client.

3 And I realize that the jury may speculate on that, but
4 I don't know of any other way to draw attention to the
5 article that was written about a month ago about a domestic
6 violence case that ended in a mistrial. And that's the
7 reason that I feel strenuously that this question or a
8 similar question could draw attention to this article in the
9 jurors' minds should be asked.

10 THE COURT: What were all of the articles about the
11 27th and 28th and 29th?

12 MR. ALLEN: On those three days the -- and I have got
13 copies of those articles if the Court wants to see those.

14 THE COURT: Were those about this case?

15 MR. ALLEN: No, sir. These cases were about -- the
16 Spartanburg Herald-Journal started running a series of
17 articles about domestic violence, what it does to family
18 life. They keyed on a very serious case that ended up in a
19 death.

20 But in this article the solicitor of this circuit was
21 quoted, as best I can say, "The juries need to do more about
22 domestic violence."

23 So the implication of these articles taken together is
24 that juries need to do more about domestic violence. And I
25 think that it would be fair for us to find out if anyone has

Motions

1 read these articles and may have perhaps been persuaded
2 especially since --

3 THE COURT: There is something about me coming to
4 Spartanburg that causes people to issue bomb threats in the
5 courthouse apparently. So are we out of here? All right.

6 (Whereupon, a recess was taken for a bomb threat in the
7 courthouse.)

8 THE COURT: Mr. Allen, I anticipate, I assume, in the
9 voir dire that relates to these newspaper articles that it
10 would be some -- suggested to the jury in some way that
11 there has been an article that we are specifically asking
12 about, is that correct?

13 MR. ALLEN: Well, specifically as to number ten, yes.
14 What I am asking about is a specific article.

15 THE COURT: Because the obvious danger is that the
16 juror won't recall when. If I say have you ever read
17 anything about this case or have you ever read anything
18 about domestic violence, they might not realize that they
19 have, in fact, and they get into this case, perhaps
20 recognize the names or whatever, and then they do realize,
21 they do realize they remember it, and that that puts us in a
22 difficult position.

23 MR. ALLEN: Yes, Your Honor.

24 And, again, my specific concern about the article that
25 was written about the mistrial in this particular case was

Motions

1 that they began to recall that, and they also recall the
2 comment that was described by the presiding judge as related
3 in that article.

4 THE COURT: Right. So if I were to take all of this
5 round-about business of trying to see if they've read
6 anything about this case and just say that there has been an
7 article or has anybody read any article about this case or
8 about any domestic violence, would it be your preference
9 that we just confront this thing head on and tell them there
10 has been an article and has anybody read it?

11 MR. ALLEN: We can do that, Your Honor, indicate that
12 there has been an article about this case without specifying
13 the reasons for the article, and because, after all,
14 articles are periodically written about the case soon after
15 the arrest is made, and then again also by referencing the
16 articles written about domestic violence.

17 That's essentially what I am trying to do, you know,
18 other questions, because I will concede and do admit that
19 the articles I asked about in questions 11, 12 and 13 do not
20 deal with this particular case but deal with the name of
21 domestic violence and talk about some of the things that
22 will probably be talked about in this case, as it would be
23 in any other domestic violence case.

24 My concern about those articles is the implication that
25 jurors aren't doing enough about those type cases, and I

Motions

1 don't want the jury to be unnecessarily persuaded by a
2 newspaper article that there needs to be more convictions in
3 cases of domestic violence.

4 THE COURT: All right. Any response?

5 MS. WELLS: Your Honor, I don't have any problem or we
6 don't have any problem with just confronting the issues head
7 on, saying that there has been an article written about this
8 case. I think that would be the preferable way to do it.

9 THE COURT: All right. Anything else before we bring
10 the jury in?

11 MR. ALLEN: No, Your Honor.

12 MS. WELLS: I don't believe so, Your Honor.

13 I guess somebody is trying to locate the -- have got an
14 estimated time of arrival for the projector in four minutes.
15 But however the Court wants to handle that is fine with the
16 state.

17 THE COURT: Okay. All right. Let's bring that jury
18 panel around then.

19 Because we have 60 something jurors, and it seems
20 unlikely that we could fit all of those jurors into this
21 courtroom with all of the spectators that were out there, we
22 probably would have room now, I went ahead and had the clerk
23 draw a jury of 30. She took those names in the order that
24 she drew them out of the barrel as she would have done here
25 in the courtroom and has them on her little board over

Jury qualification

1 there.

2 And so I'm going to have her call the names when we get
3 around to actually striking the jury in the order in which
4 they were taken out of the barrel. Any objection?

5 MR. ALLEN: No, Your Honor.

6 MS. WELLS: No, Judge.

7 THE COURT: Does that take care of it?

8 THE CLERK: Yes, sir.

9 MR. ALLEN: For the record, I presume that only the
10 clerk has a list of those names, and in the order. I have
11 not been provided one.

12 THE COURT: The state has not been and I have not been.

13 MR. ALLEN: Okay. I just wanted that on the record.
14 We still have no objection.

15 (The following takes place in the presence of the jury
16 venire.)

17 THE COURT: Ladies and gentlemen, good morning again.

18 I am sorry for the delay we had in getting together
19 this morning. I don't have any idea what was the source of
20 the supposed bomb threat that we had. The one thing I did
21 hear is that it apparently had come from the -- some people
22 involved in the civil side of magistrates court on the other
23 side of this building, which would have absolutely nothing
24 whatsoever to do with this case.

25 We are now here and ready to begin the trial in the

Jury qualification

1 case of the State of South Carolina vs. David Ferrel
2 Sullivan.

3 Mr. Sullivan has been indicted in Indictment Number
4 2002-GS-42-1612 with criminal domestic violence of a high
5 and aggravated nature.

6 And in that indictment it is alleged that David Ferrel
7 Sullivan did in Spartanburg County on or about March 11th of
8 2001 commit an assault and battery upon the victim, Cathy
9 Sullivan, a household member and/or former household member,
10 constituting an unlawful act of violent injury to the person
11 of said victim accompanied by circumstances of aggravation,
12 to wit, serious bodily injury, and/or difference between the
13 sexes, and/or great disparity between the ages, and/or
14 physical conditions of the parties and/or the purposeful
15 infliction of shame and disgrace; this all in violation of
16 Section 16-25-65 and 17-25-30 of the South Carolina Code of
17 Laws.

18 Now, ladies and gentlemen, when we move a little bit
19 farther along in this case and I get a chance to talk to
20 those of you who are actually selected to serve on this
21 jury, I will tell you in more detail, talk to you in more
22 detail, about the indictment.

23 But let me tell you at this point the indictment is in
24 no sense evidence of the allegations that are contained
25 within the indictment. The indictment simply is the

Jury qualification

1 document that contains the allegations made against the
2 defendant and is the document that serves to process the
3 case and bring it into this court for trial.

4 The defendant has pled not guilty to this indictment,
5 and that plea casts the burden on the state of proving the
6 defendant guilty beyond a reasonable doubt.

7 And just as we did yesterday morning, I am about to ask
8 you a series of questions about this case, about the people
9 who will be involved in this case. And if you have any
10 information that I ask for, then you must stand and give me
11 your name, and then give me that information.

12 And just as yesterday, if you have any reason why you
13 don't want to stand and give the information that I ask for
14 out loud in front of the rest of the jury panel, then you
15 can just tell me that. And I will get you down front and
16 get your answer privately with the lawyers.

17 If you know something about this case or if you know
18 some of the people who will be involved in this case, and if
19 you think that giving your information out loud in front of
20 the rest of the jury panel might expose the rest of the
21 potential jurors to information they should not be exposed
22 to, then in that event you must come down front and answer
23 the question privately with me and with the lawyers.

24 I will remind you that you are still under oath from
25 the oath that I gave you yesterday morning or that the clerk

Jury qualification

1 gave you yesterday morning.

2 And, Ms. Wells, I would like for you to stand and
3 introduce yourself and anyone who will be assisting in the
4 trial of this case to the jury panel.

5 MS. WELLS: Thank you, Your Honor.

6 My name is Jennifer Wells. I am an assistant solicitor
7 in the Seventh Judicial Circuit, that's here in Spartanburg
8 County.

9 Cindy Smith is also with our office. And we will be
10 the two lawyers representing the state in this matter today.

11 THE COURT: Is there any member of the jury panel who
12 is related to Ms. Wells or to Ms. Smith or who knows either
13 of those ladies in any way? If so, please stand.

14 (No response.)

15 THE COURT: Ms. Wells and Ms. Smith work for the
16 solicitor of this circuit, who is Trey Gowdy.

17 Mr. Gowdy, will you please stand?

18 MR. GOWDY: Yes, sir, Your Honor.

19 THE COURT: Mr. Gowdy, I anticipate, will not be
20 directly involved in the trial of this case, but he has a
21 staff of lawyers and non-lawyers both here and in Cherokee
22 County.

23 Is there any member of the jury panel who is related by
24 blood or by marriage to Mr. Gowdy or to anyone who works for
25 him or who knows him or anyone who works for him in any way?

Jury qualification

1 If so, please stand.

2 (No response.)

3 THE COURT: Mr. Allen, would you please stand and
4 introduce yourself and your client to the jury?

5 MR. ALLEN: Yes, Your Honor.

6 My name is Clay Allen. Today I'm representing David
7 Ferrel Sullivan seated beside me. Please stand.

8 THE COURT: Is there any member of the jury panel who
9 is related by blood or by marriage to Mr. Allen or to
10 Mr. Sullivan or who knows either of these gentlemen in any
11 way? If so, please stand.

12 (No response.)

13 THE COURT: Is Ms. Sullivan in the courtroom?

14 MS. WELLS: Yes, Your Honor, she is.

15 THE COURT: Ladies and gentlemen, you heard when I read
16 the indictment. You heard me call the name of Ms. Cathy
17 Sullivan who is the alleged victim in this case.

18 Ms. Sullivan, would you please stand and face the jury?
19 Thank you, Ms. Sullivan.

20 Is there any member of the jury panel who is related by
21 blood or by marriage to Ms. Sullivan or who knows her in any
22 way? If so, please stand.

23 (No response.)

24 THE COURT: Now, ladies and gentlemen, I am going to
25 read you a list of potential witnesses.

Jury qualification

1 I think it looks like there are about ten or 12 names
2 on this list. After I have read this list, I am going to
3 ask you whether or not you know or are related to any of the
4 people whose names I call.

5 If you think that you hear a name that is familiar, but
6 you are not sure if that's the person you know, then please
7 stand and tell us that. We will get you some more
8 information about the person so you can determine if that is
9 the person whom you know.

10 If the witness whose name I call is in the courtroom, I
11 would like for the witness to stand and face the jury.

12 Jennifer Brian, registered nurse, Spartanburg Regional
13 Healthcare System; Robin Davidson; Frances Dawkins; Shane
14 Dedmon, Spartanburg County Sheriff's Office; James Lamm, M.
15 D., Spartanburg Regional Healthcare System; Ryan McJimpsey;
16 Deanna Nicsinger; emergency medical technician, Spartanburg
17 Regional Healthcare System; Loretta Rhorer, Spartanburg
18 County Sheriff's Office. There is Ms. Rhorer. Thank you,
19 ma'am.

20 Willie Payden; Debra J. Williams.

21 All right. Are there any additional witnesses?

22 MS. WELLS: Not from the state, Your Honor.

23 THE COURT: Ladies and gentlemen, is there any member
24 of the jury panel who is related by blood or by marriage to
25 any of the witnesses whose names I just called or who knows

Jury qualification

1 any of these witnesses in any way? If so, please stand.

2 And tell me your name, ma'am.

3 JUROR NUMBER 36: Michelle Dawkins.

4 THE COURT: Michelle Dawkins? And who do you know?

5 JUROR NUMBER 36: I think I know Ryan McJimpsey.

6 THE COURT: All right. Tell me something about Ryan
7 McJimpsey.

8 JUROR NUMBER 36: We went to school together.

9 THE COURT: Well, let me hear -- are you pretty sure?
10 How old is Ryan McJimpsey? Who knows from the state?

11 JUROR NUMBER 36: About 24.

12 MS. WELLS: That would be about accurate. If she could
13 give us a physical description, it would be pretty easy for
14 us to determine whether she knows Mr. McJimpsey or not.

15 THE COURT: Well, why don't you give a physical
16 description? And she can determine if it's the same Mr.
17 McJimpsey.

18 MS. WELLS: He's a pretty big guy.

19 JUROR NUMBER 36: Uh-huh.

20 MS. WELLS: Yes, Your Honor. I think it is the same
21 Mr. McJimpsey.

22 THE COURT: All right. Tell me how you know
23 Mr. McJimpsey. You were in school together?

24 JUROR NUMBER 36: Uh-huh.

25 THE COURT: How long has it been since you were in

Jury qualification

1 school with him?

2 JUROR NUMBER 36: About six years.

3 THE COURT: Have you seen him in the last six years?
4 You need to answer yes or no if you don't know, ma'am.

5 JUROR NUMBER 36: No, sir.

6 THE COURT: While you were in school, did you have a
7 particularly close relationship with him?

8 JUROR NUMBER 36: No, sir.

9 THE COURT: You just knew him as a fellow school -- as
10 a fellow student?

11 JUROR NUMBER 36: Yes.

12 THE COURT: Would the fact that Mr. McJimpsey is
13 potentially going to be involved in this case as a witness
14 interfere in any way with either your willingness or your
15 ability to give both the state and the defendant a fair and
16 impartial trial in this case?

17 JUROR NUMBER 36: Uh-huh.

18 THE COURT: It would? You would not? Would the fact
19 that you know Mr. McJimpsey interfere with your ability or
20 willingness to give the state and the defendant a fair and
21 impartial trial?

22 JUROR NUMBER 36: No, sir.

23 THE COURT: Okay. Thank you, ma'am.

24 Yes, ma'am. Your name.

25 JUROR NUMBER 108: Lupe Price. I am not sure, but I

Jury qualification

1 heard the name of Rhorer, Loretta Rhorer. I am not sure
2 whether I know her or not.

3 THE COURT: All right. Ms. Rhorer is seated back here.
4 Could you stand again, Ms. Rhorer?

5 JUROR NUMBER 108: Is she related to Jim and Thelma
6 Rhorer?

7 THE WITNESS: Yes, I am, ex.

8 JUROR NUMBER 108: Ex. I understand that. I have met
9 her one time.

10 THE COURT: I see. All right. And tell me just a
11 little bit about that meeting.

12 JUROR NUMBER 108: Her exmother-in-law introduced me to
13 her. We were at work.

14 THE COURT: I see. How long ago was that?

15 JUROR NUMBER 108: Four years, three years, something
16 like that.

17 THE COURT: Okay. Would the fact that you met
18 Ms. Rhorer and know her exmother-in-law, as you described,
19 interfere in any way with either your willingness or your
20 ability to give both the state and the defendant a fair and
21 impartial trial?

22 JUROR NUMBER 108: It would not bother me, sir.

23 THE COURT: All right. Thank you, ma'am.

24 Tell me your name, ma'am.

25 JUROR NUMBER 82: I am Connie Long. I have met Trey

Jury qualification

1 Gowdy. I stopped a kidnapping in April, in March, and I met
2 him at the victims' luncheon.

3 THE COURT: You stopped. Was that out at the --

4 JUROR NUMBER 82: The courthouse, the city.

5 THE COURT: Is that the fellow who I had the pleasure
6 of meeting a couple of weeks ago?

7 MR. GOWDY: Yes, sir.

8 THE COURT: All right.

9 JUROR NUMBER 82: I was supposed to testify at that
10 trial, but I didn't. And I just met Trey at that time.

11 THE COURT: All right. And during the course of that
12 meeting or in any way during the course of preparing for
13 that trial did you, did you have any communication with
14 anybody in the solicitor's office that would concern
15 anything other than just that case?

16 JUROR NUMBER 82: Just that case.

17 THE COURT: Did you speak in any way concerning this
18 case?

19 JUROR NUMBER 82: No. I don't know anything about it.

20 THE COURT: Did you speak in any way concerning any
21 other issues that might be involved in this case such as
22 domestic violence, alleged domestic violence?

23 JUROR NUMBER 82: None, no, sir.

24 THE COURT: Okay. Other than your having been thrust
25 into the, that case, have you been involved in any other

Jury qualification

1 kind of victims' rights issues or victims' organizations?

2 JUROR NUMBER 82: Yes. But I don't want to say that
3 out in front of everybody.

4 THE COURT: Okay. Well, come down front, and let me
5 just talk to you for a few minutes, please.

6 (The following takes place at the bench with the
7 attorneys.)

8 THE COURT: Let me get you to stand back at the bar
9 just for a minute, please, all the way back behind the
10 tables.

11 MR. GOWDY: We are giving her an award Friday night,
12 and I don't think she knows about, an award Friday night for
13 what she did in the Higgins case. I don't think she knows
14 about it, but I would think that maybe she ought not to be
15 on this jury given the fact.

16 THE COURT: She might not --

17 MR. GOWDY: She might not know. She is definitely
18 going to be at our awards banquet Friday night.

19 MR. ALLEN: She is aware?

20 MR. GOWDY: I don't know.

21 THE COURT: Basically he is offering and consenting to
22 excuse.

23 MR. ALLEN: We join.

24 THE COURT: Make sure she can hear you.

25 MR. ALLEN: Yes. We join in that request.

Jury qualification

1 THE COURT: All right. Come up, please, Ms. Long.

2 (The following takes place at the bench with Juror
3 Number 82.)

4 THE COURT: We are going to take your name out of this
5 case.

6 JUROR NUMBER 82: Okay.

7 THE COURT: Have a seat if you want to, or you can go
8 back to the jury assembly room.

9 (End of proceedings at the bench.)

10 THE COURT: All right. Anyone else who has an answer
11 to that question, please stand.

12 (No response.)

13 THE COURT: Is there any member of the jury panel who
14 is a member of the grand jury that presented the indictment
15 in this case? If so, please stand.

16 (No response.)

17 THE COURT: Is there any member of the jury panel who
18 is a friend or relative or acquaintance of anyone who is
19 employed in the Spartanburg Department of Public Safety, the
20 Spartanburg County Sheriff's Office or the police department
21 of any city or town within the County of Spartanburg or the
22 South Carolina Law Enforcement Division? If so, please
23 stand.

24 And I would like for each person who has an answer to
25 this question to go ahead and stand, and then I will

Jury qualification

1 recognize you one at a time.

2 Tell me your name, ma'am.

3 JUROR NUMBER 107: Tina Plexico.

4 THE COURT: Who do you know or are related to?

5 JUROR NUMBER 107: My husband works with the Office of
6 Emergency Services. He is a commissioned police officer for
7 Spartanburg County.

8 THE COURT: Okay. And he works for the --

9 JUROR NUMBER 107: Office of Emergency Services,
10 Spartanburg County.

11 THE COURT: Is he actively serving as a police officer
12 at this time?

13 JUROR NUMBER 107: Well, he's a training director for
14 the emergency service academy. Like, for instance, the bomb
15 threat, he was sitting out here blocking the parking lot
16 with his car. I mean, I don't know if you want to consider
17 that.

18 THE COURT: Okay, okay. That may be why we got such
19 special attention, is because you were over here at the
20 courthouse. Thank you, Ms. Plexico.

21 Your name, sir.

22 JUROR NUMBER 45: Tony Eubanks.

23 THE COURT: Who do you know, sir?

24 JUROR NUMBER 45: I know several people on the city and
25 county, and also know Mr. Plexico and worked with him in

Jury qualification

1 various services several years ago.

2 THE COURT: Okay. Do you know anybody employed in any
3 of the police departments particularly well?

4 JUROR NUMBER 45: Just acquaintances, friends and
5 acquaintance. Nothing that I think would interfere being on
6 this case.

7 THE COURT: Thank you, Mr. Eubanks.

8 Your name, ma'am.

9 JUROR NUMBER 113: Marilyn Reid. My neighbor is a
10 Spartanburg County policeman. Brian Dill.

11 THE COURT: You say your last name is Reid?

12 JUROR NUMBER 113: Reid.

13 THE COURT: Reid. All right. Brian Dill?

14 JUROR NUMBER 113: Is my neighbor, yes.

15 THE COURT: Okay. Thank you, Ms. Reid.

16 JUROR NUMBER 55: My name is Thomas Grant. My first
17 cousin is chief of police in Pacolet.

18 THE COURT: Pacolet. All right. Thank you, sir.

19 Your name, ma'am.

20 JUROR NUMBER 35: Toni Davis.

21 THE COURT: Ms. Davis.

22 JUROR NUMBER 35: My sister is a city police officer in
23 Spartanburg.

24 THE COURT: What's her name?

25 JUROR NUMBER 35: Tracy Fowler.

Jury qualification

1 THE COURT: Tracy Fowler.

2 Thank you, Ms. Davis.

3 Ms. Henderson.

4 JUROR NUMBER 66: My cousin by marriage is the police
5 chief in Inman.

6 I know several law enforcement officers on the
7 sheriff's department, because I worked at the county jail.

8 THE COURT: All right.

9 JUROR NUMBER 66: I knew Mr. Gowdy when he was with the
10 U. S. Marshall Service, and I worked at the county jail, but
11 that's been about six years ago.

12 THE COURT: Okay. Thank you, ma'am.

13 Your name, sir.

14 JUROR NUMBER 72: Ronald Kelly. I know several police
15 officers, because I went to college with them.

16 THE COURT: Are you particularly close with any of
17 those police officers?

18 JUROR NUMBER 72: No, sir.

19 THE COURT: All right. Thank you, Mr. Kelly.

20 Your name, ma'am.

21 JUROR NUMBER 108: Lupe Price. I would like to speak
22 with you privately.

23 THE COURT: Okay.

24 (The following takes place at the bench.)

25 THE COURT: Hold on just one second. Y'all come around

Jury qualification

1 here where the court reporter can hear you.

2 JUROR NUMBER 108: This isn't earth shattering. I do
3 several police officers' tax returns. This is
4 confidentiality. Can't tell you who they are. I don't have
5 friendship with them. I know them for years.

6 THE COURT: Is there any of their names I called as
7 potential witnesses in this case?

8 JUROR NUMBER 108: No.

9 THE COURT: Other than the fact that you do their tax
10 returns, are you particularly --

11 JUROR NUMBER 108: No. I don't talk to them but once
12 or twice a year. That's at tax time. I have known them
13 years and years because I keep doing them.

14 THE COURT: Thank you, Ms. Price.

15 (End of proceedings at the bench conference.)

16 THE COURT: Now, this is a follow-up question for each
17 of you who just answered that last question.

18 Would the fact that you know law enforcement officers
19 or are related to law enforcement officers as you just
20 described, would that interfere in any way with either your
21 willingness or your ability to give both the state and the
22 defendant a fair and impartial trial in this case?

23 Ms. Plexico.

24 JUROR NUMBER 107: No, sir.

25 THE COURT: Mr. Eubanks.

Jury qualification

1 JUROR NUMBER 45: No, sir.

2 THE COURT: Ms. Reid.

3 JUROR NUMBER 113: No, sir.

4 THE COURT: Mr. Grant.

5 JUROR NUMBER 55: No, sir.

6 THE COURT: Ms. Davis.

7 JUROR NUMBER 35: No, sir.

8 THE COURT: Ms. Henderson.

9 JUROR NUMBER 66: No, sir.

10 THE COURT: Mr. Kelly.

11 JUROR NUMBER 72: No, sir.

12 THE COURT: And Ms. Price.

13 JUROR NUMBER 108: No, sir.

14 THE COURT: Is there any member of the jury panel who
15 has ever been employed by a civilian or military police
16 department or who has a place family member who has ever
17 been employed by a civilian or military police department?
18 If so, please stand.

19 JUROR NUMBER 66: Your Honor, would that count the
20 county jail too?

21 THE COURT: Well, it would, yes, ma'am. But since you
22 have already given us that information, Ms. Henderson, I
23 think that would suffice.

24 Yes, sir. Your name, please.

25 JUROR NUMBER 104: Nicholus Parris. I worked for the

Jury qualification

1 Spartanburg County Sheriff's Department.

2 THE COURT: You did?

3 JUROR NUMBER 104: A long time ago.

4 THE COURT: How long ago was that?

5 JUROR NUMBER 104: '75, '76.

6 THE COURT: And how long did you work there?

7 JUROR NUMBER 104: Sixteen months.

8 THE COURT: Sixteen months. All right. Were you
9 working as a deputy or just as a --

10 JUROR NUMBER 104: As a deputy.

11 THE COURT: As a deputy. All right. Would that, would
12 the fact that you were involved with the sheriff's
13 department in that way, interfere in any way with either
14 your willingness or your ability to give both the state and
15 the defendant a fair and impartial trial in this case?

16 JUROR NUMBER 104: No, sir.

17 THE COURT: Thank you.

18 Your name, sir.

19 JUROR NUMBER 39: Joseph Dejesus, Sr. My brother was a
20 police officer in Spartanburg City.

21 THE COURT: Spartanburg City. And he is still a police
22 officer in Spartanburg?

23 JUROR NUMBER 39: No.

24 THE COURT: What was his name?

25 JUROR NUMBER 39: Michael Dejesus.

Jury qualification

1 THE COURT: Dejesus. And when did he serve?

2 JUROR NUMBER 39: I don't remember how long ago it was.

3 THE COURT: All right. Would the fact that your
4 brother was a police officer in Spartanburg interfere in any
5 way with either your willingness or your ability to give
6 both the state and the defendant a fair and impartial trial
7 in this case?

8 JUROR NUMBER 39: No, sir.

9 THE COURT: Thank you.

10 Is there any member of the jury panel who has ever been
11 a victim of a serious assault or who has a close friend or
12 family member who has ever been the victim of a serious
13 assault? If so, please stand.

14 And remember that you may simply request to come down
15 front and talk with me privately about this if you would
16 like to. Please stand now if you have an answer to that
17 question.

18 (No response.)

19 THE COURT: Is there any member of the jury panel who
20 has ever been the victim of any domestic violence or who has
21 a close friend or family member who has ever been the victim
22 of any domestic violence? If so, please stand.

23 Ma'am, would you like to come down front?

24 JUROR NUMBER 21: I would like to come down there.

25 THE COURT: All right.

Jury qualification

1 Anyone else?

2 If you would, step to the center, ma'am. And the
3 bailiff will direct you to come down after I have spoken to
4 the first juror.

5 (The following takes place at the bench.)

6 THE COURT: Come on down, ma'am.

7 JUROR NUMBER 21: I just --

8 THE COURT: What's your name?

9 JUROR NUMBER 21: Judy Chastain now. It was Judy Ivey
10 or Judy Elein about five years ago now.

11 THE COURT: Your name now is what?

12 JUROR NUMBER 21: Chastain. I had an exhusband that I
13 had to go to the Safe House something about and press
14 charges against him.

15 THE COURT: Was he eventually prosecuted?

16 JUROR NUMBER 21: No.

17 THE COURT: Did it come to court?

18 JUROR NUMBER 21: He ended up getting out of it, and I
19 moved to Florida to get away from him.

20 THE COURT: Was that here in Spartanburg?

21 JUROR NUMBER 21: In this court here.

22 THE COURT: Okay. All right. How long ago was that?

23 JUROR NUMBER 21: About five years ago.

24 THE COURT: And how long did you stay in Florida?

25 JUROR NUMBER 21: A year and a half. I came back after

Jury qualification

1 my divorce.

2 THE COURT: Okay. Well, would the fact that you have
3 been involved in that situation interfere in any way with
4 either your willingness or your ability to give both the
5 state and the defendant a fair and impartial trial in this
6 case?

7 JUROR NUMBER 108: I don't think so.

8 THE COURT: You don't think it would interfere?

9 JUROR NUMBER 21: I would prefer you dismiss me though.

10 THE COURT: You would? You understand this case is, of
11 course, a completely separate case and you have to -- if you
12 are put on the jury in this case you would be instructed
13 that you must base your decision in the case based solely on
14 the testimony and evidence that you hear in this courtroom
15 and in light of the legal instructions that I will give you
16 at the conclusion of the case. And do you think you will be
17 able to follow those instructions and do what I said or do
18 you think your personal situation would interfere with your
19 ability to be follow my instruction?

20 JUROR NUMBER 21: I think I could follow your
21 instructions, because everybody is not like him.

22 THE COURT: Okay. All right. Thank you, Ms. Chastain.
23 Would you mind waiting right there for a second? I may have
24 some follow-up questions for you.

25 (The following takes place at the bench with the

Jury qualification

1 attorneys outside the hearing of the juror.)

2 THE COURT: All right. Have you got anything to say?
3 If you've got a motion to strike, make it known, or if you
4 have any follow-up questions you want me to ask.

5 MR. ALLEN: I move to excuse her for cause. Even
6 though she is trying to say she is trying to be fair, she
7 said she didn't think so.

8 THE COURT: She what?

9 MR. ALLEN: She said she didn't --

10 THE COURT: She didn't think so.

11 MR. ALLEN: She wasn't basically unqualified yes. She
12 seems to be digressing with us to some degree. I ask the
13 Court to excuse her for cause.

14 THE COURT: I think I am not going to dismiss her. I
15 think she was being honest. I, of course, was able to
16 evaluate her as she was saying that. I think she was, was
17 making a sincere effort to tell us that even though this
18 thing that she has in her past, she would do everything she
19 could to just follow my instructions as I described to her.
20 So I am going to deny the motion to dismiss her for cause.

21 (End of proceedings at the bench.)

22 THE COURT: All right. Ms. Chastain, you can be
23 seated, please.

24 And you come up, ma'am. Tell me your name, please.

25 JUROR NUMBER 89: Laqueta McClintock. My mother and my

Jury qualification

1 grandmother were both victims of domestic violence, but they
2 never pressed charges. And my cousin was this past summer,
3 but she pressed charges on hers, but hers wasn't in this
4 county. It was in Greenville County.

5 THE COURT: Were you ever personally involved with any
6 of the incidents?

7 JUROR NUMBER 89: With my mother, I was.

8 THE COURT: Was that your father or some other man?

9 JUROR NUMBER 89: It was her boyfriend.

10 THE COURT: Were you ever a witness to any of the
11 events?

12 JUROR NUMBER 89: Yes, sir.

13 THE COURT: All right. Would the fact that you were
14 involved in those situations as you described them interfere
15 in any way with either your willingness or your ability to
16 give both the state and the defendant a fair and impartial
17 trial in this case?

18 JUROR NUMBER 89: I think I would be more partial to
19 the state because of the victim.

20 THE COURT: I appreciate your being honest. We are
21 going to excuse you in this case.

22 THE BAILIFF: Judge, we have one more that wants to
23 speak to you.

24 THE COURT: Thank you.

25 JUROR NUMBER 66: My husband was sentenced to 30 years

Jury qualification

1 for assault and battery with intent to kill, and he did 11
2 years. He got out on probation. I didn't know if that
3 would --

4 THE COURT: Who was the victim?

5 JUROR NUMBER 66: His name was Ted Knox.

6 THE COURT: It wasn't a family member?

7 JUROR NUMBER 66: No, sir.

8 THE COURT: Did that happen in Spartanburg County?

9 JUROR NUMBER 66: Yes, sir, it did.

10 THE COURT: How long ago did he receive that sentence?

11 JUROR NUMBER 66: In '86.

12 THE COURT: And he served 11 years?

13 JUROR NUMBER 66: Yes, sir.

14 THE COURT: And he was paroled?

15 JUROR NUMBER 66: Yes, sir. He was paroled in '93.

16 THE COURT: And he violated parole?

17 JUROR NUMBER 66: And he did 15 months on that and got
18 out and violated probation and is back in the Department of
19 Corrections on that.

20 THE COURT: You mentioned that situation yesterday.

21 Would the fact that you have been involved in that situation
22 with your husband now serving time, would any of that
23 interfere with your ability --

24 JUROR NUMBER 66: I don't think it would.

25 THE COURT: Let me finish. Would any of that interfere

Jury qualification

1 with either your willingness or your ability to give both
2 the state and the defendant a fair and impartial trial in
3 this case?

4 JUROR NUMBER 66: No, sir. I wanted to be honest.

5 THE COURT: I appreciate you doing that very much.
6 Thank you.

7 (End of proceedings at the bench.)

8 THE COURT: Is there any member of the jury panel who
9 has such strong feelings about the issue of domestic
10 violence that you feel that your ability to serve as a fair
11 and impartial juror in this case might be affected by your
12 feelings or your beliefs concerning domestic violence? If
13 so, please stand.

14 All right. Anyone else? All right. Tell me your
15 name, sir.

16 JUROR NUMBER 29: Juror Number 29, Ronnie E. Crawford.

17 THE COURT: Crawford. Mr. Crawford, I am going to get
18 you down and talk to you individually in just a minute.
19 Okay. You can have a seat for right now.

20 And your name, sir.

21 JUROR NUMBER 96: William Miller.

22 THE COURT: And, Mr. Miller, I will talk to you also in
23 just a minute.

24 Now, is there any member of the jury panel who knows
25 anything whatsoever about this particular case? If so,

Jury qualification

1 please stand.

2 (No response.)

3 THE COURT: Is there any member of the jury panel who
4 has read anything in the newspaper recently concerning
5 domestic violence in any way or has seen anything on the
6 television or heard anything on the radio concerning
7 domestic violence in the last several months? If so, please
8 stand.

9 (No response.)

10 THE COURT: Now, ladies and gentlemen, there have
11 been -- I will tell you that there have been some articles
12 in the Spartanburg Herald over the last several months that
13 relate to domestic violence in this county; and there has
14 been an article in the Spartanburg Herald in the last two
15 months that relates specifically to this case.

16 And without disclosing to you in any way what the
17 articles may have said, because that really is not
18 important, is there any member of the jury panel who has
19 seen any of those articles, read any of those articles,
20 heard any discussion about any of those articles or is
21 familiar with any such newspaper articles in any way? If
22 so, please stand.

23 (No response.)

24 THE COURT: All right. Mr. Crawford and Mr. Miller, if
25 you would, please come to the center and let me speak to

Jury qualification

1 you-all one at a time.

2 (The following takes place at the bench with Juror
3 Number 29.)

4 THE COURT: Come up, Mr. Crawford. How do you do, sir?

5 JUROR NUMBER 29: I have a problem. I have a lot of
6 problems with tenants and clients having problems, and I was
7 here yesterday at three o'clock on my job, and her and her
8 husband --

9 THE COURT: Let's back up and start over and just talk
10 slowly. I think the whispering makes it hard for us to hear
11 each other.

12 JUROR NUMBER 29: I am a contractor.

13 THE COURT: I think he said he has an opportunity to
14 work in people's houses and at apartment complexes.

15 JUROR NUMBER 29: Right. I have an opportunity to hear
16 conflicts that occur.

17 THE COURT: He hears all different type of conflicts
18 that occur.

19 JUROR NUMBER 29: I have lots of people because of that
20 problem, domestic problem.

21 THE COURT: So you --

22 JUROR NUMBER 29: I don't feel --

23 THE COURT: You get called out sometime by people who
24 tell you that they are having this kind of problem and ask
25 you to change the locks or something like that to protect

Jury qualification

1 them.

2 JUROR NUMBER 29: Right.

3 THE COURT: Okay. Anything else? You said something
4 about conflict. What can you tell me about that?

5 JUROR NUMBER 29: In their house.

6 THE COURT: Let's do this. Let's move over this way,
7 and you look at her when you talk. And I will stand over
8 here so I can hear you.

9 JUROR NUMBER 29: In an apartment or a house I try
10 neutral point of view of it and do my job and get out and
11 try not to show no attitude, no partiality. That's the only
12 problem I have right there.

13 THE COURT: Do you think that any of that would affect
14 your willingness or your ability to give both the state and
15 the defendant a fair and impartial trial in this case?

16 JUROR NUMBER 29: Based on my experience, it would be
17 difficult, but I could probably do it.

18 THE COURT: Now, here is, here is what I am going to
19 tell you if you are a member of this jury.

20 I'm going to instruct you as a member of the jury you
21 are to make your decision in this case based solely on the
22 testimony and evidence that will be presented in the
23 courtroom and in light of the law as I will state it to you.

24 Do you think that you will be able to follow those
25 instructions and make your decision based on those

Jury qualification

1 instructions, or do you think that your experience that you
2 described a few minutes ago would interfere with your
3 ability toward your willingness to do that?

4 JUROR NUMBER 29: I could follow.

5 THE COURT: You could follow my instruction?

6 JUROR NUMBER 29: Yes. Unbiased.

7 THE COURT: Unbiased. You can be unbiased.

8 JUROR NUMBER 29: Yes, sir.

9 THE COURT: Okay. All right. Thank you, sir. Thank
10 you very much.

11 MR. ALLEN: No challenge.

12 THE COURT: All right. Mr. Miller, how are you, sir?

13 JUROR NUMBER 96: In 2000 I was falsely accused of
14 domestic violence.

15 THE COURT: What happened with the case?

16 JUROR NUMBER 96: The only way I feel I got out of it,
17 I had a voice activated tape recorder, and I had it in my
18 home. And I put it in my pocket. And that's the only thing
19 that got me out of it. It was false statements.

20 THE COURT: And the Court dismissed?

21 He said after he pulled out the tape recorder and
22 presented it to the judge -- is that what you said?

23 JUROR NUMBER 96: Yeah. They dropped the charges
24 against me.

25 THE COURT: Okay. He was falsely accused of criminal

Jury qualification

1 domestic violence, and he had a voice activated tape
2 recorder in his pocket. They recorded conversations.

3 JUROR NUMBER 96: They didn't go by the statement she
4 had wrote.

5 THE COURT: All right, sir. Thank you very much. Let
6 me back up. Because you were involved in that, do you
7 believe that you, that your experience in that as you
8 described would interfere in any way with either your
9 willingness or your ability to give both the state and the
10 defendant a fair and impartial trial in this case?

11 JUROR NUMBER 96: I don't think it would.

12 THE COURT: All right. Thank you, Mr. Miller. All
13 right.

14 MR. ALLEN: No challenge.

15 THE BAILIFF: One more, Judge.

16 JUROR NUMBER 104: Nicholus Parris.

17 THE COURT: Come on up a little bit. Look at her when
18 you talk.

19 JUROR NUMBER 104: My daughter provides security for
20 the courthouse here. About two and a half months ago one of
21 my officers in Anderson was involved in a domestic
22 situation. He shot and killed his wife and shot and killed
23 himself. It was only an employee of mine.

24 THE COURT: That's something we were interested in
25 hearing about. We appreciate you telling us that.

Jury qualification

1 Would the fact that you had that happen within your
2 company and also would the fact that you are personally
3 involved in providing security here in this courthouse and
4 apparently other courthouses interfere in any way with
5 either your willingness or your ability to give both the
6 state and the defendant a fair and impartial trial?

7 JUROR NUMBER 104: No, sir.

8 THE COURT: Okay.

9 That's pretty much it. Are there any objections for
10 cause from the jurors we have heard so far other than the
11 ones we dismissed?

12 MR. ALLEN: I don't think other than the one dismissed.

13 (End of proceedings at the bench.)

14 THE COURT: Is there any member of the jury panel who
15 has ever discussed this case or heard anyone discuss this
16 case other than what you have heard in the courtroom this
17 morning? If so, please stand.

18 (No response.)

19 THE COURT: Is there any member of the jury panel who
20 has any particular interest in the outcome of this case? If
21 so, please stand.

22 (No response.)

23 THE COURT: Is there any member of the jury panel who
24 has formed or expressed any opinion as to the guilt or
25 innocence of this defendant? If so, please stand.

Jury qualification

1 (No response.)

2 THE COURT: Does any member of the jury panel have any
3 bias or prejudice either towards or against the state or the
4 defendant in connection with this case? If so, please
5 stand.

6 (No response.)

7 THE COURT: Now, ladies and gentlemen, thinking back
8 over everything that we have discussed in the last 45
9 minutes to an hour, is there any member of the jury panel
10 who knows of any reason why you could not give both the
11 state and the defendant a fair and impartial trial in this
12 case and you have not already told me about that reason?
13 Then please stand now.

14 (No response.)

15 THE COURT: Any additional voir dire from the state?

16 MS. WELLS: Nothing from the state, Your Honor.

17 THE COURT: From the defense?

18 MR. ALLEN: No, Your Honor.

19 THE COURT: All right. Ladies and gentlemen, the way
20 we are going to select this jury is that the clerk is going
21 to randomly call your names one at a time.

22 When your name is called, please come down front and
23 stand out sort of in the middle of this room. The bailiff
24 will show you where to stand.

25 And face the lawyers. The state will go first. The

Jury qualification

1 state will either present you to the defense or will ask you
2 to return to your seat. The defendant's lawyer will then
3 either ask you to have a seat in the jury box or ask you to
4 return to your seat. When the jury box is full enough, we
5 will begin. We will begin the trial.

6 All right. Hold on just one second. You may proceed.
7 Five and five.

8 (Whereupon, a jury was impanelled.)

9 THE COURT: Let's go ahead and get one more alternate.
10 One and two strikes.

11 (Whereupon, an additional alternate juror was seated.)

12 THE COURT: Is there any objection to the composition
13 or manner of selection of this jury from the state?

14 MS. WELLS: None from the state, Your Honor.

15 THE COURT: From the defense?

16 MR. ALLEN: No, Your Honor.

17 (Whereupon, the remaining members of the jury venire
18 were excused.)

19 THE COURT: Those of you who are selected to serve on
20 this jury, we are going to begin this trial by taking a
21 lunch break, and I am going to ask you to -- are there any
22 issues that we have to take up before opening statements?

23 MS. WELLS: I don't believe so, Your Honor, not from
24 the state.

25 MR. ALLEN: I don't believe so.

Jury qualification

1 THE COURT: We are going to begin this trial at two
2 o'clock. So please be back in the jury room that Mr. Parks
3 will show you in just a second.

4 Before you leave, let me tell you a few things. First
5 of all, you may not discuss this case in any manner
6 whatsoever until I have specifically given you permission to
7 do so when it is time for you to deliberate.

8 So from this point forward you may not discuss the
9 allegations that I read to you from the indictment; you may
10 not discuss the witnesses whose names I called and who were
11 introduced to you, the lawyers who were introduced to you.
12 You may not discuss the general issues at stake in this
13 case.

14 You may talk about sports and weather and Christmas and
15 things of that nature, but you may not discuss this case.

16 Please remember those instructions, because if there
17 comes a time when I hear that there have been discussions
18 about this case or about anything related to this case, that
19 is going to make it very difficult for me to deal with.

20 I really need for you all to cooperate. I know it
21 seems like I could just tell you that and you would
22 understand it and go on, but you would be surprised the
23 things that come up. And I want you to just be very careful
24 not to discuss this case.

25 All right. Be back in the jury room at two o'clock.

Jury qualification

1 And at that time we will get you back in the courtroom, and
2 I will give you some more detailed instructions. You may
3 leave now.

4 (The following takes place outside the presence of the
5 jury.)

6 THE COURT: All right. I would like for you folks when
7 we break, I would like for you to go back to the jury
8 assembly room.

9 Is there anything further from the state?

10 MS. WELLS: Not at this time, Your Honor.

11 THE COURT: From the defense?

12 MR. ALLEN: No, Your Honor.

13 THE COURT: I will be here. I anticipate that I will
14 be here by at least 20 till. If there is any issue that
15 needs to be taken up, I want it to be brought to my
16 attention so that we can be finished with it by two o'clock
17 and get the jury in here to begin at two o'clock.

18 (Whereupon, a recess was taken.)

19 THE COURT: Is the jury all here?

20 THE BAILIFF: Yes, sir. We are ready to go.

21 THE COURT: All right. I am going to step out
22 momentarily, and I will be back to bring the jury in.

23 (Whereupon, a recess was taken.)

24 (The following takes place in the presence of the
25 jury.)

Opening remarks

1 THE COURT: Swear the jury, please.

2 (Whereupon, the jury was duly sworn.)

3 THE COURT: Ladies and gentlemen, we are ready now to
4 begin the trial in this case. This is the State of South
5 Carolina vs. David Ferrel Sullivan.

6 Mr. Sullivan, as I mentioned to you earlier, has been
7 indicted in Indictment Number 2002-GS-42-1612 with criminal
8 domestic violence of a high and aggravated nature.

9 And in that indictment it is alleged that David Ferrel
10 Sullivan did in Spartanburg County on or about March 11th,
11 2001, commit an assault and battery upon the victim, Cathy
12 Sullivan, a household member and/or a former household
13 member, constituting an unlawful act of violent injury to
14 the person of the said victim, accompanied by circumstances
15 of aggravation, to wit, serious bodily injury, and/or
16 difference between the sexes, and/or great disparity between
17 the ages, and/or physical conditions of the parties, and/or
18 the purposeful infliction of shame and disgrace in violation
19 of Section 16-25-65 and 17-25-30 of the South Carolina Code
20 of Laws.

21 Now, let me repeat for you, ladies and gentlemen, that
22 the indictment in this case is not in any sense evidence of
23 the allegations that are contained within the indictment.
24 The indictment is simply the formal document that contains
25 the charges against the defendant and processes the case so

Opening remarks

1 it can be brought into this court for trial.

2 The defendant has pled not guilty to this indictment,
3 and that plea casts the burden on the state of proving the
4 defendant guilty beyond a reasonable doubt.

5 The defendant is not required to prove anything in a
6 criminal case such as this. A defendant is presumed
7 innocent. No matter what the seriousness of the charge
8 against the defendant may be, the defendant will always be
9 presumed to be innocent of that charge unless and until his
10 guilt has been proven by evidence satisfying you of that
11 guilt beyond a reasonable doubt.

12 And it will be your job, ladies and gentlemen, to
13 determine whether or not the state has met or can meet its
14 burden of proof in this case.

15 And this case, like any other case, will be broken down
16 basically into five phases, and I'm going to talk to you a
17 little bit about those five phases now.

18 The first phase we call the opening statements, and in
19 just a second the lawyers will stand before you to make
20 their opening statements in which they will explain to you
21 what this case is about, what the issues are that you will
22 hear about in this case and what the evidence is that will
23 relate to those issues.

24 And the second phase is the evidentiary phase when
25 witnesses will come to the witness box here. You will hear

Opening remarks

1 their testimony. You perhaps will see exhibits and other
2 evidence that will be offered into evidence. And that
3 evidence will eventually become the basis on which you will
4 decide whether or not the state has met its burden of
5 proving the defendant guilty beyond a reasonable doubt.

6 And the third phase will be the closing arguments of
7 the attorneys. At this time the lawyers will stand before
8 you and argue to you as to which version of the facts you
9 should accept as true, argue to you as to whether or not the
10 state has met its burden of proving the defendant guilty
11 beyond a reasonable doubt.

12 And then in the fourth phase, which we call the jury
13 charge, I will give you the law that is applicable to this
14 case.

15 And then in the fifth phase you will go back into the
16 jury room and deliberate to determine whether or not the
17 state has met its burden of proving the defendant guilty
18 beyond a reasonable doubt.

19 Now, there are several things that I need for you to do
20 and not do during the course of this trial. First of all,
21 don't begin to make up your mind about whether or not the
22 state has met its burden of proof until you have been
23 through all five of the phases that I just outlined for you,
24 including the fifth phase when you will have a chance to
25 hear each other discuss the evidence and discuss whether or

Opening remarks

1 not the state met its burden of proof in this case.

2 I've already talked to you about discussing this case
3 or any aspect of this case among yourselves or with anyone
4 else.

5 When you go home tonight or when you are on any kind of
6 break that we may have, you may not discuss this case in any
7 manner either among yourselves or with anybody in your
8 family or anybody you may see outside this courthouse.

9 If someone asks you what you are doing, you can tell
10 them you're involved in a case and you cannot discuss it.

11 Now, after the case is over, you can discuss it as you
12 would like to. You don't have to discuss it, but if you
13 want to, you certainly can.

14 Now, you and I have different roles to play in this
15 case. As members of the jury, you are the exclusive judges
16 of the facts. And I am not permitted to play any role in
17 the decision concerning the facts. That is exclusively your
18 job.

19 If you see me do anything or hear me say anything
20 during the course of this trial that might lead you to
21 believe that I have an opinion about the facts of this case,
22 then you must disregard that.

23 The decision concerning whether or not the state has
24 met its burden of proof in this case is exclusively yours.
25 I, on the other hand, am the exclusive judge of the law.

Opening remarks

1 And if you have some idea as to what the law is or what the
2 law should be and if that differs from what I will tell you
3 the law is, then you are obligated under the oath that you
4 have just taken as jurors to accept the law as I state it to
5 you, to set your notion of the law aside and to accept and
6 apply the law precisely as I state it to you.

7 One other role that I play during the course of this
8 trial is to decide upon the admissibility of evidence. And
9 from time to time I expect that you will hear the lawyers
10 making an objection. And this is not the lawyers' attempt
11 to hide anything from you. This is the way our evidentiary
12 system works.

13 When one lawyer feels that a piece of evidence is
14 offered that does not comply with the rules of evidence, it
15 becomes that lawyer's obligation not only to his or her
16 client but also to me and to the court system to make an
17 objection.

18 And when an objection is made, it then becomes my
19 responsibility to rule on the objection. If I sustain the
20 objection, that means I believe, that means I agree that the
21 evidence is not admissible, and I will not allow it in for
22 you to consider. If I overrule an objection, that means I
23 believe the evidence is admissible, and I will allow it in.

24 And most of the time I can do that as I sit here. You
25 will hear someone say objection, and I will then say either

Opening remarks

1 sustained or overruled.

2 From time to time it's necessary for me to ask the
3 lawyers to come up to the bench so that I can discuss it
4 momentarily with them before I rule. And on some occasions
5 I will actually have to send you back into the jury room, or
6 I may actually have to send you back into the jury room so
7 that we can have an open discussion of the question of
8 evidence before I rule.

9 Sometimes you will hear a lawyer say no objection, and
10 that's particularly true with physical evidence. That does
11 not mean that the lawyer concedes that the evidence is true.
12 It simply means the lawyer concedes that the evidence is
13 admissible.

14 It then becomes your job as members of the jury to
15 decide whether or not the evidence is true. And in
16 evaluating the evidence, the testimony of witnesses, you
17 will necessarily have to evaluate the credibility or the
18 believability of these witnesses.

19 And some of the things that you may wish to consider as
20 you decide whether or not to believe a witness' testimony
21 about a particular matter include the following: The manner
22 and appearance of the witness who testifies; is he or she
23 straightforward or hesitant in answering the questions; is
24 the testimony of a witness consistent or inconsistent; how
25 did the witness come to know the facts that he or she is

Opening remarks

1 testifying to; and what is that witness' ability to know
2 those facts; is there some reason that a witness would want
3 to give testimony that might help or hurt one side or the
4 other.

5 In other words, is any witness biased either towards or
6 against the state or the defendant. Is the testimony of a
7 witness strengthened or weakened by other testimony and
8 evidence?

9 As members of the jury, you can believe as much or as
10 little of each witness' testimony as you think it is
11 appropriate to do. You may believe the testimony of a
12 single witness against that of many, or you may do just the
13 opposite. And you are not required to accept testimony as
14 true even if it is uncontradicted.

15 Mr. Parks, was it you or was it Mr. Hip that had the
16 key to the --

17 THE BAILIFF: Mr. Hip has it. He is going to be
18 delayed just a few minutes.

19 THE COURT: Do you think he will know to go ahead and
20 check the thermostat when he gets in? Don't y'all think it
21 is a little hot in here? It is a little hot in this corner
22 of the room. I know that. Turn it down just a little bit.

23 Unless there is some objection to my initial comments,
24 then you may begin your opening statements.

25 MS. SMITH: Thank you, Your Honor. May it please the

Opening statements

1 Court.

2 THE COURT: Yes, ma'am.

3 MS. SMITH: On March the 11th of 2001 Cathy Sullivan
4 did not wake up to the ring of her alarm clock as she
5 usually did.

6 Instead the evidence is going to show that Cathy awoke
7 to find her husband standing over her yelling and hitting
8 her with a belt over and over and over and over with the
9 strap of that belt and with the buckle of that belt.

10 Cathy Sullivan didn't roll out of bed and go about her
11 normal activities that day, because you are going to find
12 out that Cathy Sullivan was lying in the emergency room at
13 Spartanburg Regional.

14 Ladies and gentlemen, this lady sitting right over
15 here, this is Cathy Sullivan. And that man sitting right at
16 that table, that's the man that beat her.

17 My name is Cindy Smith, and this is Jennifer Wells.
18 And we both work for the Seventh Circuit Solicitor's Office
19 right here in Spartanburg County. It is going to be our job
20 today to bring forth all of the important evidence and
21 present it to you.

22 First, let's talk about what I mean by evidence.
23 Mainly, you are going to hear two forms of evidence during
24 this trial. You are going to hear some testimony and you
25 are going to see some photographs; testimony from witnesses

Opening statements

1 who are going to sit right there in that witness stand and
2 photographs of Cathy's injuries.

3 First, let's talk a little bit about what you're going
4 to hear from the witness stand. You're going to hear from
5 the emergency medical technician who originally saw Cathy
6 and treated her when she came into the E. R. that morning.

7 And you are also going to hear from the emergency room
8 doctor who treated her, who examined her and who evaluated
9 her condition.

10 They are both going to tell you exactly what they saw
11 in that early morning. And in the case of the doctor, he is
12 going to give you his opinion as to what actually happened
13 to her.

14 You're going to hear from a sergeant from the sheriff's
15 office, and he was in the E. R. that day and took
16 photographs. You are going to get to see pictures of
17 Cathy's injuries with your own eyes.

18 And, of course, you are going to hear from Cathy. And
19 she is going to explain to you why it is that instead of
20 getting out of bed that morning and going about her daily
21 activities, she was lying in a bed in the emergency room.

22 You know what my job is and Ms. Wells' job is and what
23 the defense attorney's job is. And we all know what Judge
24 Few's job is. And with all due respect to Judge Few, your
25 job is the most important job in this courtroom today,

Opening statements

1 because you alone have to decide what happened on March the
2 11th of 2001.

3 And Ms. Wells and I are going to give you almost every
4 single thing you need to make that decision, but there is
5 one thing we are not going to give you. Luckily, it is
6 something all of you already have, and that is common sense.
7 Common sense.

8 If you use your common sense as you listen to the
9 testimony coming from the witness stand, as you look at the
10 photographs that you have in front of you, as you take all
11 of this evidence back into the jury room and begin to
12 discuss it, evaluate it, if you use your common sense
13 justice will be done in this case.

14 Common sense is the tool that will serve you best as
15 you sit on this jury. And when it's all said and done and
16 this trial is over, your common sense will tell you, and you
17 will know, that that man beat Cathy Sullivan. And you will
18 find him guilty.

19 MR. ALLEN: May it please the Court.

20 Good afternoon, ladies and gentlemen. Without trying
21 to be overly repetitious of His Honor, there are a few
22 things that I would like to bring to your attention as we
23 begin in this case.

24 And that is essentially that the state has brought this
25 charge, this charge of criminal domestic violence of a high

Opening statements

1 and aggravated nature, against David Sullivan, my client.

2 And as he sits there right now beside me, he is
3 presumed innocent. The law requires it. And the way I like
4 to look at the presumption of innocence is simply this. If,
5 after I finish my opening statement, and this, by the way,
6 won't happen. Trials aren't conducted this way, but this is
7 the mindset I want to get you in.

8 If, after I finish my opening statement, you were
9 allowed to go back and vote and decide if, based on the
10 charge and what you have heard so far he is guilty or not
11 guilty, you have only got one decision to make, and that is
12 to decide that he is not guilty, because, even after I
13 finish my opening statement, the state will not have proved
14 anything beyond a reasonable doubt.

15 And that's what's required before the state -- or
16 before the jury is allowed to act or before you should find
17 anyone guilty. The state is required to prove, anyone they
18 bring a charge against, including Mr. Sullivan, guilty of
19 that charge beyond a reasonable doubt. He is presumed
20 innocent.

21 I also am going to ask you to keep an open mind. I
22 watch, and maybe I shouldn't admit this, but I periodically
23 like to watch television shows involving law, lawyers and
24 the courts. I don't know why I do that. I get enough of
25 that during the day.

Opening statements

1 But one show that really gets on my nerves is this
2 television program where they show a court trial going on
3 and they ask the viewers as this case is going on to call in
4 their votes. Would you find him guilty; would you find him
5 not guilty? Call it in. While we are telling you the
6 story, y'all are just going to call in your votes.

7 And what really bothers me is that obviously for
8 dramatic reasons, is this show towards the end provides new
9 information, which had it been known by those people who
10 called in their votes, probably would not have voted that
11 way or changed their votes.

12 This is part of keeping an open mind. And I am going
13 to ask y'all, just as the Court has asked you and the
14 solicitor has asked you, to keep an open mind about this
15 case. Don't call in your vote early. Listen to all of the
16 evidence, the questions and information that's produced by
17 the state, as well as the questions and information that we
18 produce.

19 We will attempt to show you plenty of doubt in this
20 case. We will attempt to show you that the state cannot
21 prove and has not proven Mr. Sullivan's guilt beyond a
22 reasonable doubt. We will attempt to show you at the
23 conclusion of all of the evidence in this case that
24 Mr. Sullivan is entitled to that presumption of innocence.

25 You will hear from a number of witnesses, as the

Cathy Sullivan
Direct examination by Ms. Wells

1 solicitor has indicated. But essentially one witness from
2 whom you will hear that will testify about what happened,
3 I'm going to ask you to pay attention to that witness,
4 because this case will depend upon the credibility of that
5 witness, among others.

6 At the conclusion of this case I also, and Mr. Sullivan
7 also, asks for justice in your hands, to apply the law as
8 His Honor will give it to you and the facts as you find them
9 to be and to find him not guilty. Thank you.

10 THE COURT: Call your first witness.

11 MS. WELLS: Thank you, Your Honor. May it please the
12 Court, the state would call Cathy Sullivan to the stand.

13 CATHY SULLIVAN, having been first
14 duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. WELLS

16 Q Would you state your name? And spell your last name
17 for the court reporter, please.

18 A Cathy Sullivan, S-U-L-L-I-V-A-N.

19 Q Thank you, Cathy. Cathy, how old are you?

20 A Forty-two.

21 Q And where do you live?

22 A 214 Hill Street.

23 Q And where is that?

24 A In Gaffney.

25 Q Have you always lived at 214 Hill Street in Gaffney?

Cathy Sullivan
Direct examination by Ms. Wells

- 1 A No.
- 2 Q No? Cathy, do you have any children?
- 3 A Three girls.
- 4 Q All girls. And are you married?
- 5 A Yes.
- 6 Q Who are you married to?
- 7 A David Sullivan.
- 8 Q Can you point David Sullivan out? Is he in the
9 courtroom today?
- 10 A Yes.
- 11 Q Where is he, sitting next to his lawyer at the defense
12 table?
- 13 A Yes.
- 14 Q Cathy, where did you live on March the 11th of 2001?
- 15 A Spartanburg.
- 16 Q In Spartanburg. Do you remember the address?
- 17 A Not really, no.
- 18 Q Was it 480 Ransdell Street?
- 19 A Yeah.
- 20 Q Who did you live there with?
- 21 A My husband.
- 22 Q Your husband's name is David. But that's not what you
23 call him, is it?
- 24 A No. I call him a nickname, Cal.
- 25 Q You call him Cal. What's Cal short for?

Cathy Sullivan
Direct examination by Ms. Wells

1 A California.

2 Q California. That's his nickname. Cathy, I am going to
3 direct your attention back to March of 2001. Where were you
4 living on March the 10th and March the 11th? You were
5 living in Spartanburg County, 480. And we've already
6 covered that, right? And you were living there with
7 Mr. Sullivan.

8 A Right.

9 Q Did you have an opportunity to see or speak to
10 Mr. Sullivan that day?

11 A Yes.

12 Q When did you see him?

13 A That morning.

14 Q Were y'all getting along?

15 A Yeah. We had a little argument, but that's about it.

16 Q You had had an argument. You don't remember -- do you
17 remember what the argument was about?

18 A No, I don't.

19 Q You don't? Did you talk to him that day?

20 A Yes.

21 Q When did you talk to him?

22 A I had talked to him that morning and I had talked to
23 him that evening.

24 Q And when did you talk to him that evening?

25 A At the job.

Cathy Sullivan
Direct examination by Ms. Wells

1 work until about 3:00 in the morning?

2 A No.

3 Q What time did he usually come home?

4 A It all depends on if he got clients, 7:00 or 8:00.

5 Q Okay. But it wasn't 7:00 or 8:00 this time.

6 A No.

7 Q What happened when Cal came home that night, Cathy?

8 A He was fussing.

9 Q What do you mean, fussing? Can you tell the jury, when
10 you say fussing, what you mean?

11 A Saying all kind, calling me all kind of names.

12 Q What kind of names did he call you, Cathy?

13 A Like bitch and whore.

14 Q Did you say anything back to him?

15 A No.

16 Q Why not?

17 A I didn't want to argue.

18 Q What did you do instead of saying something back to
19 him?

20 A I just laid there.

21 Q And while you were laying there did anything happen?

22 A Yeah. He started hitting me with a belt.

23 Q Where did he hit you?

24 A On my back, leg, arm.

25 Q Was he saying anything to you while he was hitting you?

Cathy Sullivan
Direct examination by Ms. Wells

- 1 Q He was working?
- 2 A Yeah.
- 3 Q Did you go to see him?
- 4 A Yes.
- 5 Q What was the nature of your conversation that you had
6 at his job? What did y'all talk about when you went to go
7 see him at his job?
- 8 A About the argument that we had that morning, but I
9 can't remember what it was.
- 10 Q Okay. Did you have an in-depth conversation? Did you
11 talk for a long time?
- 12 A No.
- 13 Q No. Did you later leave where he was working?
- 14 A Yes.
- 15 Q What did you do after you left?
- 16 A I went back home.
- 17 Q And what did you do at home?
- 18 A Just sat there and looked at T. V.
- 19 Q Were you awake when Cal came home that night?
- 20 A Well, no, until he came in and I woke up.
- 21 Q Do you know what time he came home?
- 22 A Around 3:00.
- 23 Q How did you know it was 3:00 in the morning?
- 24 A Because I got a microwave that has got the time on it.
- 25 Q Was that his usual time to come home? Did he usually

Cathy Sullivan
Direct examination by Ms. Wells

1 A I don't remember. I just was trying to get out of
2 there.

3 Q Were you afraid?

4 A Yeah.

5 Q Do you know how long the beating went on?

6 A No.

7 Q Cathy, were you able to get away from Cal?

8 A Yes.

9 Q What did you do?

10 A I walked to the store and got a cab to the hospital.

11 Q Cathy, I want to talk to you just one second and go
12 back and clarify a couple of things. What were -- what were
13 you sleeping when Cal came home that night?

14 A Upstairs.

15 Q But were you -- did you have on anything when you were
16 sleeping?

17 A Yeah. I had a gown.

18 Q Were you able to -- did you walk to the store in your
19 gown?

20 A No.

21 Q No. Were you able to get some clothes before you left
22 the house?

23 A Yes.

24 Q Is it well-lit where you lived, the road that you
25 walked on to the store?

Cathy Sullivan
Direct examination by Ms. Wells

- 1 A In spots.
- 2 Q Did you take any shortcuts? How did your walk go?
- 3 A I just walked as fast I could. I could walk.
- 4 Q Were you able to walk very fast?
- 5 A Not too fast.
- 6 Q Why not?
- 7 A Because I was sore.
- 8 Q You were hurting?
- 9 A Yes.
- 10 Q Do you know what store you walked to?
- 11 A A convenience store.
- 12 Q Do you know what road it was on?
- 13 A What road it was on?
- 14 Q What road it was on?
- 15 A Uh-uh. I don't know the name of the road.
- 16 Q And when you were there, you had someone call a cab for
- 17 you?
- 18 A Yes.
- 19 Q Why didn't you call 9-1-1?
- 20 A I was just thinking about getting out of there.
- 21 Q You just wanted to get out. Did the cab ever come to
- 22 get you?
- 23 A Yes.
- 24 Q And where did the cab take you?
- 25 A To the hospital.

Cathy Sullivan
Direct examination by Ms. Wells

1 Q Do you know what -- do you know what the name of the
2 hospital was?

3 A Spartanburg Regional.

4 Q It was Spartanburg Regional. Cathy, what happened once
5 you got to the hospital?

6 A The nurses, they came out and checked me and took me in
7 the back.

8 Q And at some point did you realize how seriously injured
9 you were?

10 A Not that bad until I really looked, but I know I was
11 bad.

12 Q Did you tell the nurses, the nurse that you talked to,
13 did you tell her what happened to you?

14 A Yes.

15 Q Did you tell the doctor?

16 A Yes.

17 Q Did you speak with anybody from law enforcement?

18 A Yes.

19 Q And did you tell him what happened?

20 A Yes.

21 Q What did you tell these people happened to you?

22 A I told them that what had happened, that my husband had
23 took a belt and beat me with it.

24 Q Cathy, did anybody take any pictures?

25 A Yes.

Cathy Sullivan
Direct examination by Ms. Wells

1 MS. WELLS: Your Honor, let me show these photos to
2 Mr. Allen. I don't think he has seen them before.

3 (Pause.)

4 MS. WELLS: Your Honor, may I approach the witness?

5 THE COURT: Certainly.

6 Q Cathy --

7 MS. WELLS: Beg the Court's indulgence. I may need to
8 have these marked, Your Honor, before I show them to the
9 witness.

10 THE COURT: That will be fine.

11 (Photographs marked State's Exhibits Numbers One
12 through Thirteen for Identification.)

13 Q Cathy, I am going to show you a group of pictures that
14 have been marked as state's for identification purposes only
15 One through, I believe it is, Thirteen. I just want you to
16 look at the pictures and tell me if you recognize what these
17 pictures are.

18 A Pictures of me.

19 Q Do you recognize them? And they are pictures of you.
20 Cathy, when were these pictures taken?

21 A The night that I was at the hospital.

22 Q The night you were at the hospital, the night we are
23 talking about.

24 A Uh-huh.

25 Q Cathy, do these pictures, are they a fair

Cathy Sullivan
Direct examination by Ms. Wells

1 representation of the injuries that you had at that time,
2 that night?

3 A Yes.

4 Q They are.

5 MS. WELLS: Your Honor, we would move these as State's
6 Exhibit One through Thirteen at this time.

7 MR. ALLEN: I believe we might have a technical
8 objection, Your Honor. Shall we approach or do you want me
9 to state it?

10 THE COURT: State it.

11 MR. ALLEN: She didn't take the pictures. I don't know
12 how she is capable of testifying to each and every one of
13 these pictures if it was a picture of her or if it was the
14 actual condition.

15 THE COURT: I believe that I would overrule that
16 objection. She has stated that those pictures are a fair
17 and accurate representation of her condition on the night
18 that the pictures were taken. Overruled.

19 MR. ALLEN: Yes, sir.

20 MS. WELLS: Thank you, Your Honor. We would offer the
21 photos at this time into evidence.

22 THE COURT: They are admitted.

23 MS. WELLS: Thank you, Your Honor.

24 (Photographs marked State's Exhibits Numbers One
25 through Thirteen.)

Cathy Sullivan
Direct examination by Ms. Wells

1 Q Cathy, I am going to show you what's been marked as
2 State's Exhibit Eleven. What is that a picture of?

3 A Me.

4 Q That's a picture of your face. And the rest of the
5 pictures, those are the pictures of the injuries that you
6 had, is that correct?

7 A Yes.

8 Q Cathy, how did the injuries that you received that are
9 shown in those pictures, how did those injuries make you
10 feel? What was your physical condition like after this
11 beating?

12 A Real sore, very sore.

13 Q Were you able to sleep very easily?

14 A No.

15 Q Were you given any medication?

16 A Yes.

17 Q After -- did the doctor come and treat you?

18 A Yes.

19 Q And after the doctor treated you, what, if anything,
20 happened? Did you go home?

21 A Yes.

22 Q Who did you go home with?

23 A My daughter.

24 Q And what's your daughter's name?

25 A Robin.

Cathy Sullivan
Direct examination by Ms. Wells

1 Q Robin. And where does Robin live?

2 A In Gaffney.

3 Q Do you know how long you stayed with Robin?

4 A About a month.

5 Q About a month. What were you -- what were you doing
6 while you were at Robin's house?

7 A Getting well.

8 Q Did anybody take care of you?

9 A Yeah, my sister.

10 Q Your sister. What's your sister's name?

11 A Frances.

12 Q And Frances took care of you?

13 A Yes.

14 Q And what kind of things did she do for you?

15 A She had to bathe me and wash --

16 MR. ALLEN: Your Honor, at this point I would object as
17 not being relevant to the issues in this trial.

18 THE COURT: I think that as long as this is just sort
19 of setting up a little background, then I will allow it.
20 But going much farther than when you have gone so far is
21 probably not going to be necessary.

22 MS. WELLS: Thank you, Your Honor. May she complete
23 and answer the question?

24 THE COURT: She may.

25 MS. WELLS: Thank you, Your Honor.

Cathy Sullivan
Direct examination by Ms. Wells

1 Q What kind of things did she do to take care of you?

2 A Took me a bath, and more or less everything, helped me
3 to the bathroom.

4 THE COURT: All right. Let me get y'all to come up
5 here a second.

6 (Bench conference held off the record in the presence
7 of the jury but out of the hearing of the jury.)

8 MS. WELLS: Thank you, Your Honor.

9 Q Cathy, where did you go after you stayed with Robin,
10 after you stayed with your daughter?

11 A I went to a shelter in Charlotte.

12 Q In Charlotte, North Carolina?

13 A Yes.

14 Q Why did you go to a shelter in Charlotte?

15 A To get finished getting healed inside.

16 Q How long did you stay in Charlotte?

17 A Ten days.

18 Q Ten days. Cathy, who's taller, you or Cal Sullivan?

19 A My husband.

20 Q About how much taller is he than you are?

21 A A lot.

22 Q Who's heavier, you or Cal Sullivan?

23 A My husband.

24 Q Do you know how much heavier he is than you are?

25 A No.

Cathy Sullivan
Direct examination by Ms. Wells

1 Q But he is definitely bigger. He is definitely bigger
2 than you?

3 A Yeah.

4 Q Who is stronger?

5 A My husband.

6 Q Cathy, I'm going to ask you one last question. I want
7 you to listen to my question real carefully. Okay. At any,
8 at sometime after this occurred did you have a conversation
9 with your husband about what happened? I don't want you to
10 tell me where. I just want you to tell me if you had a
11 conversation with your husband about what happened on March
12 the 11th of 2001.

13 A Yes.

14 Q And what did he tell you about what had happened on
15 March the 11th of 2001?

16 MR. ALLEN: Your Honor, I object at this point.

17 THE COURT: Let me get the jury to step out for just a
18 few minutes, and I will get back to you as soon as I can.

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

21 THE COURT: All right. Let me hear your answer, ma'am.
22 Let me hear your answer to that question.

23 THE WITNESS: Yes.

24 THE COURT: The next question was what did he tell you
25 about what happened.

1 THE WITNESS: He apologized.

2 THE COURT: All right. Okay. Is that where you are
3 headed? Is that what you want or were there specific -- is
4 there -- you continue if necessary.

5 Q Well, what did he tell you about what happened on March
6 the 11th of 2001? What did he tell you about what had
7 happened that night?

8 A He said what had happened?

9 Q Uh-huh.

10 A He just stated he apologized for what he did, for
11 everything he have did to me.

12 Q Okay.

13 MR. ALLEN: May I ask some questions, Your Honor, at
14 this juncture?

15 THE COURT: What are your objections?

16 MR. ALLEN: Well, at this point, first of all, there
17 has not been any showing as to when or where this comment
18 was made; just sometime later. And I imagine the solicitor
19 has got a reason for not wanting to indicate where. But if
20 it is where I think it is based upon the way she prefaced
21 the question, we're talking about a comment that was made
22 well over a year after the event.

23 And, secondly, a simple statement that he apologized
24 for what he did is not specific enough to show any kind of
25 culpability or what was being apologized for, for example,

Cathy Sullivan
Direct examination by Ms. Wells

1 an argument, the fact that their marriage had broken up, or,
2 I mean, what? And if she is going to --

3 THE COURT: On the current foundation, I would sustain
4 the objection.

5 MS. WELLS: Beg the Court's indulgence for just a
6 minute.

7 THE COURT: Certainly.

8 (Pause.)

9 MS. WELLS: Your Honor, just for some clarification
10 purposes, the reason I asked her not to say when or where
11 this conversation was held, it was because it was held while
12 the defendant was in jail on a bench warrant in this case.
13 I'm simply just trying to prevent a mistrial as to that.

14 THE COURT: Well, Mr. Allen, I am sure, appreciates
15 your efforts, but he has, nevertheless, put you to the task
16 of proving when and where the conversation occurred.

17 And I think also you need to introduce evidence of what
18 he was talking about and how she knows what he was talking
19 about when he said I'm sorry or I apologize or whatever it
20 is he said.

21 MS. WELLS: I mean, I can question the witness if --

22 THE COURT: Have at it.

23 MS. WELLS: Okay.

24 Q Cathy, what was the nature of the conversation that you
25 all had about -- let me just ask you this.

Cathy Sullivan
Direct examination by Ms. Wells

1 MS. WELLS: And I'm not -- these two questions I am not
2 going to ask her in front of the jury, Your Honor.

3 Q Where did this conversation occur?

4 A It occurred later on when I did see him.

5 Q Uh-huh. And where were y'all when you had the
6 conversation?

7 A He was at my daughter's house.

8 Q He was at your daughter's house. Okay. We must have
9 had a misunderstanding about where it occurred then. I
10 thought he was in jail.

11 A Then too.

12 Q Then too?

13 A Yeah.

14 Q So you had a conversation more than once --

15 A Yeah.

16 Q -- about what had happened?

17 A Yeah.

18 Q Did you actually talk about, at any time about, him
19 actually beating you?

20 A Yes.

21 Q What was the nature of that conversation where you
22 talked about him beating you?

23 A Well, he told me that he was going to plead guilty. He
24 was guilty of what he did to me.

25 Q And at that point, is that when he told you he was

Cathy Sullivan
Direct examination by Ms. Wells

1 sorry for what had happened?

2 A He had already told me earlier that he was sorry.

3 Q How did you know that he was sorry for the beating and
4 not for any of the other things that had happened between
5 y'all?

6 A Well, we had got back together.

7 Q And/but how do you know that it was about the beating
8 and not about anything else?

9 A Well, I assumed that's what it was.

10 Q Okay.

11 MS. WELLS: I guess we will just withdraw, just strike
12 the last part of the testimony.

13 THE COURT: Okay.

14 MS. WELLS: I mean, beg the Court's indulgence. We
15 will just move to strike, and that will be the end of it.

16 THE COURT: You won't need to move to strike it. The
17 only evidence in the record before the jury is that they had
18 a conversation.

19 MS. WELLS: And then we will just --

20 THE COURT: I am going to take a short walk down the
21 hall. I will be right back.

22 (Whereupon, a recess was taken.)

23 THE COURT: Anything further before we bring the jury
24 out?

25 MS. WELLS: Not from the state, Your Honor.

Cathy Sullivan
Cross-examination by Mr. Allen

1 THE COURT: All right.

2 (The following takes place in the presence of the
3 jury.)

4 THE COURT: You may proceed.

5 MS. WELLS: Thank you, Your Honor.

6 Your Honor, at this time the state would move to
7 publish the photos to the jury.

8 THE COURT: That will be fine.

9 MS. WELLS: Your Honor, I have no further questions of
10 this witness at this time.

11 Q Please answer any questions Mr. Allen has for you.

12 CROSS-EXAMINATION

13 BY MR. ALLEN

14 Q You knew it was three o'clock when your husband came in
15 because you saw the time on the built-in clock or microwave,
16 is that correct?

17 A Correct.

18 Q I'm going to ask you to speak up a little bit. I am
19 getting a little hard of hearing.

20 A Yes.

21 Q Thank you. Now, he didn't normally come in that late,
22 is that correct?

23 A Correct.

24 Q And you expected him to come home pretty much after he
25 got off work and finished with his customers, is that

Cathy Sullivan
Cross-examination by Mr. Allen

1 correct?

2 A Correct.

3 Q He worked at Joe Gibson Auto World, is that correct?

4 A Correct.

5 Q He was a car salesman.

6 A Yes.

7 Q And your events or your memory of those events that day
8 were probably better then when you were getting, where you
9 talked to the police, than your memory is today, is that
10 correct?

11 A Correct.

12 Q And isn't it a fact that you did not see your husband
13 at Joe Gibson Auto World the day before?

14 A Yes.

15 Q Yes, it is a fact, or, yes, you did see him?

16 A Yes, I did see him.

17 Q You are positive of that?

18 A Yes.

19 Q When did you see him at Joe Gibson?

20 A That evening.

21 Q About what time? About 6:00?

22 A Yes.

23 Q Were you able to find him at Joe Gibson Auto World
24 around 6:00?

25 A Yes.

Cathy Sullivan
Cross-examination by Mr. Allen

1 Q When you first were talking or reporting this case, did
2 you speak with Deputy Rhorer, the lady sitting on this first
3 pew next to the gentleman in the gray suit?

4 A Yes.

5 Q And you told her about the situation?

6 A Yes.

7 Q Everything you knew about it?

8 A Yes.

9 Q You gave a written statement --

10 A Yes.

11 Q -- that you allowed her to write, but you signed, is
12 that correct?

13 A Yes.

14 Q And you were trying to be accurate when you gave that
15 statement?

16 A Trying to be.

17 Q And to the best of your knowledge, you were accurate
18 when you gave that statement, is that right?

19 A To the best of my knowledge.

20 Q You were expecting officers to rely on this statement?
21 You expected the officers to rely on this statement in their
22 investigation of this case?

23 A Yes.

24 Q You wanted them to rely on this statement in the
25 investigation of this case, is that correct?

Cathy Sullivan
Cross-examination by Mr. Allen

1 A Yes.

2 Q I'm showing you a copy. Is this a copy of the
3 statement that you gave to Officer Rhorer that day?

4 A Yes.

5 Q And where were you when you gave that statement?

6 A At the hospital.

7 Q Okay. How long were you at the hospital?

8 A I don't remember.

9 Q A couple of hours?

10 A Yes.

11 Q And doesn't it say in your statement that you wanted to
12 work things out between us so you stopped by Joe Gibson's
13 Auto World to see him, meaning your husband, around 6:00
14 p.m. but I couldn't find him? Is that what the statement
15 says, ma'am?

16 A That's not correct.

17 Q No. That's not my question, ma'am. Isn't that what
18 the statement says?

19 A Yes.

20 Q The statement that you signed.

21 A Yes.

22 Q The statement you gave Officer Rhorer while you were at
23 the hospital for a couple of hours.

24 A Yes.

25 Q And you were allowed to review this statement before

Cathy Sullivan
Cross-examination by Mr. Allen

1 you signed it.

2 A Yes.

3 Q You were allowed to make any corrections of anything
4 that was not correct before you signed it.

5 A Yes.

6 Q And there's no correction on that part, is there?

7 A No.

8 Q Isn't it true you told Officer Rhorer that you could
9 not find your husband when you went to Joe Gibson Auto,
10 World the day before about 6:00 p.m?

11 A I didn't ever say that. I said I did find him, because
12 my daughter went with me.

13 Q Now, getting back to the times, your husband normally
14 came home pretty much after he finished up with his
15 customers at work, is that right?

16 A Yes.

17 Q But he didn't on this day, is that correct?

18 A Correct.

19 Q And that made you a little bit angry, isn't that right?

20 A No. It didn't make me angry.

21 Q You didn't wonder what he was up to or what he was
22 doing?

23 A Yes.

24 Q And you suspected that he had gone somewhere after
25 work.

Cathy Sullivan
Cross-examination by Mr. Allen

1 A Yes.

2 Q When you say he came home around 3:00 and you say that
3 he was hitting you with a belt -- is that what you are
4 saying?

5 A Yes, I am.

6 Q How was he clothed during that time?

7 A He had on his clothes.

8 Q He didn't take all of his clothes off before you say he
9 began hitting you with the belt?

10 A No.

11 Q Did you say in this statement that you gave to Officer
12 Rhorer during the time that you are in the hospital that he
13 did take his clothes off?

14 A No.

15 Q You didn't say that? Doesn't your statement say that?

16 A Yes.

17 Q Your statement does say that.

18 A Yes. It do.

19 Q And, again, you were allowed an opportunity to correct
20 the statement if you wanted to.

21 A Yes.

22 Q And you didn't correct it.

23 A No.

24 Q Now, how -- well, let's get an idea of what the house
25 is like. You lived with Mr. Sullivan on Ransdell Street in

Cathy Sullivan
Cross-examination by Mr. Allen

- 1 a two-story house, is that correct?
- 2 A Correct.
- 3 Q And who else lived in that house?
- 4 A The people downstairs.
- 5 Q How many people downstairs?
- 6 A Two.
- 7 Q Okay. And they are whom -- Willie Payden?
- 8 A Yes.
- 9 Q And his wife?
- 10 A Yes.
- 11 Q And you had a telephone up in your part of the house.
- 12 A Yes.
- 13 Q And there was a telephone downstairs as well, is that
- 14 correct?
- 15 A Correct.
- 16 Q And you and Mr. Sullivan lived primarily upstairs, is
- 17 that right?
- 18 A Yes.
- 19 Q That's why you had a microwave up there, because that's
- 20 where you and he were living and preparing your meals and
- 21 that sort of thing, right?
- 22 A Right.
- 23 Q And after you -- or how long are you saying that you
- 24 were in your part of the house after Mr. Sullivan came home
- 25 before you left?

Cathy Sullivan
Cross-examination by Mr. Allen

1 A Excuse me?

2 Q How long was it before you left your part of the house
3 after Mr. Sullivan came home that morning that we are
4 talking about?

5 A All day. I was up there.

6 Q Before you left to go to the hospital.

7 A Yes. Until his job.

8 Q Okay. He came home around three o'clock you say,
9 right?

10 A Yes.

11 Q Okay. How long after that were you in the house before
12 you left?

13 A I don't remember.

14 Q Twenty minutes?

15 A I don't remember.

16 Q Thirty minutes?

17 A I can't remember.

18 Q An hour, as much as an hour then, or what?

19 A Yeah. You could say about an hour and a half.

20 Q And you're saying that he came home and you stayed in
21 the house an hour and a half.

22 A I would say about a good hour, because I sat downstairs
23 for a while.

24 Q All right. You don't know how long you were in the
25 house?

Cathy Sullivan
Cross-examination by Mr. Allen

- 1 A No, I don't.
- 2 Q How long did you sit downstairs?
- 3 A I don't know.
- 4 MS. WELLS: Your Honor, I think he has asked. This has
5 been asked and answered.
- 6 THE COURT: Overruled.
- 7 Q You were by yourself while you sat downstairs?
- 8 A Yes.
- 9 Q But this was in the Paydens' part of the house, is that
10 correct?
- 11 A Yes.
- 12 Q And while you sat down, I mean, so you sat down there,
13 and then you left the house?
- 14 A Yes.
- 15 Q Walking?
- 16 A Yes.
- 17 Q And how far did you walk?
- 18 A I don't know how far that is.
- 19 Q How far was it to the store?
- 20 A I don't know.
- 21 Q Do you know how long you walked?
- 22 A It wasn't that far.
- 23 Q I am sorry?
- 24 A It wasn't that far.
- 25 Q Do you know how long in time that you walked?

Cathy Sullivan
Cross-examination by Mr. Allen

- 1 A No.
- 2 Q Was it 20 minutes?
- 3 A I don't know. I'm just walking.
- 4 Q Were you walking pretty much by the roads?
- 5 A Yes.
- 6 Q Didn't you walk all the way to the hospital?
- 7 A No.
- 8 Q Didn't you tell Deputy Rhorer that you walked all the
9 way to the hospital?
- 10 A I don't recall.
- 11 Q Well, when you say you don't recall telling Officer
12 Rhorer if you went all the way to the hospital, are you
13 saying that it's possible you told her that, or not?
- 14 A It's a possibility.
- 15 Q It's a possibility you told her that.
- 16 A I doubt it.
- 17 Q You doubt it.
- 18 A Because I didn't walk.
- 19 Q Do you know if your statement indicates how far you
20 walked?
- 21 A No.
- 22 Q Well, let's take a look at your statement. Is this a
23 copy of your statement, again?
- 24 A Yes.
- 25 Q Doesn't it say here towards the bottom, "I walked all

Cathy Sullivan
Cross-examination by Mr. Allen

1 the way to the hospital"?

2 A Yes.

3 Q So isn't it true that you did not go to the store and
4 call a cab?

5 A Yes. I did.

6 Q Did you see anybody at the store?

7 A Yes.

8 Q A clerk?

9 A Yes.

10 Q Is he here today, or she? Is he or she here today?

11 A He.

12 Q Is he here today?

13 A I don't even remember how he looked.

14 Q What about the cab driver? Is he or she here today?

15 A He. I don't remember how he looked either.

16 Q Now, you spoke about while you were at the hospital for
17 a couple of hours, is that correct?

18 A Yes.

19 Q And then you were taken care of, you say you were taken
20 care of, by your sister, I understand, is that correct, for
21 a while? Your sister took care of you for a while?

22 A Yes, and my daughter.

23 Q During any of that time afterwards did you see other
24 doctors about these injuries?

25 A No.

Cathy Sullivan
Redirect examination by Ms. Wells

1 Q You say that you live at 214 Hill Street in Gaffney, is
2 that correct?

3 A Yes.

4 Q When you began to live at 214 Hill Street in Gaffney,
5 were you living with someone else there?

6 A My husband.

7 Q Mr. Sullivan here?

8 A Yes.

9 Q But this was after March the 11th of last year, right?

10 A Yes.

11 MR. ALLEN: One second, please, Your Honor.

12 (Pause.)

13 Q After your husband came home at three o'clock that day,
14 is it true that you accused him of seeing someone else?

15 A No.

16 MR. ALLEN: Nothing further, Your Honor. Thank you.

17 MS. WELLS: Your Honor, just briefly.

18 REDIRECT EXAMINATION

19 BY MS. WELLS

20 Q Cathy, after your husband beat you that night, were you
21 thinking really clear? Do you remember a lot of things in
22 detail?

23 A No.

24 Q You've already answered this question for Mr. Allen.
25 But you don't know the mileage of the walk from your house

Cathy Sullivan
Redirect examination by Ms. Wells

- 1 to the convenience store, do you?
- 2 A No.
- 3 Q Do you even know how long it took you to make the walk
- 4 that night?
- 5 A No.
- 6 Q What was your -- what was going through your mind at
- 7 the time? What was your state of mind?
- 8 A Why did he do this for no reason.
- 9 Q Cathy, Mr. Allen talked to you about a statement that
- 10 you gave to the deputy who came to the hospital that night.
- 11 Let me show you a copy. Is that your handwriting?
- 12 A No.
- 13 Q So you didn't write this statement yourself?
- 14 A No.
- 15 Q Who wrote it for you?
- 16 A The officer.
- 17 Q How did that happen, this statement? When she took the
- 18 statement from you, how did that occur?
- 19 A I guess because I couldn't. I was too sore and too
- 20 hurt.
- 21 Q So you couldn't write the statement. Is that what you
- 22 are saying?
- 23 A No.
- 24 Q Do you remember reading the statement ever?
- 25 A If I -- I might have did, but I just can't remember.

Cathy Sullivan
Recross-examination by Mr. Allen

1 Like I say, I was too hurt.

2 MS. WELLS: Beg the Court's indulgence.

3 (Pause.)

4 Q Cathy, where were you when this statement was taken
5 from you?

6 A At the hospital.

7 Q I'm going to -- do you know what time the statement was
8 taken? Do you know what time it was?

9 MR. ALLEN: I am sorry. I did not hear the answer.

10 A No.

11 MS. WELLS: I don't think I have any further questions,
12 Your Honor.

13 RECROSS-EXAMINATION

14 BY MR. ALLEN

15 Q But the statement that was written by the officer, you
16 signed, is that right?

17 A Yes.

18 Q And she was writing on the statement apparently as you
19 were talking to her, right?

20 A Yes.

21 MR. ALLEN: Nothing else.

22 THE COURT: You can step down, ma'am.

23 All right. Why don't we take a short break? And then
24 we will move into the next witness.

25 (The following takes place outside the presence of the

Deanna Nicsinger
Direct examination by Ms. Wells

1 jury.)

2 THE COURT: All right. We will take a short break.

3 MS. WELLS: Your Honor, I don't believe we have a
4 foreman for this jury. I don't know how you do that.

5 THE COURT: I take care of that.

6 MS. WELLS: Okay. Someone just brought that to my
7 attention.

8 (Whereupon, a recess was taken.)

9 THE COURT: Bring in the jury.

10 (The following takes place in the presence of the
11 jury.)

12 THE COURT: Call your next witness.

13 MS. WELLS: Thank you, Your Honor.

14 The state would call Deanna Nicsinger to the stand,
15 please.

16 DEANNA NICHSINGER, having been first
17 duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MS. WELLS

19 Q Will you state your full name for the jury? And spell
20 your last for the court reporter.

21 A Deanna Nicsinger, N-I-C-S-I-N-G-E-R.

22 Q Deanna, where are you currently employed?

23 A Spartanburg Regional.

24 Q And what is your position at Spartanburg Regional?

25 A I am an emergency medical technician.

Deanna Nicsinger
Direct examination by Ms. Wells

1 Q And what department do you work in?

2 A The emergency department.

3 Q How long have you been at Spartanburg Regional?

4 A Almost six years.

5 Q What kind of training do you have to have to be an
6 emergency medicine technician?

7 A Excuse me?

8 Q What had kind of training to have to have to be an E.
9 M. T?

10 A About -- I have a diploma. I had to go to school for
11 six months.

12 Q Okay. Do you have any other types of training?

13 A Nursing, some nursing, college. I have two more
14 semesters left.

15 Q And you are sick today, is that right?

16 A Yes.

17 Q Okay. Deanna, were you working at the emergency room
18 at Spartanburg Regional back on March the 11th of 2001?

19 A Yes, I was.

20 Q And what shift were you working?

21 A Third shift.

22 Q Did you have any reason to come in contact with Cathy
23 Sullivan that night?

24 A Yes.

25 Q And how did you come into contact with her?

Deanna Nicsinger
Direct examination by Ms. Wells

1 A I was in the front triage. And when she came in, I was
2 the person that checked her in.

3 Q Okay. What is triage?

4 A Where you sort and assess.

5 Q So can you explain? If I were to come into the
6 emergency room and want to be treated, where would I --
7 would I go to triage first, or how would that work?

8 A You go into triage, and you get checked in. You give
9 your name. We take you in our room, and then you give us
10 your complaint of why you are there. And we take your blood
11 pressure. And then we -- either you have a seat in the
12 lobby, or if you are you are urgent, we take you straight
13 back.

14 Q Okay. Does Cathy Sullivan stand out in your mind for
15 any reason from that particular night?

16 A Yes, she does.

17 Q Why did she stand out to you?

18 A Because when she came in, she was very distraught. I
19 am the one that took her back to the room and helped her get
20 undressed. And I remember the markings on her back and her
21 legs and her thighs and her arms.

22 Q And you first noticed those injuries when you took her
23 back --

24 A To her room.

25 Q -- to her room. You said that when you come into

1 triage that you take somebody's blood pressure.

2 A Yes.

3 Q Is that true?

4 A Yes.

5 Q I'm going to show you a document and I am going to ask
6 you if you recognize it. Just tell me if you recognize it
7 or not.

8 A Yes, I do.

9 Q And what is that document?

10 A This is the beginning of her chart, and this is the
11 initial blood pressure and the time of when she arrived in
12 the emergency department.

13 Q And what was her blood pressure when she arrived?

14 A It was 150 over 90. Her plus was 92, which is a little
15 elevated due to her being distraught.

16 Q Can you describe Cathy's demeanor when she arrived at
17 the emergency room?

18 A She was upset, crying, shaking. Her hands were
19 trembling.

20 Q Did she say anything to you when she got there?

21 A She told me she had been beaten up.

22 Q And did she tell you who?

23 A Not at that time.

24 MR. ALLEN: Objection as to that, Your Honor.

25 THE COURT: Ma'am, you make sure you listen carefully

1 to the question. The answers that you could have given to
2 that question were either yes or no. But the question, I
3 do. I will overrule the action objection as to that
4 particular question.

5 Q Did Cathy tell you what had happened to her that night?

6 A Yes.

7 Q What did she tell you?

8 A That her husband beat with her with --

9 MR. ALLEN: Objection as to the identity, Your Honor.

10 THE COURT: What was the question?

11 MS. WELLS: I asked her if she -- if Cathy told her
12 what had happened to her that night.

13 THE COURT: The answer is either yes or no.

14 THE WITNESS: Yes.

15 MS. WELLS: And then I asked her to repeat what
16 Ms. Sullivan had told her.

17 THE COURT: And your objection?

18 MR. ALLEN: Goes to -- we are talking about hearsay
19 testimony which is going to relate it -- or should we go up
20 to the bench or --

21 THE COURT: Come on up here.

22 (Bench conference held off the record in the presence
23 of the jury but out of the hearing of the jury.)

24 THE COURT: Let me get the jury to step back into the
25 jury room for a few minutes, please.

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

3 THE COURT: All right. Let me hear your answer to the
4 question.

5 Go ahead and ask the question again.

6 Q Did Ms. Sullivan relate to you what happened that
7 evening?

8 A Yes.

9 Q And what did she tell you?

10 A She told me her husband beat her with a belt and a belt
11 buckle.

12 MS. WELLS: That is all.

13 THE COURT: All right.

14 MS. WELLS: And I don't believe it goes -- that's what
15 she related to her. And I believe she related to her that
16 at some point she came in a cab and she --

17 A Well, she told me that at triage, that that's how she
18 arrived in the emergency department. She called a cab.
19 When I took her back to the room, that's when she told me
20 what had happened, that her husband beat her with the belt.

21 THE COURT: Wouldn't the manner in which the injuries
22 that you saw had occurred have been important to you in
23 determining where to send her for treatment in the emergency
24 room and what to do for her?

25 THE WITNESS: Yes.

Deanna Nicsinger
Direct examination by Ms. Wells

1 THE COURT: All right. Then the, the beating with the
2 belt part would come in as a statement made for purposes of
3 medical diagnosis and treatment, clearly an exception to the
4 hearsay rule. But the identity of who did it wouldn't make
5 any difference to you, would it?

6 THE WITNESS: No.

7 MS. WELLS: Are you ready, Your Honor?

8 THE COURT: I am ready.

9 MS. WELLS: Your Honor, as to the excited utterance,
10 quoting from State vs. Sims, 558, S. C. 2d., 518, a Supreme
11 Court case from 2002, Your Honor, this being the excited
12 utterance argument that I made at the bench and will be
13 happy to put on the record if you wish, but I would argue
14 that this entire statement would come in under the excited
15 utterance exception to the hearsay rule due to the fact
16 that, as our Supreme Court said, the passage of time between
17 the event and the statement is one factor to consider, but
18 it is not a dispositive factor.

19 In fact, there are cases. Even statements after
20 extended periods of time can be considered as long as they
21 were made under continuing stress. And the court there
22 cites State vs. Blackburn, a 1978 case, in which it's noted
23 that a time interval of over one hour and up to 11 hours did
24 not necessarily eliminate the excited utterance.

25 And in this particular case, Your Honor, it looks like,

1 if I remember correctly, this child was left alone for
2 several hours. This is a child in this case. He was left
3 alone for several hours before the statement was made.

4 I would just say, Your Honor, certainly that while it
5 is a factor to consider, I don't believe that it is
6 dispositive.

7 And from this witness' own testimony, she was clearly
8 under the stress of the event. She was shaking; she was, as
9 this witness said, distraught. I would just submit that it
10 is admissible under that, under the excited utterance
11 exception. And as far as -- well, that would be.

12 MR. ALLEN: May it please the Court, I believe that the
13 witness here testified that she was a little distraught.

14 Secondly, what we have also got is the state's prior
15 witness said that she had sat down on the stairs of a house
16 for some period of time, possibly as long as an hour or an
17 hour and a half, before she left.

18 I would submit that the period of time in which she sat
19 thinking about this or whatever before moving out would be
20 different with an adult than it would be with a child.

21 I would submit that her time -- I mean, the whole
22 purpose of the excited utterance is that they don't have
23 time to reflect on what's happened and to shape their story
24 or their testimony.

25 And here we've got somebody who sat alone for possibly

Deanna Nicsinger
Direct examination by Ms. Wells

1 as long as an hour or an hour and a half doing whatever,
2 thinking or whatever about what had happened. I don't
3 believe you should qualify it as an excited utterance.

4 And I agree with the Court that the identity of the
5 perpetrator should not come as a medical -- as a statement-
6 made-while-seeking-medical-treatment exception. I don't
7 think there is an exception that will qualify the identity
8 of the perpetrator as related to Ms. Nicsinger to come into
9 evidence.

10 MS. WELLS: Your Honor, if I could say one more thing
11 to point out something Mr. Allen said, I would point out
12 that State vs. Blackburn, which said one hour up to 11
13 hours, Your Honor, is a case about an adult and not about a
14 child; and this would fall well within the bounds of
15 Blackburn, which is favorably cited in State vs. Sims.

16 MR. ALLEN: Well, I'm not exactly immediately familiar
17 with State vs. Blackburn, so I don't know what kind of --

18 THE COURT: I think that was the case where the victim
19 had been set on fire. And I think that case is
20 distinguishable on that basis.

21 MR. ALLEN: Yes, sir.

22 THE COURT: There was already a statement that right
23 back at the beginning of this witness' testimony that was
24 not objected to as I recall that was -- and I can't remember
25 exactly what it was, but it was about the identity of the

1 person who did this. Do you recall that?

2 MS. WELLS: Your Honor, I can go back through what my
3 questions were, but I don't specifically recall.

4 THE COURT: All right. I believe that as far as who
5 did it that it should not be admitted based on what I have
6 heard so far.

7 Now, what that does, of course, is that it raises the
8 question of whether or not there is going to be any
9 suggestion by the defense as to whether or not this idea was
10 cooked up by the, by the defendant, I mean, by the victim.
11 So this question could come back up again, but I sustain the
12 objection as to the identity of the assailant.

13 As to the other, as to the rest of the statement about
14 what happened, I will allow that in under 8034.

15 Bring the jury in.

16 Do you understand what I said, ma'am? Basically you
17 can tell the jury what she said, but don't say who she said
18 did it.

19 THE WITNESS: Can I say something?

20 THE COURT: All right. Close the door, Mr. Parks.

21 THE WITNESS: The reason I asked her who assaulted her
22 is because it's part of our job to notify the authorities in
23 an assault situation, and that's why I asked her who. And
24 then we notify the police, and they come in and question
25 her. That's how I came to the knowledge of who assaulted

1 her.

2 THE COURT: Okay.

3 THE WITNESS: Because that's part of our -- you know,
4 we have to notify authorities so they can come and take
5 pictures, get a statement. I mean, if we don't do all of
6 that, then they do not know.

7 THE COURT: Okay. That would not change my ruling
8 though. Thank you.

9 Bring in the jury.

10 (The following takes place in the presence of the
11 jury.)

12 THE COURT: You may proceed.

13 MS. WELLS: Thank you, Your Honor.

14 Q Deanna, did Cathy tell you what happened to her?

15 A Yes, she did.

16 Q And what did she tell you?

17 A That she was beaten up with a belt.

18 Q When she told you that, what, if anything, did you do?

19 A I helped her get undressed, put a gown on her. And I
20 started assessing her wounds, her abrasions on her back.

21 And then I went and notified the doctor. And the
22 authorities had already arrived, and I notified them. And
23 then they came in to take some pictures.

24 Q Okay.

25 A And I helped her get undressed.

Deanna Nicsinger
Cross-examination by Mr. Allen

1 Q Deanna, I'm going to show you -- I'm going to show you
2 what's been admitted as State's Exhibits One, Two, Three,
3 Four and Five. I show you these photos. Tell me if you
4 recognize those photos.

5 A Yes.

6 Q What are those photos of?

7 A Those are the photos of, that Shane Dedmon took of her,
8 the abrasions on her legs and her back. That's when I took
9 her gown and pulled it back for him so he could take the
10 pictures of her -- the contusions.

11 Q Do those pictures fairly represent the way that her
12 injuries looked that night?

13 A Yes, they do.

14 MS. WELLS: Beg the Court's indulgence.

15 (Pause.)

16 Q Deanna, did Cathy tell you how she got to the hospital
17 that night?

18 A Yes, she did.

19 Q How did she get to the hospital?

20 A A cab.

21 MS. WELLS: Your Honor, I have no further questions for
22 this witness at this time.

23 CROSS-EXAMINATION

24 BY MR. ALLEN

25 Q You didn't see the cab, did you?

Deanna Nicsinger
Cross-examination by Mr. Allen

- 1 A No, sir.
- 2 Q When you first saw her, she had walked in?
- 3 A Yes, sir.
- 4 Q Did you see her as she was walking in the outer doors,
5 or did you see her after she had apparently been in for a
6 while, been inside the building?
- 7 A As soon as she came in, I saw her.
- 8 Q The doors that she would come in from, from the
9 outside, were they made of --
- 10 A They're revolving doors.
- 11 Q They had glass in it?
- 12 A Yes.
- 13 Q And the place where people are dropped off to come in
14 those revolving doors, they are just outside those doors?
- 15 A Yes.
- 16 Q And, again, you saw no cab.
- 17 A No.
- 18 Q Now, you said that blood pressure, pulse and that sort
19 of thing was elevated.
- 20 A Yes.
- 21 Q Would you expect to find an elevation, elevated blood
22 pressure, pulse reading, if someone, say, had walked a
23 number of miles?
- 24 A Could be, yes.
- 25 Q Could.

Shane Dedmon
Direct examination by Ms. Wells

1 MR. ALLEN: One second, please.

2 (Pause.)

3 MR. ALLEN: Nothing further, Your Honor. Thank you.

4 THE COURT: Any redirect?

5 MS. WELLS: Nothing, Your Honor.

6 THE COURT: Thank you, ma'am.

7 MS. WELLS: Your Honor, may this witness please be
8 excused?

9 THE COURT: Yes.

10 (Whereupon, the witness was excused.)

11 THE COURT: Call your next witness.

12 MS. WELLS: Thank you, Your Honor. The state would
13 call Shane Dedmon to the stand.

14 SHANE DEDMON, having been first
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MS. WELLS

17 Q Please state your name. And spell your last name for
18 the court reporter, please.

19 A Shane Dedmon, D-E-D-M-O-N.

20 Q Investigator Dedmon, where are you employed?

21 A I am employed with the Spartanburg County Sheriff's
22 Office.

23 Q And how long have you been with Spartanburg County?

24 A I've been with them approximately six years.

25 Q How long have you been in law enforcement?

Shane Dedmon
Direct examination by Ms. Wells

1 A I've been in law enforcement for over 12 years.

2 Q What type of job do you do for Spartanburg County
3 Sheriff's Department?

4 A I am currently in the forensics division assigned to
5 investigate crime scenes.

6 Q And what are your job duties?

7 A When we get to a crime scene or we get requested for
8 assistance, we go out, and we investigate what happened at
9 the crime or to a victim. We take pictures, collect
10 evidence, things of that nature.

11 Q And over your career, how many incidents have you
12 responded to the victims? You can estimate, obviously.

13 A Well, this year alone, it has been over 200.

14 Q Investigator Dedmon, were you working during the early
15 morning hours of March the 11th of 2001?

16 A Yes, I was.

17 Q And where were you in those early morning hours?

18 A I was working in Spartanburg County answering calls,
19 service.

20 Q Did you have a reason to respond to a call from
21 Spartanburg Regional Memorial or Medical Center?

22 A Yes. A couple of other police departments had
23 requested my assistance in some cases, to assist them at the
24 hospital. And I responded to the emergency room at
25 Spartanburg Regional.

1 Q While you were there did you have any reason to come
2 into contact with Cathy Sullivan?

3 A Yes. I went into room 29 in the emergency room, and I
4 saw Ms. Sullivan there.

5 Q Can you tell this jury what her demeanor was like when
6 you first came into contact with Ms. Sullivan?

7 A Yes. When I first saw Ms. Sullivan, the obvious thing
8 was you could tell she had had multiple bruises and injuries
9 all about her body.

10 The only place that I was aware that she didn't have
11 any injuries was about her face. She was also real timid in
12 the way she moved. She wasn't moving around too much.

13 I could tell that she was obviously in what appeared to
14 me to be pain and soreness. She was distraught. And the
15 way I determine someone being that way is I would ask a
16 question and I wouldn't get so much of a response. I would
17 have to ask it again. And it was obvious what she had been
18 through.

19 I guess that's, you know, why she couldn't answer the
20 questions, or I had to ask several times just to get basic
21 information.

22 Q What was -- do you recall what the first thing that you
23 asked her was?

24 A Yes. The first thing I asked her when I saw her was I
25 needed to know where it happened.

Shane Dedmon
Direct examination by Ms. Wells

1 We have to find out basic information when we conduct
2 an investigation. Some of the questions that we have to ask
3 is what happened, who did it, where did it happen to make
4 sure that it's going to be our case. And that was the
5 primary. The most important thing was I wanted to make sure
6 that it was going to be a Spartanburg County case and not a
7 city case or not an out-of-county case or something of this
8 nature. So my first question was where did it happen.

9 Q And what did she tell you?

10 A She told me that it happened, if you will let me just
11 refresh my memory here on the address, that it happened on
12 Ransdell Road or Ransdell Drive. And I knew from my
13 experience as a county deputy that Ransdell Road or Drive
14 was in the county.

15 Q And at that time did you take photographs of her?

16 A No. My next question, like I said, I needed to find
17 out basic information about what had happened.

18 That only determined where it was. I needed to make
19 sure that a crime had occurred. So I asked her what
20 happened. And that's when she told me what happened.

21 MS. WELLS: Your Honor, may we approach for a moment?

22 (Bench conference held off the record in the presence
23 of the jury but out of the hearing of the jury.)

24 Q You asked Ms. Sullivan what happened, is that correct?

25 A Correct.

Shane Dedmon
Direct examination by Ms. Wells

1 Q And as a result of the conversation that you had with
2 her, after you asked her what happened, what, if anything,
3 did you do?

4 A I then asked her who.

5 Q Okay. And after she answered that question for you --

6 A After that question, I then determined that it was
7 going to be a Spartanburg County case that we would have to
8 handle.

9 Since I am an investigator, I don't normally do the
10 reports, so I went and used the phone in the emergency room
11 and contacted our dispatch to request a deputy come up and
12 start a report of the incident that had occurred that night.
13 And I then went back into the room and proceeded to take
14 photographs of Ms. Sullivan's injuries.

15 Q I'm going to show you what's been marked and entered
16 into evidence as State's One through Thirteen. Would you
17 look at those and tell me if you can identify them, please?

18 A Yes. That's the photographs that I took of the victim
19 that night.

20 Q Do these photos fairly and accurately represent the
21 nature of the victim's injuries as you saw them that
22 evening?

23 A Yes.

24 Q Investigator Dedmon, earlier you testified that you
25 responded to over 200 domestic violence cases in just this

1 year alone, is that correct?

2 A Yes. Domestic violence and assault cases where there
3 were victims.

4 Q In your experience as an officer and as an investigator
5 who responds to crime scenes, how do those injuries compare
6 to other injuries you have seen?

7 MR. ALLEN: Your Honor, I would object to that question
8 as not being relevant.

9 She is asking about experience in other cases, you
10 know, comparing other cases, and that's not relevant to
11 issues involved in this case.

12 She also seems to be trying to put him up as some form
13 of expert witness without qualifying him as an expert, if
14 indeed he could be qualified, asking to draw an opinion.

15 I would object to those questions on that basis.

16 THE COURT: I sustain the objection.

17 MS. WELLS: I have no further questions.

18 CROSS-EXAMINATION

19 BY MR. ALLEN

20 Q Investigator Dedmon, at that time, as I understand it,
21 were you the crime scene investigator? Was that your title?

22 A Correct.

23 Q As part of that you would apparently go to crime scenes
24 to look for evidence.

25 A Yes. When we are requested, we go to a crime scene to

Shane Dedmon
Cross-examination by Mr. Allen

1 assist.

2 Q Or what is believed to be a crime scene?

3 A Correct.

4 Q Is that correct? And in an assault type case would it
5 be important to go to the place where the assault is
6 supposed to have occurred to see if, especially if it had
7 occurred indoors, to see the condition of the room?

8 A Yes.

9 Q To see if it was disheveled or looked like there had
10 been an assault?

11 A Yes. It would depend on the situation.

12 Q To look for items that might have caused the injuries
13 that were talked about or photographed?

14 A Correct.

15 Q To see how those items may compare to the actual
16 injuries, to see if those items could have caused the
17 injury?

18 A Yes.

19 Q To see if there was any other evidence that could be
20 found, is that correct?

21 A Yes.

22 Q You took what appears to be 13 pictures at the
23 hospital.

24 A Correct.

25 Q All of these are of Ms. Sullivan.

Shane Dedmon
Redirect examination by Ms. Wells

1 A Correct.

2 Q That night after you had determined that this was
3 supposed to have occurred at, on Ransdell Drive, which you
4 determined was in Spartanburg County and within y'all's
5 jurisdiction, did you go to Ransdell Drive to investigate
6 the crime scene?

7 A No.

8 Q Did you take pictures --

9 A No.

10 Q -- to look for items that might have caused the
11 injuries?

12 A No.

13 Q Did you look for any evidence at all?

14 A No.

15 Q Thank you.

16 REDIRECT EXAMINATION

17 BY MS. WELLS

18 Q Investigator Dedmon, how many calls were you on that
19 night when you took photographs of the assault?

20 A I had approximately nine calls that night. At the time
21 I took these photographs I was on two other calls. One of
22 the other calls was a stabbing for another agency. So that
23 one took priority. And that's why I didn't respond to
24 Ransdell Drive immediately after handling Ms. Sullivan's
25 case.

Shane Dedmon
Recross-examination by Mr. Allen

1 Q I have no further questions.

2 RECROSS-EXAMINATION

3 BY MR. ALLEN

4 Q Are you the only crime scene investigator that was then
5 employed by Spartanburg County?

6 A I am not the only one employed, but I was the only one
7 that was working that hour, yes.

8 Q Are you the only one that had a camera and could
9 operate a camera at that time?

10 A Yes.

11 Q They couldn't have called anyone else to operate a
12 camera?

13 A At that time I am the only one that had the digital
14 camera. And the other officers, that they did request them
15 to come, I mean we requested them to come in, if the case,
16 you know, if we need them.

17 Q And y'all didn't need them?

18 A I don't make that determination. I only go if I am
19 requested.

20 Q And you are not the only investigator that was working
21 that night, were you?

22 A Yes. I was the only investigator at those crime scenes
23 that was working that night.

24 Q The only investigator that could do reports?

25 A I was the only investigator that was working that

Robin Demeteria Davidson
Direct examination by Ms. Smith

1 night, yes.

2 Q And you were not the only deputy working that night.

3 A I was not the only deputy, no.

4 MR. ALLEN: Nothing further.

5 MS. WELLS: Nothing further.

6 THE COURT: You may step down, sir.

7 MS. WELLS: Your Honor, I beg the Court's indulgence
8 for one minute.

9 (Pause.)

10 MS. SMITH: Your Honor, the state would call Robin
11 Davidson at this time.

12 ROBIN DEMETERIA DAVIDSON, having
13 been first duly sworn, testified as follows:

14 DIRECT EXAMINATION BY MS. SMITH

15 Q Robin, could you please give us your full name for the
16 record at this time?

17 A Yes. Robin Demeteria Davidson.

18 Q And can you tell us how you know Cathy Sullivan?

19 A That's my mother.

20 Q So you have known her all of your life. I want to ask
21 you, did you see Cathy on March the 11th of 2001? Did you
22 see her?

23 A Yes.

24 Q And did you see her before this incident occurred, the
25 incident that we have been talking about?

Robin Demeteria Davidson
Direct examination by Ms. Smith

1 A Yes.

2 Q And what were you doing when you saw her?

3 A Well, I had took her up there to Joe Gibson, and I was
4 sitting in the car, me and my friend. We was eating,
5 because there was a hot dog stand. This man, he was selling
6 barbeque ribs and stuff. We had bought something from him.
7 We were staying in the car, and she had went into the, went
8 into Joe Gibson.

9 Q And why did she go into Joe Gibson?

10 A She wanted to talk to Cal.

11 Q And did you see her after this incident occurred?

12 A Yes.

13 Q How did you see her? How did you come to see her after
14 this incident occurred?

15 A I went and picked her up from the hospital.

16 Q And how did you know that you needed to go pick her up
17 from the hospital?

18 A She called me. She called me about 7:30, because I
19 worked the third shift, and I got off at 7:00.

20 Q Okay. Did you pick her up?

21 A Yes.

22 Q When you got to the hospital to pick her up, where was
23 she?

24 A She was walking out. She was walking out. I didn't
25 even get out of the car. One of the nurses had walked her

1 to the car, and they put her in the car.

2 Q When she was walking out to the car, could you see her
3 injuries at that time?

4 A No. I didn't see them until we got home.

5 Q Okay. So where did you go once you picked her up?

6 A I took her back to my house.

7 Q Okay. When she first came out of the hospital and got
8 in your car, what was her mood like or what was her
9 emotional state like?

10 A Well, she didn't say nothing, and I didn't want to ask
11 her anything, because, I mean, I had to drive. So I didn't
12 want to get too emotional to whereas I couldn't drive, so I
13 didn't ask her anything until we got home.

14 Q And how did she seem to you?

15 A She didn't, she was like, you know, like she wanted to
16 cry, and she was hurt. And, you know, I knew she was hurt.
17 And so, you know, like I said, I didn't want to get too
18 emotional, so I didn't ask her anything at that time.

19 Q Okay. You say you took her to your house. How long
20 did she stay at your house after you took her from the
21 hospital?

22 A About a month.

23 Q Lived with you for a month. And what did you -- what
24 did she do while she was at your house?

25 A Well, like I say, I work third shift, so I pretty much

1 slept all day. That's why I had went and got my aunt, so
2 she could take care of her while I was at work. And, you
3 know, I would cook and everything, but, you know.

4 Q And which aunt is that?

5 A Frances.

6 Q And you say that you slept, and you would cook. Did
7 Cathy help out around the house?

8 A No. She just laid on the couch.

9 Q Did she sleep a lot?

10 A Yes.

11 Q Could she sleep at night?

12 A Well, I wasn't there at night.

13 Q Okay. You said you didn't take care of her around the
14 clock because you were working third shift. Did you see her
15 injuries eventually?

16 A Yes.

17 Q And what --

18 A I rubbed her down a couple of times.

19 Q Okay. What did they look like?

20 A Well, one was like a square with a line in it, looked
21 like a buckle. And, you know, I done got whippings before,
22 so I know what a whip looked like, and these were deep, deep
23 whips.

24 Q Was it like a whipping you would get if you got in
25 trouble when you were little?

Robin Demeteria Davidson
Direct examination by Ms. Smith

1 A No. I never got a whipping.

2 Q Was there bruising?

3 A Yes.

4 Q Were there marks?

5 A Yes. They were purple.

6 Q Did the injuries get better right away?

7 A No, not right away.

8 Q What happened? How did they look the next day?

9 A Well, I tried not to look at it, because I didn't want
10 to hurt and I didn't want to, you know, feel too bad for
11 her.

12 I needed to be strong, so I really didn't try to look
13 at her body a whole lot. I looked at it, and I just didn't
14 want to look at it.

15 Q Did they get worse?

16 A They didn't get worse, but they didn't heal.

17 Q So they stayed the same for a while?

18 A Yes.

19 Q How long did she stay with you, live with you, while
20 she was recovering?

21 A A month.

22 MS. SMITH: Beg the Court's indulgence.

23 (Pause.)

24 Q I just have one last question, Robin. Was she injured
25 when you dropped her off or saw her at Joe Gibson that day?

Robin Demeteria Davidson
Cross-examination by Mr. Allen

1 A No.

2 Q And the next time you saw her was she injured?

3 A Yes.

4 Q Thank you.

5 CROSS-EXAMINATION

6 BY MR. ALLEN

7 Q The time you saw her at Joe Gibson, you took her to Joe
8 Gibson around six o'clock the day before?

9 A I really don't know what time it was.

10 Q Do you know what time that you took her home?

11 A No.

12 Q Well, was it light or dark outside?

13 A It was daylight.

14 Q So when you last saw her on the 10th, the day before
15 you got the call to go to the hospital, it was still
16 daylight?

17 A Yes.

18 Q Bright daylight?

19 A No. It was getting dark.

20 Q Getting dark?

21 A Uh-huh.

22 Q This would have been apparently not quite mid-March of
23 2001. Would that be right?

24 A Uh-huh.

25 Q When you dropped her off at Joe Gibson, you and, you

Frances Dawkins
Direct examination by Ms. Smith

1 said, a friend sat in the car eating something that you all
2 had purchased.

3 A Yes.

4 Q So you didn't see what, if anything, she did while she
5 was in there.

6 A No.

7 Q Wasn't in there very long.

8 A Well, I didn't time her. I was eating.

9 Q After you picked her up from the hospital, during the
10 time that she lived with you, you didn't take her to a
11 doctor, did you?

12 A No.

13 MR. ALLEN: Nothing further, Your Honor. Thank you.

14 MS. SMITH: Nothing further from the state, Your Honor.

15 THE COURT: You can step down, ma'am.

16 MS. WELLS: Your Honor, may we approach just briefly?

17 (Bench conference held off the record in the presence
18 of the jury but out of the hearing of the jury.)

19 MS. SMITH: Your Honor, the state calls Frances Dawkins
20 to the stand.

21 FRANCES DAWKINS, having been first
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MS. SMITH

24 Q Frances, could you please tell us your whole name for
25 the record?

Frances Dawkins
Direct examination by Ms. Smith

- 1 A My name is Frances Dawkins.
- 2 Q Frances, how do you know Cathy Sullivan?
- 3 A Cathy Sullivan is my sister.
- 4 Q Is she your little sister or your big sister?
- 5 A Little sister.
- 6 Q Okay. And where do you live?
- 7 A I stay in Gaffney.
- 8 Q Okay. When Cathy came home from the hospital, who did
9 she stay with?
- 10 A Stayed with her daughter, Robin.
- 11 Q Okay. And did you help take care of her at any time?
- 12 A Yes, I did.
- 13 Q About how often or how long?
- 14 A I was there every day for three weeks straight.
- 15 Q Okay. How was she when she came home from the
16 hospital?
- 17 A She wasn't moving around real good. I helped her in
18 and out of the bed. I helped her in the tub. I got her out
19 of the tub. She rested some during the day, not at night.
20 She didn't sleep well at night, but she did in the day.
- 21 Q Okay. And so you were there at nighttime?
- 22 A Yes, ma'am.
- 23 Q And what did her body look like to you?
- 24 A She had a whole lot of bruises and scars on her body.
- 25 Q What did they look like? Can you tell us how big they

Frances Dawkins
Direct examination by Ms. Smith

1 were?

2 A She had a scar on her back, looked like a fist, you
3 know, a hard spot like a fist.

4 Q Was it as big as a fist?

5 A Yes, ma'am, in her back.

6 Q What color was it?

7 A Red and dark.

8 Q Okay. Did you see any cuts or bruises besides that?

9 A She had a lot of cuts and bruises, especially on her
10 legs and her arms and stuff. I kept her dressed down the
11 best I could to keep her from getting sore.

12 Q When you say you dressed her down, what did you do
13 factually?

14 A I rubbed ointment on her to get the swelling and the
15 coloring back to her skin.

16 Q Okay. How often did you do that?

17 A Done that every day for three weeks.

18 Q Okay. Was she swollen at all?

19 A Yes, she was.

20 Q Okay. Was she sore?

21 A Yes.

22 Q Did her injuries get worse from the time when you first
23 saw them when she first came from the hospital? Did they
24 get worse?

25 A They turned a different color. They was red when she

Frances Dawkins
Cross-examination by Mr. Allen

1 came from the hospital, but they turned dark.

2 Q And did they eventually get better?

3 A Yes, they did.

4 Q And how long did that take?

5 A It's about two or three weeks to start coloring coming
6 back.

7 Q Okay. How long for the fist-like knot? How long did
8 that take to go away?

9 A Well, that was the longest one it took to go away, but
10 it, it went down eventually.

11 Q I think that's all I have for you. Thank you. Please
12 answer anything Mr. Allen has.

13 CROSS-EXAMINATION

14 BY MR. ALLEN

15 Q You indicated that you rubbed an ointment on her. Was
16 that a prescribed ointment?

17 A No. It wasn't from the doctor. I just rubbed her down
18 with it. My sister is a nurse's assistant, and she had
19 asked me to rub her in it, and I did.

20 Q Do you remember what kind of ointment it was?

21 A I think you call it witch hazel.

22 Q Witch hazel?

23 A Yeah. I think that's what it was.

24 Q When you were with Ms. Sullivan during this
25 approximately three weeks straight, did you take her to a

1 doctor?

2 A The doctor at the emergency room over here in
3 Spartanburg had gave her medicine, and really it was no need
4 to taking her back at that time.

5 Q So you didn't take her to the doctor for two or three
6 weeks..

7 A No, I didn't.

8 Q Thank you. Nothing further.

9 MS. SMITH: Nothing further from the state, Your Honor.

10 THE COURT: You can step down, ma'am.

11 MS. WELLS: I'm sorry, Your Honor.

12 THE COURT: Take your time.

13 MS. WELLS: I beg the Court's indulgence for one
14 moment.

15 (Pause.)

16 MS. WELLS: May we approach, Your Honor?

17 (Bench conference held off the record in the presence
18 of the jury but out of the hearing of the jury.)

19 THE COURT: Well, ladies and gentlemen, we are out of
20 witnesses for today, and so we are going to break for the
21 day. And we will begin.

22 Did you have a time that you have invited the next
23 witness to attend?

24 MS. WELLS: Your Honor, I believe the doctor will be
25 available as early as nine o'clock. I would say 8:30. I

Colloquy

1 think that's what time he is supposed to be here, but I want
2 to be certain.

3 THE COURT: 8:30 is a little bit early for me to get
4 over here from Greenville. I would have to drop my kids off
5 at school about 7:15. They wouldn't like that too much.

6 So we will begin tomorrow morning as close to nine
7 o'clock as we can. So please be back in your jury room
8 tomorrow morning at 9:00.

9 Please do remember my instructions not to discuss this
10 case and not to allow anyone to discuss the case with you.

11 I say this in every case, and I'll say it now. I don't
12 have any idea whether or not there is going to be press
13 coverage concerning this case, but please be very careful
14 tonight and tomorrow morning as you are watching the news or
15 reading the newspaper to make sure that you do not allow
16 yourselves to become exposed to any press coverage that
17 there may be. Have someone else look through the paper
18 tomorrow morning if you can, and keep that remote control
19 handy in case you must watch the local news. Watch C. N. N.
20 if you can.

21 We look forward to seeing you tomorrow morning at 9:00.
22 Have a nice night.

23 (The following takes place outside the presence of the
24 jury.)

25 THE COURT: Let me see those pictures, please.

Colloquy

1 (Pause.)

2 THE COURT: Okay. Anything further before we break for
3 the day?

4 MS. WELLS: Not from the state, Your Honor.

5 THE COURT: Y'all anticipate one more witness?

6 MS. WELLS: Your Honor, one more witness is what we
7 would anticipate.

8 THE COURT: All right. Mr. Allen, do you anticipate a
9 lengthy presentation of evidence?

10 MR. ALLEN: I don't think it's going to be terribly
11 lengthy, but, I mean, that's about all I can say at this
12 point. I am not trying to be --

13 THE COURT: All right. That's fine; that's fine.

14 Is there anything that either side wants to suggest as
15 a special request for charge?

16 MR. ALLEN: I would ask the Court to consider charging
17 criminal domestic violence as a lesser included.

18 THE COURT: All right. Anything from the state?

19 MS. WELLS: Your Honor, we will leave that in your
20 discretion.

21 THE COURT: Okay. I will get here as quick as I can.
22 I expect that I would be here probably around 15 or ten till
23 tomorrow morning.

24 If you have anything that comes up, please bring it to
25 my attention so that we can deal with it and be done by

Colloquy

1 9:00.

2 MR. ALLEN: Yes, Your Honor.

3 MS. WELLS: Yes, sir, Your Honor.

4 THE COURT: All right. We will be in recess until
5 then.

6 MS. WELLS: Thank you, Your Honor.

7 END OF PROCEEDINGS NOVEMBER 19, 2002

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Dr. James Lamm
Direct examination by Ms. Wells

1 (Proceedings November 20, 2002)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Are we ready?

5 MS. WELLS: Yes. Thank you, Your Honor.

6 THE COURT: Is the jury back?

7 THE BAILIFF: Yes, sir.

8 THE COURT: Okay. Bring them in.

9 (The following takes place in the presence of the
10 jury.)

11 THE COURT: Good morning, ladies and gentlemen.

12 I am sorry that you all had to sit back there. We had
13 had had high hopes of getting started at nine o'clock. We
14 had a little problem with the scheduling of witnesses, and
15 we were not able to begin until just now. So we are now
16 ready.

17 Call your next witness.

18 MS. WELLS: Thank you, Your Honor. The state would
19 call Dr. James Lamm to the stand, please.

20 DR. JAMES LAMM, having been first
21 duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MS. WELLS

23 Q Dr. Lamm, could you state your full name? And spell
24 your last name for the court reporter please.

25 A James Dominic Lamm, L-A-M-M.

Dr. James Lamm
Direct examination by Ms. Wells

1 Q Dr. Lamm, where are you currently employed?

2 A McLeod Regional Medical Center, Florence, South
3 Carolina.

4 Q And how long have you been licensed to practice
5 medicine in the State of South Carolina?

6 A My permanent licensure was effective September of the
7 year 2000.

8 Q How long have you been licensed to practice medicine
9 overall?

10 A My first licensure was in the year 1985 or four.

11 Q Okay. So --

12 A I am sorry. I don't --

13 Q So going on 20 years, would that be accurate?

14 A Yes, ma'am.

15 Q Where did you receive your undergraduate education?

16 A The University of Minnesota.

17 Q And what year did you graduate from the University of
18 Minnesota?

19 A 1978.

20 Q And what was your degree in?

21 A It was a Bachelor of Arts in philosophy.

22 Q And did you go on to attend medical school?

23 A Yes.

24 Q And where did you attend medical school?

25 A At the University of Minnesota also.

Dr. James Lamm
Direct examination by Ms. Wells

1 Q And what year did you graduate from the Medical
2 University of Minnesota?

3 A 1983.

4 Q And where did you do your residency training?

5 A My training was at the Naval hospital, San Diego,
6 California.

7 Q And what was your specialty?

8 A In emergency medicine.

9 Q How long was your length of training and residency
10 altogether?

11 A Altogether my post medical school education was four
12 years.

13 Q And how long were you in the military?

14 A Just under 11 years.

15 Q And, Dr. Lamm, are you board certified?

16 A Yes, ma'am..

17 Q In what specialty?

18 A Emergency medicine.

19 Q Could you talk a little bit about what the
20 qualifications for board certification are?

21 A The officially recognized board is the American Board
22 of Emergency Medicine. To become board certified you have
23 to have completed an approved residency and then
24 successfully pass both a written examination and then an
25 oral examination which presumably tests your ability to

Dr. James Lamm
Direct examination by Ms. Wells

1 absorb the knowledge of the field.

2 Q And did you complete those requirements?

3 A Yes, ma'am.

4 Q And how long have you been board certified?

5 A My certification reads from January 1993.

6 Q Okay. And you are on staff at McLeod in Florence?

7 A Yes, ma'am.

8 Q Do you belong to any medical associations?

9 A Yes, ma'am. I am a member of the South Carolina
10 Chapter of Emergency Physicians and the American College of
11 Emergency Physicians.

12 Q Are you engaged in any way in the private practice of
13 medicine?

14 A My practice is with -- I am an employee of a hospital,
15 and that is the full extent of my practice, is working in
16 the emergency room.

17 Q Do you have to continually do any -- do you have to do
18 any other type of education to keep your board
19 certification, or your certification, updated?

20 A Yes, ma'am. Both the American College of Emergency
21 Physicians and the State of South Carolina require 50 --
22 what they call category one continuing medical education
23 credits.

24 Q And you keep up your counting education credits?

25 A Yes, ma'am.

Dr. James Lamm
Direct examination by Ms. Wells

1 Q Dr. Lamm, have you ever been called as an expert in a
2 case before?

3 A Yes, ma'am. I was called when I was still in the Navy,
4 a case in 19 -- it was in either 1992 or 1993.

5 Q And have you ever been qualified as an expert?

6 A Yes, ma'am.

7 MS. WELLS: Your Honor, at this time we would offer Dr.
8 Lamm as an expert in the initial treatment of trauma and
9 medical diagnosis.

10 MR. ALLEN: Sure. We have heard the qualifications in
11 those specific areas. If you're going to offer him as an
12 expert in emergency medicine, I have no objection to that.

13 THE COURT: What was the other expert?

14 MS. WELLS: Your Honor, we just offer him as an expert
15 in the treatment of trauma and in medical diagnosis.

16 THE COURT: Well, that's all fancy words for saying an
17 emergency room doctor. I qualify him as an expert.

18 MS. WELLS: Thank you, Your Honor.

19 Q Dr. Lamm, were you one of the emergency room doctors
20 working at Spartanburg Regional Memorial on March 11th of
21 2001?

22 A Yes, ma'am.

23 Q And, in fact, you used to work at Spartanburg Regional,
24 is that correct?

25 A I was formerly the medical director there, yes, ma'am.

Dr. James Lamm
Direct examination by Ms. Wells

1 Q Okay. Did you have any reason to come in contact with
2 the victim in this case, Cathy Sullivan, that evening?

3 A Yes, ma'am. I cared for Ms. Sullivan.

4 Q What was -- how did you come to come in contact with
5 her?

6 A I entered the room in which she was lying on a bed to
7 care for her. She presented as complaining of having been
8 the victim of an assault.

9 Q Okay. Did she indicate to you -- let me back up for
10 one second. You performed an examination of her.

11 A Yes, ma'am.

12 Q And what was the purpose of that examination?

13 A Well, every time that we go in to see a patient, we
14 really, we have some hints from the medical record, but we
15 really have to establish why they're really there. It
16 begins with an interview, asking the patient what was it
17 that made them decide to come and see us.

18 And then after we talk with the patient and get a sense
19 of their medical history both in the past and specifically
20 what precipitated the present visit, then we conduct an
21 examination.

22 Q Okay. And did you have an opportunity to do that
23 initial interview with Cathy?

24 A Yes, ma'am.

25 Q Did she relate to you why she had chosen to seek

Dr. James Lamm
Direct examination by Ms. Wells

1 medical treatment?

2 A Yes, ma'am. She was complaining of pain to her back
3 and legs. And she related to me, as reflected in my record,
4 that she, just prior to arriving at her own home, she had
5 been struck with a belt --

6 Q Okay.

7 A -- specifically about her back and legs.

8 Q You said just prior to arrival at her own home.

9 A Yes, ma'am.

10 Q Is that what's reflected in --

11 A The physician documentation tool has check-offs. In
12 that, just P. T. A. is the abbreviation for prior to
13 arrival, and where. I checked the home.

14 Q So it occurred at the home prior to arrival at the
15 hospital.

16 A That's what she related to me, yes, ma'am.

17 Q After you got that initial information from
18 Ms. Sullivan, did you then perform an examination?

19 A I did.

20 Q What was the -- what was the nature of that
21 examination?

22 A The nature of the examination is really a head-to-toe
23 examination looking for signs of trauma or medical disease.

24 Q Okay. Did you note any injuries on her body?

25 A I did. Specifically, she had several contusions and

Dr. James Lamm
Direct examination by Ms. Wells

1 abrasions on her back and legs.

2 Q Okay. And from -- after examining her and noting the
3 injuries that she had on her body, did you find it necessary
4 to order any type of pain medication for her? Did she
5 present that she was in any pain?

6 A Yes, ma'am. I noted on the record that she was in
7 apparent discomfort, and I ordered for her two different
8 types of pain medications, two classes, one of which was a
9 narcotic called Lortab.

10 Q And did you order any other types of pain killers for
11 her?

12 A The -- if I did during her emergency department stay,
13 it's not noted. It is noted that I did write her a
14 prescription for narcotic pain medicines on her dismissal
15 from the department.

16 Q Could you talk a little bit about what Lortab is? You
17 said it was a narcotic.

18 A It's a combination of a narcotic with acetaminophen or
19 Tylenol.

20 Q And what kind of effect can Lortab have on a person?

21 A Well, it's intended effect is to block certain pain
22 receptors in the brain which reduces your perception of
23 painful stimuli. It has certain unwanted effects also such
24 as drowsiness and stomach upset. But for trying to relieve
25 pain, that's the reason we give it.

Dr. James Lamm
Direct examination by Ms. Wells

1 Q Did you have any reason to note her blood pressure or
2 her pulse?

3 A Yes. Every patient that presents has what we call
4 vital signs recorded, which are temperature, heart rate, the
5 rate of breathing and the blood pressure. And hers, her
6 pulse, although not technically elevated, is in the high
7 range, and her blood pressure is also technically slightly
8 elevated, as is the respiratory rate.

9 Q Are those -- is that the high pulse rate and the high
10 blood pressure, is that indicative or does that -- would
11 that tell you anything as a physician?

12 A What it tells me is that the patient is under some kind
13 of stress. It could run the gamut from a fever, the pain
14 from trauma, certain disease states.

15 Q Is it consistent with someone who has experienced a
16 trauma?

17 A It is consistent with someone who is in pain from
18 trauma.

19 Q After you completed your examination of Ms. Sullivan
20 did you come to any -- did you make a diagnosis, or did you
21 come to any conclusions about how she presented to you?

22 A Yes, ma'am. My conclusion was that her physical
23 examination was consistent with the historical facts she
24 related to me and that she had sustained multiple
25 contusions, hematomas and abrasions of her back and legs.

Dr. James Lamm
Direct examination by Ms. Wells

1 Q Okay. I'm going to show you State's One through
2 Thirteen. Would you just look at these and tell me if you
3 recognize them?

4 A Yes, ma'am; yes, ma'am. I do recognize them.

5 Q And what are these pictures of?

6 A They are pictures of Ms. Sullivan during her
7 presentation on that day in March.

8 MS. WELLS: Beg the Court's indulgence for this to warm
9 up one second. We just turned it off.

10 (Pause.)

11 MS. WELLS: With the Court's indulgence, I should have
12 asked you to turn the lights down.

13 THE COURT: That's fine, but you don't need my
14 indulgence, but I am happy to allow you to do that and wait
15 a few minutes for that machine to heat up.

16 MS. WELLS: I appreciate it, Your Honor.
17 Your Honor, may the witness leave the stand?

18 THE COURT: That will be fine.

19 MS. WELLS: Thank you.

20 (Whereupon, the witness left the stand.)

21 Q Dr. Lamm, I am going to show you what's been marked as
22 State's Eleven. Can you tell me if that's the same picture
23 that is on this screen at this time?

24 A It appears to be, yes, ma'am.

25 Q And what is that a picture of?

Dr. James Lamm
Direct examination by Ms. Wells

1 A A picture of Ms. Sullivan.

2 Q And I'm going to show you --

3 MR. ALLEN: Your Honor, I object to this being
4 displayed to the jury at this time. It is not presented
5 into evidence. What was up there before was not offered
6 into evidence.

7 THE COURT: Well, turn the machine off while we discuss
8 this.

9 MS. WELLS: Thank you, Your Honor. Can I leave it
10 right here?

11 THE COURT: No. You need to take that off the screen.

12 MS. WELLS: Thank you, Your Honor.

13 THE COURT: Now, hand me those. All right. Stand
14 back, please.

15 Do you -- what you just had up on the screen, is that
16 not the same as State's Eleven?

17 MR. ALLEN: That's not what I am objecting to. Before
18 she flipped back to State's Eleven there was another
19 document that had not been offered into evidence or received
20 into evidence.

21 THE COURT: All right.

22 MS. WELLS: Your Honor, we would ask to use it as a
23 demonstrative aid at this time. And then if the Court sees
24 fit, we may offer it into evidence.

25 THE COURT: Do you have a printed copy of it I can take

Dr. James Lamm
Direct examination by Ms. Wells

1 a quick look at?

2 MS. WELLS: Yes, sir, Your Honor. I sure do.

3 THE COURT: What's the objection?

4 MR. ALLEN: It has not been offered into evidence. It
5 is inappropriate to show something to the jury that's not
6 been put into evidence.

7 THE COURT: She is not intending to put it into
8 evidence. She is going to allow this witness to demonstrate
9 his testimony by using this exhibit. Is there an objection
10 to that?

11 MR. ALLEN: Yes, sir, Your Honor. They are showing a
12 document that's not been presented or offered into evidence
13 for the jury. I don't think it can even be used as a
14 demonstrative aid if it's not going to be put into evidence.

15 THE COURT: I overrule the objection.

16 MS. WELLS: Thank you, Your Honor. May I approach?

17 THE COURT: Yes.

18 MS. WELLS: Thank you.

19 THE COURT: Is what you just handed me precisely what
20 is being put on the screen?

21 MS. WELLS: Actually, Your Honor, if I may, I can point
22 out to you exactly what's precisely on here that's going to
23 be put on the screen if I may.

24 THE COURT: Well, since he's made an objection, you
25 just need to -- you need, you're going to need to be

Dr. James Lamm
Direct examination by Ms. Wells

1 responsible for making a record of what's up there. That's
2 all right. You can go ahead and follow your testimony. Go
3 ahead.

4 MS. WELLS: Thank you, Your Honor.

5 Q Dr. Lamm, I'm going to show you -- what is on this
6 page? Is that what is on the screen at this time?

7 A What is on the screen appears to be approximately the
8 upper quarter of one part of the medical record which I
9 generated when Ms. Sullivan came to see me that night.

10 Q What is the significance of this diagram? And how does
11 it relate to the injuries that Ms. Sullivan presented to you
12 with that evening?

13 A What appears on the screen is my attempt to graphically
14 demonstrate injuries which I had noted on Ms. Sullivan that
15 night.

16 The little areas on the human body with hatch marks,
17 and which are outlined, are the areas of injury. And the
18 abbreviation, T. S. and E., between the two figures, yes,
19 ma'am, stand for tenderness, swelling and ecchymosis --
20 ecchymosis being the medical term for bruising.

21 Q Okay. And can you point out to the jury, what is the
22 significance of, say, comparing these two? This would be
23 round and this would be straight. What is the significance
24 of how you drew the injuries on this particular diagram?

25 A Generally if there is a single blunt trauma to the skin

Dr. James Lamm
Direct examination by Ms. Wells

1 severe enough to cause swelling, bruising, it is an outline
2 of the object roughly that caused it.

3 And what I was attempting to demonstrate by the kinda
4 precise linear edges to the fields was that these were very
5 sharply demarcated contusions, bruises on the patient's
6 body, the one exception being the one on the inferior
7 portion of the left scapula, which is the shoulder blade,
8 which is round and actually was mounted up in swelling.

9 Q Okay. When you say mounted up, can you explain to this
10 jury what you mean by that term?

11 A The injury was severe enough to cause swelling of the
12 skin. It was if you had cut a tennis ball in half and kinda
13 stuck it on the skin. Her skin was raised up about to that
14 degree.

15 Q Can you tell this jury what causes -- you said that
16 ecchymosis is the medical term for bruising. What causes
17 bruising?

18 A What bruising is, is bruising occurs when blood which
19 is normally limited to the inside of our blood vessels leaks
20 out of our blood vessels. And in the skin it leaks out and
21 is generally causing a discoloration to the skin and is
22 visible in some cases to the naked eye.

23 Q Okay. And you also noted that she had swelling. What
24 might have caused swelling?

25 A In addition to frequently breaking open blood vessels,

Dr. James Lamm
Direct examination by Ms. Wells

1 which causes the bruising or the blue-purple discoloration,
2 swelling is a slightly lesser injury caused by leaking of
3 fluid. The damage to the blood vessels are not, will not,
4 fluid, the clear fluid, the serum, to leak out, but the
5 vessels are still intact and the whole, the red blood cells,
6 which are disclotted, inside.

7 Q Okay. Dr. Lamm, I am going to show you what's been
8 marked as State's Exhibit Number Five and introduced into
9 evidence. Can you tell me if that photo is the same that is
10 being displayed on the screen?

11 A It appears to be the same, yes, ma'am.

12 Q Can you point out for the jury? Where are the injuries
13 that are of significance in this particular photo?

14 A The most, the two most prominent injuries are the area
15 of swelling I described over the inferior portion of her
16 left scalp which encircled. That is difficult to appreciate
17 that, but that was swollen out.

18 The other most obvious injuries are an area lateral to
19 the scapula, which is an abrasion and ecchymosis with a
20 linear edge. And then further over her iliac crest, there
21 are contusions and abrasions also.

22 Q Okay. Is there any significance to, say, this mark
23 right here? What would that indicate? That looks like --
24 what is that?

25 A Well, the upper portion of the injury is significant in

Dr. James Lamm
Direct examination by Ms. Wells

1 that it was a blunt object, significant, struck with
2 significant force to actually cause an abrading of the skin,
3 a tearing off of the superficial layers of the skin causing
4 that darker portion to appear.

5 Q Okay. Now, Dr. Lamm, I am going to show you what's
6 been marked --

7 MR. ALLEN: Your Honor, if it please the Court, I
8 object to that being displayed. I don't think that has been
9 entered into evidence.

10 THE COURT: What is that? Don't put anything -- take
11 that off the screen. Don't put anything on the screen until
12 you have identified what it is.

13 MS. WELLS: Thank you, Your Honor.

14 May I approach, Your Honor?

15 THE COURT: Yes.

16 (Bench conference held off the record in the presence
17 of the jury but out of the hearing of the jury.)

18 Q Dr. Lamm, I'm going to show you what's been marked as
19 State's Number Two. Can you tell me if that's the same
20 picture that was on the screen at this time?

21 A It appears to be, yes, ma'am.

22 Q Okay. Dr. Lamm, what is this a photo of?

23 A This is a photo of an injury to the patient --
24 swelling, ecchymosis. You can see the bruising portion.

25 Q Do you want to point out with the laser? It is right

Dr. James Lamm
Direct examination by Ms. Wells

1 there.

2 A This area is an area of swelling. These areas are
3 abrasions where the superficial layers of skin were scraped
4 off by some object. This is an area of ecchymosis where the
5 blood has left the blood vessels and caused discoloration of
6 the skin.

7 Q And, Dr. Lamm, you have spoken several times about the
8 linear nature of these wounds. What does that indicate to
9 you? In your experience as a medical physician, as an
10 emergency room doctor, what does that indicate to you?

11 A Well, the sharp demarcation or stopping of the injury
12 between injured and normal skin suggests to me that the
13 object which caused the injury was -- had a linear edge to
14 it.

15 Q When you say a linear edge, can you --

16 A A straight, a straight edge or a straight line, rather
17 than if you fell on the ground, you just fell on the
18 sidewalk, you would probably just have kind of a round or
19 oblong shape injury.

20 Q Dr. Lamm, I'm going to show you what's been marked as
21 State's Number Three. Can you tell me if that's the same
22 that's on the screen here?

23 A Yes, ma'am. It appears to be.

24 Q And what is this, Dr. Lamm? What is this a photo of?

25 A It appears to be a photo of Ms. Sullivan's left upper

Dr. James Lamm
Direct examination by Ms. Wells

1 arm indicating an area of ecchymosis over the bicep muscle.

2 Q And ecchymosis, again --

3 A Ecchymosis, again, is bruising.

4 Q And, Dr. Lamm, I am going to show you now State's
5 Number Six. Can you tell me if that's the same as you see
6 on the screen?

7 A Yes, ma'am. It appears to be.

8 Q And, Dr. Lamm, what is this a photo of?

9 A This is a photo of the lateral aspect of Ms. Sullivan's
10 left leg and the eagle aspect of her right leg showing
11 multiple areas of abrasion and ecchymosis and bruising.

12 Q I'm going to go through the areas, and you tell me if
13 these are, this is accurate as to bruising.

14 A Yes. That appears to be bruising, yes, ma'am,
15 bruising, again, with the linear border suggesting what the
16 multiple directions of the linear edge that the patient was,
17 came in contact with the object multiple times in multiple
18 directions.

19 Q What is this particular area that's highlighted at this
20 point?

21 A The posterolateral aspect of her mid thigh, again,
22 showing rather a more pronounced ecchymosis. Again, the
23 extent to which a bruise is visible is directly related to
24 the amount of blood which has leaked out of the blood
25 vessels. Again, the greater the force, which would cause

1 greater leaking, which would cause greater apparent
2 discoloration of the patient's skin.

3 Again, another area of bruising with a sharp edge; more
4 areas. It looks -- to me it looks like there's several,
5 actually several, wounds or injuries there, because you can
6 see edges in slightly different directions. Another, yet
7 another, injury. Still more on her right leg. Again,
8 bruising, bruising and abrasion. The same, bruising and
9 abrasion.

10 Q And these were the areas that --

11 A Yes, ma'am.

12 Q Okay. Dr. Lamm, I'm going to show you what's been
13 marked as State's Number Twelve. Can you tell me if that is
14 what is reflected on the screen here?

15 A It appears to be the same, yes, ma'am.

16 Q Okay. Dr. Lamm, what is this a picture of?

17 A This is a picture of the patient's skin, again,
18 demonstrating areas of bruising, ecchymosis with a charred
19 demarcated border. There is an area, the darker area, in
20 the mid portion of the screen, also demonstrates a very dark
21 discoloration indicating more blood lost. And then the
22 lower portion of the screen, there is a sharp narrow
23 abrasion, contusion, yes, ma'am, which indicates, again,
24 another area.

25 Q Does the shape of this particular wound indicate

Dr. James Lamm
Direct examination by Ms. Wells

1 anything to you about what type of instrument might have
2 been used to cause it?

3 A Again, the sharp border between the injured and
4 uninjured skin suggests that the object had a sharp edge to
5 it, or a straight, a straight edge or side to it.

6 Q And, Dr. Lamm, I am going to show you what's been
7 marked as State's Number Ten. Can you tell me if that is
8 what's been shown on the screen here?

9 A It appears to be the same, yes, ma'am.

10 Q What is this a photo of?

11 A This appears to be Ms. Sullivan's left thigh with,
12 demonstrating multiple linear or straight-edged abrasions
13 and contusions, that being --

14 Q Okay. And could you point out, perhaps using this as a
15 demonstrative, could you show the linear edge that you are
16 speaking of? I think that just to be clear --

17 A When I talk about the linear edge, like this area,
18 there is a very sharp border between the bruised area and
19 then the nonbruised area suggesting that the object had a
20 straight edge to it. Again, here you can see there's a
21 straight edge here, a straight edge here, a slightly
22 different direction, again, here and here.

23 Q Dr. Lamm, this is State's Eight. I am going to ask you
24 to look at that and tell me if it is the same thing you see
25 on the screen here.

Dr. James Lamm
Direct examination by Ms. Wells

1 A It appears to be, yes, ma'am.

2 Q And what is this a photo of?

3 A This appears to be Ms. Sullivan's leg, again, with
4 areas of contusion here and here, a slight abrasion right
5 here.

6 Q Okay. And I'm going to show you now State's Number
7 One. Is that what you see on the screen?

8 A It appears to be, yes, ma'am.

9 Q And what is this a photo of?

10 A This is a photo of Ms. Sullivan's left leg, again,
11 demonstrating the abrasions and contusions that sharply are
12 bordered here, one here, one here, one here, one here, also
13 one here suggesting that she was struck multiple times.

14 Q And I'm going to now State's Number Four. Is that what
15 you see on the computer screen?

16 A Yes, ma'am.

17 Q Can you tell us what that's a photo of?

18 A This is actually a different perspective of some we
19 have seen, abuse we've seen earlier, again, demonstrating
20 the sharp, the demarcated border between the injured skin
21 and less injured skin with multiple linear edges around,
22 suggesting that she was struck multiple times with a good
23 significant amount of force.

24 Q Thank you.

25 (Whereupon, the witness returned to the stand.)

Dr. James Lamm
Direct examination by Ms. Wells

1 Q Dr. Lamm, we just saw all of these photos. Are these
2 types of injuries painful?

3 A Yes, ma'am. I would imagine almost everyone would find
4 them painful.

5 Q Would they cause any type of disfiguration?

6 A They have the potential to do that. They are certainly
7 disfigured. You can see the swelling and the bruising which
8 was there at the time she presented. That disfiguration
9 could be expected to last for a matter of weeks. Whether
10 there is permanent disfiguration, one would have to wait and
11 observe over time.

12 Q In your opinion how long might it take for these types
13 of injuries to heal?

14 A I would expect that the skin lesion should heal within
15 a week or two. But some of the bruising, once blood leaks
16 out of the blood vessels into either the skin or the
17 tissues, the body takes weeks to clean it up. In cleaning
18 it up, it's an inflammatory process which is perceived by
19 the patient as painful to some degree.

20 Q All right. And can you tell this jury a little bit
21 about how someone's skin pigmentation might affect the
22 evidence of the bruising or how the bruising would show up
23 on one's skin?

24 A Yes, ma'am. You could think of it as using different
25 color inks on different color of paper. If you wrote with

Dr. James Lamm
Direct examination by Ms. Wells

1 white ink on white paper, you wouldn't be able to see it
2 very well, but if you wrote with dark blue ink on white
3 paper, it would be quite dramatic, and you'd be able to see
4 it.

5 Ms. Sullivan. Ms. Sullivan's skin is relatively dark,
6 and so the fresh blood, which is a dark blue, would not be
7 as immediately or as obvious to someone looking at her as if
8 she were a fair-skinned person. The bruises and the degree
9 of blood loss in her skin would be very striking or more
10 striking than these pictures show.

11 Q Dr. Lamm, in your opinion what type of force would be
12 necessary to cause these types of injuries?

13 A To cause a degree of blood leaking out of blood vessels
14 and swelling, I would think a good deal of force. It would
15 take a strong adult exercising a good deal of his or her
16 strength to cause that sort of injury.

17 Q In your opinion are these injuries serious?

18 A I would describe them as serious, yes, ma'am.

19 Q In your opinion could these injuries have been
20 self-inflicted in any way?

21 A Judging by the multiplicity and the location of the
22 injuries, it would just seem to be very difficult to get the
23 kind of leverage on her back. I have never seen that in 20
24 years, so I would say no. In my opinion, it wouldn't be
25 likely that she could have done that herself.

Dr. James Lamm
Cross-examination by Mr. Allen

1 Q But it is your opinion that these injuries are serious.

2 A Yes, ma'am. A good deal of force was expended with a
3 blunt instrument to cause this degree of injury.

4 MS. WELLS: Beg the Court's indulgence.

5 (Pause.)

6 MS. WELLS: Your Honor, those are all the questions we
7 have at this time.

8 THE COURT: All right. Cross-examination.

9 CROSS-EXAMINATION

10 BY MR. ALLEN

11 Q Doctor, in going over these photos that have been put
12 into evidence, would you agree with me that a number of
13 these photos are repetitious, showing the same injuries?

14 A Yes, sir.

15 Q I mean, for example, State's, Two and Five showing the
16 back and the part of the scapula, that is all repetitious,
17 right?

18 A There was -- we did look at the same injuries, several
19 times, yes, sir, more than once.

20 Q As well as the legs -- Six, Twelve and One.

21 A I don't have the numbers in my head, but I do recall
22 seeing the same injuries more than once, yes, sir.

23 Q I don't have them in my head either. Where are the
24 pictures?

25 THE COURT: They are at counsel table.

1 Q I will bring my notes up too. And Seven and Three are
2 not in order either, but Seven and Three show the same arm.
3 Would you say that's correct? Let me find Three. Here is
4 Three, Seven. That's showing the same bruise, same arm.
5 Would you agree with that?

6 A Yes, sir, I would.

7 Q And Nine, Ten and Five show parts of the back. There
8 is Five.

9 A Yes, sir. These are the --

10 Q Two. That's all the same, is that correct?

11 A Yes, sir, appears to be.

12 Q Okay. According to the medical records -- and I
13 presume that you have had access to the medical records.

14 A Yes, sir.

15 Q She arrived at the hospital at 5:51 in the morning.
16 Would that be correct?

17 A Sir, what?

18 Q What time did she arrive at the hospital? Do you have
19 a copy of the --

20 A I do. I'm sorry. I am at a new hospital. I'm trying
21 to find the exact wording on this.

22 Q Okay. I was looking at this particular document. Is
23 that the time she arrived at the hospital or is that the
24 time that --

25 A The time, it's noted in the record. It's the time of

Dr. James Lamm
Cross-examination by Mr. Allen

1 the triage or initial assessment. Technically at
2 Spartanburg when people walk in the front door, if they walk
3 in the front door, that's when the time starts. When they
4 actually -- they may have to wait a period of time before
5 they see a nurse, which would be the time of triage.

6 Q Okay. From the records that you have, can you tell the
7 time that she arrived at the hospital?

8 A Judging from the time of her triage and registration,
9 it was 5:51.

10 Q You saw her at 6:42. Would that be correct?

11 A Yes, sir, that's correct.

12 Q And would you say -- when would you say your
13 examination was completed, or do you have that noted?

14 A I don't have that noted, sir. I could estimate it.

15 Q There is a -- do you have a copy of that document in
16 your records?

17 A I believe I do.

18 Q Yes. There is a time listed there of 6:57.

19 A Yes, sir.

20 Q The document we are looking at, of course she
21 acknowledged she received instruction. Would this be about
22 the time your examination concluded?

23 A It would be somewhat after that time. I would have had
24 to tell the nurse to discharge the patient, write the order
25 for discharge. Then she would have generated this form and

Dr. James Lamm
Cross-examination by Mr. Allen

1 had the patient sign it.

2 Q So that form is signed at 6:57, wasn't it?

3 A Yes, sir.

4 Q Was printed after you made a decision that she would be
5 discharged, is that correct?

6 A Yes, sir.

7 Q And she was discharged soon thereafter? Maybe you --

8 A This suggests that she was discharged at close to this
9 time. She may have stayed in the bed for some period for
10 whatever reason, but she would have been free to go at that
11 point, or discharged. Whether she was physically there or
12 not, I would have no way of knowing.

13 Q Okay. Now, you didn't see her again about these
14 complaints after you saw her on that day.

15 A Not to my recollection, sir.

16 Q You indicated that she, that she was alert. Is that
17 right?

18 A Yes, sir. I did note that on my medical record.

19 Q So she appeared to be with it, for lack of a better
20 term for me. She knew what was going on.

21 A Yes, sir.

22 Q And she was apparently able to remember the event that
23 she was complaining about, because she gave you a history.

24 A Yes, sir. I had no reason to think otherwise.

25 Q She didn't appear to have difficulty remembering, did

Dr. James Lamm
Cross-examination by Mr. Allen

1 she?

2 A I did not note that, sir.

3 Q Now, would you say that you would describe the pain
4 that she appeared to be in as being mild?

5 A Yes, sir. That's what I checked on the record.

6 Q And the stress that she appeared to be in was mild.

7 A Stress being a component of her overall distress, yes,
8 sir, that's -- I checked mild.

9 Q I am talking about there is a part there on the medical
10 records for distress. I don't know if I said stress or
11 distress.

12 A You said stress. I checked mild under that.

13 Q Checked mild.

14 A Yes, sir.

15 Q Okay. And basically your form has three levels of
16 severity of pain, is that correct?

17 A It has four levels to assess distress; one of them
18 being N. A. D., meaning no apparent distress. So there were
19 three degrees of distress.

20 Q I was back on pain. We will go over distress as soon
21 as I find it. There were four levels of distress, one being
22 no apparent distress.

23 A Yes, sir.

24 Q And then the next level up is mild.

25 A Yes, sir.

Dr. James Lamm
Cross-examination by Mr. Allen

- 1 Q And next level up is moderate, is that right?
- 2 A Yes, sir.
- 3 Q And next level up is severe.
- 4 A Yes, sir.
- 5 Q And you checked mild.
- 6 A I checked mild, yes, sir.
- 7 Q And on severity of pain, there are three levels, is
8 that right? I am back on the first column, the page you
9 looked at, the severity of pain.
- 10 A Oh, yes, sir. Three are three levels -- mild, moderate
11 and severe.
- 12 Q Mild being the least form.
- 13 A Yes, sir.
- 14 Q And when you assess a patient, you accurately reflect
15 the things that you note, is that correct?
- 16 A Yes, sir.
- 17 Q You don't want to fudge and you don't want to take
18 away. You want to be as accurate as possible.
- 19 A Would be ethically bound to reflect it accurately to
20 the best of my ability.
- 21 Q Yes, sir. You didn't measure, take any measurements of
22 any of these bruises, the length of them.
- 23 A I did not, sir.
- 24 Q The width of them.
- 25 A I did not.

Dr. James Lamm
Redirect examination by Ms. Wells

1 Q There are other things that could cause elevation of
2 blood pressure and pulse rates, right?

3 A Yes, sir.

4 Q One could be if someone were to walk several miles to,
5 say, arrive at the hospital. There would be an elevation of
6 the blood pressure and pulse rate, would there not be?

7 A Yes, sir. Exercise can induce those findings.

8 Q When you say that certain things are consistent with,
9 say, the history the patient gave, you're not saying that
10 that's what actually caused it, are you?

11 A No, sir.

12 Q What you mean to say is that it goes along with what
13 the patient says.

14 A Yes, sir.

15 Q But there could be other explanations.

16 A Yes, sir.

17 Q Nothing further.

18 MR. ALLEN: Thank you, Your Honor.

19 THE COURT: Any redirect?

20 MS. WELLS: Briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. WELLS

23 Q Dr. Lamm, you indicated that from the triage or initial
24 assessment that it appeared that she arrived at 5:51, is
25 that correct?

Dr. James Lamm
Redirect examination by Ms. Wells

1 A Yes, ma'am.

2 Q And that your assessment of her ended sometime close to
3 7:00 in the morning, is that correct?

4 A I did not specifically note the time that my assessment
5 ended, but certainly it ended before 6:57 when the nurse
6 would have discharged the patient.

7 Q Would a heightened level of blood pressure or heart
8 rate from a walk, would that be reduced within an hour's
9 time?

10 A One would expect so, yes, ma'am.

11 Q Okay. On the physical exam you noted that she was --
12 her distress was mild. What's the significance of that mark
13 of choosing that particular --

14 A It was a reflection of my experience in dealing with
15 patients with a numerous degree of injuries in the
16 department, probably different than a civilian or a
17 nonmedical professional, as we tend to see a wide variety of
18 people with minor injuries and very, very, very severe
19 injuries, life-threatening.

20 Q And you indicated that under the pain, that pain was
21 mild. What's the significance of that? Does it mean she
22 wasn't in any pain at all?

23 A No, ma'am. I would have put no apparent distress if I
24 thought that.

25 Q Dr. Lamm, were the injuries to Ms. Sullivan's back,

Dr. James Lamm
Recross-examination by Mr. Allen

1 were they serious?

2 A I believe that they required a great deal of force to
3 be caused, yes, ma'am.

4 Q And the injuries to her legs were serious?

5 A Yes, ma'am.

6 MS. WELLS: No further questions, Your Honor.

7 RECROSS-EXAMINATION

8 BY MR. ALLEN

9 Q If I may, after the initial triage when the blood
10 pressure and pulse rate were taken, were there any others
11 taken according to those records?

12 A The only ones that I see are the ones -- the only timed
13 vital signs in the chart are 5:51. There is no evidence,
14 although there certainly should have been, there's no
15 evidence in this record reflecting that they were.

16 Q So we don't know if they were reduced by the time you
17 saw her or not.

18 A No, sir.

19 Q Thank you.

20 MR. ALLEN: No other questions.

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

22 MS. WELLS: Your Honor, the state would rest.

23 THE COURT: All right. Ladies and gentlemen, I have
24 some matters of law that I will have to take up at this
25 time, so please go back into the jury room.

Motion

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

3 MR. ALLEN: Your Honor, if it please, at this time I
4 would move for a directed verdict based on the grounds that
5 the evidence taken in the light most favorable to the state
6 does not support each and every element as alleged in the
7 indictment and on the grounds of -- on prior objections and
8 motions ruled adversely to the defense.

9 THE COURT: I deny the motion.

10 MR. ALLEN: Your Honor, at this time the Court may want
11 to inquire of my client as to whether or not he desires to
12 testify.

13 Of course I have gone over that with my client and
14 explained his rights and also explained the procedures in
15 court should he decide to testify, as well as decide not to
16 testify.

17 I'm not sure if the Court's general practice is to
18 inquire of the defendant himself or go over his rights. If
19 the Court wants to, I offer him up at this time.

20 THE COURT: Please stand, Mr. Sullivan.

21 (Whereupon, the defendant was duly sworn.)

22 THE COURT: All right. Put your hand down.

23 Do you understand your rights, the right that Mr. Allen
24 just referred to that you may remain silent and not testify
25 in this case?

Defendant questioned

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand you also have the right
3 to testify in this case?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: I'm going to talk to you a little bit about
6 those rights, and at the end I'm going to see if you have
7 any questions.

8 Now, you have the right to remain silent. And you
9 cannot be required to testify in this case. The Fifth
10 Amendment to the United States Constitution provides that no
11 person shall be compelled in a criminal case to be a witness
12 against himself. And that means that you have the personal
13 privilege of deciding whether or not you wish to testify in
14 this case.

15 Should you decide not to testify, I will instruct the
16 jury that this is your constitutional right, and your
17 decision not to testify cannot and must not be held against
18 you.

19 If you decide to testify, then you assume the role of
20 any other witness, and you become like any other witness,
21 subject to cross-examination on any matter that is relevant
22 to this case. And that may include any criminal convictions
23 that you may have in your past. And I don't know whether
24 you do or not, put that's true for each witness.

25 Now, this is a question as to which you may seek the

Defendant questioned

1 advice of your lawyer, Mr. Allen, but you must make this
2 decision yourself.

3 Now, have you discussed this with Mr. Allen?

4 THE DEFENDANT: Yes, sir. We have.

5 THE COURT: Are you satisfied that you fully understand
6 the rights that I have been discussing with you now?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Have you made your decision as to whether
9 or not you wish to testify?

10 THE DEFENDANT: I made a decision earlier. It's just a
11 matter of giving up the last testimony. I would like to
12 converse with --

13 THE COURT: All right, sir. We will take a break in
14 order to allow you to do that.

15 MS. WELLS: Your Honor, may Dr. Lamm be excused?

16 THE COURT: Let me see y'all for a second.

17 (Bench conference held off the record in the presence
18 of the jury but out of the hearing of the jury.)

19 THE COURT: All right. We will take a short break.

20 (Whereupon, a recess was taken.)

21 THE COURT: All right. Mr. Sullivan, have you made
22 your decision?

23 THE DEFENDANT: Yes, sir, Your Honor, I have.

24 THE COURT: What is it?

25 THE DEFENDANT: I have decided not to take the stand.

Defendant questioned

1 THE COURT: All right. Is there going to be any
2 testimony presented by the defense?

3 MR. ALLEN: No, Your Honor. We did have one witness
4 standing by. I appreciate that witness standing by. But
5 given the fact that my client does not want to testify, we
6 will release that witness from her subpoena and not put up
7 any testimony or evidence.

8 THE COURT: All right. I think what we will do is take
9 a lunch break right now. We will come back and argue and
10 charge at -- do you-all anticipate any other legal issues
11 before we go right into arguments?

12 MS. WELLS: Your Honor, I will just have one motion in
13 limine real quick, and I don't think it's going to be a
14 problem. I just wish --

15 THE COURT: It's not going to go a motion in limine,
16 because the evidence is closed.

17 MS. WELLS: Sorry, Your Honor. Just a quick motion as
18 to the closings.

19 THE COURT: Okay.

20 MS. WELLS: I would just ask that Your Honor -- ask
21 Mr. Allen not use any third-party guilt. If he is not going
22 to present any evidence, then I don't believe that he would
23 be able to argue third-party guilt in his closing in this
24 case.

25 I just wanted to clarify that with the Court before we

Motion

1 went into closing arguments. He would be required to put in
2 evidence of third-party guilt, which he has not done. He
3 would have to at least make a proffer of someone else doing
4 this and --

5 THE COURT: Well, he is fully entitled to argue that
6 his client did not commit this crime.

7 MS. WELLS: Correct.

8 THE COURT: And as part of that argument, he is free to
9 suggest the necessary corollary to that argument, which is
10 that someone else committed these acts. And I am not going
11 to restrict his testimony -- his argument in that way.

12 If he argues a specific scenario, then that perhaps
13 would be something that would be objectionable, but he -- it
14 would be -- I cannot restrict his argument to telling that
15 he can't argue that his client didn't commit the crime. So
16 I am not going to do that.

17 All right. Anything else?

18 MR. ALLEN: For the record, then I will move to renew
19 my motion previously made since we have now closed the
20 evidence. I will renew my motion for a directed verdict on
21 the same grounds.

22 THE COURT: Now, I don't know what you -- that motion
23 is denied, but I don't know what she anticipates that you
24 have got cooked up, but/and I don't know what the argument
25 was that you made last time, if you even got to that point.

Motion

1 MR. ALLEN: We didn't get to that point.

2 THE COURT: But, I mean, is there something specific
3 that you anticipate him doing? Is there some evidence out
4 there that I don't know of that somebody else may have done
5 this?

6 MS. WELLS: No, Your Honor. Just the anticipation of
7 what he may do.

8 THE COURT: All right. I think he knows what he can
9 and can't do. I am not going to restrict his closing
10 argument in advance.

11 Okay. We will take a break until 1:30, and we will
12 begin with closing arguments at 1:30.

13 MS. WELLS: Thank you, Your Honor.

14 THE COURT: And I will -- how long do you think you
15 need for closing arguments?

16 MS. WELLS: I can't imagine that my closing argument,
17 and, again, this is underestimated, Your Honor. I can't
18 imagine my closing's going to go any more than 30 minutes at
19 most.

20 THE COURT: How much? Ten minutes?

21 MS. WELLS: I don't even think I argued totally 15
22 minutes last time.

23 MR. ALLEN: I didn't time you last time. I don't know.

24 MS. WELLS: Fifteen minutes maybe, or 20 minutes. It's
25 not -- I don't know how long Mr. Allen would anticipate

Closing arguments

1 going.

2 MR. ALLEN: I am like the assistant solicitor. I
3 generally overestimate. I think 15 minutes is a gracious
4 plenty for me to get my points across, however, I appreciate
5 it if --

6 THE COURT: I would anticipate that these closing
7 arguments would take a total of about 20 minutes. And so if
8 we take another ten to 15 minutes to charge, that's going to
9 take us about 30 to 45 minutes to complete all of that.

10 So if y'all would like to have your witnesses here in
11 the 2:15 to 2:30 range, then we ought to be able to get
12 started with selecting a jury by about 2:30.

13 MS. WELLS: Thank you, Your Honor.

14 MR. ALLEN: Your Honor, yesterday I requested the
15 charge of a lesser included of criminal domestic violence.
16 Has the Court decided whether to charge that?

17 THE COURT: I am going to charge it.

18 MR. ALLEN: Thank you.

19 THE COURT: I'm just going to tell -- Mr. Allen, I am
20 just going to tell the jury to come back, just have the
21 bailiff tell this jury to come back at 1:30.

22 MR. ALLEN: Yes, sir. That will be fine.

23 (Whereupon, a recess was taken.)

24 THE COURT: Anything from the state?

25 MS. WELLS: Nothing from the state, Your Honor.

Closing arguments

1 MR. ALLEN: No, Your Honor.

2 THE COURT: All right. Bring them in, please.

3 (The following takes place in the presence of the
4 jury.)

5 THE COURT: Madam Solicitor, you may begin.

6 MS. WELLS: Your Honor, may we approach?

7 (Bench conference held off the record in the presence
8 of the jury but out of the hearing of the jury.)

9 THE COURT: Ladies and gentlemen, you have heard all of
10 the evidence that you are going to hear in this case, and it
11 is now time for the closing arguments of the lawyers.

12 And, Ms. Wells, you may begin.

13 MS. WELLS: Thank you, Your Honor. May it please the
14 Court.

15 Ladies and gentlemen, I will talk to you briefly about
16 the law in this case and how the facts apply to the law in
17 my closing.

18 Ladies and gentlemen, you are going to hear from the
19 judge about the law that applies to this case. Mr. Sullivan
20 is charged with criminal domestic violence of a high and
21 aggravated nature. And what criminal domestic violence of a
22 high and aggravated nature is is this. It is unlawful for
23 any person to cause physical harm or injury to a person's
24 own household member or to offer or attempt to cause
25 physical harm or injury to a person's own household member

Closing arguments

1 with apparent present ability under brief circumstances to
2 reasonably create a fear of imminent peril. Now --

3 THE COURT: Let me see you up here, please.

4 (Bench conference held off the record in the presence
5 of the jury but out of the hearing of the jury.)

6 MS. WELLS: Criminal domestic violence of a high and
7 aggravated nature is more than just what falls under one to
8 cause physical harm or injury to a person's own household
9 member.

10 This is -- one would be simply criminal domestic
11 violence. Criminal domestic violence of a high and
12 aggravated nature is where you have someone who may cause
13 physical harm or injury to a person's own household member,
14 which includes spouses, which is what we have in this case.
15 But where there are aggravating circumstances, where there
16 is serious bodily injury, where there is a disparity between
17 the ages and/or the physical conditions of the parties, if
18 one, as in this case, Mr. Sullivan is taller and he is
19 stronger and he is heavier than Ms. Sullivan. And she
20 testified to that.

21 There's a difference between the sexes. She's a woman;
22 he's a man; or the purposeful infliction of shame or
23 disgrace. You whore, you bitch --

24 MR. ALLEN: I am going to object to that, Your Honor.

25 THE COURT: Sustained. Let me see counsel at the

Closing arguments

1 bench.

2 (Bench conference held off the record in the presence
3 of the jury but out of the hearing of the jury.)

4 MS. WELLS: He attempted to inflict shame or disgrace
5 upon Ms. Sullivan. And she told you that even a month after
6 this happened she was still attempting to heal on the
7 inside, on the inside, still dealing with the physical
8 injuries from the outside, on the inside from what he had
9 done to her.

10 And that's why, ladies and gentlemen, in this case
11 Mr. Sullivan is guilty of criminal domestic violence of a
12 high and aggravated nature.

13 Ladies and gentlemen, you saw the photos of the
14 injuries, and maybe any one of these particular injuries,
15 that might be criminal domestic violence, but these injuries
16 together with this and with this, that is serious bodily
17 injury which would rise, bring this case up to the level of
18 criminal domestic violence of a high and aggravated nature.

19 You've heard from the witnesses in this case. What
20 have you heard from them? You heard from Investigator
21 Dedmon. And he told you that he came into the room that
22 night, and he was on multiple calls. And he saw
23 Ms. Sullivan. And she stood out to him.

24 He took pictures of her injuries; that she was in
25 obvious pain; that she had a hard time moving, and that it

Closing arguments

1 was difficult for her to talk to him and tell him what had
2 happened.

3 He told you that she told him what had happened that
4 night. And she told, he told you that she told him who did
5 it.

6 You also heard from Deanna Nicsinger, the E. M. T., the
7 first person to see Ms. Sullivan when she got to the
8 hospital that night.

9 She testified that she had to help her undress; that
10 she was distraught; that she was shaking; and that she took
11 her back and called law enforcement to come and see her
12 because of what Ms. Sullivan had told her.

13 And she, Ms. Sullivan, told her and Ms. Nicsinger told
14 you that she told her what happened and that she told her
15 who did it.

16 You heard from her sister, Frances Dawkins. You heard
17 from her daughter, Robin Davidson. And they told you that
18 after this was all over that Cathy had to go back to her --
19 to her daughter's house and live there for a month. And it
20 was a month before the physical injuries began to go away,
21 before she was healed. And Cathy told you herself she then
22 went to a shelter in Charlotte to attempt to heal from the
23 emotional injuries that this man, her husband, caused her.

24 And you heard from Dr. Lamm. And he told you that
25 these injuries were serious, that it would have taken great

Closing arguments

1 force by an adult to cause the kinds of injuries that
2 Ms. Sullivan sustained in this beating.

3 He also told you that he gave her medication that made
4 her drowsy. He gave her pain killers, Lortab, a narcotic
5 that causes one to lose the sensation of pain but also
6 causes other unwanted effects because of the strength of the
7 medication.

8 And you've heard from Cathy Sullivan. And Cathy told
9 you that she lay in her bed asleep. When her husband came
10 home at three o'clock in the morning, he yelled at her. He
11 called her names, and she lay there because she didn't want
12 to get into it. She didn't want to have to fight. But
13 instead he beat her with a belt over and over and over again
14 causing these injuries.

15 And she got out of the room and she went downstairs.
16 She sat there. And she walked to the convenience store in
17 the middle of the night. She called a cab and went to the
18 emergency room.

19 And she told you that when her husband was beating her
20 that she was afraid, and all she wanted to do was get out,
21 get out. And she told you who did it. And she told you
22 that it was this man, the defendant.

23 And there was some question, did she take a cab, did
24 she walk. If she had been delivered by a U. F. O., it
25 doesn't make a difference. It doesn't change the fact that

Closing arguments

1 her husband beat her.

2 She told you that she took a cab. She told you that he
3 did it. She has no motive to lie. He's her husband. She
4 has no motive to lie in this case. She's got no reason to.

5 She never wavered. She told you I told the nurses, I
6 told the investigator. She told everyone she could, my
7 husband beat me with a belt.

8 And who's her husband? It's David Sullivan. He's the
9 one who came in that night and beat her. He's the one that
10 did this and this and this and this with his belt.

11 Ladies and gentlemen, thank you. Thank you on behalf
12 of the state; thank you on behalf of Cathy Sullivan. It's
13 been a sacrifice for you to serve on a jury, and you've
14 worked hard, and it's not gone unnoticed, and we all
15 appreciate that. This case, it's almost in your hands.

16 Ladies and gentlemen, Cathy Sullivan was a victim in
17 those early morning hours. She was a victim of a crime that
18 is -- you can't do to a stranger, a crime that you can't do
19 to an animal, a crime that you can't do to a child and a
20 crime that you certainly can't do to your spouse.

21 She's a victim of a crime of violence. She was beaten
22 like an animal by the one who took a vow to uphold her and
23 to honor her above anything else. That was her husband,
24 David Sullivan.

25 Do justice, ladies and gentlemen. Do justice in this

Closing arguments

1 case, and find him guilty of criminal domestic violence of a
2 high and aggravated nature. Thank you.

3 MR. ALLEN: May I ask that this be turned off?

4 Ladies and gentlemen, I will wait for it. Thank you.

5 Ladies and gentlemen, as has been indicated, the state
6 has a burden to prove this charge they have brought against
7 Mr. Sullivan, just as they must prove beyond all reasonable
8 doubt the charge they make against any citizen.

9 And Mr. Sullivan sits there presumed innocent unless
10 and until the state can remove that cloak of innocence, if
11 you will, beyond all reasonable doubt. There is a lot about
12 this case that, quite frankly, is doubtful. This case lacks
13 a good bit of evidence.

14 I'm particularly drawing your attention to the lack of
15 a true crime scene investigation. The sheriff's department
16 had a crime scene investigator and detectives and deputies,
17 and yet their crime scene investigator, if you will, took
18 pictures of injuries, 13 pictures, we have in evidence or
19 they have in evidence, of injuries, many of them repetitive.

20 But not one attempt apparently was made to go out to
21 Ransdell Drive to the house where she told them they lived
22 and look into the condition of that house to see if they
23 could find evidence at that house.

24 Was the room in disarray? Was there evidence that an
25 assault had been made there? What about this belt they kept

Closing arguments

1 talking about? Did they try to measure some of the wounds,
2 some of the marks that the state would have you believe came
3 from a belt to see if he even had a belt that size or shape,
4 that width? Could the officers have looked? Of course they
5 could. Did they look? No. Apparently not.

6 The state, as you have seen, brought in several
7 witnesses, a number of witnesses. When you get right down
8 to it, most of witnesses talked about the history she gave
9 or they talked or described the injuries that she had that
10 had been photographed and offered and put into evidence.

11 But there was only one witness, only one witness, the
12 state offered to accuse Mr. Sullivan of this offense. Only
13 one witness did they offer to talk about anything that
14 occurred before she arrived at the hospital.

15 What convenience store did she go to? How did she get
16 there? What direction did she follow in which to get there?
17 She can't tell you or didn't tell you. Did she ever go to a
18 convenience store? Could the investigators have gone to a
19 convenience store to see who was at work there at that time,
20 to find out did you call a cab. They could have gone to a
21 cab company. Did a cab take this lady to the hospital?
22 What was her condition, this kind of thing? There is no
23 evidence of that. And what can you think about the lack of
24 this evidence?

25 It is reasonable to think, ladies and gentlemen, and

Closing arguments

1 you're allowed to think, that they didn't present that
2 evidence in court today because there is no evidence. It
3 didn't happen that way.

4 One thing they've got to prove, and prove beyond a
5 reasonable doubt, is the identity of a perpetrator, the
6 identity of a person they say inflicted those injuries on
7 Ms. Sullivan. That's got to be proven to your satisfaction
8 beyond a reasonable doubt.

9 What other evidence could there have been? Remember
10 this was a house in which two, simply two, families were
11 living. There were two adults living downstairs in a house,
12 and they were living upstairs. The Sullivans were living
13 upstairs.

14 She says that she went downstairs and sat for a period
15 of time, possibly an hour, possibly an hour and a half. No
16 attempt apparently was made to call the law. No attempt was
17 apparently made to try to get help from Mr. and Ms. Payden
18 who were living downstairs.

19 The state didn't even call them to testify about the
20 ruckus they would have heard had there been a ruckus
21 upstairs.

22 Is there someone at Joe Gibson Auto World that can
23 testify that she came to speak to him and they could not
24 find him? And what about the deputy that took the
25 statement?

Closing arguments

1 Remember there were several items in the statement that
2 I asked Ms. Sullivan about. Did you say this? Did you say
3 you went to Joe Gibson around 6:00 p.m. and could not find
4 him? No, I didn't say that, she says. Is it in your
5 statement? Yes, it is.

6 Did you say you walked all the way to the hospital?
7 No, I didn't say that, she says. Is it in her statement?
8 Yes, it is.

9 Did you say that he took off his clothes before she
10 says he beat her? No, I didn't say that. Is it in your
11 statement? Yes, it is.

12 And let's think about that. And use what the solicitor
13 asked you to use, your common sense. They didn't call
14 Deputy Rhorer to clear up any confusion that Deputy Rhorer
15 may have had about why she might have put something in there
16 if it wasn't said to her. But if it was in that statement
17 and if Deputy Rhorer's job was to go there and to write a
18 statement that she was saying, doesn't it stand to reason
19 that the reason it's in that statement is because
20 Ms. Sullivan actually did say that? Why wouldn't the state
21 want to call Deputy Rhorer?

22 She says this thing occurred around three o'clock in
23 the morning. Now, we know she didn't get to the hospital
24 until around 5:51 or thereabouts. She was in triage at
25 least by 5:51, usually the first thing they do soon after

Closing arguments

1 someone arrives.

2 A doctor saw her approximately an hour later at 6:42,
3 and she was in the process of being discharged by 6:57,
4 signing a piece of paper. And a doctor who made an
5 examination of her had already decided that by 6:57, at
6 least, that she should be discharged.

7 But there is no other evidence other than what
8 Ms. Sullivan says about anything occurring at Ransdell Drive
9 at three o'clock in the morning.

10 There is no other evidence to corroborate what she had
11 to say about how this thing occurred, and there is no other
12 evidence that corroborates the identity of the perpetrator
13 as she said.

14 Are her actions consistent with her testimony as well?
15 They are portraying her today as if she had injuries that
16 caused her so much pain that she couldn't move around much
17 for three or four weeks, or thereabouts, and yet through all
18 of the care that was given her by her family, she was never
19 apparently taken to a doctor during that period of time for
20 follow-up care after having seen the doctor for somewhere
21 less than 20 minutes or thereabouts on the initial day.

22 What about the fact that she resumed living with
23 Mr. Sullivan in Gaffney? Is that action consistent with
24 someone who, as she says, was afraid of him on that day and
25 was beaten by him on that day?

Closing arguments

1 You can also consider her testimony, consider the
2 inconsistent statements that she previously made about --
3 that we talked about, or that I talked about.

4 Remember the doctor said she was alert. She appeared
5 to be with it. She appeared to have no problem with
6 remembering. That was the medical testimony. She obviously
7 had problems remembering parts of it today.

8 Is that, ladies and gentlemen, an indication that she
9 wasn't being completely truthful and telling the complete
10 truth about what had happened back then? I submit to you
11 that is a very reasonable explanation and that it is indeed
12 what was happening.

13 In short, you've got to consider her credibility. And,
14 more importantly, consider her credibility about what she
15 says happened and about who she says did it. And I submit
16 to you the state has fallen short of their burden of proof.

17 It is difficult to prove. That's why the state is
18 required to prove guilt beyond all reasonable doubt. And I
19 ask you to hold the state to its burden.

20 For all of your sympathies for Ms. Sullivan, for all of
21 your surprise and shock about seeing those pictures, I
22 simply ask you to hold the state to its burden of proof to
23 find that the presumption of innocence surrounding
24 Mr. Sullivan has not been removed by sufficient evidence,
25 and to find him not guilty. Thank you.

Jury charge

1 THE COURT: Ladies and gentlemen, now that you have
2 heard all of the evidence in this case and the arguments of
3 the lawyers, it becomes my responsibility to explain to you
4 the law that is applicable to this case.

5 As I told you before, under the constitution of this
6 state and under our code of laws, only the jury can make the
7 findings of fact in this case.

8 I am not permitted to indicate to you how I might feel
9 about the facts. If I have said anything or done anything
10 during the course of this case that might lead you to
11 believe that I have an opinion about the facts, then you
12 must disregard that, because this jury exclusively must
13 judge the facts in this case. And you must do so based on
14 the testimony and evidence that you have heard here in this
15 courtroom.

16 On the other hand, I am the sole judge of the law, and
17 the exclusive judge of the law. And if you have some idea
18 as to what the law is or what the law should be, and if that
19 differs from what I now tell you the law is, then you are
20 obligated under the oath that you have taken as jurors to
21 set your notion of the law aside and to accept and apply the
22 law precisely as I now state it to you.

23 The fact that the defendant was arrested and charged
24 and indicted in this case is not evidence and cannot be
25 considered by you as evidence of guilt in this case; nor

Jury charge

1 does it create any presumption or inference of guilt.

2 The indictment is simply the formal written instrument
3 that serves to -- that contains the charge and serves to
4 process the case against the defendant and bring it into
5 this court for trial.

6 The defendant has pled not guilty to this indictment,
7 and that plea casts the burden on the state of proving the
8 defendant guilty beyond a reasonable doubt. A person
9 charged with committing a criminal offense in South Carolina
10 is never required to prove themselves innocent.

11 It is a very important rule of law in our country,
12 ladies and gentlemen, that a defendant in a criminal trial
13 will always be presumed to be innocent of the crime with
14 which he has been charged unless and until his guilt has
15 been proven by evidence satisfying you of that guilt beyond
16 a reasonable doubt.

17 This presumption of innocence is not merely legal
18 theory. It's not just a legal phrase. It is a substantial
19 constitutional right to which all of us and every defendant
20 is entitled.

21 The presumption of innocence accompanies the defendant
22 from the time he is charged throughout the trial and into
23 the jury room until the jury reaches a verdict of guilt
24 based on evidence satisfying you of that guilt beyond a
25 reasonable doubt.

Jury charge

1 Now, ladies and gentlemen, I instruct you now, and I
2 emphasize to you, that the fact that the defendant did not
3 testify in this case cannot be used against him, cannot be
4 considered by you in any way during your deliberations. A
5 defendant has a constitutional right to remain silent, and
6 the exercise of that right cannot and must not be held
7 against the defendant.

8 Under the oath that you have taken as jurors you are to
9 draw no inference whatsoever, no conclusion whatsoever, from
10 the fact that the defendant did not testify in this case.
11 Do not even discuss this fact in the jury room.

12 The defendant is not required to prove anything in this
13 case. The burden of proof remains on the state to prove the
14 defendant guilty beyond a reasonable doubt.

15 A reasonable doubt is a doubt that makes an honest,
16 sincere, conscientious juror in search of the truth in the
17 case to hesitate to act.

18 Proof beyond a reasonable doubt must therefore be proof
19 of such a convincing character that a reasonable person
20 would not hesitate to rely on it and act on it in the most
21 important of his or her own affairs.

22 Proof beyond a reasonable doubt can also be described
23 as proof that leaves you firmly convinced of the defendant's
24 guilt. There are very few things in this world that we know
25 with absolute certainty, and in criminal cases the law does

Jury charge

1 not require proof that overcomes every conceivable doubt.

2 If, based on your consideration of the evidence, you
3 are firmly convinced that the defendant is guilty of the
4 crime charged, then you must find him guilty. But, on the
5 other hand, if you think that there is a real possibility
6 that he is not guilty, then you must give the defendant the
7 benefit of the doubt and find him not guilty.

8 The defendant is charged with criminal domestic
9 violence of a high and aggravated nature. In order to
10 convict the defendant of this crime the state must prove
11 beyond a reasonable doubt that the defendant caused physical
12 harm or injury to a member of the defendant's own household
13 accompanied by circumstances of aggravation. A household
14 member includes a spouse, a former spouse and a person of
15 the opposite sex with whom the defendant is cohabiting or
16 has cohabited in the past.

17 The state must also prove a circumstance of
18 aggravation. Circumstances of aggravation can include the
19 infliction of serious bodily injury, a great disparity
20 between the ages or physical conditions of the parties, a
21 difference in the sexes of the parties or the purposeful
22 infliction of shame and disgrace.

23 Now, if you find that the state has failed to prove
24 criminal domestic violence of a high and aggravated nature,
25 then you should consider whether or not the state has proven

Jury charge

1 beyond a reasonable doubt the lesser included offense of
2 criminal domestic violence.

3 Criminal domestic violence includes the same elements
4 as criminal domestic violence of a high and aggravated
5 nature except that for criminal domestic violence the state
6 need not prove a circumstance of aggravation.

7 To restate the elements of the two different crimes
8 that you have the option of finding the defendant guilty of,
9 criminal domestic violence, to prove the defendant guilty of
10 criminal domestic violence the state must prove beyond a
11 reasonable doubt that the defendant caused physical harm or
12 injury to a member of the defendant's own household. That's
13 criminal domestic violence.

14 In order to find the defendant guilty of criminal
15 domestic violence of a high and aggravated nature, you must
16 find that the state has proven beyond a reasonable doubt, in
17 addition to criminal domestic violence, some circumstance of
18 aggravation, one of the four that I just listed.

19 Now, ladies and gentlemen, I will send back to you in
20 the jury room a copy of this charge so that you will have
21 that with you.

22 Ladies and gentlemen, your verdict in this case must be
23 unanimous. All 12 of you must agree before you can write a
24 verdict.

25 When you retire to the jury room, you will have with

Jury charge

1 you the exhibits that were introduced into evidence.

2 And you will also have the indictment. And on the back
3 of the indictment in the lower left-hand corner, you will
4 see the word verdict. Below that word there are four blank
5 lines. When the jury has reached a verdict, the foreperson
6 would write the verdict on one of those four blank lines,
7 and then sign the form.

8 I am going to talk to you in just a few minutes about
9 the foreperson, but let me tell you what your options are.
10 You can find the defendant not guilty; you can find the
11 defendant guilty of criminal domestic violence; or you could
12 find the defendant guilty of criminal domestic violence of a
13 high and aggravated nature. Those are your three verdict
14 options.

15 Now, in just a few minutes I'm going to send you back
16 into the jury room. I'm going to ask you not to begin your
17 deliberations. I may have some matters of law that I have
18 to take up with the lawyers.

19 While I am doing that, I want to select a foreperson to
20 serve the jury. The job of the foreperson is to preside
21 over the deliberations and, when necessary, to make written
22 communication with the Court. From this point forward the
23 jury must communicate with the Court in writing.

24 Other than those two things, the job of the foreperson
25 is no different from that of any other member of the jury.

Jury charge

1 The foreperson's vote counts no more than that of any other
2 member of the jury. If you have any trouble selecting a
3 foreperson, then please just let me know that. I will be
4 happy to appoint one.

5 When you have selected a foreperson, please let the
6 bailiff know who that is. And then as soon as I send you
7 the indictment, the exhibits and the jury charge, you may
8 begin your deliberations. And when the jury has reached a
9 verdict, please notify the bailiff that you have reached a
10 verdict. And we will get you back out here into the
11 courtroom to receive that verdict.

12 Mr. Bluumenfeld and Mr. Kelly, if you two would remain
13 in your seats, the rest of you may return to the jury room

14 (Whereupon, the jury retired to deliberate at
15 2:05 p.m.)

16 THE COURT: Any exceptions?

17 MS. WELLS: Not from the state, Your Honor.

18 MR. ALLEN: Your Honor, if it please the Court, I would
19 have a request that you also include an instruction that
20 they are required to prove the identity of the perpetrator
21 beyond a reasonable doubt. Of course the identity is an
22 issue.

23 THE COURT: I don't know how I could state that any
24 more clearly than telling them, as I did, that the state
25 must prove beyond a reasonable doubt that the defendant

Jury charge

1 caused physical harm or injury to a member of his own
2 household accompanied by circumstances of aggravation. How
3 could I state that more clearly?

4 MR. ALLEN: Well, I think there is --

5 THE COURT: I can tell them that by defendant I mean
6 this guy right here, not somebody else, but I think that is
7 pretty obvious though.

8 MR. ALLEN: Well, I mean, I have seen or heard
9 instructions before that the identity is an issue, the
10 identity, separate instruction, that identity must also be
11 proven beyond a reasonable doubt.

12 I understand what you are saying, that you said the
13 defendant did cause. But I took that instruction, as I'm
14 thinking of it, more to talk about the definition of talking
15 about the actual acts and not necessarily that defendant.

16 THE COURT: Anything else?

17 MR. ALLEN: No, Your Honor.

18 THE COURT: I'm going to leave the charge as it is. I
19 don't think I could have stated it more clearly without
20 confusing them.

21 All right. Please get the exhibits together, and make
22 sure that you all agree as to which exhibits go back. And
23 then look at this jury charge to make sure that there is
24 nothing in here that you object to.

25 (Pause.)

Jury charge

1 (Whereupon, the alternate jurors were excused.)

2 MR. ALLEN: The only other thing I would ask the Court
3 to consider doing would be to take out, and I don't know if
4 you want to take out all of the headings, but specifically
5 the heading that says the defendant did not testify.

6 I realize the Court has given instructions on that. I
7 don't know. Just the fact that this is said alone on an
8 otherwise full page might draw more attention to the fact
9 that he did not testify.

10 I don't know if the Court would want to consider taking
11 that one heading out and keeping that with the
12 presumption-of-innocence heading or if the Court wants to
13 take all of the headings out. I am concerned that draws
14 unnecessary attention to the fact that he did not testify.

15 THE COURT: I don't follow the argument. I think I
16 will leave it like it is. I mean, I appreciate you bringing
17 it up, but I think I will leave it like it is and send it
18 back.

19 MR. ALLEN: So I am clear on the record, I am not
20 trying to ask the Court to go back over anything you have
21 already ruled on, I would like --

22 THE COURT: Excuse us. We are trying to have a hearing
23 up here. Can you all be quiet back there?

24 MR. ALLEN: Just so the record is clear, I would like
25 the record to reflect that I object to the written

Jury charge

1 instructions going back with that that the defendant did not
2 testify.

3 THE COURT: And I understand that you make that
4 objection, but your objection is that it unduly draws
5 attention to that portion of the charge because it has a
6 heading?

7 MR. ALLEN: It unduly draws attention to the fact that
8 he did not testify, because the heading states simply the
9 defendant did not testify.

10 MS. WELLS: And it goes on to say you cannot hold that
11 against him. I mean, it goes on to say a lot of real good
12 things about the defendant not testifying, how you can't
13 hold it against him and how they are not even to talk about
14 it or consider it.

15 THE COURT: All right. I will change it.

16 MS. WELLS: Your Honor, are you going to take them all
17 out or are you just going to take the one out?

18 THE COURT: I am just taking the one out.

19 All right. As soon as this is ready, we will send it
20 back to the jury.

21 (Whereupon, the verdict form and the exhibits were
22 submitted to the jury at 2:27 p.m.)

23 (Copy of instructions submitted to jury marked Court's
24 Exhibit Number One.)

25 (Whereupon, a recess was taken.)

Verdict

1 THE COURT: Bring the jury in.

2 (Whereupon, the jury returned to report its verdict at
3 2:52 p.m.)

4 THE COURT: Mr. Foreman, has the jury reached a
5 verdict?

6 THE FOREPERSON: Yes, sir.

7 THE COURT: Pass it to the bailiff, please.

8 Do you want to publish it?

9 THE CLERK: Yes, sir.

10 Indictment Number 2002-GS-42-1612, the State vs. David
11 Ferrel Sullivan, indictment for criminal domestic violence
12 of a high and aggravated nature, the verdict guilty, guilty
13 of criminal domestic violence of a high and aggravated
14 nature. Signed by the foreman.

15 Mr. Foreman and ladies and gentlemen of the jury, is
16 this your verdict and still your verdict, so say y'all?

17 (Whereupon, all jurors responded affirmatively.)

18 THE COURT: All right. Bring the defendant around,
19 please.

20 Mr. Allen and Ms. Wells and Ms. Smith, let me see you
21 at the bench momentarily, please.

22 (Bench conference held off the record in the presence
23 of the jury but out of the hearing of the jury.)

24 THE COURT: Anything else from the state?

25 MS. WELLS: Your Honor, if I could, at this time I

Sentence

1 would like to read the defendant's prior record into the
2 record.

3 Your Honor, he has a 1980 charge of unlawful possession
4 of a weapon; a 1980 disorderly conduct; a 1980 receiving
5 stolen goods.

6 Your Honor, had he has a conviction for assault and
7 battery from 1981; conviction for housebreaking in 1982 for
8 which he received -- well, let's see.

9 Your Honor, he received a parole, a probation
10 revocation in 1983 when he was convicted of driving under
11 suspension; two counts of false information to the police.
12 And, Your Honor, I believe that's when his parole was
13 revoked on the housebreaking charge. 1985 he was convicted
14 of arson for which he received a 12-year sentence.

15 Your Honor, that is his South Carolina record. He has
16 a record from Ohio, Your Honor. It's a conviction for what
17 they call unarmed robbery. And from what I understand,
18 that's maybe similar to our common-law robbery here in South
19 Carolina.

20 THE COURT: When was that?

21 MS. WELLS: Your Honor, that was in 1970. Your Honor,
22 that is the extent, that's the extent of his convictions.

23 THE COURT: Anything else then from the state?

24 MS. WELLS: Your Honor, I would just say that this was
25 a crime, a high and aggravated crime, a crime against his

Sentence

1 work for Bradshaw Hyundai in Greer. I say was to start
2 work. In his prior trial that was held, and the judge at
3 that time ordered that his bond was fulfilled and revoked
4 his bond essentially. And so obviously he didn't get the
5 chance to start with Bradshaw Hyundai at that time.

6 As far as pretrial detention, Your Honor, he has been
7 in for a total of 140 days.

8 What happened in this case, and I was not initially
9 appointed. I was appointed in June of this year. Up until
10 that time I don't think Mr. Sullivan had an attorney
11 representing him.

12 On June the 14th he was put into pretrial detention
13 because of a motion that was held. At that time I am not
14 going to relitigate the issues of the motion, but, suffice
15 it to say, Your Honor, he was put in pretrial detention and
16 did not make bond until September the 25th, which by my
17 calculations is 104 days; and then came to court last month.
18 But because his bond was fulfilled, he was put back in
19 pretrial detention. And of course that has been 36 days
20 since he has been back in pretrial detention, for a total of
21 140 days.

22 THE COURT: Wasn't there a bench warrant?

23 MR. ALLEN: Yes, sir. What happened was, and I am sure
24 if I get all of the facts incorrect the solicitor will
25 correct me. I am not trying to mislead the Court. A motion

Motion

1 wife. And we would ask for an appropriate sentence in this
2 case.

3 MR. ALLEN: Your Honor, may we first, before I go into
4 the extenuating and mitigation, move for a new trial based
5 upon the ground previously stated in my motions, as
6 previously stated for the record?

7 THE COURT: Those motions are denied.

8 MR. ALLEN: Thank you, Your Honor.

9 Your Honor, may it please the Court, Mr. Sullivan is 51
10 years old. He's a graduate of Akron East High School in
11 Akron, Ohio. He's also a graduate of Greenville Tech where
12 he studied industrial technology.

13 He's a member of Shady Grove Baptist Church on
14 Whitehorse Road in Greenville. Present in the courtroom
15 today and yesterday is his mother. And also the Court may
16 have noticed that Ms. Lottie Mae Gibson, a council member of
17 the Greenville County Council, is also here today. She is,
18 she knows Mr. Sullivan, as well as Ms. Sullivan, and came to
19 show her support and her concern. And for the Court's
20 information, at the last trial she was here on both days, as
21 well as his mother was.

22 Your Honor, he has been employed most recently in car
23 sales, as you heard the testimony. He was at that time
24 working for Joe Gibson Auto World. He has been most
25 recently working for Vic Bailey V. W. Mazda and was to start

Sentence

1 MR. ALLEN: I think Mr. Sullivan might want to speak to
2 the Court.

3 THE DEFENDANT: I would just set forth in details what
4 happened in terms of the bond.

5 I was living with my wife at the time in Gaffney. The
6 solicitor had mailed her a letter back in January of 2002
7 that the case would be dismissed if she didn't contact the
8 solicitor's office. We resumed our life together.

9 The state presented a motion to the house on June 10th
10 telling me to come to court on the 14th. They held the
11 hearing on the 13th, but they are saying, this contention is
12 they verbally informed me, but I had written notice of the
13 14th. As a result, I was in jail for the 104 days.

14 Judge Beatty on the bond hearing released me on the
15 prior bond, which he deemed still in effect. I got out on
16 the 25th, came back to trial on the, in October. A
17 mistrial. Remanded back to custody. We are here today.

18 THE COURT: All right. Anything further? Anything you
19 want to say about your sentence?

20 THE DEFENDANT: I'm sort of in awe, Your Honor. Just
21 like I say, you are a professional judge, is my observation
22 the last couple of days.

23 THE COURT: Mr. Allen.

24 MR. ALLEN: Your Honor, I completed basically.

25 I would ask the Court to be as lenient with him as

Sentence

1 was filed because they received word that he was or had been
2 back living with his spouse, Ms. Sullivan. And of course
3 you have heard testimony that they were living together for
4 a while, which apparently, not apparently, was a violation
5 of the prior bond, to have no contact with the victim.

6 They had filed a motion. He was served with it. And
7 my client received written notice that the motion hearing
8 was going to be held on June the 14th. It was held on June
9 the 13th.

10 My client says he did not know about the motion hearing
11 to be held on that day. The state obviously takes a much
12 different position. They felt as if he did get notice it
13 was held on that date. I was not representing him at that
14 time, and no attorney was representing him at that time.

15 A bench warrant was issued. He was arrested on the
16 14th and put in jail. And it took me, quite frankly, a
17 while to begin to sort things out and bring him back to
18 court for a hearing on that, as well as to determine whether
19 he should be released on any particular bond.

20 That's what that 104 days was, and that's the
21 explanation about the bench warrant.

22 MS. WELLS: I don't see that, unless the Court wants to
23 hear an explanation of it -- I will be happy to. It is
24 close but not quite what I would agree to.

25 THE COURT: Anything else, Mr. Allen?

Sentence

1 possible. Interestingly enough, this couple did get back
2 together again, although it was a condition of a violation
3 of the bond.

4 I remember soon after I was appointed, I know
5 Ms. Sullivan came to me at one time expressing an interest
6 that he not remain in jail. I mean, she indicated to me
7 that she wasn't going back on what she had previously said,
8 but she expressed her concern at that time.

9 I don't know how she feels about it today. I haven't
10 talk to her recently, as I earlier indicated in court, but I
11 would like the Court to consider that as well in fashioning
12 an appropriate sentence.

13 MS. WELLS: Your Honor, I would point out South
14 Carolina case law, and I will be happy to provide it for
15 you, says the fact that the defendant and the victim get
16 back together is not mitigating as to sentencing. It makes
17 no difference. What happened that night is what's
18 important.

19 THE COURT: I would be very interested in finding a
20 case that says that a judge can't consider whatever it is he
21 wants to consider when he's fashioning the sentence.

22 MS. WELLS: Your Honor, I am just saying that I will be
23 happy to provide the law, the case law.

24 THE COURT: I will be very interested in seeing that.

25 MS. WELLS: I'll be happy to provide it to Your Honor,

Sentence

1 but it's your discretion.

2 THE COURT: I'm not interested in seeing it right now.

3 MR. ALLEN: I simply offer it up as mitigation, anyway.

4 THE COURT: All right. The sentence is ten years with
5 credit for 140 days served.

6 Good luck to you, sir.

7 (Whereupon, the trial jury was dismissed outside the
8 presence of the defendant.)

9 END OF REQUESTED TRANSCRIPT OF RECORD

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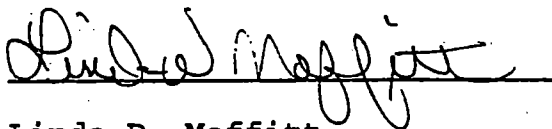
Certificate

CERTIFICATE

I, the undersigned, Linda D. Moffitt, Official Court Reporter for the Seventh 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 trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 19th and 20th days of November 2002.

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

January 7, 2003

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", is written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter