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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dillon County

Honorable Carmen T. Mullen, Circuit Court Judge

DANIEL M. HAMER, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-001484

APPENDIX

GARY H JOHNSON
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

D. RUSSELL BARLOW
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)	**IN THE COURT OF GENERAL SESSIONS**
COUNTY OF DILLON)	**2021-GS-17-00709 AND 00708**
STATE OF SOUTH CAROLINA,)	
)	
Plaintiff,)	**Transcript of Record**
)	
vs.)	
)	December 6-8, 2021
DANIEL HAMER,)	
)	
Defendant.)	

B E F O R E:

Honorable H. Steven DeBerry, IV
Dillon County Courthouse
Dillon, South Carolina

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

W. Shipp Daniel, III, Esquire
Mary Thomas Johnson Lee, Esquire
Attorneys for State

Kyle M. Hobbs, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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DECEMBER 6, 2021 - DAY 1

ON THE RECORD - 12:17 P.M.

VOIR DIRE:

THE COURT: The state and defense ready?

MS. JOHNSON LEE: State's ready.

MR. HOBBS: Defense is ready, Your Honor.

THE COURT: All right. Madam Solicitor, please call the case?

MS. JOHNSON LEE: Your Honor, the State calls the State versus Daniel Malloy Hamer, Jr., docket number 2021-GS-17-708 for domestic violence of a high and aggravated nature, and docket number 2021-GS-17-709 for resisting arrest.

THE COURT: All right. Ladies and gentlemen, as you've heard, the indictment charges the defendant with domestic violence high and aggravated nature and resisting arrest. I need to tell you that the fact the defendant was arrested, charged, and indicted in this case is not evidence in this case and cannot be considered by you as evidence of guilt in this case, nor does it create any presumption or inference of guilt. The indictment is simply the formal written instrument which contains the charges made against the defendant, and it's the formal document by which the case is brought into this court.

So, as you've heard, ladies and gentlemen, we're about to start the jury selection process in the case of the State

versus Daniel Hamer. So, there's several questions which we'll have to ask you at this point in time and again -- Madam Clerk, if you will, please swear the jury.

THE CLERK: Swear the jury? Okay.

(REPORTER'S NOTE: Jury is duly sworn.)

THE CLERK: Thank you.

THE COURT: All right. At this time, Madam Solicitor, I'd ask if you would stand and introduce yourself and your office?

MS. JOHNSON LEE: Yes, Your Honor. My name is Mary Thomas Johnson Lee. I'm a senior assistant solicitor and senior prosecutor for domestic violence. I prosecute for Dillon, Chesterfield, and Darlington Counties. He has stepped out right now, but Assistant Solicitor Shipp Daniel is assisting in this case, and also present is Derrick Rogers.

THE COURT: All right. Mr. Hobbs, if you would introduce yourself and your client?

MR. HOBBS: Thank you, Your Honor, may it please the Court?

My name is Kyle Hobbs. I am an attorney and partner at the Law Office of Hobbs. I am here today representing Mr. Daniel Hamer, Jr.

THE COURT: All right. All right. Ladies and gentlemen, at this time, I'm gonna read a list of possible witnesses that may be called to testify in this case. So, please listen

closely. Number 1 will be Investigator Jason Turner. Number 2 will be Investigator Monroe Herring. Number 3 will be Sgt. Jeffrey Cook. Number 4 will be Sgt. Ricky Day. Number 5 will be Cpl. Matthew Cox. Number 6 will be Sylvia or Sam Inman. Number 7 will be Samuel Stewart from SLED, South Carolina Law Enforcement Division, and Number 8 will be Rachel Nguyen from SLED as well.

All right. Ladies and gentlemen, do any -- does any member of the jury panel know the defendant or any of the witnesses; do you know them or have a close personal relationship with any of the witnesses listed or the defendant in this case, Mr. Hamer? If so, please stand.

All right. We'll begin with the madam on the front left. Can I have your name and number, please?

JURY NUMBER 37: Joan Daniels, 37.

THE COURT: I'm sorry; what was your number?

THE CLERK: 37.

THE COURT: 37. Okay. Ms. Joan Daniels; is that right? All right. And who is it that you know, Ms. Daniels?

JUROR NUMBER 37: I know almost all of them, but Monroe is my neighbor.

THE COURT: All right. I'm sorry. If you can, could you take your mask off for just a second.

JUROR NUMBER 37: Monroe is my neighbor.

THE COURT: All right. And you know other?

JUROR NUMBER 37: I know six of the people you called out.

THE COURT: All right. Did you say you know other people as well?

JUROR NUMBER 37: Uh-huh (affirmative response).

THE COURT: And who was that?

JUROR NUMBER 37: Mr. Day.

THE COURT: Okay. And, Madam Court Reporter, are you getting what you need?

COURT REPORTER: Yes, sir.

THE COURT: Okay. The fact that you know these individuals, would that prevent you from fairly -- prevent you from being fair and impartial if you were selected to serve on this jury?

JUROR NUMBER 37: No, I can serve,

THE COURT: I'm sorry, we're going to have to hear ---

JUROR NUMBER 37: I said I can serve.

THE COURT: All right. So, the fact that you know the individuals in this matter, that would not prevent you from being fair and impartial if you were to be chosen to serve on this jury; is that right?

JUROR NUMBER 37: Correct.

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

All right. Sir, in the front row, could I have your name and number, please?

JUROR NUMBER 153: Yes, sir. Bobby Purnell, Juror 153. I'm neighbor with Jason Turner, and I also know ---

THE COURT: So, you're Mr. Bobby Purnell; is that right?

JUROR NUMBER 153: Yes, sir.

THE COURT: All right. And the fact that you know those individuals, will that prevent you from being fair and impartial in the event you are picked to serve on this jury?

JUROR NUMBER 153: No, sir.

THE COURT: All right. Thank you so much.

Sir, in the blue shirt?

JUROR NUMBER 95: Carl Locklear, Juror 95.

THE COURT: All right. All right. Carl Locklear, Jr., and who is that you know?

JUROR NUMBER 95: Cpl. Cox.

THE COURT: All right. And the fact that you know Cpl. Cox, would that prevent you from being fair and impartial if you were selected to serve on this jury?

JUROR NUMBER 95: No, sir.

THE COURT: All right. Thank you, sir. Your name and number, sir?

JUROR NUMBER 151: Marion Pelt, 151. As I stated earlier, I'm retired law enforcement and I've worked with all of the police officers present, and also went to school with Monroe, played ball with Monroe.

THE COURT: All right. Mr. Pelt, the fact that you're

retired law enforcement and that you know these individuals, would that affect your ability to be fair and impartial if you were selected to serve on this jury?

JUROR NUMBER 151: It would not.

THE COURT: All right. Thank you, sir.

All right. Have any of you, any members of the jury panel, ever had any matters or members of your family ever had any matters whatsoever handled or prosecuted by the Fourth Circuit Solicitor's Office, and that's the solicitor's office that prosecutes here in Dillon County? Have any of you or members of your family had any matters handled whatsoever by the Fourth Circuit Solicitor's Office? If so, please stand.

All right. Ma'am, and your name and number again?

JUROR NUMBER 37: Joan Daniels, 37.

THE COURT: All right. Ms. Daniels, the fact that you had a matter -- or a member of your family has had a matter handled by the Fourth Circuit Solicitor's Office, would that prevent you from being fair and impartial if you were selected to serve on this jury?

JUROR NUMBER 37: No. No.

THE COURT: Thank you, ma'am.

Have you or any member of your family ever had any matters whatsoever handled by Attorney Kyle Hobbs or do you know Attorney Kyle Hobbs, or have a close personal relationship with him? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: All right. Have you or any member of your family or does any member of the jury panel know or have a close personal relationship with any members of the Fourth Circuit Solicitor's Office?

(REPORTER'S NOTE: No response.)

THE COURT: And again, are you related by blood or marriage, or have a close personal relationship or acquaintance with anyone employed by the Fourth Circuit Solicitor's Office or with anyone that's employed by or works with Mr. Hobbs?

(REPORTER'S NOTE: No response.)

THE COURT: All right. Does any member of the jury panel have any personal, political, religious, or philosophical beliefs that would prevent you from being a fair and impartial juror? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: All right. Is any member of the jury panel a former law enforcement officer or have a family member who is a law enforcement officer or former law enforcement officer? If so, please stand.

JUROR NUMBER 151: Marion Pelt, 151.

THE COURT: All right. Mr. Pelt, and tell us.

JUROR NUMBER 151: I'm retired law enforcement; my father is retired law enforcement; I have a cousin in law

enforcement, that's active -- currently active, two cousins actually, sir. It wouldn't impact my partiality at all.

THE COURT: That would?

JUROR NUMBER 151: It would not.

THE COURT: Okay.

MR. HOBBS: Your Honor, could we inquire as to what former agencies he was with?

THE COURT: Yes, sir. Mr. Pelt, could you place on the record what former law enforcement agencies you worked for?

JUROR NUMBER 151: Yes, sir, I retired from Greenville County Sheriff's Office. I worked for the Dillon County Sheriff's Office for two years prior to coming to the position I'm in now.

THE COURT: All right. Mr. Pelt, the fact that you are a retired law enforcement officer, would that affect your ability to be fair and impartial if you were selected to serve on this jury?

JUROR NUMBER 151: It would not.

THE COURT: All right. Thank you, sir.

Ma'am?

JUROR NUMBER 159: My niece is a present law enforcement officer, and my brother is a former.

THE COURT: All right. Can I have your name and number please?

JUROR NUMBER 159: Deborah Rogers, 159.

THE COURT: All right. Ms. Rogers, and that's your niece and your brother?

JUROR NUMBER 159: Yes.

THE COURT: All right. And who do they work for?

JUROR NUMBER 159: My brother worked in Latta, and my niece is in Marion.

THE COURT: All right. And the fact that you have a brother and a niece that were -- that worked in law enforcement, would that affect your ability to be fair and impartial?

JUROR NUMBER 159: No.

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

Ma'am, your name and number?

JUROR NUMBER 181: Therese Teaford, 181.

THE COURT: All right. Ms. Teaford, and who was it that you know or ---

JUROR NUMBER 181: I have a son-in-law that is a police officer in Virginia, and a nephew that is with the Secret Service.

THE COURT: All right. And the fact that you have a son-in-law and a nephew in law enforcement, would that prevent you from being fair and impartial if you were selected to serve on this jury?

JUROR NUMBER 181: No, sir.

THE COURT: All right. Thank you.

Sir, your name and number?

JUROR NUMBER 7: Billy Barino, Number 7.

THE COURT: All right. Mr. Barino, who is it that you have in law enforcement?

JUROR NUMBER 7: I work with law enforcement at McLeod in Florence.

THE COURT: You currently work there?

JUROR NUMBER 7: Yes, sir.

THE COURT: All right. And the fact that you work in law enforcement for McLeod in Florence County, does that affect or impair your ability to be fair and impartial if you were selected on this jury?

JUROR NUMBER 7: No, sir.

THE COURT: Thank you. Anyone else?

(REPORTER'S NOTE: No response.)

THE COURT: All right. Has any member of the jury panel formed or expressed an opinion about this case? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: All right. Has any member of the jury panel heard, seen or read anything about this case? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: Have you or any close relatives -- has any member of the jury panel or any close relatives been a victim

of a crime? If so, please stand.

JUROR NUMBER 37: Does that include murdered?

THE COURT: Yes, ma'am. If any member of the jury panel or a close relative or a relative has been the victim of a crime, at this time, please stand?

JUROR NUMBER 37: My momma shot and killed my daddy.

THE COURT: All right. And your name?

JUROR NUMBER 37: Joan Daniels.

THE COURT: All right. Juror Number 37, Joan Daniels.

All right. The fact that that situation occurred, would that affect your ability to be fair and impartial if you were selected to serve on this jury?

JUROR NUMBER 37: No.

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

Anyone else?

(REPORTER'S NOTE: No response.)

THE COURT: All right. Is there any member of the jury panel or a member of your family a member of any victim's rights or law enforcement organizations, such as Citizen's Against Violent Crime or CAVE; People Against Rape, PAR; or Mothers Against Drunk Driving; or any community watch program or any other similar organization? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: All right. Does any member of the jury panel know for any reason whatsoever why you cannot give the state

and the defendant in this trial a fair and impartial trial?

All right. Sir, your name and number?

JUROR NUMBER 76: Lee Jackson, 76.

THE COURT: All right. Number 76, Mr. Lee Jackson, and why is it that you couldn't provide a fair trial?

JUROR NUMBER 76: May I come to you?

THE COURT: Sure.

(REPORTER'S NOTE: Bench conference is held on the record in the presence of but outside the hearing of the jury.)

JUROR NUMBER 76: I have a very, very lack of memory. I just can't -- from day to day -- I'm just very, very -- I've been like that since I was a little boy. I was tested in school. I just don't -- I'm used to it, but I just don't -- can't retain it.

THE COURT: I'm gonna excuse you for this week.

JUROR NUMBER 76: Is there anything else I need to do?

THE COURT: No, you're -- if you need something for work?

JUROR NUMBER 76: No. Thank you.

(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)

THE COURT: All right. The Court is gonna strike Juror Number 151, Mr. Pelt; and Juror Number 37, Ms. Daniels, for cause.

And then if Juror Number 66, Mr. William Hayes, could you stand? It's been brought to our attention that you might have

a cousin that's in law enforcement; is that fair or is that not true?

JUROR NUMBER 66: A distant cousin.

THE COURT: Okay. Well, the fact that you have a distant cousin that's in law enforcement, would that affect your ability to be fair and impartial?

JUROR NUMBER 66: No, sir.

THE COURT: All right. Thank you, sir.

All right. Is there anything further from the state?

MS. JOHNSON LEE: No, Your Honor.

THE COURT: Anything from the defense?

MR. HOBBS: No, Your Honor.

THE COURT: All right.

Madam Clerk?

MS. JOHNSON LEE: Your Honor, are you going to have them come forward, or just stand up out there?

THE CLERK: They need to come forward so we can hear them.

MS. JOHNSON LEE: Yes, ma'am. Okay. Thank you, ma'am.

THE COURT: All right. So ---

JURY SELECTION:

THE CLERK: When I call your number and your name, if you'll come around and stand right here in front of me, and -- until I tell you more details. Okay? Thank you.

Number 119, Jennifer McRimmon. Just turn around and face

that way.

What sayeth the state?

MS. JOHNSON LEE: Please present the juror.

THE CLERK: Defendant?

MR. HOBBS: Court's indulgence, Your Honor?

THE COURT: Sure.

MR. HOBBS: Please seat this juror.

THE COURT: All right. Ms. McRimmon, if you will, just come around and have a seat in the jury box.

THE CLERK: Number 167, Annie Sellers.

What sayeth the state?

MS. JOHNSON LEE: Please present Ms. Sellers.

THE CLERK: Defendant?

MR. HOBBS: Please excuse Ms. Sellers from the trial of this case.

THE CLERK: You're excused, ma'am; I'm sorry.

Number 16, Jamaurion Q. Bildon.

You can back up for a little bit, sir.

What sayeth the state?

MS. JOHNSON LEE: Please present Mr. Bildon.

THE CLERK: Defendant?

MR. HOBBS: Please seat this juror.

THE CLERK: Have a seat in the jury box, please.

Number 159, Deborah Rogers.

What sayeth the state?

MS. JOHNSON LEE: Please present Ms. Rogers.

THE CLERK: Defendant?

MR. HOBBS: Court's indulgence?

Please excuse Ms. Rogers from the trial of this case.

THE CLERK: You're excused, ma'am.

Number 26, Angela R. Campbell.

What sayeth the state?

MS. JOHNSON LEE: I don't believe she's on the list, Madam Clerk.

MADAM CLEERK: I think she was the one that had been here; she wouldn't come out on the computer because she had been in the past three years. Thank you. Sorry.

Number 182, Julie Thompson.

What sayeth the state?

MS. JOHNSON LEE: Please present Ms. Thompson.

THE CLERK: Defendant?

MR. HOBBS: Please seat this juror. Please seat this juror.

THE CLERK: Have a seat in the jury box, please, ma'am.

Number 151 was struck for cause.

Number 153, Bobby Purnell.

What sayeth the state?

MS. JOHNSON LEE: Please present Mr. Purnell.

THE CLERK: Defendant?

MR. HOBBS: Please excuse Mr. Purnell from the trial of

this case.

THE CLERK: You're excused, sir.

Number 34, Genny Coward.

What sayeth the State?

MS. JOHNSON LEE: Please present Ms. Coward.

THE CLERK: Defendant?

MR. HOBBS: Please seat this juror.

THE CLERK: Have a seat in the jury box, please, ma'am.

Number 126, Sherry Mills.

What sayeth the state?

MS. JOHNSON LEE: Please present Ms. Mills.

THE CLERK: Defendant?

MR. HOBBS: Please seat this juror.

THE CLERK: Have a seat in the jury box, please, ma'am.

Number 66, William Hayes.

What sayeth the state?

MS. JOHNSON LEE: Please present Mr. Hayes.

THE CLERK: Defendant?

MR. HOBBS: Please seat this juror.

THE CLERK: Have a seat in the jury box, please, sir.

Number 79, Joyce Ann Johnson.

What sayeth the state?

MS. JOHNSON LEE: Please present Ms. Johnson.

THE CLERK: Defendant?

MR. HOBBS: Please seat Ms. Johnson.

THE CLERK: Have a seat in the jury box, please, ma'am.
Number 194, Florence M. Williams.
What sayeth the state?
MS. JOHNSON LEE: Please present Ms. Williams.
THE CLERK: Defendant?
MR. HOBBS: Please seat this juror.
THE CLERK: Have a seat in the jury box, please, ma'am.
Number 45, Dedric Fleming.
What sayeth the state?
MS. JOHNSON LEE: Please present Mr. Fleming.
THE CLERK: Defendant?
MR. HOBBS: Please seat this juror.
THE CLERK: Have a seat in the jury box, please, ma'am -- sir. Excuse me.
Number 162, Clara Sanchez.
What sayeth the state?
MS. JOHNSON LEE: Please present Ms. Sanchez.
THE CLERK: Defendant?
MR. HOBBS: Please excuse Ms. Sanchez from the trial of this case.
THE CLERK: You're excused, ma'am.
Number 127, Joanna Mishoe.
What sayeth the state?
MS. JOHNSON LEE: Please present Ms. Mishoe.
THE CLERK: Defendant?

MR. HOBBS: Please seat this juror.

THE CLERK: Have a seat in the jury box, please, ma'am.

Number 7, Billy M. Barino.

What sayeth the state?

MS. JOHNSON LEE: Please present Mr. Barino.

THE CLERK: Defendant?

MR. HOBBS: Please excuse him from the trial of this case.

THE CLERK: You're excused, sir.

Number 3, Howard L. Arnette.

What sayeth the state?

MS. JOHNSON LEE: Please excuse the juror for this case.

THE CLERK: You're excused, sir.

Number 35, Henry K. Cox.

What sayeth the state?

MS. JOHNSON LEE: Please present Mr. Cox.

THE CLERK: Defendant?

MR. HOBBS: Defendant has no cause to strike. Please seat this juror.

THE CLERK: Have a seat in the jury box, please.

Number 95, Carl Locklear, Jr.

What sayeth the state?

MS. JOHNSON LEE: Please present Mr. Locklear.

THE CLERK: Defendant?

MR. HOBBS: Please seat this juror.

THE CLERK: Have a seat in the jury box, please, sir.

You want two alternates, Your Honor?

THE COURT: One alternate. Is one alternate okay?

One alternate okay, Madam Solicitor?

MS. JOHNSON LEE: Yes, Your Honor.

THE CLERK: Number 61, Carol Haselden.

What sayeth the state?

MS. JOHNSON LEE: I beg the Court's indulgence.

Please present Ms. Haselden.

THE CLERK: Defendant?

MR. HOBBS: Please seat this juror.

THE CLERK: Have a seat, please, ma'am, right there in the jury seat, the alternate seat. Thank you.

THE COURT: All right. At this time, are there any objections to the jury as we sit them down?

MS. JOHNSON LEE: None from the state.

MR. HOBBS: None from the defense, Your Honor.

THE COURT: All right. Thank you very much.

BY THE COURT:

THE COURT: All right. Ladies and gentlemen that are in the audience, thank you for being here this morning. Thank you for your patience; that goes to everybody.

At this time, I will excuse you.

Madam Solicitor, is there any instructions for the panel?

MS. JOHNSON LEE: I believe the other trial cases have

pled, but since Mr. Shipp isn't in here, we'll just have them call in maybe tomorrow night after 6:00.

THE CLERK: Okay.

THE COURT: Okay.

If you will, ladies and gentlemen, please call the number that was provided to you on the jury slip after 6 o'clock tomorrow afternoon. If it's busy, wait a few minutes and call back in case everybody tries to call back right at 6 o'clock. There will be a message on here regarding the remainder of the week's jury service, and if there's anything else that we need for you to do for us.

So, please have a nice day the remainder of today. Tomorrow, call back tomorrow afternoon after 6 o'clock for further instructions.

Thank you very much.

(REPORTER'S NOTE: Jury venire exits courtroom.)

THE COURT: All right. Ladies and gentlemen, thank you so much for being here and being available, and I know you probably didn't volunteer to get picked, but this is your lucky day. But thank you very much for your service already. Without a jury, you know, our system of justice just would not work, and to me it's one of the greatest systems of justice that's ever been created. So, thank you for being here. Thank you for your attention that you've already given us, and thank you for your service. It's very important.

Again, this already took another 30 minutes longer than I anticipated, but I'm about to let you go home for the night. We anticipate to start this trial at 9 o'clock in the morning. So, if you could be here about maybe ten minutes till 9:00, 15 minutes till 9:00, the deputies will certainly, and the bailiffs will show you where to go.

It's important, it's extremely important that you not talk about this case. You can go home, you can tell your husband, your wife, your children, your parents, whoever they may be, that you got selected to serve on a jury, but you can't talk about the case. Okay? And it's improper to talk about this case the whole time we're trying the case. Okay? Even when you take a break and go to your jury room, you can't discuss this case between yourselves and amongst yourselves. It's very important that we follow the rules and that we keep up with the way things are supposed to be.

Again, there will be times during this trial where you'll be asked to go to your jury room; we might have to take up a matter of law or something that wouldn't be fair to be heard in your presence. Okay?

Again, your job in this -- in this situation is to find the facts. All right? To listen to the testimony and the evidence that's going to be presented in this trial and determine what the facts of this case are. My job is to be the judge of the law. All right? So, at certain times,

there's going to be questions of law that come up that it's just not proper for the jury to hear. So, during those times, you're gonna be asked to go to your jury room. You know, whether it be for lunch, or break or any reason, you're just not allowed to talk about this case until this case is over with, and I give it to you for deliberations. And at that point in time, you can deliberate it and talk about this case, and determine what the facts are. Okay? So, before then, it would be improper to talk to anybody. Even if you go home and if we don't finish this trial tomorrow, it would still be improper for you to talk to anybody about the case. It's also improper for you to go try to find something on the internet or go to the library and look up some old newspaper articles. I'm not sure if there is anything written or if the press covered this case at all; but if there is, it would not be proper for y'all to go and do some independent research or anything else. It's extremely important for this system of justice that our jurors hear the evidence that's presented in this courtroom -- okay -- for the trial of this case, and that that's what you consider to reach a verdict. Okay?

So, I'm gonna let you go at this time. Ask that you be back here about quarter or ten minutes till 9:00 in the morning. We're gonna work here this afternoon and be available in the morning. If there's any pretrial matters, we're gonna try to have all those ready and out of the way

before you get here so that we can maximize your time and be as efficient as possible and go from there.

If anybody has an emergency or some sort of situation comes up, call the clerk of court's office. Okay? And explain that to them and we'll take it up. All right? But otherwise, try to be here -- I mean, be here on time. All right? And we're gonna do everything we can to make sure that we get you in and out of here as efficiently as possible. All right? So, at this time, is there anything further from the state or the defense before we ---

MS. JOHNSON LEE: No, Your Honor.

MR. HOBBS: Nothing from the defense, Your Honor.

THE COURT: All right. Thank y'all very much again, and we'll see you in the morning.

(REPORTER'S NOTE: Jury exits courtroom. The following takes place outside the presence of the jury.)

THE COURT: Anything further?

MS. JOHNSON LEE: No, Your Honor.

MR. HOBBS: Your Honor, just for scheduling purposes, would you rather take that up off the record, or should we discuss that. It might be something we take up off the record.

THE COURT: That's fine. We're going to go off the record.

RECESS - 1:02 P.M. - END OF DAY 1

*******OFF THE RECORD*******

DECEMBER 7, 2021 - DAY 2

ON THE RECORD - 9:14 A.M.:

BY THE COURT:

THE COURT: All right. We can go on the record now.

MR. HOBBS: Thank you, Your Honor. The issue that I wanted to present to the court before we started might not be relevant to our start of the trial, but certainly could be relevant for the progression of the trial. The issue that I have, Your Honor, is last week I followed up with Madam Solicitor and law enforcement about a lack of the copy of the 911 calls in this case. As you will hear, there are two 911 calls, and it's alleged that both of these calls were made by the defendant in this case and would certainly be of heavy weight and relevance to this case for several reasons. First of all, would be the nature of the defendant's statements; second of all, would be potential exculpatory evidence it might contain; and third of all is the notion that the defendant was the one calling law enforcement to the scene, and I do think that that's relevant. I do think it's something that needs to be vetted. So, the response that I had was that Lt. Turner was going to retrieve these 911 calls and have them for me to review, and at that point, I put my eggs in the basket of -- of law enforcement retrieving these 911 calls and me not having to go through the steps of getting

them from 911 myself. I was presented with a disc yesterday that I didn't have a chance to review until last evening, and that disc only contains the first 911 call; it does not contain the second 911 call, which I need to be able to review in an effort to, you know, be diligent and make sure I'm doing everything for my client. So, Lt. Turner is working diligently to try to secure that so that I can review it, but if there's an issue with securing it, then it might create an issue that needs to come in front of the Court as far as, you know, essentially me relying on this video being produced to me yesterday morning -- I'm sorry -- this audio, and then me not having it to review now.

THE COURT: What says the state?

MS. JOHNSON LEE: Your Honor, I would defer to Lt. Turner in his efforts to retrieve that video. We've been requesting that since May. There was an issue with 911 getting that to us. We finally got it, so, I was not even gonna introduce the 911 call because of the delay of them getting it to us, and I would defer to Lt. Turner about the issue with that second call.

LT. TURNER: Your Honor, I literally just walked out the door when Mr. Hobbs brought this issue to me. I walked out the door and just called Sonny McCray, the 911 director. He pointed me to look at the CAD. He said that when he recorded this disc, he put both on one -- in one file, and just

repeating that to Ms.-- Ms. -- Assistant Solicitor here, Ms. Mary, she - she said that it was not on that extended disc. I have asked Mr. McCray to go back and look and re-evaluate and see if there was a second call that he missed. So, he's actually doing that now, but his response to me, Your Honor, was is that he made it all one file and put it on that -- or the file that was on the disc would contain both calls. He said the CAD would reflect it. I said, well, the CAD does reflect it, but I'm told that the audio file does not cover the second call. I apologize. He is going -- right now he is going to go back and look and see if he missed something.

THE COURT: All right. And how do we know there were -- I mean, everybody agrees there were two calls?

MS. JOHNSON LEE: Yes, Your Honor. The second call was actually the defendant calling alleging that one of the officers was trying to kidnap the victim.

MR. HOBBS: It's very relevant, Your Honor, and I've reviewed my copy, and I apologize for interrupting, and the state's copy, and it's not present on these discs. And I didn't want to sandbag the Court and -- and have us open and have us go through our first witness and then say well, Judge, I don't know have this information. I need time to figure this out or whatever the case might be to review it.

THE COURT: All right. So, what's the -- what's contained in the first call; was that made by the defendant as

well?

MR. HOBBS: It is, and he's calling for -- he's calling for EMS to come and help with the victim because she cut her hand. So, call number 1 is the defendant saying, hey, we need EMS out here saying she cut her hand. Call number 2 is, hey, Cpl. Cox -- making a complaint about Cpl. Cox saying, hey, can the deputy -- sheriff's deputies come out here -- based on what I'm told, this is what I'm told is in that tape.

THE COURT: Is this in an incident report somewhere or this is just what you're told?

MR. HOBBS: This is in the incident report. It's part of the facts of the case. That's why they came out there the second time was not because of the domestic disturbance call, but instead, the defendant calling making a complaint about the officer who arrived at that first call. And so, again, I do feel it's highly relevant.

THE COURT: All right. How long, I mean, is 911 right here in this facility?

LT. TURNER: It's about -- I'm sorry, Your Honor, it's about three or four blocks down First Avenue. It's just a couple of blocks from here.

THE COURT: All right. What do you anticipate the time period being before we can know if he has that or not?

LT. TURNER: He was actually at the office, Your Honor, so, he's probably -- as we're talking right now, he's probably

pulling it up. I don't want to speak out of turn, because I'm not there, but I know Mr. Sonny, when I told him what was actually happening in the courtroom right now, that we can't or might not be able to go forward until this issue is resolved, he understood the urgency of my request.

MR. HOBBS: Judge, I feel that the need to exercise my diligence as defense counsel to review it.

THE COURT: I understand.

MR. HOBBS: However, my greater concern is just the factual basis of my client calling 911 on these two occasions on the date of the incident, and his requests. First request to EMS; second request was a complaint about Cpl. Cox. If this is stipulated by the state and this is not an issue, and this is something that we all agree on, then that's gonna -- that's gonna cure a lot of my, my ills, because really, at the end of the day, the relevant portion of it is he's calling, he's not calling for a domestic dispute, and these are the two reasons that he calls and the times that he calls. If those -- if those facts are uncontroverted, then this, this cures the issue, but if we're butting heads about what the nature of the calls were and who made them, then I -- you know, it's something that's got to be played out.

THE COURT: All right. Madam Solicitor, what's your position on that? I mean, are y'all at odds as to what the calls say or ---

MS. JOHNSON LEE: I'm not at odds with the defense as to what that call says. EMS, actually, is the ones who notified law enforcement the first time to respond. They had her in the back of the ambulance with her hand cut and bleeding, and that's how it came about about the first incident. There was no charges, they left, and then he made the second call actually requesting that the sheriff's office respond, because he claimed that the first responding officer had tried to kidnap the victim. The sheriff's office would not respond because this is in the city. So, a supervisor, Ricky Day, actually responded out there, and when he responded regarding the alleged kidnapping, that's when it was discovered she's been hit in the head with the hammer.

THE COURT: Okay. And can that -- if that testimony is elicited from one of the law enforcement witnesses, does that cure this issue?

MR. HOBBS: I believe as long as one of the officers is competent to testify to it, Your Honor. Otherwise, it would need to be a factual stipulation, because I think one of the issues here is that Lt. Turner hasn't even heard the second 911 call. So, I don't know who can say, yeah, here's what these 911 calls are. It seems to be undisputed. And from my position in defense of this, if we can just cross the hurdles of, it was Hamer; here's why he called number 1, here's why he called number 2, then we've cured it. I don't know about the

foundation that needs to be laid for the knowledge of these officers, and that's kind of the secondary issue to it. So, if Lt. Turner, or Sgt. Day, or somebody is -- is able to testify to that fact, all I want to do is hopefully getting my hands on it and review it, but it's gonna cure my concern and it should expedite the issue.

MS. JOHNSON LEE: And that is something I was going to bring out actually through their testimony. This is not my desire to hide anything from the jury in all fairness.

THE COURT: Well, as long whichever officer you intend to bring out that with, I don't mind if the three of y'all want to have a conference and make sure you understand how it needs to come out, that's fine.

Does that satisfy you, Mr. Hobbs?

MR. HOBBS: Yes, sir, again, as long this is an uncontroverted fact.

THE COURT: And if for some reason it doesn't, then we can certainly make a stipulation on the record as to why he called; does that satisfy the state?

MS. JOHNSON LEE: Yes, Your Honor.

MR. HOBBS: Yes, Your Honor.

THE COURT: All right. And certainly, if the audio is produced, then let us know immediately.

LT. TURNER: Yes, sir. Yes, sir, Your Honor.

MR. HOBBS: Thank you, Your Honor.

THE COURT: Anything further?

MS. JOHNSON LEE: Not from the state.

MR. HOBBS: Nothing from the defense, Your Honor.

THE COURT: Can we have the jury, please?

(REPORTER'S NOTE: Jury enters courtroom @ 9:29 a.m.)

THE COURT: Good morning, ladies and gentlemen. Thank you for being here on time, and I apologize. I'll take full responsibility for not having started at 9 o'clock, but we were taking up some important matters. I promise you we weren't eating doughnuts and that sort of thing.

So, we're here about to begin the trial of this case at this time. Okay?

So, ma'am, you're Ms. Carol Haselden?

JUROR NUMBER 61: Yes.

THE COURT: All right. You are our alternate juror. Okay? So, if you will, just so we don't get confused, because this could be a problem. If you'll switch seats with the gentleman right behind you? Now, Ms. Haselden, your - your role is extremely important here today, this week, and what it is, is if one of the other jurors falls ill or for whatever reason has an issue and can't continue, then you would be the juror that would step into that role; do you understand?

JUROR NUMBER 61: Yes, sir.

THE COURT: So, it's very important that you stay here and pay close attention and do everything that we ask of you

to do, and then at the end of trial, if everybody is looking well and doing good, then you've done your job. Okay? But one thing that can really mess this whole show up is if we forget that you're the alternate. Okay? So, if you will keep that seat. All right?

And the rest of you, you're free to sit wherever you like to. Now, what I'd ask you to do at some point in time when you get to go back to your jury room for a break is to decide amongst yourselves who would like to be the foreperson of the jury. Okay? And that responsibility, you know, really that's the person who communicates with the Court. If there's a question, or if there is a concern, or if there is something that needs to be relayed to the Court, then that person would also hand the verdict to the Court at the end of the trial when such a verdict might be reached. So, we understand that.

So, at this time, we're gonna ask the Clerk of Court to swear you in, and then we're gonna begin this trial.

(REPORTER'S NOTE: Jury duly sworn.)

THE COURT: All right. Ladies and gentlemen, I'm gonna read to you basically what's more or less like a roadmap of what to expect and what your job is here, and then we'll hear from the attorneys. Okay?

So, ladies and gentlemen of the jury, the case we're about to try is the case of the State of South Carolina versus Daniel Malloy Hamer, Jr. Before we begin this trial, I want

to tell you that this trial will probably be different from what you might expect. Many people do not have a chance to attend a actual court session as you're doing now, and may think from watching television or movies or reading books that trials are always full of high drama, intense action, and riveting circumstances; and while all of that might be true at times, it's not always the case. It's a fundamental - this process is a fundamental part of our democracy, a search of what happened in an effort to make sure that justice is done between the parties and before the Court.

Searching for what happened and making sure that justice is done is often slow, deliberate, and repetitive; the opposite of what you might've seen on television and the movies or reading books. This courtroom is a place of honor dedicated to the protection and preservation of citizens' rights through what many have called the greatest system of justice ever created. The attorneys appearing before you are advocates for their parties that they represent, but first and foremost, they are officers of this Court sworn to uphold the integrity and fairness of our judicial system and to help you in the search for what happened.

You should expect them to be professional, competent, and ethical in the representation of their client's interest, and remember that you have taken an oath to try this case and to reach a fair and just verdict, and you are also expected to be

professional, reasonable, and ethical. So, thank you for accepting that important responsibility of jury service and for your contribution.

What I will now say is not intended -- is intended to serve as an introduction to the trial of this case. These remarks are not a charge on the law in this case. I will instruct you on the law of these criminal offenses at the end of this trial. All right? But this is merely an explanation of the procedure that we'll follow in the trial of this case, so that you may better understand what's going on.

All right. As we've heard, the defendant is charged by two indictments in this case. One charge of domestic violence of a high aggravated nature, and one charge of resisting arrest. The indictments are simply the charges which brings this case into this court -- or these cases into this court, and it is not -- they are not in any sense, evidence of any allegations that they contain. The defendant has pled not guilty to these indictments, and the state therefore has the burden of proving each of the elements of the indictments beyond a reasonable doubt, and it will be your duty, ladies and gentlemen, to decide whether the state meets that burden at the end of this trial.

Your purpose as jurors is to find and determine the facts of this case. So, you are the sole judges of the facts, and if at any time, I make any comment regarding the facts, you

must disregard them. I'm the judge of the law; the jury is the judge of the facts. You, the jury, are who determines what happened in this case. You are to determine the facts from the testimony you hear and the other evidence that's introduced through this -- throughout this trial. It is up to you to determine the inferences which you feel may be properly drawn from the evidence. It's especially important that you perform your duty of determining the facts diligently and conscientiously. Because ordinarily, if you make a -- if the jury makes a mistake determining what happened or what the facts are, we can't fix that. Okay? It is especially important that you perform your duty of determining the facts as fairly as possible. On the other hand and with equal emphasis, the same law that makes you the judges of the facts, makes me the judge of the law.

The law that is given by the Court is the only law you can consider. You must accept and follow it even if you may disagree with it. I cannot tell you what the facts are, and the jury can't disagree with the judge about what the law is. Your job is to take the law as I give it to you at the end of this trial and apply it to the facts as you find them, and from the testimony of the witnesses and any other evidence that's introduced, and after doing that, then you will render a verdict, and a verdict under the solemn oath that you just took as jurors.

So, just as I warned you yesterday, before it's time for you to deliberate, please don't talk about this case. Don't talk about it with your neighbors, with your fellow jurors, with your spouses, with your children. You can just simply tell them that you've been selected to serve on a jury, but it would be improper for you to talk about this case before deliberating. After you deliberate and return a jury verdict, it's completely up to you whether or not you want to talk to somebody or anybody at all about this case. All right? But until that time, please don't discuss it, not even amongst yourselves.

Also, it would be improper for you to go try to do any sort of independent research. It's extremely important to this situation and to this system of justice, that you determine the facts of this case based by what's introduced into evidence and the witnesses who testify at this trial. That's extremely important.

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

In just a moment, the solicitor will make what's called an opening statement, in which the solicitor will explain to you the issues in this case, or at least what the solicitor believes the issues in this case are. The attorney for the defendant may also make an opening statement. Also, he's not required to do so. What the attorneys tell you during their opening statements is not evidence in this case; it's only their contention as to what the issues are. The evidence in this case will be presented to you by the testimony of sworn witnesses from this witness stand, and any evidence, and any matters of -- excuse me -- any exhibits or documents, or otherwise that may be admitted into evidence in this case. So, you're to take the testimony and any exhibits or other evidence that's submitted into this case to make your decision.

From time to time during the trial, you may hear one of the lawyers say something like, Your Honor, I believe we have a question of law or matter of law to discuss with you or Your Honor, may we approach the bench. And sometimes we might have to discuss and the judge might have to make comments on what he believes the facts are in the case, and that would be highly improper for you to hear as a jury. So, during those matters, you might have to be asked to retire to your jury room. I promise you again that we will be working and trying to resolve these issues and get you back to be able to do your

job as soon as possible.

All right. So, in determining what the facts in the case are, you must decide whether or not the testimony of the witnesses is believable. It will be my responsibility to rule as a matter of the law as to whether certain testimony is admissible at all or not, but once that testimony is admitted, then whether or not you believe it is entirely up to you as a juror. In deciding whether to believe a witness, you have the right to consider the interest of any witness, the bias of any witness, the prejudice of any witness, the opportunity for the witness to have seen the matters and things about which the witness may be testifying, and the way that the witness acts on the witness stand. You have the right to consider anything that is in the record that will help you evaluate the testimony of the witnesses. That means it is your duty to pay close attention to these witnesses, to observe the witnesses, to listen to the witnesses, and to pay close attention to the attorneys and the Court. So, don't let your thoughts wander, but give strict attention to the testimony in this case so that at the end of all the testimony, after the arguments of counsel, and the charge on the law by the Court, you will then be in a position to determine what the facts are, and to apply the law to those facts as I give it to you.

All right. Are there any objections or is there any matters of law that need to be taken up by the state?

MS. JOHNSON LEE: No, Your Honor.

THE COURT: Anything from the defense?

MR. HOBBS: Not at this time, Your Honor.

THE COURT: All right. So, ladies and gentlemen, at this time, we'll ask the state to present their opening argument.

MS. JOHNSON LEE: May it please the Court?

THE COURT: Yes, ma'am.

OPENING BY JOHNSON LEE:

MS. JOHNSON LEE: Good morning. We're all here today for one reason and one reason only, and that is to have a trial for you to determine if the state has met the burden of proof in showing you that Daniel Hamer, Jr., seated at the table here, cut Sylvia Inman with a knife and/or with a hammer.

Sylvia, on May 27th of this year, 2021, at [redacted] Cleveland Street on two separate occasions that evening, in the dark, was found to be with a knife cut to her hand; it was bleeding profusely. And then later she was found to be with a hammer injury to her head that was bleeding profusely. She -- I'm going to be honest. She refused any medical treatment beyond having EMS wash her off the first time with her hand and letting Ricky Day wash off her head the second time with some bottles of water. She was uncooperative. I don't know what she's gonna say today when she takes the stand, but this case is important. My job as an assistant solicitor for the Fourth Judicial Circuit of South Carolina is that I represent the

people of Dillon County, and we've got about 1300 cases overall, not just domestic violence, but everything, but this case is important, and that's why we're bringing it to trial, because my job is to try to protect vulnerable victims, and that is what Sylvia Inman is.

Now, you're gonna hear testimony from witnesses on the stand, and that's evidence, and you're also going to get physical items of evidence. All of those, it's up to you decide how much weight to give to any of that evidence. But at the end of this trial, after you've heard from everybody, and looked at whatever we're legally allowed to present to you, then I'm gonna ask you to find the defendant guilty. And he's not just charged with domestic violence of a high and aggravated nature for cutting her hand and hitting her on the head with that hammer, he's also charged with resisting arrest, because when he was arrested, he did tussle a little bit with the officers. He didn't want to go nowhere. And we're gonna ask you to find him guilty of both of those charges. I submit to you that, at the end of this trial, you will find that Sylvia was injured. You will find that the defendant was responsible for those injuries, and you'll find that the state's evidence is credible enough to find him guilty as he's indicted.

Thank you.

THE COURT: Mr. Hobbs?

MR. HOBBS: Thank you, Your Honor, may it please the Court, Madam Solicitor?

THE COURT: Yes, sir.

OPENING BY HOBBS:

MR. HOBBS: Ladies and gentlemen of the jury, first, thank you for being here today. I know that when we're called into court and we're asked to leave work, or asked to leave our family, or asked to leave our loved ones behind, that it becomes a very significant burden on your life and on your day-to-day activities. I know that many of you would much rather be somewhere else tending to your work or tending to your family, and I just want to express my sincere appreciation for you being here today and for your role in this process in our judicial system.

Now, as the Judge put it, a lot of what we interpret of -- of the trial system and the judicial system is derived off of movies, right, or television shows or sometimes this day and age, maybe even trials that are broadcast on television. However, even with that exposure, as a juror coming in off the street, this can be very confusing; it can be very disorienting. You might not understand some of the processes that are involved. So, in consideration of you being caught up and you being part of this system, I want to slow things down before we start the trial and kind of help explain the roles of all of the parties that are here today and that have

a role in the trial that we're going to move forward on.

Of course, you've heard from the Judge. Now, the Judge is not on the side of the state; the Judge is not on the side of the defense. He is impartial and, as you've heard, he has the final say on the law in this case. So, if there is to be any dispute between myself and Madam Solicitor, as to what evidence should come in, as to the application of the laws of our state, then the Judge is going to be the final say on those issues. It's not for us to say what the law is; it's not for y'all to say what the law is; it's for the Judge's final ruling to determine how the law is applied in this case.

Now, we've got Madam Gwen Hyatt here; she's with the Clerk of Court. She maintains the records. She also helps in so many administrative functions with the court. So, from time to time, you might see us engaging with her, but she is an elected official that is here to assist the court in administrative functions of record keeping and other functions of the court. Of course, we've got Madam Clerk -- Court Reporter here; she's taking down everything that we say. She's taking down what the Judge says, she's taking down what the prosecutor says, what the witnesses say, so that we can create a complete record of what happened here today and to be able to, if needed, we can look back and -- and review the testimony and the statements that were presented in court. That brings us to Madam Solicitor. As you heard from her, her

job is to prosecute cases that arise within, in this particular instance, in the County of Dillon. So, law enforcement brings a charge, she is the prosecuting arm of that law enforcement agency and actually brings the case to trial. Another important function that she has is she picks what cases need to move forward. She decides what cases are dismissed; she decides what cases are called to trial. And in this case, she is the one that decided that this trial would be called here today and that we would convene and you, as the jury, would be the finder of facts to determine whether or not Mr. Daniel Hamer is guilty or not guilty of the charges as presented. She's also going to be the one that's producing evidence on the stand. She's gonna make determinations about what witnesses are called, what pieces of evidence come in, and that's because of a phrase that we like to call a burden of proof. A burden of proof is fancy talk. It basically means that it's the state's job to prove their case to you, the jury, beyond a reasonable doubt. Not just one fact or one element of the crime, but each and every element, and each and every fact beyond a reasonable doubt.

Now, it comes to my job. As the defense attorney in this case, many people may think that your job is to prove your client innocent. Ladies and gentlemen of the jury, I submit to you that that's not my job. It's not the burden of the defendant, of Mr. Daniel Hamer, to prove himself innocent.

Instead, it's my job to hold the state to their burden of proof, to hold the state to their obligation to prove my client guilty beyond a reasonable doubt. So, I need you to understand that everything that I do as a defense attorney, every step that I take, every question I ask, every witness that I call or don't call, is based on their obligation and my duty to hold them to that burden of proof.

Now, depending on what's presented and how things go, I might not present any witnesses here today. I might not present any evidence here today because, again, my obligation is not rooted in proving my client innocent; it's holding the state to that burden of proof beyond a reasonable doubt.

That brings us to the defendant in this case. Many times when they talk about the defendant and the presumption of innocence, words like him being wrapped in a robe of righteousness that can only be removed by the jury upon your finding of his guilt. Again, it's poetic, it's beautiful, it's fancy talk, but what it means is that this man is presumed innocent until the state proves their case to you beyond a reasonable doubt.

And of course, maybe, most importantly of all, the jury. As I mentioned earlier, the judge is the finder of the law; he's the judge of the law in this case. And as he told you, you're the judge of the facts. You are the one who is vested with the power of making the determination as to whether or

not each and every fact, each and every element, has been proved without -- excuse me -- beyond a reasonable doubt. This role is so vital in our system. In fact, it's so vital that we could not conduct this trial here today without you. Without members of the community, who are fair and impartial, who are standing in judgment of one of their peers from the community, and making sure that these constitutional protections, that these rights and these obligations of the state, and the presumption of innocence is followed through with here today.

Again, I want to sincerely thank y'all for your time. You have my word that while we might hit road bumps and speed bumps throughout this process and maybe even, as the Judge said, issues of law that has to be taken outside your presence that we are going to try to be as expeditious and efficient as possible. You have my word as an attorney in this case, that we are gonna move promptly, and swiftly, and efficiently, and make sure that you're able to go back to your family, and to your work, and to your life as soon as possible.

But again, I want to thank y'all for your service. I want to thank y'all for your patience. And I would ask y'all to remain diligent and steadfast in your obligation as a jury, and please listen to the evidence in this case. And at the end of it, I think what's most significant is what you're not gonna hear and what you're not gonna see, and the gaps in the

state's case.

Thank y'all.

THE COURT: All right. Madam Solicitor?

MS. JOHNSON LEE: The state calls Sylvia Inman.

THE CLERK: Place your left hand on the Bible and raise your right hand.

SYLVIA INMAN, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

THE CLERK: You can be seated and state your full name for the Court spelling your last, please.

MS. INMAN: Sylvia Inman. I wanted to plead the Fifth, because I don't want to testify.

BY THE COURT:

THE COURT: Ladies and gentlemen, at this time, we're gonna take a matter of law up. It will just be a few minutes, and we'll have you right back out. Thank you so much for your attention. Please don't discuss the case.

(REPORTER'S NOTE: Jury exits courtroom @ 9:54 a.m. The following takes place outside the presence of the jury.)

THE COURT: All right. Madam Solicitor?

MS. JOHNSON LEE: Your Honor, the state is going to request that the witness be declared a hostile witness, so that we can proceed from there.

THE COURT: Mr. Hobbs?

MR. HOBBS: Okay. So, we can -- we can talk about this

for a minute, Your Honor. This is not my client. However, this is my client's trial. To speak as to Ms. Inman's rights if she felt that in a way she was going to, through her testimony, incriminate herself of a crime, which I would only presume would be false information to law enforcement, then she does have the right and ability to plead the Fifth Amendment against self-incrimination. That may be frustrating to the state. There, again, could be other components as to what she's talking about as far as pleading the Fifth, but my understanding would be that there is a basis for pleading the Fifth if a person is going to incriminate themselves of the crime of false information to law enforcement.

Secondarily, Your Honor, the issue of adversarial and hostile witnesses is Rule 611(c). 611(c) provides that when you have an adversarial or a hostile witness, then you're able to examine that witness through direct examination using leading questions, and that's what the rule applies to; not any other hearsay exception or any other ability to -- to bring in her statements, but instead the ability to aggressively examine her. The problem here is, Judge, I can't find anything within my case search that applies to a victim and the state calling the victim in their case in chief. In fact, this is their witness. They decided to call her in the notion that now they can treat her in an adversarial fashion because she's not saying what they want her to say and is

essentially pleading a constitutional protection is a wrongful application of Rule 611(c). And again, I would re-emphasize that she has the right to plead the Fifth for statements that could incriminate her of a crime, especially false information to law enforcement.

MS. INMAN: I take it back. I'll testify, because I ain't lied about nothing; I'll testify, if I can.

THE COURT: All right, ma'am. Do you mind taking your mask off? All right. And you're telling the Court at this time that you wish to testify?

MS. INMAN: Yes.

THE COURT: All right.

MS. JOHNSON LEE: And I do want to say one thing for the record, Your Honor, just in reply to that one matter about her not saying what the state wants her to say. The only thing Mr. Daniel or I ever want anybody to say from that stand is the truth. We're not going to craft anything in this courtroom to fit our narrative; we just want the truth, that's all.

MR. HOBBS: In classifying her as an adversarial witness, or a hostile witness, when they call her in the case in chief, I think is an improper application of the ---

THE COURT: Well, I think, at this time, the Court doesn't need to rule on that if she's gonna be, you know, a voluntary witness that's gonna give her testimony. Then

certainly, I haven't heard anything at this point that would -- that would credit the Court making a ruling on whether or not she's adversarial yet. Do you understand that?

MS. JOHNSON LEE: Yes, sir.

THE COURT: Okay. All right. Sir, would you please bring us the jury.

And ma'am, do you mind keeping your mask off?

MS. INMAN: Huh-uh, (negative response)

THE BAILIFF: Your Honor, they're trying to take a restroom break. Some of them need to go to the restroom.

THE COURT: Okay. Do any of us need a break; you want to take a five-minute break? We'll be right back as soon as the jury gets through.

MS. INMAN: Can I step down?

THE COURT: Yes, ma'am.

MS. INMAN: Thank you.

THE COURT: You cannot talk to anybody though; do you understand?

MS. INMAN: Oh, I won't.

THE COURT: All right.

RECESS - 9:59 A.M.

*******OFF THE RECORD*******

ON THE RECORD - 10:12 A.M.

THE COURT: Is the state ready?

MS. JOHNSON LEE: Ready, Your Honor.

THE COURT: Mr. Hobbs?

MR. HOBBS: Yes, Your Honor.

THE COURT: All right. Everybody okay?

THE CLERK: Yes, sir.

THE COURT: If the witness will come back to the stand.

(REPORTER'S NOTE: Jury enters courtroom @ 10:14 a.m.)

THE COURT: Did y'all have an opportunity to select a foreperson? Who is that gonna be; is it you? Okay. Next time when we come out, I want you to switch seats and sit here on this front corner. Okay? All right. Thank you.

Let me have your name if I can, please.

JUROR NUMBER 119: Jennifer McRimmon.

THE COURT: All right. Thank you, Ms. McRimmon.

Madam Solicitor?

MS. JOHNSON LEE: Thank you, Your Honor.

DIRECT EXAMINATION OF SYLVIA INMAN BY MS. JOHNSON LEE:

Q: Sylvia, do you want to be here today?

A: No.

Q: Are you scared?

A: Yes, ma'am.

Q: For the record, could you say your name for Madam Court Reporter?

A: Sylvia Inman. They call me Sam.

Q: They call you Sam?

A: Yes, ma'am.

Q: What do you prefer, Sylvia or Sam?
A: Sam.
Q: Okay. Sam, I want to take you back to May 27th of this year.
A: Yes, ma'am.
Q: Were you living on Cleveland Street at that time?
A: Yes, ma'am.
Q: [redacted] Cleveland? You have to say yes or no for the record. Okay, Hon?
A: Yes.
Q: Now, do you know Daniel Hamer?
A: Yes, ma'am.
Q: And how do you know Daniel?
A: I lived with him.
Q: And how long have y'all been together?
A: Eleven years.
Q: And have y'all lived at the Cleveland Street address the entire time?
A: No, ma'am. We've been there about maybe ten.
Q: About ten years?
A: Yes.
Q: Do y'all have any children together?
A: No, ma'am.
Q: Who owns that residence?
A: Danny. Daniel.

Q: And he goes by Danny?
A: Yes.
Q: Now, on May 27th of this year, was there an incident or incidents at your house?
A: Yes, ma'am.
Q: Okay. Can you tell the jury about the first incident in your own words, speak your truth?
A: We was sitting there drinking beer and his friend come up and brought some liquor. He started drinking liquor, and he's violent when he drinks liquor. He had that knife and cut my hand. I tried to grab it and it cut my hand.
Q: You tried to grab the knife from him?
A: Yes.
Q: And which hand got cut?
A: Left.
Q: Did EMS come?
A: Yes, ma'am.
Q: Now, you didn't - did you call an ambulance, or did he call the ambulance?
A: He called the ambulance, I think.
Q: And it was just because your hand was cut?
A: Yes, ma'am.
Q: Now, you didn't call 911 for the police, did you?
A: No, I don't think so.
Q: Why didn't you?

A: I was drunk.
Q: You're a strong person?
A: Yes.
Q: Okay.
COURT REPORTER: Excuse me. Can you move that microphone. Yeah, put it in front of her. This one here.
THE COURT: This one?
COURT REPORTER: Yeah. Thank you.
BY MS. JOHNSON LEE:
Q: Now, a police officer did show up that night, didn't he?
A: Yes, ma'am.
Q: Okay. And did the ambulance come?
A: Yes, ma'am.
Q: And what happened when the ambulance came?
A: They took me out there and they tried to clean me off, and I don't know -- I was drunk, and I had took some sleeping pills. I mean, I mostly blank when I drink. I mean, I don't drink anymore, but that night I was drunk.
Q: Were you too drunk to remember what happened?
A: Yes, ma'am; I was drunk.
Q: But were you too drunk to remember how you got cut?
A: No, because I felt that. I mean, I was sneaking and drinking his liquor, because I was about out of beer and I was sneaking drinking his liquor, and when I drink liquor I blank. I mean after the first incident, I like, you know I had took

some sleeping pills just to go to bed and just to -- go to my room. I liked to go to my room.

Q: And I don't want to confuse you here today. Okay?

A: Yes, ma'am.

Q: Did Daniel cut you with the knife?

A: Yes, ma'am.

Q: And your drinking and the pills didn't affect your being able to remember that fact?

A: I mean, yeah, I mean it's like portions of it. I can't remember everything.

Q: But that part, do you remember?

A: I think so.

Q: Do you remember talking to the ambulance people?

A: Not really.

Q: Do you remember talking to the officer?

A: Not the first time or the second time. I mean, you showed me the video yesterday, but I really don't. Like I said, I blank when I drink liquor; I don't remember. I'm sorry.

Q: That's okay. Now, you didn't go in the ambulance to the hospital, did you?

A: No, ma'am; I don't think so. No, because I was at home.

Q: Do you remember why you didn't go to the hospital?

A: No, ma'am. I go to mental health, too; I don't ---

Q: Did you not want to go?

A: I must have didn't.
Q: Now, do you remember the second incident?
A: No. I mean, like I said, when I drank liquor, I blank. I can't remember it. I mean, I'm sorry.
Q: Well, do you remember at some point bleeding somewhere else on your body?
A: No. I didn't know I was bleeding until Officer Day told me, I think it was Officer Day that told me, I think. I think he was the one, I don't know.
Q: Was that at your house?
A: I guess. Yeah, because I was at home.
Q: Was that the same night?
A: Yeah. Yes, ma'am.
Q: Where was you bleeding at?
A: My hand.
Q: Your head or your hand?
A: My hand was bleeding.
Q: Okay. You said Officer Day?
A: I think he was - I don't know which one it was, Officer Day or Officer Cox, one of them ---
Q: Okay.
A: --- because it was on the video that my head was bleeding.
Q: Your head was bleeding; do you know how your head got to be bleeding?

A: Not really, because I tell you, when I drank liquor, I'd blank, and I take medication and then I took them sleeping pills because I wanted to go to my room.

Q: Sylvia, do you know if you lie or tell the truth when you're drinking?

A: I ain't gonna lie to you; I'm gonna tell you.

Q: So, if on the video, you said what happened, that would be the truth?

MR. HOBBS: Objection, Your Honor, this video hasn't been submitted into evidence. These references to the video are without foundation.

THE COURT: Sustained.

BY MS. JOHNSON LEE:

Q: Would anything you've said to an officer or to anybody, would that have been the truth or a lie?

A: It would have been the truth.

Q: It would have been the truth?

A: I wouldn't lie to the police officer.

Q: Thank you, ma'am.

I beg the Court's indulgence?

All right. Sylvia, I'm not going to ask you any more questions. Answer anything that Mr. Hobbs has. Okay?

A: Yes, ma'am.

CROSS-EXAMINATION OF SYLVIA INMAN BY MR. HOBBS:

Q: Ma'am, you mentioned earlier that you had been drinking

the day of this incident; is that right?
A: Yes, ma'am -- I mean, yes, sir, all day.
Q: All day?
A: Uh-huh, (affirmative response).
Q: And that you felt that you had blacked out during that day at some point?
A: Uh-huh (affirmative response). When I started drinking his liquor when he went to the bathroom, because I ain't supposed to drink his liquor. I drank it and put water in it.
Q: Okay. So ---
A: Then I blank. I mean, I don't know when I drink liquor.
Q: Okay. So, your testimony today would be that prior to the ambulance showing up that you had drank liquor; is that right?
A: Yeah.
Q: And after you drank that liquor that you blacked out; is that correct?
A: Yeah.
Q: You also mentioned that you have some mental health issues?
A: I do.
Q: Okay. Can we talk about what those mental health issues are?
A: I don't want to talk about it.
Q: Okay. Have you ever been diagnosed as either bi-polar or

schizophrenic?
A: Bi-polar and PTSD.
Q: Okay. So ---
A: Whatever that is.
Q: Okay. And so, there -- there is a bi-polar diagnosis. Have you taken your medication here today?
A: I don't got any.
Q: Okay. Are you prescribed any medication for your bi-polar disorder?
A: I was, but I've got to go back Thursday.
Q: Okay. Are you out of that medication at this point?
A: Yes, sir.
Q: Okay. How long have you been without that bi-polar medication?
A: A couple of weeks.
Q: A couple of weeks now, okay.
A: I've got to start going back.
Q: Okay. What happens when you don't take that medication?
A: I get depressed. I have anxiety.
Q: Okay. Do you recall that day on May 27th whether or not Officer Cox showed up at the residence to speak to you?
A: I remember some, but but I don't know it all; just like I told her if I can't remember, I can't remember.
Q: You can't remember. Well, you told her that you remembered ---

A: I remembered parts, but when I got in that liquor...
Q: Did you get into the liquor before or after you alleged that your hand got cut?
A: I don't know because I had been drinking beer all day.
Q: Okay.
A: I was drunk.
Q: Okay. And what does it mean to you when you say that you blank; what does that mean?
A: I don't remember stuff. Like that -- it's like if I'm sober, I blank everything out. I don't really remember.
Q: When you blank, does it affect the way that you act?
A: Yes.
Q: Does it affect the way that you communicate?
A: I don't know, I be blanked out; I don't know.
Q: You don't know. So, on the date of the 27th, when you're speaking to law enforcement, you were blanked out; is that correct?
A: I don't lie to the police officers.
Q: Well, would you recall if you're blanked out if you're lying to the police officers or not?
A: I tell the truth.
Q: Okay. That's a good point; tell the truth.
A: That's right.
Q: What would happen if you were found to have been lying to law enforcement; have you been told anything?

A: No, because I'm not lying.
Q: Okay. And has anyone ever told you that you would be arrested or charged if you stated that you lied to law enforcement?
A: No, sir.
Q: Okay. Has anyone stated that if you didn't cooperate here today that you might be facing some sort of criminal prosecution?
A: No. They said I had to appear because they sent me -- they give me a paper.
Q: They gave you a paper?
A: Yes, sir.
Q: Did they say anything that could happen to you if you didn't appear and you didn't testify?
A: If I didn't appear, I'd get locked up.
Q: You'd get locked up. Okay.
A: If you be subpoenaed, if you don't come to court, you can get locked up.
Q: Yes, ma'am.
A: Not only me; it's anybody.
Q: I think that's correct. So, there's no recollection of your speaking to Cpl. Cox that day on May 27th?
A: Say it again?
Q: Do you have any memory or recollection of speaking to Cpl. Cox on the date of this incident, May 27th?

A: I think.
Q: You think. Okay.
A: I seen video.
Q: Okay. I'm not asking you about the video; I'm asking you about what you actually remember?
A: I think I did; I don't know.
Q: Okay. Do you recall if at any point in your engagement with Cpl. Cox he shut you in the ambulance and wouldn't let you out?
A: No. I don't know that. I was -- I was in the ambulance. I remember being in the ambulance. I remember parts because -- I can't remember.
Q: Okay. So, you don't remember if Cpl. Cox closed the door on that ambulance when you were trying to get out of it?
A: No, sir.
Q: Okay. Do you remember Cpl. Cox saying that he was gonna lock you up for disorderly conduct?
A: I don't remember that.
Q: You don't remember that?
A: No, sir.
Q: Do you remember Cpl. Cox asking you if you were gonna go to jail that day or if you wanted to go to jail that day?
A: No, sir.
Q: Okay.
A: I don't remember him telling me that -- asking me that.

Q: Okay. That's fine. You spoke about your hands being cut. Do you recall what portion and what part of your hand was cut that day? Can you verbally state?
A: My left hand, my fingers.
Q: Your fingers?
A: Yes, sir.
Q: Okay. What about the outside of your hand?
A: Well, the outside of my hand, I don't think so, no.
Q: You don't think your -- the outside of your hand was cut?
A: Like -- I don't think so.
Q: Okay. Do you think if the outside of your hand was cut that day that you'd remember it?
A: I reckon I would if I was cut.
Q: Okay. Can we -- can we actually see your hands? Okay. Hand number one and hand number two. Any -- any injury -- again, can you -- can you tell us both hands, did they have injuries?
A: Huh-huh, (negative response).
Q: One hand?
A: One hand.
Q: And where is that injury again?
A: There ain't no scar or nothing.
Q: Okay.
A: I mean, it was like -- I was drinking and it's free bleeding because -- I was free bleeding because -- I was

bleeding real bad because it was just like a little nick, you know. You know, it wasn't down to the bone; it wasn't ---

Q: Okay. But you'd remember if there were any other ---

A: I remember the next day when I was sober.

Q: Okay. Well, that's fine, I'm asking you about that -- that time when we're talking about the incident.

A: Okay.

Q: Because you said you remembered what happened and how your hand got cut.

A: Because my hand was cut that morning, I mean, and then the laws come -- I don't know. I just blanked; I'm sorry.

Q: It's okay. It's okay. Your hand was cut that morning; is that correct?

A: Yeah, because I looked at it and it was blood all over it.

Q: Okay. How did your hand get cut that morning?

A: I didn't cut it that morning; he cut it that night.

Q: Okay. You told us that your hand was cut that morning; that is why I'm asking.

A: No, I said it was cut that morning. When I woke up, it was cut -- it was cut from that night.

Q: The next day?

A: Yeah; that's what I meant.

Q: But you had blanked out and you didn't remember what had happened the day before; isn't that what you tell us?

A: Yeah, I drank liquor a lot. I drank a lot of his liquor, and I drunk beer all day.
Q: And what else did you -- what else did you take that day; you said you took some sleeping pills?
A: Uh-huh, (affirmative response).
Q: Did you take any other medication that day?
A: I took my bi-polar medicine.
Q: Are you supposed to drink on that?
A: And I took my Zoloft and my Restoril.
Q: Okay. Let's run through it. What medications had you taken that day; you took Zoloft?
A: Restoril.
Q: Restoril. What kind of ---
A: Trazodone.
Q: Okay. And what kind of sleeping pills?
A: Tylenol PMs; I took four of them.
Q: Then you drank the entire day?
A: Yes, sir.
Q: You started drinking liquor?
A: Yes, sir, that night.
Q: And then after you drink the liquor, you black out?
A: (Indicates affirmatively.)
Q: Okay. Have you since been able to, you know, kick the habit of -- of drinking and drinking -- substance abuse?
A: Yes, sir; I kicked it.

Q: Okay. That's wonderful. But you're still prescribed this medication for, let's say, at least your bi-polar disorder, right?
A: Yes, sir.
Q: And you haven't taken that medication for two weeks now?
A: Yes, sir.
Q: Okay. Again, is there anything about you not taking your bi-polar medication that's gonna affect the way that -- that you testify here today?
A: No.
Q: Okay.
A: I don't think so. I mean, I'm agitated, and I'm -- I just want it over.
Q: I understand. After this incident happened, did you continue to speak to Dan?
A: Sir?
Q: Did you continue to talk to Dan after this incident?
A: Yes, sir; I live in his house.
Q: Okay. Did you continue to speak on the phone with him after this incident?
A: Yes, sir.
Q: I've got some of those phone calls. Are we talking about two times; are we talking about three times; are we talking about a hundred times? How many times did y'all talk on the phone?

A: A lot.
Q: A lot?
A: Uh-huh, (affirmative response).
Q: Okay.
A: I love him.
Q: Okay. Do you recall telling Dan shortly after this incident that you had lied to law enforcement that night?
A: Yeah, because he told me to.
Q: He told you to tell what?
A: That he didn't do it.
Q: He said to say he didn't do it?
A: Yeah. He wrote me all kind of letters and he said that they record on the phone.
Q: Okay.
A: And y'all would get the recording. I don't know what -- but that's what he said to say on the cell phone when we talked, because it has been recorded.
Q: Okay. So ---
A: To keep him from getting time.
Q: Okay. So, do you recall how many times you told him over those several phone calls that you lied to law enforcement?
A: Because he told me to say it because he did it.
Q: Okay.
A: It ain't the first time and it ain't gonna be the last time.

MR. HOBBS: Objection, Your Honor. Can we have at least a minute to ---

THE COURT: Yeah. Ladies and gentlemen, if you'll retire to your jury room for just a moment; we'll take up a matter of law, and we'll be right back.

(REPORTER'S NOTE: Jury exits courtroom @ 10:34 A.M. The following takes place outside the presence of the jury.)

THE COURT: Mr. Hobbs?

MOTION FOR MISTRIAL:

MR. HOBBS: Thank you, Your Honor. Your Honor, part of our pretrial issues that we discussed was -- were prior bad acts. In my examination of Ms. Inman, I'm being intentional -- as intentional as I can be about not getting into history, not getting into previous dealings between the parties, my question to her is how many times did you lie, or say to Mr. Hamer on these phone calls that you lied to law enforcement. Her response then gets into him doing this to me before and getting into his prior bad acts is a -- it's inadmissible information first and foremost. It is not in the line of questioning. It was unresponsive to my question; it was an outburst. I don't believe that I've opened the door for that information through my line of inquiry, and now that information is gotten to the jury. I do believe that this is not something that can be cured. This is something where the weight of her evidence has so much significance, that now

putting forth 404(b) evidence, that perhaps my defendant was acting in conformity with prior actions and prior domestic violence issues is - is grounds for a mistrial, and it's not something that I feel that the Court can cure through instruction.

THE COURT: All right. Madam Solicitor?

MS. JOHNSON LEE: Your Honor, this obviously came out on cross and not direct, but the questioning was repeated ongoing questions about letters and phone calls all which originated from South Carolina Department of Corrections, where he is currently serving a sentence that arose out of a domestic violence charge. So, it was reasonable for that answer to come out. I actually was sitting here thinking something is about to come out because he keeps questioning her about something he did while at the Department of Corrections on another domestic violence case. And I think a curative instruction to just disregard that and instruct the witness just not to say anything else about the prior acts would be sufficient. Because I -- she and I had talked about that, and she certainly didn't say anything about it on direct.

THE COURT: Mr. Hobbs?

MR. HOBBS: Briefly, Your Honor, I made no mention of where those calls were coming from. The issue of his incarceration versus his incarceration for a prior conviction for domestic violence are two separate issues. Her response

was not responsive to my line of questioning. It was what I would state as an unresponsive outburst that, again, even with her previously being told to not get into this information, she went into it. And again, I do not believe that a curative instruction is gonna un-ring the bell for this jury having heard that this is not the first time that Mr. Hamer has been accused or, as she said, has committed domestic violence against her.

THE COURT: All right. Anything further from the state?

MS. JOHNSON LEE: Judge, it wasn't an outburst. She was just trying to respond to his questions, and the door, I think, was opened.

MR. HOBBS: Well, I appreciate Mr. Daniels side bar with me about asking an inappropriate question. My question was how many times did you tell Mr. Hamer that you lied to law enforcement on phone calls. It had nothing to do with prior instances between them. It was a very direct question, and that was unresponsive. I appreciate their opinion that the question was bad, but the response had no bearing on that question at all. It was -- I did not open the door for prior bad acts by asking her how many times she told Mr. Hamer that she had lied to law enforcement on -- on the phone.

MS. JOHNSON LEE: Judge, she didn't get into any specific acts; she just said it happened before. And she's not a lawyer. Sylvia was just trying to be responsive to the

questions.

THE COURT: I understand. All right. We're gonna take ten minutes, and I'll let you know what we're going to do.

MR. HOBBS: Thank you, Your Honor.

MS. INMAN: Can I go?

THE COURT: You can't speak to anybody.

MS. INMAN: Okay.

THE COURT: You're still under oath. You can step down if you need to, but -- Okay? Do you understand?

MS. INMAN: Yes, sir.

RECESS - 10:39 A.M.

*****OFF THE RECORD*****

ON THE RECORD - 10:53 A.M.

BY THE COURT:

THE COURT: Mr. Hobbs, let me ask you, what exactly do you recall the question being?

MR. HOBBS: There was a line of questioning, Your Honor, about if she recalled telling Mr. Hamer that she had been -- lied to law enforcement about the incident. Then it was the question of how many times had you told during these phone calls to Mr. Hamer -- after the incident, how many times did you tell him that you had lied to the law enforcement.

THE COURT: And she testified also -- tell me if this is your recollection, that he had told her to lie, correct?

MR. HOBBS: Yes. She said that the reason that she was

lying was because he had said to lie and that the phone was being recorded or told her to say that.

THE COURT: And I think she also testified because he didn't want to do time or to some effect along those lines?

MR. HOBBS: I think she had testified that it was to protect him.

THE COURT: Correct.

I certainly understand the motion, but I find that the line of questioning could've been taken as a whole to elicit the response that she gave. Now, I'm certainly gonna instruct -- and if you could, please come back and take the stand -- her that, you know, we're not gonna talk about or mention anything that happened in the past. And I'm willing to give a curative instruction if you want one, but I'm gonna deny the motion for a mistrial, because I think that the response that she gave could've certainly been a reasonable response to the line of questioning if she -- if she interpreted the line of questioning as to asking her why she was being asked to not tell the truth.

MR. HOBBS: Your Honor, yes, sir. And could I just briefly reiterate my position for the record?

THE COURT: Sure.

MR. HOBBS: My question to her was how many times throughout those phone calls she told Mr. Hamer that she had lied to law enforcement. It had nothing to do with why she

had said it; it had nothing to do with whether or not Mr. Hamer had told her to say it; it had nothing to do with their prior -- issues with domestic violence or any assaults by Mr. Hamer. The case -- the most recent prior bad acts case that I have is *State v. Williams*, at 430 S.C. 136. We talk about how damaging this sort of prior bad acts testimony is. Again, asking her about telling the defendant that she had lied to law enforcement does not open the door to an admission or statement that he had previously done something to her or had previous domestic violence issues. I do not see how these two items could be related. I would maintain that that was outside the line of my questioning and certainly, you know, the Court has made its ruling.

THE COURT: I understand and for the record, I mean, as far as my ruling, it was certainly based on the fact that she had already responded to the line of questioning in certain ways to indicate that she was responding with the response as to why she was being told, told to lie. And so that is what my ruling is based on.

Would you like a curative instruction or would you not like that to be brought up again before the jury?

MR. HOBBS: I absolutely would like a curative instruction.

THE COURT: You would?

MR. HOBBS: Yes, sir.

THE COURT: All right. And so, my proposed curative instruction would be simply to tell the jury when they have returned to the courtroom that they are to disregard the last question and answer for Mr. Hobbs and this witness. Is that satisfactory?

MR. HOBBS: Yes, Your Honor.

THE COURT: All right. Anything from the state?

MS. JOHNSON LEE: No, Your Honor.

THE COURT: Do you object to that curative instruction?

MS. JOHNSON LEE: No, Your Honor. And I would just ask to reiterate to Ms. Inman not to say anything about anything in the past.

THE COURT: All right. Ms. Inman, do you understand that?

MS. INMAN: Yes, sir.

THE COURT: All right. Please don't mention anything about anything that this defendant did in the past.

MS. INMAN: Okay.

THE COURT: You understand?

MS. INMAN: Yes, sir.

THE COURT: Okay. Any questions about that?

MS. INMAN: No, sir.

THE COURT: All right. Please bring us a jury.

(REPORTER'S NOTE: Jury enters courtroom @ 11:00 a.m.)

BY THE COURT:

THE COURT: All right. Ladies and gentlemen, thank you for your patience. We took up a matter of law outside the -- out of your presence, and I'm gonna now instruct you to disregard the last question by Mr. Hobbs and the response by the witness. Okay? Please disregard that in full.

Mr. Hobbs, please continue.

MR. HOBBS: Thank you, Your Honor.

CONTINUATION OF CROSS-EXAMINATION OF SYLVIA INMAN BY MR. HOBBS:

Q: Sam, I want to go back again to May 27th, the date of this incident.

A: Yes, sir.

Q: Can you talk about when on that date that you had started drinking?

A: About 8 o'clock in the morning.

Q: 8 o'clock in the morning?

A: Yes, sir.

Q: Do you recall that it was about 9:30 p.m. before you first met with law enforcement that night?

A: No, sir; because I wasn't looking at the time.

Q: Do you recall if it was dark out or if it was daytime?

A: It was dark.

Q: It was dark. Okay. So, what had y'all been doing that day? You'd been drinking since 8:00 a.m. What else had y'all been doing?

A: Cleaning up, cooking, taking care of my animals.
Q: Okay. There was a air conditioner unit. Do you recall getting an air conditioning unit that day?
A: No, cause I got it the day before.
Q: The day before. Okay. Very good. So, were y'all installing that air conditioning unit that day of May 27th?
A: I wasn't; he was.
Q: Okay. So, Dan was working on this air conditioning unit in the room; is that right?
A: Yes, sir.
Q: Okay. Did you help out with anything? Did you help out hanging any curtains or doing anything else with that process?
A: No.
Q: Okay. Just curious. Just curious, Sam.
Sam, you mentioned that you had started drinking at 8:00 a.m. that day.
A: Yes.
Q: How many drinks do you think that you had consumed throughout that day?
A: First, a 15-pack, and then got another 15-pack. And then his friend, Mike, come brought some liquor.
Q: Okay. So, how much of that had you drank?
A: I tried to drink all of it.
Q: You tried to drink 30 beers plus the liquor?
A: I didn't drink 30 beer, but I drunk a lot. I don't know

how -- I mean, I don't count how much I drink; I just drink. I ain't gonna sit there and count them.

Q: Okay.

A: If it's there I'm gonna drink it -- well, back then I would.

Q: Okay. And again, you had taken substantial different types of medication that day?

A: Uh-huh, (affirmative response).

Q: Okay. And you recall that you blanked out, as you put it; is that correct?

A: Exactly.

Q: Okay. You made an accusation earlier about having been cut with a knife?

A: Yes, sir.

Q: Considering that you say that you had blanked out that day and you had been drinking all day ---

A: Yes, sir.

Q: Is it possible, Sam -- is it possible that you cut your hand getting the cat cat food from the can?

A: No, cause the cat food has got a pop-top on it.

Q: Okay. Very good. Is it possible that you were doing something else, and you cut your hand?

A: No. Why would I cut my hand?

Q: I'm not sure, Sam. That's what I'm asking you.

A: I wouldn't hurt myself.

Q: Okay. I understand, but you were drunk.
A: Still, if -- I've been drunk plenty of times. I'm an alcoholic. I've been drinking since I was 18 years old, and I'm not gonna hurt myself.
Q: Okay. I understand.
A: Ain't nobody was in the house but me and him, so...
Q: Okay. What injuries did you end up having on May 27th?
A: Head busted, cut fingers.
Q: Okay. And you remember your hand getting cut; is that right?
A: Well, I'm trying to remember. I remember that -- I know there was a pocketknife that he had.
Q: Okay. You remember Dan had a pocketknife?
A: Yeah, he always kept it. He totes a knife.
Q: And do you remember how your hand got cut?
A: No, I mean...
Q: Do you remember how you got injured on your head?
A: He had a hammer.
Q: Okay. Beyond Dan having a knife that he carries on him, beyond Dan having a hammer, do you recall how your hand got cut that day or what happened?
A: I don't know.
Q: You don't know. And the reason you say you don't know, is it because you blanked out that day?
A: When I drink liquor, I blank. And I'd been drinking all

day, I mean, you can't make me try to remember if I don't remember.

Q: Okay.

A: If I told the Court, I mean, I'm not gonna lie to a police or to a cop, sir. And I trust Officer Dan. The cops, they help. I mean, they good cops.

Q: Okay. And I understand that and I'm certainly not trying to contest that.

A: Exactly.

Q: But you say here -- your sworn testimony today is that you blanked out.

A: I did blank out.

Q: And you don't remember how your hand got cut?

A: No. Me and him was the only one in the house, I mean, no. And I take that medicine and I need my medicine again.

Q: Okay. Do you feel if you had your medicine now that we would be able to navigate through this testimony a little bit easier?

A: No.

Q: Okay.

MR. HOBBS: Court's indulgence.

BY MR. HOBBS:

Q: Sam, I want to understand the timeline of that day. You recall that it was nighttime when law enforcement first shows up; is that right?

A: I guess so.
Q: And, Sam, I'm not telling you what you recall. I'm asking you a question.
A: Yes, sir.
Q: Okay. So, do you recall that it was nighttime when law enforcement showed up?
A: I guess so, yes.
Q: Were you blanked out and you don't recall, or do you recall that it was nighttime when law enforcement showed up?
A: I really don't remember when the law come.
Q: Okay. That's fine. Do you recall being treated by EMS?
A: I don't know; I'm sorry. It's like bits and pieces. I mean like -- they come with the ambulance -- they come in with the ambulance.
Q: And do you remember who you spoke to at that time?
A: And they cleaned my hand.
Q: Okay. So, the ambulance cleaned your hand?
A: Yeah.
Q: And again, where was your hand injured? Where were you bleeding?
A: On my fingers.
Q: Okay. Which part of your fingers?
A: Right here.
Q: And again, you would recall if there was any cut on the outside of your hand?

A: There might've been. I mean...
Q: But you just don't know?
A: No.
Q: Okay.
A: No, sir.
Q: Do you remember any of the things that you talked to Cpl. Cox about when he was there at that time?
A: No, cause I just told you that I didn't remember seeing the cops. It's just like bits and pieces. I mean...
Q: So, by the time you recall the ambulance showing up, you had already -- you were already blanked out; is that right?
A: I drunk all day, and then I drank liquor, and that's not good with me because -- and I take that medicine. That's not good with me.
Q: Okay. You drink liquor and then you say you blank out?
A: Yes, I do.
Q: Okay.
A: I drank so much that I -- you know, everything just -- I don't know why it does it, but ---
Q: Well, do you think that drinking on your medication has something to do with that?
A: Yeah.
Q: Okay. Do you recall what time of day it was when you started drinking liquor that day?
A: Huh-uh, (negative response), cause I didn't look at the

clock. I don't never look at the clock when I'm drinking.
Q: That's fine.
A: I ain't see no reason.
Q: That's fine. Do you recall if it was nighttime or if it was daytime when you started drinking liquor?
A: Well, it wasn't dark, I don't think. I don't think it was dark because his friend come by. I remember Mike coming up and giving him that liquor cause I got mad.
Q: So, you said Mike brought liquor to you?
A: Yes, sir.
Q: You had been drinking beer since 8:00 a.m.?
A: Yes, sir.
Q: It's daytime when Mike brings that liquor?
A: Uh-huh, (affirmative response). I was drinking, yeah.
Q: And then you started drinking liquor when it's daytime?
A: Yes, sir.
Q: Okay. So, after you start drinking liquor, is that when you blank out and you don't recall what happened?
A: Exactly; yes, sir.
Q: Okay. So, how is it that you recall what happened with your hand being cut if you were blacked out?
A: They wasn't nobody else in the house. I mean, I don't know.
Q: Okay. So, you're saying that only Dan was there and that he carries a pocketknife, so even though you don't remember

being cut, that must've been what happened?
A: Yeah.
Q: Okay. So, you don't remember being cut?
A: Because I wouldn't have been the one having a knife.
Q: Does he always have a knife?
A: But he don't never pull it out like that. I mean, I remember him having a knife.
Q: Okay. Do you remember him pulling it out?
A: Yeah, because he had it on the coffee table. What time -- he always kept it there.
Q: Okay. Do you recall -- was it day or night when he brought the knife out?
A: I don't know. I don't know, Mr. Hobbs.
Q: That's fine, Sam. I'm only asking you to testify as to what you know.
You don't recall him using that knife against you?
A: No, no.
Q: Okay. Do you recall him -- you say you recall him having a hammer, do you recall him using the hammer against you?
A: Yes.
Q: When was that?
A: I just told you; I don't know. I don't look at the clock. When I get drunk, why would I look at the clock or outside -- I be on the inside and it's -- we have boards up to the window and we can't tell if it's daylight or if it's dark,

but he always keeps the door shut.
Q: Okay. Was it -- when you got -- when you said -- I think you -- what happened with the hammer?
A: He didn't hit me hard. He just (indicating) like that. He didn't hit me hard.
Q: Okay. Was that before or after the incident with the knife?
A: After.
Q: Afterward, okay. And you don't recall the incident with the knife, but you recall the incident with the hammer?
A: I blanked. If somebody hit you in the head with a hammer, you would remember it, too.
Q: Did you lose consciousness?
A: Just like...
Q: Okay. Sam, what I'm trying to understand is you say you blacked out that night and that you don't remember things.
A: Some I remember; some I don't. I mean, it's just -- something wrong with me, I mean -- I don't know.
Q: Sam, to be clear, you say at one point that you recall being cut with a knife, and then you ---
A: It's ---
Q: Excuse me. And then you say that you were blacked out and you don't recall.
A: It's -- I mean, I -- I can't help something wrong with me.

Q: And I understand that. But, as part of this again, the idea that you don't remember but you just put the situation together and you think that it was Dan that did it?
A: Yes.
Q: Because you blacked out?
A: Yes, sir.
Q: The same way with the hammer. You don't remember it happening, but you just put two and two together that you think it was him?
A: Yes, sir.
Q: Did you ever have any medical treatment other than EMS cleaning your hand up?
A: No, sir.
Q: Okay. Do you recall Sgt. Day at some point pouring water on your head when he was there?
A: No.
Q: Do you recall Sgt. Day taking any pictures of you or anything that you told him that day?
A: No, sir.
Q: And that's your sworn testimony here that you don't remember these things?
A: No. It's in and out, I mean, like -- I don't remember all of it; I mean, I don't. I'm sorry.
Q: It's fine. You say that you have reviewed certain videos of your conduct; is that right?

A: Yes, sir.
Q: All right. It's part of your memory here today from you watching those videos?
A: Yes, sir.
Q: So, it's not actually what you remember ---
A: No, sir.
Q: --- it's you watching something and then saying that's what happened?
A: Yes, sir.
Q: Okay. Other than you watching the video, do you remember anything about what happened that night?
A: (Indicates negatively.)
Q: No?
A: No.
Q: You don't recall what time it was that you blacked out?
A: No, sir. How you gonna look at the clock when you blacked out.
Q: That's okay. You don't recall being assaulted with a knife?
A: No.
Q: You don't recall being assaulted with a hammer?
A: You gonna feel a hammer when he hit you in the head.
Q: I'm not saying you wouldn't, but do you recall being hit in the head with a hammer?
A: No. All I know, when they come back I was -- he said

what happened to my head, it was bleeding.
Q: Okay. Other than -- other than you waking up the next day and having cuts on your hand, do you remember having cuts on your hand the night of May 27th?
A: That night?
Q: Yes, ma'am.
A: Huh-uh, (negative response).
Q: You don't remember it?
A: No.
Q: Sam, if you don't remember an assault with a knife ---
A: No, sir; I done told you; no, sir.
Q: Then how could you tell the Court and the jury that Dan assaulted you with a knife?
A: Cause I seen the video.
Q: You seen a video of Dan assaulting you?
A: No.
Q: You've seen the video of your conduct that evening ---
A: No.
Q: --- with law enforcement?
A: But I heard what I told the law. And, if I tell the law something, it happened, cause there ain't no sense in lying to the cops.
Q: Right. But your memory of what actually happened is not present; is that right?
A: Uh-huh, (affirmative response).

Q: Sam, can you run back one more time the medication that you took that day? I know you told me once.
A: Zoloft ---
Q: Zoloft.
A: --- Restoril, Trazodone, and four Tylenol PMs.
Q: Four Tylenol PM?
A: Uh-huh, (affirmative response). I wanted to go to bed.
Q: And you started drinking liquor during the day?
A: Can't say it was daylight. Like I said we had boards up to the windows at the time and the door be shut; you can't tell if it's daylight or dark.
Q: So, you don't know when you started -- if it was daylight or if it was dark when Mike came over?
A: Nope. Because he -- I was in my bedroom and because I have to go to my room, and I heard the horn blow.
Q: But it's ---
A: And I see him with the liquor.
Q: Okay. You saw him through the curtains. Was it daytime or was it ---
A: No, I did not see him through the curtains cause they ain't no window; they boards up there.
Q: Okay.
A: At the time they was; now, they ain't.
Q: Okay. So, by the time EMS in law enforcement shows up that day, you're blacked out; is that correct?

A: Yes, sir.
Q: And you've been drinking liquor?
A: Yes, sir.
Q: And do we know -- y'all had 30-some-odd beers. Do you know how many you had drank since 8 o'clock that morning?
A: I don't -- about 15, I guess. I don't count my beers; I just drank them.
Q: That's okay. Sam, we've talked about the medication you took that day. Were all those medications prescribed to you?
A: Yes, sir.
Q: Yes, sir. Okay. What medications are still prescribed to you here today?
A: None, cause I got to go back and get my medicine.
Q: So, you've run out of your prescriptions.
A: Uh-huh, (affirmative response).
Q: But what medications are you prescribed currently? Is that all of those same medications?
A: Huh-uh, (negative response), they said they was gonna change them because they weren't doing no good, cause I'm depressed and anxiety, and they just -- the medication wasn't h helping me as well.
Q: I understand. In the last time you took any of this medication for your bipolar disorder was two weeks ago?
A: Uh-huh, (affirmative response).
Q: And again, you talk about your mental issues and that

being one of the reasons that you can't remember what happened.

A: Yes, sir.

Q: Okay. What is the component of your mental issues that has to do with your memory?

A: I can't explain it. The doctor explained that. I don't know.

Q: Okay. Do you have trouble remembering things?

A: I do.

Q: Okay. Like what? Tell us what you have trouble remembering.

A: I can put something somewhere, but Lord knows I forget where I put it. I'll go in the kitchen and look for something and I forget what I'm trying to find and go back to the room, and then I think about it.

Q: Is that something, Sam, that the doctor had diagnosed and that you'd been treated for?

A: Yes.

Q: And so, beyond the drinking and all the medicine you took that day, even if you were sober do you think that there would be issues with your memory?

A: Yeah.

Q: Okay.

A: Yes, sir.

Q: And again, that's because of a medical condition that you

have?
A: Yes, sir.
MR. HOBBS: Court's indulgence, please.
BY MR. HOBBS:
Q: Sam, do you recall again the installation of the air conditioning unit that day, anything about it?
A: No.
Q: Do you recall if you helped out in any way with that AC unit being installed?
A: I told you a while ago, I didn't help him.
Q: You didn't help him?
A: No, I didn't help him.
Q: Okay. Was that installed before or after you blanked out?
A: I remember the air condition because my son give it to me.
Q: Okay.
A: My -- I had been drinking but I hadn't hit the liquor yet, but I remember the air conditioner cause my son give it to me, Rocky.
Q: Okay.
A: So, I mean, that ain't got nothing to do with what happened.
Q: I'm just trying to understand the issues and what all went on that day. So, you don't recall what time you hit the

liquor?
A: No, I don't, cause I don't look at the clock when I drink.
Q: I know ---
A: I just drink.
Q: But we know that by the time EMS got there, that you're blanked out; is that right?
A: I blanked before that. I don't know what happened. I blanked out before then. I been -- I couldn't remember what happened. If I can't remember, I can't remember.
Q: Thank you.
THE COURT: Any redirect?
MS. JOHNSON LEE: Briefly, Your Honor.
REDIRECT EXAMINATION OF SYLVIA INMAN BY MS. JOHNSON LEE:
Q: Sylvia ---
A: Ma'am?
Q: You testified when you first took the stand and you remembered then about Dan having the knife and then you grabbing get to get it away from him; is that the truth?
A: Yes. I told him that -- I keep -- it's up over my head -- I told him Dan had that pocketknife, yes.
Q: And that's how you got cut?
A: Yes, sir. I mean, yes, ma'am.
Q: And do you remember anybody other than Dan having that hammer in his hand?

A: No.
Q: Was anybody else in the house besides you and Dan?
A: No.
Q: Did you hurt yourself?
A: No.
Q: Did you cut yourself with the knife?
A: No, ma'am.
Q: Did you cut yourself with that hammer -- hit yourself with the hammer?
A: No, ma'am.
Q: And Dan -- and I know you've been looking at him, but his he in the courtroom today, the person that had the hammer and had the knife?
A: Yes, ma'am.
Q: Can you point to him?
A: (Indicating.)
MS. JOHNSON LEE: Let the record reflect she has pointed at the defendant.
THE COURT: So reflected.
MS. JOHNSON LEE: No further questions.
THE COURT: Ma'am, you can return to your seat.
MS. INMAN: Thank you.
THE COURT: Madam Solicitor?
MS. JOHNSON LEE: I believe there was a matter of law to take up, Your Honor.

BY THE COURT:

THE COURT: Okay. All right. Ladies and gentlemen, I'm gonna ask you to go to your jury room. We may send you to lunch and take these matters of law up and then we can get back and be ready to go, but give me about five minutes to determine how long it might take and how long the next witness maybe, and I'll let you -- I'll send a message to you. Okay?

Thank you. Please don't discuss the case.

(REPORTER'S NOTE: Jury exits courtroom @ 11:26 a.m. The following takes place outside the presence of the jury.)

MOTIONS:

THE COURT: Mr. Hobbs, was this your matter?

MR. HOBBS: Well, judge, we previously discussed an issue of law regarding the redaction of certain videos. And I do still feel confident as to the necessity to exclude those videos, and we can certainly get into that. I don't know if the testimony of the state's witness has potentially changed their position, if they still have issues that they are trying to submit to the Court or are trying to present to the jury that would otherwise be objected to. So, I'm not sure if that testimony has changed their stance. If it hasn't, I believe that we need to review those videos on several bases. And I'd be happy to address what my concerns are about the videos, but there are several of them, and I believe that we need to have an in camera hearing as to their admissibility, their

relevance, their probative versus prejudicial nature, issues of testimony or evidence on behalf of the victim that would otherwise be admitted. And again, this pervasive 404(b) material that is contained in those videos. So, I would ask the Court if we could conduct an in camera hearing to address these. I think that this position is very clear, and I feel confident that these videos should be excluded and that it would not preclude the state from testifying to physical observations at the scene, testifying to Mr. Hammer, his actions and his statements at the scene. It would simply prevent this hearsay, this testimonial evidence in this, otherwise, I think less probative information from coming into the record in front of the jury.

THE COURT: All right. And are there pictures that are sought to be introduced?

MS. JOHNSON LEE: There are some photographs, also, Your Honor.

THE COURT: What's your position, Madam Solicitor?

MS. JOHNSON LEE: Your Honor, the videos are necessary to give the jury the truth of what happened, give them a full picture. Your Honor, the *Crawford* prohibition is against testimonial statements such as depositions or responses to formal interrogations, present sense impressions and excited utterances admitted in typical domestic violence cases lack the formality and the self-awareness on the part of the

declarants, such as the victim in this case that the *Crawford* Court was concerned about. In fact, the rules of evidence allow for the admissibility of such statements specifically, because they were made prior to any opportunity to fabricate. The Courts post-*Crawford* have often referred to statements made to 911 operators and responding police officers as cries for help rather than accusatorial statements. So, *Crawford* does not apply in this case, Your Honor, and I think it is necessary for the jury to get the full picture because you can see the victim's demeanor even changing when she's with law enforcement. It's visible the changes once she -- for example, in the first video, approaches the front door and the defendant comes out. The story changes, her demeanor changes. And that's something the jury needs to see and hear. And I certainly understand that stopping or muting the videos at certain times -- it may be a little difficult, but it's important for the jury. And I think we can actually exclude some of the videos and limit it so that we don't have any duplication in this matter.

THE COURT: All right. Well, for purposes of the in camera hearing, I'll certainly ask that you whittle it down to exactly what you intend to put in.

MS. JOHNSON LEE: Yes, sir.

MR. HOBBS: Your Honor, and I do, I think that part of this is gonna be the Court's review to determine what's

actually on these videos. What I would say as far as the *Crawford* issue is that the admission that she is trying to get in and the demeanor is 12 minutes into their encounter with law enforcement, after law enforcement has asked her the same questions some 12 to 15 times. So, this is upon examination from law enforcement and is responsive to their examination at the scene. This is not, hey, law enforcement shows up, she comes out screaming, and X, Y, and Z happened. We are talking about 12 minutes before there is any accusation that Mr. Hamer had anything to do with the injuries that she sustained. The notion of that being an excited utterance or present sense impression undermines the amount of time that it happened since the issue. But again, we'll have to look at these videos, and I'm not sure if we can present them in court because -- or I could summarize the position, Your Honor. But any time we're talking about, oh, you've got Court in July, or oh, there's -- I mean, we're talking -- they're talking -- Mr. Hamer and the victim are talking over each other at one point during the video. These statements from -- not just from him, not just from the victim but from law enforcement saying this has happened before. What happened -- you know, he's gonna testify in July. It is all throughout this, Judge. And again, once we look at this video as a whole and we consider the issues, I think that law enforcement can testify but these videos coming in would be irrelevant to so many issues that

violate 404(b), violate the confrontation clause, as well as are far more prejudicial than they are probative of any fact. And I apologize, I didn't mean to cut you off.

THE COURT: No, I understand. Let me ask her -- I mean, you've already asked the witness about statements she made on the video, right?

MR. HOBBS: Well, Your Honor, that's because she was talking about reviewing the videos. And the distinction between her actually remembering what happened and her seeing something on the video. So, it seems that the state played to her these videos from law enforcement. And again, she's sitting there saying that that's what I told them, so it must've been true, not based on her actual memory. And that's why the -- even when they responded to her last line of questioning, she says that's what I told them, because there's not a basis for her saying she actually remembers it because she says she blanked out. But instead, she reviewed these videos and is basing her testimony off of something she doesn't remember but instead is contained in those videos.

THE COURT: I mean, I listened to the witness, obviously we all did. She certainly, I think, at one point and at another point she indicated she remembered the knife and the hammer. Now, certainly, she said other things as well during her testimony, and that she blanked out and everything else. But that's a question -- a fact for the jury to determine as

to what part of the witness's testimony they believe. You understand? So, I mean, I haven't -- I'm certainly willing to look at the videos, but I think they've been referenced and, you know, certainly, I mean, if they're -- that's why we're gonna have the in camera hearing.

MR. HOBBS: Yes, Your Honor. The references to the videos were made during the direct examination, I was responding to them and the nature of her memory from these. They are still hearsay; they're still foundational issues; and they're still testimonial even if there was a reference to, they're making a statement, it is still testimonial and that's my biggest concern is that it's testimonial. And, also, the issues of all of the information that are contained in these videos and what it actually goes to show other than bolstering her testimony.

THE COURT: All right.

MS. JOHNSON LEE: Your Honor, excited utterances can result from both the unsolicited statements of the victim as well as through questioning of an investigator, but they're not inadmissible solely because of the passage of time between the event and the declaration. Your Honor, what matters is whether the declarant was still under the stress of the excitement caused by the event or condition. There is no timeframe, and I submit that she was obviously -- having a cut hand and head being hit by hammer, she's obviously still in

distress of that event.

THE COURT: In the -- is that the only testimonial evidence that you're concerned about, or is there other testimonial evidence that you think is contained in there.

MR. HOBBS: Yes, Your Honor. I -- you know, first of all, I do think it would be bolstering her testimony. Secondarily, in this testimony, there is a repeated question of her time and time again until law enforcement seems to get a different answer. Once law enforcement gets that different answer, then they start engaging with Mr. Hamer. So, I believe that this testimony of her responding and saying that this event happened and what -- and the assault with the knife and the assault with the hammer were not excited utterances; they are responses to a line of examination from law enforcement and not subject to cross-examination. So, therefore, that violated the confrontation clause to come in. And it's hearsay, it's -- the victim has testified as to what her recollection is. Again, this is testimonial evidence that I don't have the benefit of cross-examination and asking her questions about, and I do believe it is inadmissible as it violates the confrontation clause. But then there are the secondary issues as to relevancy, the prejudicial and probative nature of the -- of the videos and the *Lyle* evidence. So, there's a lot that interplays here, Your Honor, that I think almost fall down in a line as far as my issues

with these videos.

THE COURT: All right. So, how long -- do we know exactly what you intend to introduce?

MS. JOHNSON LEE: Judge, I believe we would like to play Disc Number 4, which is just an audio of Sgt. Day, his bodycam didn't play, so he actually recorded himself, I believe, on the telephone -- well, anyway, it's an audio only, and so I've got those redactions here for -- to mute at the certain points. That's on Disc Number 4.

Disc Number 5, which is the first call. We don't hear the sound until 21:54, and then we mute from 21:55 to 21:58, so it's only a small section that actually plays.

And then Disc Number 3 -- Your Honor, and actually in order to limit things to keep this simple, the state would not introduce Disc Number 3, because the video is actually the -- a second playing of the audio that we would play through of Ricky Day. The second video is of the deputy taking him to jail. This was after the resisting arrest had occurred, so that -- I would take that out.

And the other two discs, 1 and 2, are really just when they move to execute the search warrant but they can testify to that. So, the state would limit to Disc 4 and Disc 5.

THE COURT: All right. How long will it take for the Court to be able to hear that?

MS. JOHNSON LEE: Disc 4 is 24 minutes in total,

including the portion to be muted. And Disc 5 is, I believe -- they're both 20-some-odd minutes.

THE COURT: Okay.

Mr. Hobbs?

MR. HOBBS: Judge, could we take these one at a time ---

THE COURT: Yeah. I'm just trying to get -- I'm just trying to figure out scheduling.

MR. HOBBS: Yes, sir; I understand.

THE COURT: We're certainly gonna take it one at a time.

MR. HOBBS: Yes, sir.

THE COURT: Let me ask y'all. Do you think if we ask the jury to be back here at 2 o'clock, would we have time to hear all this and your arguments and lunch for the court staff?

MS. JOHNSON LEE: I think so.

MR. HOBBS: I hope so, Your Honor. I'll definitely try to be concise.

THE COURT: Well, I'm not -- I certainly want everybody to be heard, don't get me wrong. I'm just trying to understand as far as scheduling goes. So, it's 20 minutes till 12:00 now. So, I mean, it's conceivable that the court staff or -- and everybody else not might get lunch until 12:30 or maybe -- so, we'll ask the jury to be back here at 2 o'clock and we'll see where we are. Is that fair enough?

MS. JOHNSON LEE: Yes, sir.

THE DEPUTY: You want to bring them in here for you to

tell them?

THE COURT: Does anybody have an objection if the bailiff tells them to return here at 2 o'clock?

MS. JOHNSON LEE: No objection from the state.

MR. HOBBS: None from the defense, Your Honor.

THE COURT: All right.

All right. So, at this time, we want to play the videos so that I can rule.

MR. HOBBS: That would be -- yes, sir, Your Honor.

MS. JOHNSON LEE: So, as to Disc 4, the state is gonna call Ricky Day.

COURT REPORTER: Can we go ahead and mark that, please?

MS. JOHNSON LEE: Yes, ma'am.

Now, Judge, we actually have it on a -- I have the disc to mark, but we've also downloaded onto a flash drive in the interest of time, and I have the photographs on a flash drive also for publishing purposes.

COURT REPORTER: So ---

MS. JOHNSON LEE: These would be the two.

Your Honor, do you wish to go ahead and mute at the redacted places or just play it straight through without the ---

MR. HOBBS: I don't think we need to redact for the Court. I think the Court should see the entirety of the video, and then take it -- and consider, because I disagree

with the limited redactions as well because it's -- there's a lot of it. It would be -- are we gonna start with the second one ---

MS. JOHNSON LEE: This is Number 4, Sgt. Day.

MR. HOBBS: So, Sgt. Day's video cam. So, Your Honor, we're gonna hear about the court date in July, we're gonna hear about what's gonna happen with that and these prior bad acts. So, you'll hear references as to something coming up and the court date coming up, that's what they are referring to in that -- of the court date.

COURT REPORTER: So, this disc you're playing has been designated as State's Exhibit Number 1.

STATE'S EXHIBIT NUMBER 1

MARKED FOR IDENTIFICATION

THE COURT: You want to swear the witness.

SGT. RICKY LEE DAY, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: Be seated in the witness box, state your full name for the Court and spell your last name.

SGT. DAY: My name is Ricky Lee Day, last name is D-A-Y.

PROFFER DIRECT EXAMINATION SGT. RICKY LEE DAY BY MS. JOHNSON LEE:

Q: Where are you employed?

A: I am employed with the City of Dillon Police Department.

Q: And what is your job there?

A: I am a sergeant and supervisor of a shift.
Q: And how long have you been doing that?
A: I have been in law enforcement approximately 12 years.
Q: Has all of that been with Dillon city?
A: No, ma'am.
Q: Where were you previously?
A: I was a first sergeant with the Dillon County Sheriff's Office, supervisor as well.
Q: Now, were you working on May 27th, 2021?
A: I was.
Q: Did you respond to [redacted] Cleveland Street in Dillon at some point in time?
A: Yes, ma'am.
Q: What was the nature of that call?
A: The nature of the call -- are you talking about when central dispatch ---
Q: Why did you go there?
A: Central dispatch actually wanted me to give them a call on the phone. I called them. They advised that Mr. Hamer wanted a deputy to come out to his house. Since it's in the city limits, they asked, since I was a supervisor, would I mind going out and talk to them? I said, no problem. I'll be glad to go out and talk to them.
Q: And when you went out there, was there a recording, something on you that was recording everything that was ---

A: Yes.
Q: --- said and done while you were there?
A: Yes, ma'am, my body camera.
Q: And approximately what time did you respond to that address?
A: Probably about 10:30, 10:33, something like that.
Q: Did you have a chance to review the video from that body camera?
A: I did.
Q: And is it accurate?
A: Yes, ma'am.
Q: Has it been changed in any way since that night?
A: No, ma'am.
Q: So, it's an accurate representation of what happened that night?
A: Yes, ma'am.
Q: Now, is it really dark and you can't see anything?
A: It's pretty dark on the video.
Q: But you can hear?
A: Yes, ma'am.
Q: Okay.

MS. JOHNSON LEE: At this time, I would ask to publish the audio/video. It's mostly audio.

MR. HOBBS: Without objection.

(REPORTER'S NOTE: State's Exhibit 1 published for the Court

Outside the presence of the jury.)

MS. JOHNSON LEE: Sorry about that. I'm gonna fast forward to where we stopped if that's okay.

BY THE COURT:

THE COURT: Let me just ask while we're trying to get back where we were. Is there anything that I've heard so far that's trying to be introduced or is that -- are we hearing the proposed redactions?

MS. JOHNSON LEE: The proposed redactions, everything is in here, nothing has been redacted right now.

THE COURT: I understand that but are you asking to introduced what's already been played?

MS. JOHNSON LEE: Yes, sir.

(REPORTER'S NOTE: State's 1 is published for the Court outside the presence of the jury.)

MS. JOHNSON LEE: Judge, after consultation with Mr. Daniel, the state would only want to play the portion of the video for the resisting arrest from 14:30 to 17:42, and we will withdraw playing the rest of the video, if the defense will stipulate: Number one, that Sylvia Inman told law enforcement that she fell when she spoke with them in the presence of the defendant, and then they would stipulate that she then tells law enforcement once taken away from his immediate presence that he hit her in the head with a hammer.

MR. HOBBS: Judge, I believe that the portion with the

resisting arrest is something that I feel like the Court is going to find is admissible in this case based on the foundation that Sgt. Day has laid. Again, my problem with quoting the defendant with out-of-court statements -- I'm sorry -- quoting the victim with her out-of-court statements, even in reference, is testimonial in nature, and that I cannot consent to us bringing those statements in. You heard, I think, the relevant portion of this, Your Honor, where she's asked the same question again and again and that it kind of culminates in saying you said you fell down, what happened, what happened to your head, Sam. And her -- this is an examination by law enforcement that bears repetition. These aren't excited utterances, these are present sense impressions where she's just offering up this information.

THE COURT: Hasn't she already testified to it, though?

MR. HOBBS: Well, that's what I'm saying, so it's bolstering, first of all, Your Honor. It's bolstering her testimony that she's already presented. It is testimonial in nature, and so while we could lean on her testimony that she presented on the stand to then present this video that's testimonial is bolstering her statement on the stand and it violates the confrontation clause, not to mention the other issues that are in the rest of this video in regard to that 404(b) evidence that I think the Court heard. Also, as to the probative versus prejudicial nature of this. So, I understand

that she reviewed this video with the state. I understand that she leaned on it in her testimony. However, the statement that she made on the stand about what she recalls and her testimony in general is only gonna be bolstered by this testimonial evidence that's not subject to cross-examination.

THE COURT: Well, the only thing they're asking to do at this point is to allow the officer to say she first said she fell and that later she said that she was hit with a hammer.

MR. HOBBS: I agree.

THE COURT: She's already testified to that.

MR. HOBBS: So, the statement -- she did already testify to that. She also testified that she didn't remember.

THE COURT: I understand.

MR. HOBBS: So, the issue -- I believe that both are testimonial in nature. The thing that I'm most concerned about is obviously that second part of the statement, 12 minutes in when she's responding to the examination from law enforcement. That that is testimony, not that present sense impression of what she said when they first arrived on scene and they ask her, but by the time we get to the tenth question of how did you fall, what happened to your head, Sam, and she says he hit me with a hammer. That is responsive to the line of questioning. I believe that's testimonial. It might bolster what she said earlier, but she also said earlier that

she didn't remember what happened. And that's -- that's the tricky issue is that nothing that she says negates the testimonial nature of this. It's bolstering. It's already in the record. We don't need to show a video of her saying it.

THE COURT: Well, we're not -- we're not even -- and I agree for the record, that the only thing that I think is admissible, you know, is the evidence of whether or not the resisting arrest was committed. I think, you know, a lot of that was inaudible to me. I mean, it's not that it was -- it's just not the greatest quality of audio. But I don't understand the prejudice at this point. Especially after your very thorough cross-examination of the witness, you know. And I believe that I recall that she might've testified that she at first said she fell. So, I mean, I don't understand how that doesn't -- do you understand where I'm going?

MR. HOBBS: I do, Your Honor. My position, again, would be that the portion was responsive to the questions from law enforcement is testimony, and that putting that into the record that she actually said these things on scene would be bolstering, and it'd be testimony in nature. So, I do understand that's it's already out there. I think that's the issue that I'm emphasizing that it's testimonial and that it would just be used only for the basis of bolstering what her testimony was on the stand. I do agree that the statement does limit the prejudice of it. I completely agree. But I

still feel confident that you've got what might be considered a present sense impression or excited utterance on the front end of the video, and then 12 minutes into it, we've got the same line of questioning. I'm not debating that she said it; I'm debating the admissibility of that statement and whether or not it was testimonial and bolstering her testimony from the stand. But I do agree that it does limit the prejudice.

THE COURT: All right. Madam Solicitor?

MS. JOHNSON LEE: Your Honor, we tried to clean this up to not have to show the video. We're trying to help here. But this -- it's not bolstering when you're giving a present sense impression. This is a victim who has just been attacked within the last couple of hour or two with two different weapons, and she is describing or explaining the event or condition made while she was perceiving the event or condition or immediately thereafter, 803(1) present sense impression, that's a clear exception under the rule. Excited utterance is a statement relating to a startling event or condition while declarant was under the stress or excitement caused by the event or condition. Obviously, she is still under that stress of excitement. 803(3), then-existing mental, emotional, or physical condition. A statement of the declarant's then-existing state of mind, emotions, sensation, or physical condition. Your Honor, it's almost like take your pick as to which exception. There are multiple ones here. I mean, this

clearly, clearly are exceptions to the hearsay rule.

THE COURT: All right. With regard to this video and audio, we're gonna limit the playing of this to the portion of which was already mentioned by the state earlier that shows the potential existing arrest. I will allow this officer to testify that he was told that she first may have fallen and then later that maybe she had been hit with a hammer. I think that's already been testified to. I also think it fits into the hearsay exception, but I will limit it to that.

Any other testimony that you're gonna give is gonna have to be what you witnessed and not what anybody else told you or said.

SGT. DAY: Yes, sir.

THE COURT: All right? All right.

MS. JOHNSON LEE: All right. That would be all for this video, Your Honor.

The other video is with Matt Cox, it is in the back of the ambulance.

THE COURT: All right.

MS. JOHNSON LEE: Which -- I beg the Court's indulgence. Judge, after consulting with Assistant Solicitor Daniel, we've agreed to withdraw the other video, and we'll just go with this one in the interest of court time.

THE COURT: All right. Any objection, Mr. Hobbs?

MR. HOBBS: No objection, Your Honor. That what I was

asking for.

THE COURT: All right.

MS. JOHNSON LEE: And one other matter. And when the officers are testifying, is it permissible to of course asked, since it was brought up about this being on video during cross-examination, is it permissible to say and she told you this on video, or was it recorded when she told you this, without going any further?

THE COURT: Mr. Hobbs?

MR. HOBBS: Your Honor, the Court -- and I think that we've cured my concerns to a great degree, obviously not withstanding my previous objections and conditions, I think referencing a video that's not gonna be in front of the jury, I can't imagine why that would have value. If they say what the Court has ruled that they can say, then I don't know that the issue of it being recorded on video is something that would be relevant and might only confound the jury. I don't know why it would be necessary to say that.

MS. JOHNSON LEE: Your Honor, the word video was used so much on cross-examination of Ms. Inman, if we don't address that and say even to the limited existence of the video without even going further, they're gonna wonder why we're not introducing it. So, we're not even going into that. We're just saying and it was reflected on the video and leave it at that. But they're gonna have that question. And I think we

have to answer that question to some extent.

THE COURT: Sure. I mean, I agree with you. I don't see an issue with that.

Does that conclude our matters of law?

MS. JOHNSON LEE: Yes, sir. Mr. Hobbs and I just need get together at lunch just to verify that start and stop time as 14:30 to 17:42.

THE COURT: And certainly -- I don't know if it'll come up and I don't know if you plan to introduce pictures or not, but certainly, they can -- you know, that foundation of or questions about, you know, is this -- are these pictures maybe even from the video or what would've been seen in the video, would you have an objection to that?

MR. HOBBS: Well, I believe that the pictures were taken dependently of the video.

THE COURT: Okay, well, if that's what ---

MR. HOBBS: I would add I don't believe that we need to go any further into the video. My intent there was just not to raise an issue that would confuse or confound the jury.

THE COURT: All right.

MS. JOHNSON LEE: And we do intend to have the deputies at some point open the -- there was actually two cameras seized but the hammer and the knife we want to have those opened and just have them address those.

THE COURT: Sure.

Is SLED coming to testify this afternoon?

MS. JOHNSON LEE: They are, Your Honor. They actually had texted me yesterday. They were gonna actually come a little bit early at 1:00, but they will be here this afternoon. So, I may take some witnesses out of order so I can go ahead and get the two scientists in and out.

THE COURT: Okay. Are there still issues or matters of law about the chain of custody?

MR. HOBBS: Your Honor, I do still have some gaps, but I'm hoping that I can communicate with the solicitor and answer some of those questions.

THE COURT: Okay.

MR. HOBBS: The questions and concerns I had about SLED's taking the custody of the items, who was the custodian prior to it making it to the hands of the experts that are being called today. That's what I'm missing. And so, if there is information out there, then I'm gonna work with the state to try to wrap my head around it and see if we can narrow it down.

MS. JOHNSON LEE: Yes, sir, Your Honor. As soon as we finished yesterday, I reached out to Lori Johnson at SLED. And she asked her assistant to fast track getting me a certified report. And I checked this morning and it's not there, but they're supposed to get it to me today. So, I will check again at lunch.

MR. HOBBS: That could be a big issue, Judge. We are dealing with DNA issues and DNA testing. And so, I'm missing a piece of the chain of custody, and our courts have put great emphasis on that.

THE COURT: Okay. I understand.

So, what time -- I'm anticipating coming back at 1:45. Should we come back earlier or do you think ---

MR. HOBBS: Your Honor, we can try to get ahead of our issues, I think 1:45 will be awesome. If we identify something that comes up, then we will try to let the Court know as soon as possible so maybe we can convene ---

THE COURT: All right. So, we're gonna break now until 1:45.

RECESS - 12:20 P.M.

*****OFF THE RECORD*****

ON THE RECORD - 2:01 P.M.

THE COURT: Are you gonna call Officer Day again when the jury gets in here and then we'll reswear him or what?

MS. JOHNSON LEE: I'm actually gonna call Officer Cox first and then call Officer Day.

THE COURT: Okay. No problem with that, Mr. Hobbs?

MR. HOBBS: No problem, Your Honor.

THE COURT: All right. So, we'll bring in the jury, please. Thank you.

MS. JOHNSON LEE: If I can put on record before the jury

gets in, the -- we've actually narrowed down additionally on the bodycam to be played through Officer Day. What will be played is 14:47 through 15:15 and 16:36 through 17:02.

THE COURT: All right.

MR. HOBBS: No objection, Your Honor.

THE COURT: Thank you.

(REPORTER'S NOTE: Jury enters courtroom @ 12:03.)

THE COURT: All right. Thank everybody very much for your -- your attention and your cooperation, and we're gonna continue the trial at this point.

Madam Solicitor?

MS. JOHNSON LEE: Thank you, Your Honor. The state calls Cpl. Matthew Cox.

THE CLERK: Place your left hand on the Bible, and raise your right hand.

MATTHEW COX, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

THE CLERK: Be seated and state your full name for the Court, spelling your last?

CPL. COX: Matthew Cox, Dillon Police Department.

DIRECT EXAMINATION OF CPL. MATTHEW COX BY MS. JOHNSON LEE:

Q: How long have you been with the Dillon Police Department?

A: Four years.

Q: What's your job there?

A: Corporal/Patrol Officer.

Q: Did you have any law enforcement experience before Dillon PD?

A: Yes, ma'am. I started my career in Latta with the Latta Police Department, worked there for two years, then went to Marion. Worked with the Marion Police Department for around nine months before coming to Dillon.

Q: And what was your job title on May 27th of this year?

A: Corporal/Patrol Officer, same as now.

Q: Did you go to respond to [redacted] Cleveland Street in Dillon on May 27th?

A: Yes.

Q: Approximately what time was that?

A: It was around 21:45 hours.

Q: So, what is that in layman's terms?

A: 9:45 p.m.

Q: Why did you go there?

A: I was notified by dispatch that EMS had been dispatched to that address, [redacted] East Cleveland, City of Dillon. Dispatch advised me that they only called for ---

MR. HOBBS: Objection, Your Honor.

THE COURT: All right. Sir, you can't tell -- you can't say what anybody else told you; do you understand that?

A: Yes, sir.

THE COURT: That would be hearsay. So, you can answer the question as to why you were dispatched without telling us

what somebody told you.

BY MS. JOHNSON LEE:

Q: What did you see when you got there?

A: I saw -- well, I saw Ms. Inman in the back of the ambulance.

Q: Okay. Where was the ambulance at?

A: In front of the house.

Q: [redacted]?

A: Yes.

Q: And describe how Ms. Inman looked.

A: I noticed that she had what appeared to be a cut on her left hand, and EMS workers were attempting to treat her at that time.

Q: Okay. Could you tell if there was more than one cut, or did you examine her hand?

A: No, ma'am. I could only see, from where I was, that she just had what I could see was just one cut on her -- on her left hand, I believe it was.

Q: Okay. How close did you get to her?

A: I was standing at the back of the ambulance, and she was inside the ambulance, so only a few feet.

Q: Okay. Did you go inside the ambulance?

A: I don't believe I did.

Q: Was there blood?

A: Yes, ma'am; she was bleeding.

Q: Okay. How much?
A: Enough to get blood on the ambulance, inside the ambulance.
Q: Did she have any cloths or bandages on her hand?
A: That I don't remember.
Q: Okay. What did you do after seeing her in the ambulance?
A: Well, I wasn't sure if she had already been treated or not, so I was just asking her, you know, if she was going to the hospital, telling her that I thought that she needed to get treated, and that I thought she should go to the hospital.
Q: Did she go?
A: No, ma'am.
Q: Did she refuse to go?
A: Yes, ma'am.
Q: Did y'all have words about that?
A: I just -- again, I just asked her if she was going, and she said no. I believe I told her that I thought she should go get checked out.
Q: Why did you feel so adamant that she needed to get checked out?
A: Just due to, you know, what I saw on her hand and the blood.
Q: So, it was more than just a scratch?
A: Yes, ma'am.
Q: That you saw?

A: Yes.
Q: Okay. And again, you didn't look, examine her hands up close?
A: No.
Q: Okay. Now, did you have occasion to see Daniel Inman that night during that call?
A: I ended up seeing him after she refused treatment.
Q: Okay. And how did that come about that you saw him?
A: Whenever she walked away from the ambulance, she walked back up to the front of the house, I believe, and I remember him coming out onto the porch.
Q: Okay. Do you remember any exchanges between the two of them?
A: I think I remember him asking what happened. And at that time, she had told me that she had cut her hand in the kitchen.
Q: Okay. Did her demeanor change in any way when he came out of the house?
A: I believe it did.
Q: Describe it for us.
A: Well, whenever she was at the ambulance, and after refusing treatment, she was, you know, a little aggressive acting, using profanity. Whenever she got to the front of the house, she seemed to have calmed down a little bit.
Q: Okay. Calmed down how?

A: She -- she just wasn't saying much at that point.
Q: And that was in his presence?
A: Yes.
Q: Thank you. Answer any questions that Mr. Hobbs has for you.

CROSS-EXAMINATION OF CPL. MATTHEW COX BY MR. HOBBS:

Q: Cpl. Cox, were you the first person to arrive on scene and speak to Ms. Inman on May 27th?
A: After the EMS workers, yes.
Q: First representative of ---
A: First officer.
Q: --- law enforcement?
A: Yes.
Q: Do you have any knowledge of who it was that actually placed the call for the EMS services?
A: At the time of the call, I was not sure.
Q: Okay. You mentioned that she had a cut on her hand. I believe you got close enough to at least see that cut; is that right?
A: I believe so, yes.
Q: And it was on the outside of her hand; isn't that right?
A: From what I remember, I think it was.
Q: Okay. And she was holding a rag at that time, and there was a lot of blood on that rag; is that right?
A: I don't remember if she had a rag in her hand. I do

remember there was blood and that she had got on the ambulance.

Q: Okay. So, a lot of blood ---

A: Yes.

Q: --- was on her and on the ambulance; is that right?

A: I believe so, yes.

Q: Okay. Cpl. Cox, there is this - this point of contention as to when Sam refuses to go to the hospital and there's a moment in time, where she appears to be trying to leave the ambulance and you close the door on the ambulance; do you remember that?

A: I do.

Q: And for a period of time, you don't reopen that door or allow her out of the ambulance; is that right?

A: Well, the reason why I closed the door is I wasn't sure if she was still being treated or not. So, I wanted to shut the ambulance door until they were finished.

Q: Okay. So, prior to you closing the door, do you recall her trying to get out and trying to make her way out of the ambulance?

A: No, I don't remember that.

Q: Okay. Do you recall that you literally shut her into the ambulance and waited for a period of time before you reopened that door?

A: I remember shutting the door, but it was not my intention

to keep her from getting out.

Q: Okay. Then why did you shut the door?

A: Because I wasn't sure if the EMS workers were finished.

Q: Were you trying to give her privacy?

A: Yeah, you could say that.

Q: Okay. How long was it that you shut that door until you reopened it?

A: That I don't remember for sure. Someone else had actually pulled up to the scene with the fire department, so I briefly talked to them.

Q: Okay. In your experiences as a police officer, is that something that you'll do commonly to close somebody into an ambulance?

A: Well, most of the time in my experience that I've seen patients in the back of an ambulance, the door has been shut most of those occasions.

Q: I'm asking you closing the door and closing the person into the ambulance?

A: I don't recall ever closing the door on the ambulance before, but again, I was just trying to give them some privacy.

Q: Ultimately, Sam does not want to go to the hospital; is that right?

A: Yes.

Q: And the situation with you and Sam raises to the point

where you say -- you describe her as being extremely uncooperative; is that right?

A: Yes.

Q: Okay. And at one point, you asked her if she wants to be charged with disorderly conduct?

A: Yes.

Q: And at one point, you asked her if she wants to go to jail?

A: That's correct.

Q: Okay. So, you're on scene coming to check on EMS treating her. You close her into the ambulance for at least a period of time, correct?

A: Yes.

Q: You describe her behavior in the ambulance and outside of the ambulance as extremely uncooperative?

A: I said that, yes.

Q: And ultimately, you threatened her with arrest at that time?

A: Well, that was after she had refused treatment and she was already out of the ambulance.

Q: Okay. Is refusing treatment a basis for why somebody might be placed under arrest?

A: No, sir. At that point, she became, you know, talking very loudly, using profanity, so that's why I did say something about the disorderly conduct.

Q: Okay. So, her conduct at that time rose to a level where it was almost criminal?
A: I -- I thought so, yes.
Q: Okay. And you ultimately leave that scene without Sam going to the hospital, correct?
A: Yes.
Q: And without any sort of investigation any further; is that right?
A: Correct.
Q: Okay. You show up later that evening at the residence; is that correct?
A: Yes.
Q: Were you called out to the residence?
A: No, sir.
Q: Okay. Why did you show up?
A: This was -- this was later in the shift. I was just out patrolling. I had heard dispatch ask Sgt. Day to give them a call. I didn't know what the call was for; I was out patrolling, rode by the residence, and I saw Sgt. Day arriving on the scene. So, I just pulled up, you know, got out to offer my assistance. At that point, I did not know why he was back at the residence.
Q: Did you ever find out why?
A: He told me when I got there.
Q: Okay. And there was a complaint levied against you and

called in about you and your activities toward Sam; is that right?

A: Yes.

Q: And after you found out about that complaint, did you leave the scene or did you stay around?

A: I stayed.

Q: Throughout the whole time of the engagement at that scene?

A: Yes, sir.

Q: Until Mr. Hamer was placed under arrest?

A: That's correct.

MR. HOBBS: Court's indulgence, please?

BY MR. HOBBS:

Q: Cpl. Cox, prior to your meeting with Sam in the back of the ambulance, were you on scene communicating with Sam or the defendant, Mr. Hamer?

A: No, sir.

Q: At the time you arrived and EMS was treating her hand, had you been there prior that day at any time?

A: Not that day.

Q: Had you ever been there within, let's say, the time period before EMS showed up that day?

A: That was the first time I had been there in that shift.

Q: Okay. Very good.

MR. HOBBS: No further questions, Your Honor.

THE COURT: Anything further?

MS. JOHNSON LEE: Yes, thank you, Your Honor, briefly.

REDIRECT EXAMINATION OF CPL. MATTHEW COX BY MS. JOHNSON LEE:

Q: Okay. When you were asked about threatening to charge Sam with disorderly conduct?

A: Yes, ma'am.

Q: What was that about?

A: Well, that was after she refused treatment. The EMS workers were leaving. She was in the yard. This is in, you know, a residential area, it's late at night, she was in the yard, started using profanity, yelling; so that's when I, you know, advised her that she could be arrested for disorderly conduct.

Q: Was she very loud?

A: I would say so.

Q: Was it aggressive?

A: I'm not sure if it was aggressive, but the language she was using and the way she was -- had her voice raised, you know, that's why I told her that.

Q: Was she angry that you were there?

A: I don't ---

MR. HOBBS: Objection, Your Honor, calls for speculation. I don't know how he could speak as to the cause of any sort of emotion that Sam was feeling at that time.

THE COURT: Can you rephrase your question?

MS. JOHNSON LEE: Yes, Your Honor.

BY MS. JOHNSON LEE:

Q: Did she say anything when she was yelling that indicated that she was angry that you were there?

A: I don't remember, but I don't think she was angry that I was there.

Q: Okay. Now, when the defendant came outside of the house, you indicated earlier that her demeanor changed.

A: It did.

Q: So, was this a substantial change from being angry in the yard to being ---

A: I would say so.

Q: Okay. Did she become more quiet when he came out?

A: She did.

Q: Okay. Now, and who was it -- Mr. Hobbs asked you about somebody calling 911 to make a complaint; what's your understanding of who made that call?

A: I was advised by Sgt. Day that the defendant had made the call?

Q: Not Sam, but ---

A: Mr. Hamer.

Q: --- Mr. Hamer. What was the nature of the complaint?

A: I was told that he had said that I had tried to kidnap Sam.

Q: That you tried to kidnap her?

A: That's what I was told.
Q: Okay. Did you try to kidnap her?
A: No, ma'am.
Q: Okay. All right. Thank you. No further questions.
THE COURT: You can return to ---
A: Thank you.
MS. JOHNSON LEE: Next the state calls Sgt. Ricky Day.

SGT. RICKY LEE DAY, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

THE CLERK: Have a seat in the witness box and state your full name for the Court.
SGT. DAY: My name is Ricky Lee Day. Last name is D-A-Y.

DIRECT EXAMINATION OF RICKY LEE DAY BY MS. JOHNSON LEE:

Q: Where are you employed?
A: City of Dillon Police Department.
Q: And how long have you been there?
A: I've been there approximately close to four years now.
Q: What is your job?
A: I am a supervisor and also sergeant over the road officers.
Q: Do you have prior law enforcement experience?
A: I do.
Q: Where is that at?
A: I was also a first sergeant and supervisor with the Sheriff's Office, Dillon County Sheriff's Office. I also was

employed with the Dillon Detention Center, and also Marion Detention Center.

Q: So, what's your total years of law enforcement experience?

A: Approximately 12 years.

Q: Now, were you in that same position as sergeant and supervisor on May 27th of this year?

A: I was.

Q: Now, did you respond for any reason to [redacted] Cleveland Street in Dillon?

A: I did respond to that address.

Q: Now, why did you go there?

A: Central Dispatch advised they wanted me to give them a phone call. I called Central Dispatch, and they advised me that Mr. Hamer wanted to speak with a deputy, but since it being in the city limits, our jurisdiction, they asked would I go out, since I'm the supervisor, and speak with him, and I told them yes, I would.

Q: Did you talk to him?

A: Yes, I did.

Q: Was anybody else there?

A: Yes. Ms. Inman was there, she come out later, and Cpl. Cox arrived after I did.

Q: What did Mr. Inman tell you when you got there -- excuse me -- Mr. Hamer?

A: Mr. Hamer, he come out of the house, he was friendly. He came out and I told him why I was there; told him I was there to -- because I had got a complaint and I told him the deputies wouldn't come since it would be in the city and I'm the supervisor, that's why I came out to talk with him.
Q: What if -- did he say anything about Sam being kidnapped?
A: He did not say anything about Same being kidnapped.
Q: Now, you said Sam came out later?
A: Yes, ma'am.
Q: Okay. Did anything stand out to you about Sam when she came out?
A: Yes, ma'am. When she come out the door, I immediately seen that her head was bleeding.
Q: Did she have any other visible injuries that you saw at that time?
A: Yes, ma'am. Her hand was also bleeding.
Q: Did she have a tissue or cloth or anything?
A: She did. She had a cloth wrapped around her hand.
Q: Was the -- did the cloth have any blood on it?
A: Yes. It had a lot of blood on it.
Q: Now, did either Sam or Mr. Hamer tell you how she got these injuries?
A: I asked Sam how she received the injury on her head. She said she had fell down.
Q: Now, did she say this in the presence of the defendant?

A: She did.
Q: How close was she to the defendant when she told she had fallen?
A: Probably standing -- he was sitting down and she was standing up maybe two feet, maybe, right there close beside of him.
Q: Now, where was he sitting at?
A: He was sitting on the little porch and steps. If you're facing the house, it would be on the left side.
Q: And was she standing up on top of the porch?
A: Yes, ma'am. She was still on top of the porch.
Q: Okay. So, what happened next after she tells you that she had fallen?
A: Mr. Hamer talked about, something about money; she was supposed to get a check. And Mr. Hamer said something about -- he asked her how she hurt her head, and he said two minutes ago, your head wasn't like that. He said you're trying to set me up.
Q: You're trying to set me up?
A: Yes, ma'am.
Q: But she came out the door not long after him?
A: Yes, ma'am; not long right after he did.
Q: How much blood was on her head?
A: The blood was on the top and it was coming down on the front of her brow on her forehead.

Q: Now, at some point, did you separate the two of them?
A: Yes, ma'am.
Q: And how did you do that?
A: I asked -- I asked Ms. Inman would she walk to my vehicle, my patrol vehicle with me.
Q: Did she?
A: Yes, she walked -- she came with me to the patrol vehicle.
Q: Now, what did y'all do at your patrol vehicle?
A: I asked her to come to the patrol vehicle. I had a first aid kit in my car, I also had several bottles of water. So, I had gave her maybe two or three bottles of water. And then I opened my first aid kit and got some alcohol wipes, also some bandages to give to her so she could dress her hand and hopefully clean it up with the water, her forehead and her hand as well.
Q: Now, outside the presence of the defendant, did you ask her again what happened?
A: I did. I did ask her.
Q: What was her response?
A: She told me that Mr. Hamer had hit her in the head with the hammer, the claw part.
Q: That he hit her in the head with a hammer?
A: Yes, ma'am.
Q: Did you talk to her about the hand?

A: I did ask her what happened to her hand.
Q: Did she have a response?
A: She did. She reported to me that Mr. Hamer was going to cut her with his knife. She reached for the knife with her hand, and that's how her hand was cut.
Q: So, when she was close to him, she said one story but, when she's away from him with you at your patrol car, then she tells you about the hammer and the knife.
A: Yes, exactly.
Q: Now, what did you do after she told you about getting hit in the head with a hammer and cut on the hand with the knife?
A: I asked Ms. Inman does she want to press charges. She said yes. I pulled out my victim's form to sign -- to fill out the victim's form and have her sign the victim's form stating that she does want to press charges. Once she did that, I proceeded to go talk with Mr. Hamer and advise Mr. Hamer that he was under arrest for domestic violence.
Q: What was his response when you told him he was under arrest?
A: At first, he couldn't hear me because the dog was barking. So, I advised him again, I said you're under arrest for domestic violence. He said, well, I didn't do anything; I didn't do anything. I said, well, you're under arrest. I reached for his hand; he pulled away. I got him on his side and Cpl. Cox got on the other side. He was tousling with us.

We ended up taking him to the ground. I hit my knee on my way down on the ground. I put the cuffs on him, got him up. He was complaining about the cuffs being too tight, so I told Cpl. Cox, when we got to the patrol car, to loosen the cuffs up and which he did. Mr. Hamer advised that the cuffs were still too tight and was -- he was pretty upset, cussing, and we had to tousle with him again to get him the car because he did not want to get in the patrol car. Once then we got him in the patrol car, I asked Cpl. Cox to put detainers on him and transport him to the Dillon County Detention Center.

Q: And what were the charges?

A: The charges were domestic violence high and aggravated nature, and also resisting arrest.

Q: And you actually signed the arrest warrants?

A: Yes, I did.

Q: Now, were you wearing a body camera?

A: I was. I was wearing a body camera.

Q: Now, what time of the day did this occur?

A: It's approximately about 10:33 at night.

Q: Now, have you had a chance to go back and look at the body camera?

A: I did. I did go back and look at the camera.

Q: Now, was there any changes, deletions or modifications since that body camera video was made?

A: No, none at all.

Q: Okay. So, it's a fair and accurate representation of what happened that night?

A: Yes.

MS. JOHNSON LEE: Your Honor, we'd like to publish -- well, at this time, what's marked for identification as State's Exhibit 1, we'd like to move that into evidence for the state?

THE COURT: Any objection.

MR. HOBBS: Subject to the prior objection ruling of the Court.

THE COURT: All right. State's Exhibit 1 is into evidence.

STATE'S EXHIBIT NUMBER 1

ADMITTED INTO EVIDENCE

MS. JOHNSON LEE: Okay. Your Honor, we'd like to publish that section of the video regarding the arrest.

THE COURT: All right.

MS. JOHNSON LEE: And we have it on a flash drive, so we don't have to set that up.

(REPORTER'S NOTE: Portions of State's 1 published to the jury.)

BY MS. JOHNSON LEE:

Q: You said you injured your knee when this happened?

A: Yes, ma'am.

Q: Did you go get medical treatment or anything?

A: No, ma'am.
Q: Okay. Now, after the arrest, did you take any photographs of Sylvia?
A: I did. I did take photos.
MS. JOHNSON LEE: Permission to approach the witness?
THE COURT: Yes, ma'am.
BY MS. JOHNSON LEE:
Q: I'm going to hand you what's marked for State's identification as Exhibits 3, 4, 5, 6, and 7. Do you recognize those photographs?
A: Yes, I do.
Q: Did you take each one of those?
A: Yes, I did.
Q: And were those taken on the night of May 27th, 2021?
A: Yes, I did.
Q: Okay. At this time -- are those an accurate representation?
A: Yes, they are.
Q: Any changes or deletions to those photographs since the date you took them?
A: None.
MS. JOHNSON LEE: I'd like to have those moved into evidence for the state.
THE COURT: All right. Mr. Hobbs?
MR. HOBBS: No objection, Your Honor.

THE COURT: All right. And that's State's Exhibits 3, 4, 5, 6, and 7; is that right?

MS. JOHNSON LEE: Yes, Your Honor.

THE COURT: All right. State's Exhibit -- State's Exhibits 3, 4, 5, 6, and 7 are into evidence without objection.

STATE'S EXHIBITS 3 THROUGH 7

ADMITTED INTO EVIDENCE

MS. JOHNSON LEE: And as he describes them, I would like to publish to the jury on the screen?

THE COURT: Okay.

MS. JOHNSON LEE: Could I have Sgt. -- Cpl. Day come down?

THE COURT: Absolutely.

BY MS. JOHNSON LEE:

Q: If you could stand over here for the jury could see?

A: Okay.

Q: And describe what is depicted in this photograph?

A: This is a ---

Q: Speak up so the court reporter can pick everything up, please, sir. I'm sorry.

A: After the arrest, I took the picture of Sam; she was in front of the house. This is a picture right after the incident happened. I took this picture, she -- I asked her to point to where she was hit in the head with the hammer, and

she pointed to the middle.
Q: And you can go over and point out on the screen?
A: Yes, ma'am. That's where she pointed in this area right here.
Q: Next photograph. What is depicted in that photograph?
A: In this picture, it looks like it could be a little swelling around her eye, which the blood as well that was on her face.
Q: And is that blood at the top of her hairline?
A: Yes; yes, ma'am.
Q: And that depicts the right side of her face?
A: Yes.
Q: Next photograph, please. And what is depicted here?
A: This is the left side of her face. I just wanted to get angles of all sides -- the front and both sides. I wanted to make sure I got good accurate pictures of her face.
Q: Is that some blood on the left cheek?
A: It is; yes, ma'am, it is.
Q: And along the hairline?
A: Yes.
Q: Next photograph, please. And what is this?
A: This is the picture I took of the top of her head when she -- when she said she was hit in the head, I wanted to see where approximately she was hit, so I took a picture of the top of the head.

Q: Okay. This area right in here ---
A: Right.
Q: --- is that sort of matted?
A: It is. The blood -- there was a lot of blood, so the blood had the hair kind of matted on her head.
Q: Okay.
A: Or stuck together.
Q: Next photograph. And what does this depict?
A: This is a picture of her hand that was covered in blood as well.
Q: Okay. Did you see injuries on her left hand?
A: She had, I think, two small cuts right here on the left hand.
Q: Thank you. You can take your seat.
MS. JOHNSON LEE: I beg the Court's indulgence?
THE COURT: Yes, ma'am.
BY MS. JOHNSON LEE:
Q: Thank you, Sgt. Day. Please answer any questions Mr. Hobbs has.
A: Yes, ma'am.
CROSS-EXAMINATION OF RICKY LEE DAY BY MR. HOBBS:
Q: Sgt. Day, I believe earlier you testified that you are the supervising officer for your shift; is that right?
A: Yes, sir.
Q: So, under that hierarchy of command, Cpl. Cox, would have

been your subordinate; is that correct?
A: Right; that's correct.
Q: Okay. The evening when you show up on May 27th, you weren't there when Cpl. Cox was there the first time earlier that evening?
A: Right. I wasn't there on the first call.
Q: Okay. And you mentioned that it was Dan had called law enforcement or called the emergency dispatch and made a complaint about Cpl. Cox?
A: Yes, that's correct.
Q: Okay. And what was the complaint that he had made?
A: The complaint was that Mr. Hamer was stating that Cpl. Cox had tried to kidnap Sam.
Q: Okay. And did you end up investigating that accusation at all?
A: Not entirely. I did talk to him about it, but he never came -- he never responded with, you know, information on it.
Q: Okay. As the supervising officer, did you ever review footage of him and his dealings with Sam when you weren't there?
A: Later on, I did; I did view those.
Q: Okay. And what did you see in regard to Cpl. Cox closing Sam inside the ambulance?
A: It showed Sam in the ambulance. She was refusing to go to the hospital. Cpl. Cox shut the door. I don't know

approximately how long the door was closed. Then he opens the door back up, and he says, Sam, you -- if I'm correct, he said, Sam, you need to go to the hospital and get checked out.

Q: When you watched it, did you get the indication that Cpl. Cox was giving them privacy within the ambulance?

A: To be honest, I really couldn't determine that because I wasn't there. So, it was hard for me to tell.

Q: Did any part of the actions that you saw seem problematic to you in any way?

A: Towards shutting the door -- shutting the door? For me, no, and I'll tell you why, because I -- cause in the past, I've had actually talked to people in the ambulance, and I have shut the door and walked off as well.

Q: Okay. And when you shut the door and walked off, did you come and then reopen the door?

A: If I had other questions -- if I had questions I wanted to ask or there was something that didn't seem quite right, I would probably go back and open the door and talk to that party again.

Q: Okay. If somebody was shut inside of an ambulance, would it be a fair complaint that maybe they feel like they were being kidnapped or restrained unlawfully?

A: If someone was standing there holding the door, not allowing the person out, I would say, yeah. If someone just shut the door, I would say no.

Q: Did Cpl. Cox ever speak to you about the condition that Sam was in when he initially went there when EMS was present?
A: You talking about right before I went to the call?
Q: Yes, sir. Did you have any conversations with Cpl. Cox about Sam's condition prior to you arriving on scene?
A: I don't believe I did. I mean, because I was actually -- I was working a break-in with Investigator Turner during that whole time, and I don't know -- I don't think he come and talked to me about it or not yet.
Q: Okay. Did you review, prior to you getting there, any sort of videos or pictures of Sam's condition when Cpl. Cox initially engaged with her?
A: No, I didn't. I haven't looked -- I didn't look at any video or pictures or anything like that.
Q: Okay. So, was there any way for you to tell what blood was on her from when she was getting in EMS versus the time when you showed up?
A: You talking about how much blood it was?
Q: Yes, sir.
A: There was a great amount of blood from the head and on her hand. So, it was -- it would be fair to say that it was -- it'd be kind of hard to tell where the blood come from, you know, just by looking at her.
Q: So, you didn't have an opportunity to see how much blood she had on her when EMS treated her earlier?

A: No, I did not.
Q: And so, you're just taking her as you find her the second time law enforcement is at the residence?
A: Yes.
Q: There was a request that a sheriff's deputy actually come and investigate what Cpl. Cox had done; is that right?
A: Yes, it was.
Q: And who made the determination that it was inappropriate for the deputies to come and investigate?
A: Central Dispatch called me, and when they said that he's requesting a deputy, but since it's being the city limits, which is our jurisdiction, because normally we let the county handle the county and the city handle the city. And since I was supervisor, they asked would I go, I was like, yes, I'll be glad to go and talk to him.
Q: And there's been talk, Sgt. Day, about the demeanor of Sam throughout your engagement with her at the residence, correct?
A: Yes. Yes.
Q: Okay. Would you describe her demeanor when she was around Dan, when you first showed up as calm?
A: When she first came out the house?
Q: Yes, sir.
A: Yes, I would say calm.
Q: How did her demeanor change even in the presence of Dan,

didn't she get more aggressive and more loud?
A: She did.
Q: Okay.
A: She did.
Q: So, this was not an instance of her remaining calm during this time period. There were instances of her yelling and cursing and being aggressive; is that right?
A: Yes.
Q: Okay. At one point, when you're talking to her, you make emphasis of the fact that when someone is drinking, that can actually thin their blood and they can bleed more; can you help us understand what that meant?
A: It comes from personal studies.
MS. JOHNSON LEE: Objection. I don't recall that being testified to, and also he's not a medical doctor.
THE COURT: Sustained, or if you want to rephrase your question.
BY MR. HOBBS:
Q: I'll be happy to rephrase it. Do you recall telling Sam that when you drink that your blood is thinner and you bleed more?
A: I do.
Q: Okay. So, what did you mean by that?
A: Just from personal studies and being interested in things, I, you know, Google and find out a lot of stuff, you

know. And if you drink a lot of alcohol, it does thin out your blood as well.

Q: Did you say that to her because you thought that she was drunk?

A: I did.

Q: You go into the house after Mr. Hamer is arrested, I believe you take some pictures of Sam that have been introduced here today?

A: Yes, I did.

Q: Okay. In these pictures -- do you know where the pictures are? We have a picture of Sam here that you took, and this is that evening, right?

A: Yes, it is.

Q: Okay. When you say you arrived on scene, you said that blood is dripping down her head?

A: Yes.

Q: Okay. And blood dripping down her head actively as if she has an open wound?

A: Yes. It seemed like it was pouring down her head, yes.

Q: Okay. However, once you wipe away the blood, did you see the blood start to drip again?

A: No, I did not.

Q: Okay. How long do you think you were there after you cleaned her up and you took these pictures?

A: Approximately -- I don't know exactly how long it was

between the time of -- because when he was arrested and transported, I think I took some pictures and stuff then as well on the scene at that time.

Q: Okay. It wasn't hours of course?

A: No, it wasn't.

Q: But several minutes between you cleaning her up and taking the pictures, right?

A: Right.

Q: And this open wound that you had described when you first saw it, is no longer bleeding; is that right?

A: That's correct.

Q: Okay. We talked about this cheek, the cheek mark. At one point, it's described as blood on her cheek; was it blood on her cheek?

A: Yes.

Q: So, that was something that could be wiped off of her cheek?

A: Yes.

Q: Okay. And I actually could not see her hands when you were describing where Ms. Inman was cut?

A: She -- do you want me to show you?

Q: On her hands.

A: On her hands. She said her left hand, but it was somewhere right here in the fingers.

Q: Did you examine the other sides of her hands?

A: I did not.
Q: Okay.
A: I did not.
Q: Did you take custody of any items that night that were alleged to be part of this assault?
A: I did not.
Q: Did you take pictures of any items that night that were alleged to have been part of that assault?
A: I did not.
Q: Did you take the time within the residence to attempt to locate any of the items that were alleged to be part of the assault?
A: I did not.
Q: Okay. Did you ever call EMS to come and check out Sam and this injury on her head?
A: No, I did not. I asked her did she want EMS again, and she refused.
Q: Was there ever any diagnosis of the injuries that Sam incurred that you're aware of?
A: Repeat your question, please?
Q: Was there ever any medical diagnosis of these injuries that you're aware of?
A: No, not as I -- not that I'm aware of.
Q: Okay. You took these pictures of Sam. Did you manipulate her hair and move it around in a way where you

could actually see an injury on her head?
A: No; I did not.
Q: So, you never actually witnessed a cut on Sam's head, correct?
A: The actual cut itself?
Q: Yes, sir.
A: No; I did not.
Q: Okay. No way to tell us how big or small it is?
A: No, sir.
Q: Only that she had a lot of blood on her?
A: Yes, sir. A lot of blood and the hair was matted and kind of stuck together.
Q: And had you seen if her hair was in that same condition earlier when Cpl. Cox was there?
A: I wasn't there earlier when Cpl. Cox was there.
Q: So, you don't know how much blood she had on her at that point?
A: No, sir.
MR. HOBBS: Court's indulgence, please, Your Honor?
BY MR. HOBBS:
Q: Sgt. Day, just so I'm clear, on May 27th, 2021, the first time you show up at the residence is to investigate the actions of Cpl. Cox; is that right?
A: That's correct.
Q: You weren't there earlier?

A: No, sir; I was not there earlier.

Q: Not prior to EMS that day?

A: Not prior to EMS that day.

MR. HOBBS: Thank you, Your Honor.

THE COURT: All right.

MS. JOHNSON LEE: Briefly, Your Honor.

THE COURT: Yes, ma'am.

REDIRECT EXAMINATION OF RICKY LEE DAY BY MS. JOHNSON LEE:

Q: Mr. Hobbs asked you about Sam being aggressive or loud in the defendant's presence; how many officers were standing there at that time?

A: Two officers were standing there at that time.

Q: Yourself and ---

A: Cpl. Cox.

Q: Okay. Now, what was Sam upset about or what was she saying?

A: She was upset ---

MR. HOBBS: Your Honor, I believe ---

BY MS. JOHNSON LEE:

Q: What was she saying?

MR. HOBBS: I believe -- I think we need to address ---

BY THE COURT:

THE COURT: All right. Ladies and gentlemen ---

MR. HOBBS: I'll articulate -- Judge, I'm sorry. Should I articulate the ---

THE COURT: No, that's fine.

We're gonna take just a short break and take up a matter of law. We'll have you right back out.

Thank you for your patience.

(REPORTER'S NOTE: Jury exits courtroom @ 2:50 p.m. The following takes place outside the presence of the jury.)

THE COURT: All right, sir?

MR. HOBBS: And, Judge, I apologize for not being able to articulate this in a manner in front of the jury. I didn't mean to call my own recess there.

We previously dealt with issues of the defendant's statement and its admissibility. We narrowed down the ability for law enforcement to quote things and I don't recall that bleeding into or leading into why was she upset or did she say why she was upset. I think that, again, going into why she's upset, he wouldn't know, and that was -- that calls for speculation as well is what my initial objection was, but her saying why she's upset is, I think, outside the scope of what the Court's prior ruling was.

THE COURT: All right.

MS. JOHNSON LEE: Your Honor, I don't think it's outside the prior ruling because Mr. Hobbs asked about her being aggressive. He asked about the alleged kidnapping. Well, on the video, what she was saying was I wasn't kidnapped; he called 911; I didn't say I was kidnapped. I mean, so I

certainly think that's a fair statement to get into, since he's already opened the door to that by even questioning about the alleged kidnapping and questioning about her being loud and aggressive.

THE COURT: Okay.

MS. JOHNSON LEE: That's what she was saying, I wasn't kidnapped.

MR. HOBBS: Okay. First of all, I don't think that he has the ability to testify as to why she was upset. I don't recall any statements of why are you upset in response. And again, I think when we're going to quote her -- we're talking about her demeanor, that was something that the state go into, then I asked him about the demeanor at the scene didn't open the door to her to be quoted in other ways other than were previously stipulated.

THE COURT: All right. And the question is why is she upset?

MS. JOHNSON LEE: Well, I mean, what was she saying, when she was upset -- when she appeared upset, he asked did she appear upset, so obviously he's referring to a specific instance, what was she saying. He's already opened the door to the alleged kidnapping by addressing that. I've got to address it, Your Honor. She herself said I wasn't being kidnapped.

THE COURT: Do you object to that question specifically,

whether or not this officer can answer whether or not she testified or told him that she wasn't alleging that I've been kidnapped?

MR. HOBBS: I think that we're starting to get into quoting the victim. And we had addressed our ability in the direct circumstances where the victim could be quoted. If the Court was to determine -- and Judge, I don't see how he can state why she was upset when he never asked why are you upset. The demeanor thing -- I didn't open the door to demeanor, that is the theme of the state's case. I was addressing that with them. Again, the idea of her, why she was upset, or if she said why she was upset, I don't believe that's in the record, and I don't think that he has a basis for testifying as to why she was upset.

MS. JOHNSON LEE: And I'll agree to that, but I still think I should be able to ask what she said, because he has questioned both these last two witnesses, Day and Cox, about this alleged kidnapping, shutting the ambulance doors. He's questioned about that. They've got to hear that she said, I wasn't being kidnapped.

THE COURT: I think there's also testimony in the record that he is the one that brought those allegations.

MS. JOHNSON LEE: Yes, sir.

THE COURT: So, I don't understand how her response is -- I mean, I don't think that's relevant. I'm just not gonna

allow the question. Okay?

Is there anything further before we bring the jury back out?

MR. HOBBS: No, Your Honor.

THE COURT: Okay.

MS. JOHNSON LEE: No, Your Honor. Judge, before the -- while the jury is coming in, I've got three more witnesses before we get to the SLED folks. One of them is Monroe Herring; I need to take him out of order.

THE COURT: Okay.

(REPORTER'S NOTE: Jury enters courtroom @ 2:55 p.m.)

THE COURT: Madam Solicitor?

MS. JOHNSON LEE: I have no further questions for this witness.

Sergeant, please answer any questions Mr. Hobbs has?

THE COURT: Well, it will be time for the next witness. Mr. Herring, right?

All right. Mr. Day, thank you for being here.

SGT. DAY: Yes, sir.

MS. JOHNSON LEE: The state calls Monroe Herring.

THE CLERK: Place your left hand on the Bible and raise your right hand.

MS. JOHNSON LEE: Judge,

SGT. CHARLIE MONROE HERRING, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

THE CLERK: Have a seat in the witness box. Give us your full name, spelling your last.

MR. HERRING: My full name is Charlie Monroe Herring, H-E-R-R-I-N-G.

DIRECT EXAMINATION OF SGT. CHARLIE MONROE HERRING BY MS. JOHNSON LEE:

Q: Where are you employed?

A: City of Dillon Police Department.

Q: In what capacity?

A: Investigator.

Q: How long have you been with the city?

A: Approximately 12 years.

Q: And were you with the -- what job title are you now?

A: I am a first sergeant and I work in investigations.

Q: Okay. Were you a first sergeant also back in July of this year?

A: Yes, ma'am.

Q: Now, did you have occasion to take some swabs from Sylvia Sam Inman and from Daniel Hamer?

A: I did.

MS. JOHNSON LEE: Permission to approach?

THE COURT: Yes, ma'am.

BY MS. JOHNSON LEE:

Q: I'm going to show you what's marked as State's Exhibit; is that 12, Madam Court Reporter?

COURT REPORTER: Yes.

BY MS. JOHNSON LEE:

Q: Thank you. Do you recognize what's contained in that packet?

A: Yes.

Q: What is that?

A: These are actual buccal swabs for DNA.

Q: And what is a buccal swab?

A: It is basically a cotton Q-tip that you scrub inside someone's mouth and then you submit to SLED and they can test it and get the DNA off of it.

Q: Okay. So, you took a swab on Daniel Hamer?

A: Yes.

Q: And you took a swab on Samuel, excuse me, on Sylvia Sam Inman?

A: Yes, ma'am.

Q: Okay. Do you know what day you took those on?

A: On July the 1st, I did for Ms. Inman at 11 o'clock out in the lobby. On July the 2nd, approximately 9:30, I did Mr. Hamer in the booking area of the jail.

Q: Now, after you physically swab the mouth, what do you do with that particular swab?

A: There's a box that comes with it, it gets put back in the box, gets put in this envelope, and it gets sealed, and I initial the corners, both corners, and put the date on it.

Then, I turn it over to Sgt. Cook.

Q: Is that Sgt. Jeffrey Cook?

A: Yes, ma'am, the evidence custodian.

Q: Okay.

A: And on these particular instances, both dates, July the 1st and July the 2nd, Sgt. Cook was standing beside me. So, once I sealed it, I immediately handed it to him.

Q: And is that a tamper-evidence seal?

A: Yes, ma'am.

Q: Okay. Thank you. Answer any further questions that Mr. Hobbs has?

CROSS-EXAMINATION OF CHARLIE MONROE HERRING BY MR. HOBBS:

Q: All right. Investigator Herring?

A: Yes, sir.

Q: You took a buccal swab from the victim on July 1st; is that correct?

A: Yes.

Q: How long was it before that was turned over to Officer Cook?

A: It was immediate. He was standing beside me when I took it.

Q: Okay. And then July 2nd from the defendant, Mr. Hamer, how long was it before that was turned in?

A: Immediately, Mr. Cook was with me when I done it.

Q: So, you handle it and seal it and give it to him?

A: Yes.

MR. HOBBS: No further questions, Your Honor.

THE COURT: All right. Thank you, sir, for being here.

MS. JOHNSON LEE: Can I ask that ---

THE COURT: I'm sorry.

MS. JOHNSON LEE: I'm sorry. I was just gonna ask that the investigator be excused from the subpoena. He's got something he's tending to.

THE COURT: Certainly.

Is there any objection, Mr. Hobbs?

MR. HOBBS: No objection, Your Honor.

THE COURT: All right. Sir, you're free to go.

Thank you.

MS. JOHNSON LEE: The state next calls Investigator Jason Turner.

LT. LARRY JASON TURNER, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

THE CLERK: Have a seat in the witness box. State your full name for the Court spelling your last.

MR. TURNER: Larry Jason Turner; last name is spelled T-U-R-N-E-R.

DIRECT EXAMINATION OF LT. LARRY JASON TURNER BY MS. JOHNSON LEE:

Q: Where are you employed?

A: City of Dillon Police Department.

Q: How long have you been there?
A: Twenty-six-and-a-half years.
Q: What is your current job title?
A: It's -- the title -- I carry the rank of lieutenant and I'm an investigator, but I'm -- I'm just recently been moved into supervision over investigations.
Q: And do you have any other law enforcement experience in addition to that 20-plus years?
A: Gosh. I spent the majority of my 26 years in investigations. I did work patrol, obviously, because that's where you start at, but crime scene, evidence handling, criminal -- what I call day to day criminal investigations to include misdemeanor type investigations and felony investigations.
Q: And so, you were an investigator on May 27th of this year?
A: Yes, ma'am.
Q: Now, how did you come to be involved in this case that we're here for today?
A: So, Friday, this would have been -- the 27th would've been a Thursday night. The next day, Friday, the 28th, one of the jobs that I do is I review cases, and Sgt. Day had called me the next morning, and as a result of mine and Sgt. Day's conversation and in looking at this report, I learned that in this particular instant they were talking about today in

Court, there is an issue with a knife and a hammer. So, my question was I didn't see the knife or hammer on any evidence report, to which as a result of my conversation with Sgt. Day, I learned that I would need to talk to a Judge to present probable cause to get a search warrant to go back to [redacted] East Cleveland Street, and search for and try to look for this knife and this hammer.

Q: So, did you get a search warrant?

A: We did. I called Judge Spivey. He is a Municipal Court Judge, and he also doubles a Dillon County Magistrate. And we -- I was able to call Judge Spivey. I was able to present probable cause to Judge Spivey. He agreed with my probable cause. He issued a search warrant for [redacted] East Cleveland Street under the limited scope of a knife and a hammer.

Q: And so, what date did you go to Cleveland Street?

A: If this event happened Thursday night around 10:30, this would have been 1:15 the next day, p.m.; 11:15 p.m., not a.m.

Q: So, you went to the house. Who was there?

A: Sylvia Inman, Ms. Sam Inman was there. She was the only one there along with, I say puppies, they're big dogs.

Q: So, what did you do when you arrived?

A: So, when we arrived, she met us on the porch. I announced why we were there, and what we were there to do. I told her that we had a search warrant, and that we were looking for a knife -- limited to a knife and a hammer, based

on the events from the night before. As a result of me saying that to Ms. Inman, she pointed to -- I was directed to the table in the living room, where there was a knife that had -- it was a -- I call it like a bi-fold; you push a little button and open the knife out. It had a black handle with like a little arm on it that you would stick -- that way you could stick it in your pocket and clip to your pants, and it was open sitting on the table. As a result of my conversation with Ms. Inman, that was the knife that we should be looking for. Also, I asked -- I told -- when I explained to her about the hammer, she, as a result of that conversation, I learned that there was a -- the hammers were put in a five-gallon bucket in the living room closet. So, we went immediately to the living room closet, opened the door, and there were the five-gallon buckets with the -- there were two hammers in the bucket.

Q: Did you seize both hammers?

A: Since -- since we didn't know which hammer it was, we seized two hammers. There were two hammers in the bucket, and we seized both of them.

Q: Did you seize any other items besides two hammers and one knife?

A: That's it; that's all we took.

Q: Now, what did you do with those items after you seized them?

A: Once we seized them, you know, we put them in a bag and we'll seal it, and then we hold it until we turn it over to our evidence custodian. Can I talk about evidentiary procedure?

Q: Please.

A: So, we knew we were gonna need swabs to compare to this particular -- these particular items. So, I actually held -- I held the two hammers and the knife in my lock box in my office until July the 14th of 2021, and that's when I turned it over to Sgt. Cook, who is the evidence custodian.

Q: Who has access to your lockbox?

A: So, there are only four people who have keys to our -- to the door to our building. I'm the only one that has a key to the door to my office, and there's no one else who has a key to my lock area inside.

Q: Okay. So, to get to that safe, they -- you're the only one with a key to that office, and you're the only one with a key to that safe where they were at?

A: Right.

Q: Okay. So, on what date ---

A: There were no break-ins. There were no break-ins. So, there was -- there was no outside contamination.

Q: Okay. And so, what day did you physically turn those over to Sgt. Cook?

A: July 14th of 2021.

Q: And at any point in time, did you go take the knife or the hammers out and do anything with them?
A: No, ma'am. And they were handled with a glove. They were collected with gloves on, proper protecting, and they were not handled after they were put inside of the paper bag and sealed.
MS. JOHNSON LEE: Permission to approach the witness, Your Honor?
THE COURT: Yes, ma'am.
BY MS. JOHNSON LEE:
Q: I have what's marked for identification as State's 9, 10, and 11. Can you please open State's 9? Here's some gloves and a pair of scissors.
Can you please open State's 9? Put the gloves on first.
A: I'm about to violate my own procedure.
Q: Okay. Please open State's 9.
A: May I stand, sir?
THE COURT: Yes, sir.
A: And I can still see my original seal.
Q: Now, those are in boxes. Did you put them in bags or boxes?
A: So, these are boxes. I was thinking bag, but it's a box. These are actually my boxes.
Q: How do you know that you put those in the -- in that box; how would you know that item was put in there by you?

A: So, on -- whenever you seal the evidence -- let me sit down so you can hear me. So, whenever you seal the evidence in a box or on a bag, you take evidence tape, and you make sure that you cross any opening on it. The key to it is, is that you put your initials and you put the date that you sealed it, and you put it in multiple areas. That way, if someone were to try and contaminate it or to -- to disturb the evidence to try to make it where it's hard to identify or understand, you've got multiple areas where I've initialed. And I know I overkill it, but I actually initial it almost on every aspect, you'll see a J.T. and 7/14/21 on almost every corner of the tape.

Q: Now, is there also some SLED tape on there showing that it was opened at a later time?

A: There is. And they use yellow just like we do. Actually, there is, 2/24/21 -- is that a 2 or an 8? I can't tell what that number is, but something 24/21.

Q: And is that over yours?

A: It's over mine. Over the top of mine.

Q: Okay.

A: Okay. So inside, it's resealed.

Q: And what is on that reseal?

A: So, I'm looking at a -- a lab number L21-15304, and I'm gonna be honest with you, that's a 4 and I'm not sure what -- that's somebody's initials, and then there's a 8/24/21 date on

it.
Q: Okay. Okay. And is that -- and SLED agents will testify in a little bit; could that potentially be SLED?
A: Yes, ma'am.
Q: Okay. Now, will you open that item? Can you hold that item up?
A: This okay?
Q: Yes. And that is the knife?
A: Yes, ma'am.
Q: That you recovered from [redacted] Cleveland Street?
A: Yes, ma'am.
Q: And that is in Dillon in Dillon County?
A: In Dillon; yes, ma'am.
Q: Okay. All right. And did anything stand out to you about that knife when you seized it?
A: When you say stand out, the only thing that -- I'm not a knife person, I just -- I noticed this little thing here, this little clip and that's what holds it to your pants. I'm lazy, I just throw mine in my pocket, but this is actually designed to hold it in your pants. The only reason it actually caught my attention is because I typically break that within the first week of me owning a knife, so I don't ever have those. That's the only reason why it even caught my attention.
Q: Okay.
MS. JOHNSON LEE: All right. And at this time, I would

move to have State's 9 put into evidence.

THE COURT: Any objection?

MR. HOBBS: No objection, Your Honor.

THE COURT: All right. State's 9 is into evidence without objection.

STATE'S EXHIBIT NUMBER 9

ADMITTED INTO EVIDENCE

BY MS. JOHNSON LEE:

Q: Now, will you open -- I put -- okay. Now, if you'll open Item Number 10?

MS. JOHNSON LEE: Judge, I don't want to just sit this up here on the bar. Can I have an officer hold it just to keep it secure during the trial?

THE COURT: Yes, ma'am.

BY MS. JOHNSON LEE:

Q: What is the label on the outside of Item 10?

A: So, the label on the outside of ---

Q: For Exhibit 10?

A: --- Exhibit 10 is -- this is an evidence box, and this is typically a box that we use for like a gun or a larger type item. It's got the case number, 2021-05188, Item Number 3; it's got the alleged defense of DV high and aggravated nature; the date collected, 5/28; time collected by me; black-and-red hammer, and it was in a five-gallon bucket in the living room closet.

Q: Okay. Does that box both your tape and SLED tape over it?

A: It does. Yes, ma'am, it does. Wrapped package inside just like the last one. Same lab number, L21-15304, the number 3. I'm going to guess that's initials. I can't -- it looks like the word, run, but I don't think that's it.

Q: So, it's got to be something from SLED?

A: Yes, ma'am; it's not ours.

Q: And what is that item?

A: This is the -- what I call the black-and-red handled hammer.

Q: And where did you get that from?

A: This would have been in that five-gallon bucket in the closet in the living room at [redacted] East Cleveland Street.

Q: At this time, I would move to have 10 put into evidence for the state?

THE COURT: Any objection?

MR. HOBBS: No objection, Your Honor.

THE COURT: All right. State's Exhibit Number 10 is into evidence without objection.

STATE'S EXHIBIT NUMBER 10

ADMITTED INTO EVIDENCE

BY MS. JOHNSON LEE:

Q: And now if you'll please open number 11. Now, box 11, does it have any identifying information on the outside?

A: So, box 11 has the case number on front with my name on it, the day collected, the yellow-handled hammer from the five-gallon bucket. It also has tape with my initials and the date that I sealed it. I would've turned it over to Sgt. Cook. And it also has SLED tape over mine.

Q: Okay.

A: Inside is a packet wrapped in paper, L21-15304, the number 5; that same set of initials from the other two, and 8/24/21.

Q: And again, that would be something from SLED?

A: That's SLED; that's not us.

Q: Do you recognize that item?

A: Yes, ma'am. This would be what we labeled as the yellow-handled hammer that we took from the five-gallon bucket from the living room closet.

MS. JOHNSON LEE: At this time, I would ask to move 11 into evidence for the state.

MR. HOBBS: No objection, Your Honor.

THE COURT: All right. State's Exhibit Number 11 is into evidence without objection.

STATE'S EXHIBIT NUMBER 11

ADMITTED INTO EVIDENCE

BY MS. JOHNSON LEE:

Q: Is there anything else that you did with respect to this case?

A: The only other thing I did in this case was in a pretrial meeting, we needed the EMS run report, and I had to get a search warrant for that because for HIPPA violation, we have to have a search warrant to get that because of medical -- it's medical data that we're getting from the EMS run sheet where the ambulance actually went to the scene that night. So, I did a search warrant and got that from Daniel Moody, who is the EMS Director, and I also got the -- the 911 call, attempted to get the 911 calls from the 911 center with the 911 call CAD.

Q: Now, why are you so careful when you collect evidence and how you seal it up and package it and what you do with it?

A: So, in a case like this where you're talking about fingerprints, DNA, any of those type of collection samples, air, time, moisture, humidity, all those things deplete DNA; they deplete fingerprints. So, you've got a time range that you need to get these things. You also have to be very careful how you handle them, because if you handle them improperly, you could destroy, you could contaminate or cross contaminate, which is whole separate problem. So, you have to glove up so that you don't put my DNA on the object in question, which we're taking. That could create an interesting issue for court. Also, any time you transfer or that you move an item from A to B, you have to make sure that you document it with a chain of custody because it must always

be important that we always know exactly where this piece of evidence is from the time we take it from the crime scene or the scene of the incident, until the time it gets to court or to have it returned back to the owner of the property. So, you have to take very close care to glove up, to make sure that you package it properly, to make sure that you seal it properly, make sure that you initial so that we know the right people are involved and that no one outside the proper chain of custody is tampering with or messing with the evidence.

Q: So, when you say chain of custody, you mean so we know who touched it and when they touched it?

A: Right. You should always know at any given time where that piece of property is and who's touched it and how it got there.

Q: And who is the evidence custodian for the police department?

A: Sgt. Jeffrey Cook is our evidence custodian.

Q: Okay. So, it's -- everything got turned over to him?

A: Yes, ma'am.

Q: And until it did, it was secure?

A: Yes, ma'am.

MS. JOHNSON LEE: I beg the Court's indulgence?

BY MS. JOHNSON LEE:

Q: After you collect all this evidence -- and I know Monroe testified out of order, but what's the purpose for going to

get these buccal swabs?

A: The purpose for the buccal swab or what we call the inner cheek swab, a lot of times we'll use what I like to call lay language, because people don't understand what that word means, but it's simply an inner cheek swab. And what we've learned through speaking with our DNA analyst at SLED and through training, is that instead of having to draw blood, use to you'd have to take them to the hospital, you'd have to draw a tube of blood, it's very invasive. So, we have come up with -- or science has come up with a very non-invasive procedure that we just simply get you to sign a consent form, we take the swab and do your inner cheek. The significance of the inner cheek swab is we've got to have something to compare any sample that may be collected off of, say, the handle of the knife or the end of the knife or in the handle of the -- of the hammer and the end of the hammer. So, if we just submitted the hammer and the knife without any control -- what we call control samples or known samples, we would get a letter from SLED saying, hey, we generated all this data, but we've got nothing to compare it to, and so it makes the process move faster and cleaner if we submit any item and any potential person who may be involved in the event, in the event of identification. It also helps if we have an unknown. Not only can we include someone in those samples, but it can also exclude them from the samples, too. So, it's not just

targeting somebody, it could also clear somebody.

Q: And were all these things sent to SLED; the swabs, the hammers, and the knife?

A: Yes, ma'am.

Q: Thank you. Please answer any questions Mr. Hobbs may have.

A: Yes, ma'am.

CROSS-EXAMINATION OF LT. LARRY JASON TURNER BY MR. HOBBS:

Q: Lt. Turner, were you present at all on the scene on May 27th, 2021?

A: No, sir.

Q: Okay. So, you never had any opportunity to witness the actions of the defendant?

A: No, sir.

Q: Or the victim?

A: No, sir.

Q: Or any part of the investigation that occurred on the 27th?

A: No, sir.

Q: Instead, you had a search warrant to retrieve these items from the home; is that correct?

A: Yes, sir.

Q: And then you show up on the afternoon of the 28th?

A: Yes, sir.

Q: And when you show up, you're looking for specific items;

I believe that the items that you took were a knife?
A: Yes, sir.
Q: And two hammers?
A: Yes, sir.
Q: Okay. Now, let's start with the knife?
A: Yes, sir.
Q: Okay. Where was the knife located when you first arrived at the residence?
A: So, when you walk in the front door of [redacted] East Cleveland Street, you're gonna walk into the living room. That's where Sam was standing in the door, and I don't want to quote what she said, but as a result of me telling her why I was there and what we were looking for, I was directed to -- if you're standing in the front door and if you look to your left, there is a dining room table to the left, I'd say about six or seven feet from the front door, and on that table there was a box cutter and there was a knife, that was open, which is the knife that we have; it was the black-handled knife with the silver clip on it and the knife was open in the open position.
Q: The knife was open?
A: Yes, sir.
Q: And in part of that conversation, you were told by Sam that she had picked up the knife on the floor and put it on the table; is that correct?

A: Yes, sir. Yes, sir.
Q: Okay. Do you recall if Sam was wearing gloves?
A: I do not.
Q: Okay. Was Sam wearing gloves?
A: She was not; no, sir.
Q: Okay. You talked about how careful we have to be when we're handling items?
A: Yes, sir.
Q: Why do we need to wear gloves?
A: So, we wear rubber gloves because it minimizes the transfer of DNA, what we call touch DNA or skin cells from our hand to whatever object we're touching.
Q: All right. If you had blood on your hand, could you also transfer that onto an object?
A: Yes, sir; you could.
Q: Okay. Where were the hammers located that you ended up retrieving?
A: So, if we go back to the front door, remember the table is to the left where we got the knife. So, the door swings open to the right. Behind the door is a closet, so you have to kind of move the door open, you open the closet door. So, you step in and you turn to the right, and when you face the open closet door, living room closet door, it would have been in a five-gallon bucket down and to the right and back corner of that little closet.

Q: Okay. And so, these hammers that you took weren't out in the open anywhere?
A: No, sir; they weren't.
Q: They were put away?
A: Yes, sir.
Q: In the closet?
A: Yes, sir.
Q: With the rest of the tools?
A: Yes, sir. There were more tools in that box -- in that five-gallon bucket.
Q: Okay. Again, prior to the knife being on the table, open blade, Sam picks it up off the floor and puts it on the table?
A: Yes, sir; she did, yes, sir.
Q: Sgt. Day -- I'm sorry -- Lt. Turner, excuse me, did you take over as the lead investigator in this case?
A: I did not. Officially, Sgt. Day is the lead on this. I was simply brought in for case review.
Q: Okay.
A: And to kind of help facilitate -- since it was going to come to General Sessions Court, Sgt. Day works on a rotating shift. We work every day, and so it's easier for us to run down information, to do follow-up and complete, but there was minimal -- like I said, my only involvement was the search warrant the next day, the search warrant for the EMS run sheet, and I -- I'm the one who obtained the 911 CAD report

and the CD from the 911 center.

Q: Okay. Was there ever a subpoena of any medical records relating to any injuries sustained by Sam?

A: There were not; no, sir.

Q: Are you aware of any medical records that exist?

A: No, sir.

MR. HOBBS: No further questions, Your Honor.

THE COURT: All right.

Anything further?

MS. JOHNSON LEE: I beg the Court's indulgence?

REDIRECT EXAMINATION OF LT. LARRY JASON TURNER BY MS. JOHNSON LEE:

Q: Mr. Hobbs asked you if there were any medical records. Did you obtain something from EMS?

A: Yes, I did. So, when we served EMS, Daniel Moody, who is the EMS Director, brought me a printout of the EMS run sheet and it did have data from the EMS ambulance that responded to the scene that night, which would've been the first event, if I'm not mistaken from listening to the testimony.

Q: Thank you. No further questions.

THE COURT: All right. You may be excused.

MS. JOHNSON LEE: Sgt. Jeffrey Cook.

THE COURT: How long do you think -- anticipate this witness to be?

MS. JOHNSON LEE: Very short.

THE COURT: All right. We'll get through this witness. We've been going since 2 o'clock.

Is everybody okay?

THE CLERK: Yes, sir.

Place your left hand on the Bible and raise your right hand.

SGT. JEFFREY COOK, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

THE CLERK: Be seated. State your full name for the court spelling your last.

SGT. COOK: Sgt. Jeffrey Cook.

DIRECT EXAMINATION OF SGT. JEFFREY COOK BY MS. JOHNSON LEE:

Q: Where are you employed?

A: I'm employed with the Dillon Police Department.

Q: And what is your job there?

A: My job title is evidence custodian and warrant officer.

Q: And how long have you been there?

A: Twenty-four years.

Q: Do you have any other law enforcement experience as well besides evidence custodian and chief warrant officer?

A: I worked the road in patrol, worked my way up.

Q: Okay. Now, what was your job title back in May through July?

A: Evidence custodian and warrant officer.

Q: Okay. Are you the one that took possession of all of the

evidence in this case?
A: I am.
Q: Okay. Let's go through. The swabs that were given to you by Monroe Herring, what did you do with those?
A: After I collected them, after Monroe -- Investigator Herring signed them over to me, I took them and put them in our evidence room until I could get them to SLED.
Q: Okay. Now, does anybody have access to that evidence room?
A: No, ma'am; I'm the only one with a key.
Q: What about the black-and-red hammer; what did you do with that?
A: Once I collected it, I put it in the evidence room until I could go to SLED with it.
Q: What about the yellow-handled hammer?
A: Same thing.
Q: And the knife?
A: Same thing.
Q: And those items, once you got them, did you ever touch them until you removed them to go to SLED?
A: No, ma'am. Once they went in the evidence room, they didn't leave there until they went to SLED.
Q: Okay. Did you -- whenever you carried them to SLED, did you get them out say a day early?
A: No, ma'am.

Q: So, you get them out that day to carry to SLED?
A: Yes, ma'am.
Q: And do you know what days you carried those items to SLED?
A: I carried all of it on August the 17th.
Q: Now, did you get the evidence back from SLED?
A: I did. I got the hammer -- I got the two hammers and the knife back on September the 17th, 2021. I got the DNA swabs on December the 2nd.
Q: Okay. And when you say the DNA swabs, was there an additional packet or two from SLED that you retrieved as well?
A: That's correct.
Q: Okay. And I'm gonna hand you what's marked for identification as State's 13 and 14.

MR. HOBBS: No objection.

STATE'S EXHIBIT NUMBER 13 AND 14
MARKED FOR IDENTIFICATION

BY MS. JOHNSON LEE:

Q: Did you retrieve those items from SLED as well?
A: I did.
Q: Okay. And everything you did was it done in accordance with standard operating procedure?
A: It was.
Q: Thank you. Please answer any questions Mr. Hobbs has.

CROSS-EXAMINATION OF SGT. JEFFREY COOK BY MR. HOBBS:

Q: Officer Cook, when did you retrieve these items from SLED?
A: The hammer, the knife -- the two hammers and the knife, I retrieved on September the 17th.
Q: Do you have any documents that show you retrieved those items on September 17th?
A: The documents from SLED where I signed -- where they signed them back over to me.
Q: Okay. Do you recognize your signature?
A: That's correct.
MR. HOBBS: Your Honor, can I approach?
THE COURT: Yes, sir.
BY MR. HOBBS:
Q: Is that your signature on there?
A: That is.
Q: Do you see the last entry there; what date does it say that you retrieved these documents?
A: It looks like it says 12/7.
Q: So, you're testifying here today that you had gotten it two-and-a-half months prior?
A: The paperwork I got says September the 17th.
Q: What paperwork?
A: It was the copy that you got.
MS. JOHNSON LEE: May I look at that, please?
THE COURT: Yes, ma'am.

BY MR. HOBBS:

Q: I just want to be clear, you retrieved these items from SLED on September 17th; is that right?

A: The hammer -- the two hammers and the knife, I did.

MR. HOBBS: No further questions for this witness, Your Honor.

THE COURT: All right.

MS. JOHNSON LEE: I need to have these two items marked as exhibits, please.

REDIRECT EXAMINATION OF SGT. JEFFREY COOK BY MS. JOHNSON LEE:

Q: I'm going to hand you what's marked for identification as State's 15 and 16. First is 15. Is that a document that you signed at the State Law Enforcement Division?

A: That is correct; that is what I received.

Q: And is that for the two hammers and the knife?

A: That is correct.

Q: And what date does that show that you retrieved those items from SLED?

A: September the 17th, 2021.

Q: Okay. And next I'm gonna show you what's marked for identification as State's Exhibit 16 regarding the buccal swabs that were taken from those items and is your signature on there?

A: It is.

Q: Now, what date did you pick up those swabs that were

taken from the aforementioned items?

A: December the 2nd, 2021.

Q: Thank you.

MS. JOHNSON LEE: I'd move to have those two documents put into evidence as State's 15 and 16?

THE COURT: Yes, ma'am.

Any objection?

MR. HOBBS: Your Honor, I don't have any objection.

THE COURT: All right. State's 15 and 16 are into evidence without objection.

STATE'S EXHIBITS NUMBER 15 AND 16

ADMITTED INTO EVIDENCE

MS. JOHNSON LEE: No further questions.

THE COURT: All right. Sir, you can be excused. Thank you for being here.

BY THE COURT:

THE COURT: All right. At this time, we're gonna take a 10-minute break or recess, and we're gonna come back and continue the case. Okay?

Thank you so much for your attention. Please don't discuss the case.

(REPORTER'S NOTE: Jury exits courtroom @ 3:36 p.m.)

RECESS - 3:36 P.M.

*****OFF THE RECORD*****

ON THE RECORD - 3:53 P.M.

(REPORTER'S NOTE: Jury enters courtroom @ 3:53 P.M.)

THE COURT: All right. Is there a stipulation you would like to place on the record?

MS. JOHNSON LEE: Yes, Your Honor, I would defer to Mr. Hobbs.

MR. HOBBS: Your Honor, there was a previous plan to call two representatives from SLED; one, a Ms. Nguyen, to have her supplement her testimony about getting these swabs from these particular items that were turned over to SLED. I find no basis to contest the work that she did or the chain of custody in her handling of those items. So, I would stipulate that these items were swabbed and that those swabs can be introduced into evidence without Ms. Nguyen's testimony.

THE COURT: All right. And is that in relation to which state's exhibits?

MS. JOHNSON LEE: That's State's Exhibit 13, Your Honor.

THE COURT: All right. So, State's Exhibit 13 is stipulated as to the chain of custody and introduced and moved into evidence; is that correct?

MR. HOBBS: That's correct, Your Honor.

THE COURT: Okay.

MS. JOHNSON LEE: And would that also apply to the two buccal swabs?

MR. HOBBS: As far as Ms. Nguyen processing those items or swabs or ---

MS. JOHNSON LEE: Any issue with those?

MR. HOBBS: No issue with the buccal swabs.

MS. JOHNSON LEE: Okay. 13.

THE COURT: So, that's State's Exhibit 12 and 13 are into evidence by stipulation?

MR. HOBBS: That's correct, Your Honor.

THE COURT: All right.

STATE'S EXHIBITS NUMBER 12

ADMITTED INTO EVIDENCE

MS. JOHNSON LEE: Your Honor, the state calls Samuel Stewart.

THE COURT: All right.

SAMUEL ALAN STEWART HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

THE CLERK: Have a seat in the witness box and state your full name for the Court and spell your last for us, please, sir.

MR. STEWART: Samuel Alan Stewart, S-T-E-W-A-R-T.

DIRECT EXAMINATION OF SAMUEL ALAN STEWART BY MS. JOHNSON LEE:

Q: Where are you employed?

A: I work for the South Carolina Law Enforcement Division, commonly known as SLED.

Q: How long have you been at SLED?

A: Approximately nine and a half years.

Q: What's your job title there?

A: A DNA analyst assigned to the DNA Casework Department.
Q: Now, will you please tell the Court about your educational background?
A: I received my Bachelor's in Science and Biology from Francis Marion University. I also received in-house SLED training under other court-qualified analysts for over a year and a half, where I did successfully complete a written exam, an oral exam, a mock trial, and a competency test before I was deemed competent as a DNA analyst.
Q: Describe your responsibilities at SLED?
A: As DNA analyst, I'm responsible for processing any evidence and known standards for DNA. My purpose is to try and determine whether or not the DNA profile of those known individuals involved in that case can be included or excluded as a possible contributor to the DNA profile from the evidence. I'm also responsible for reviewing the work of my peers, of eight hours continuing education every year, as well as completing any other miscellaneous tasks that need to be completed in the DNA Casework Department.
Q: And you are a forensic scientist?
A: That is correct.
Q: Now, have you testified as an expert in court before regarding DNA identification testing?
A: Yes, I have.
Q: And how many times has that been?

A: Thirty-nine.
Q: And 39 times you've been declared an expert by the Court?
A: That is correct.
Q: In the field of?
A: DNA analyst.

MS. JOHNSON LEE: And, Your Honor, at this time, the state would offer Samuel Stewart as an expert in DNA analysis.

THE COURT: All right. Mr. Hobbs?

MR. HOBBS: Without objection, Your Honor.

THE COURT: All right. I find Mr. Stewart is qualified as an expert in DNA ID testing and analysis.

BY MS. JOHNSON LEE:

Q: What is DNA?
A: DNA stands for deoxyribonucleic acid. It is a genetic material that's found in every individual and is responsible for certain traits such as eye or hair color. DNA is contained in condensed packets known as chromosomes that are found in every cell in the human body, excluding red blood cells. We receive half of those chromosomes from our mother and the other half from our father. As a DNA analyst, I target certain locations on your chromosomes known as STRs and that stands for short tandem repeats. And to compile a DNA profile, we look at 21 of those different STR locations, and we develop a DNA profile, which we then can use for comparison purposes and to make sure that it is not from any other

individual.
Q: Now, what STRmix?
A: So, STRmix is a computer-based software program that can aid me in interpreting DNA profiles. I also will assign a statistical value to any kind of comparisons that I do. Now, I do want to mention that I'm doing all the interpretation and comparison on my own as well. On the forefront I should say, but then after I've got my own interpretations and results, I enter the profile in the STRmix for confirmation and for also to assign that statistical value for comparison purposes.
Q: Now, what are the benefits to using a probabilistic genotyping software, if I'm pronouncing that correctly?
A: Yeah, that is correct, that is what STRmix is. It allows us to interpret those DNA profiles, mostly complex and sometimes low-level profiles, that can be difficult sometimes. The technology is very sensitive when detecting DNA, and so sometimes we need just a bit of assistance just for applying comparison purposes, whenever interpreting those DNA profiles. And so that's why we use the STRmix as a software aid.
Q: Now, is STRmix accepted in the forensics community?
A: Absolutely. It was first validated and used by the U.S. Army Criminal Investigations Lab in 2014. It was also then subsequently started using by the FBI and other labs across the state. Currently, right now, it's approximately used in 59 labs across the United States and International labs,

that's including the UK, Canada, Australia, and New Zealand.
Q: Now, briefly explain the statistics generated by STRmix?
A: STRmix generates -- the STRmix comparison known as likelihood ratios. And a likelihood ratio is a numerical value that explains -- or two possible explanations of a scenario. If I can give an example, pretty much what a likelihood ratio is, say we see the likelihood of -- say we see the likelihood of seeing a lion and tiger in the same place. Is it more likely to see a lion and tiger in the same place at the zoo, or is more likely to see a lion and tiger in the same place at your local park. Naturally, you would think you would see a lion and tiger at the same place would be at the zoo, and essentially, that's what we do with DNA. We take the known DNA person's profile, then we're seeing if that person with the likelihood of that person's DNA profile being included as a contributor given that DNA profile from the evidence, or is more likely that's from an unrelated unknown individual likely being in that profile -- DNA profile from the evidence.
Q: Now, what is a comparison standard?
A: That is a known standard from an individual; it can be either a known blood standard or a buccal swab, which was explained earlier as just a simple cheap swab from a sterile cotton swab, and we can use that to develop your DNA profile and then compare it to the DNA profile from the evidence.

Q: Now, when a comparison standard comes into SLED with whatever else evidence, do you assign a specific lab number to that case that follows that case throughout?

A: Absolutely. Once it comes into the Evidence Control Department, it's assigned that unique lab number, and also each item is also given its' own unique item number as well, and that's contained in our chain of custody, and it follows those items throughout it's time at SLED.

Q: Now, the case that we're here for now, when did any of those items come to SLED?

A: The date that I have is August 17th, 2021.

Q: Now, when do you actually get custody of any of these items?

A: I took the items into my custody on August the 31st, 2021.

Q: Okay. Prior to their coming to your custody, what happens with items?

A: So, the items are then held in our Evidence Control Department until it's assigned to an analyst. Once it's been assigned to an individual, the individual in the Evidence Control Department takes it into their custody, and then they transfer it to the analyst. In this case, it went to Rachel Nguyen first; she did the serology and processing of some of those items for me, and then once she completed it, she put it in a secured area for me, for me to pick it up when I was

ready for it to carry on for the DNA processing of the portion of the analysis.

Q: Okay. And what type of swabs that was it that Rachel Nguyen did?

A: So, the -- the black-and-red hammer; that was our Item 3. So, she created swabs for the entire head of the black/red -- black-and-red hammer. That's our Item 3.1. She also created swabs for the entire midsection and handle of black-and-red hammer; that was item 3.2. There was a black-handed knife open, blade out; that was our item 4. So, she swabbed the entire blade of that black-handle knife and that was item 4.1. Then she swabbed the entire handle of the black-handled knife and that was item 4.2.

Q: Okay. And those swabs, I believe, are what is in evidence now as State's Exhibit 13; do you need to see that to verify?

A: Yes, I can take it. The hammer came in, the yellow-handled hammer came in as Item 5, and she swabbed the entire head of the yellow-handled hammer, and that was item 5.1, and then she swabbed the entire handle of the yellow-handled hammer, and that was 5.2.

Q: Okay. So, those swabs that she made, all come to you?

A: That is correct.

Q: Okay. Now, you also received the buccal swabs?

A: That is correct.

Q: And was that for Sylvia Inman and Daniel Hamer?
A: That is correct. The buccal swabs on Sylvia Inman were Item 1 and the buccal swabs on Daniel Hamer, that was Item 2.
Q: Okay. Now, what did you do once you received those buccal swabs and those swabs from the items that came from Rachel Nguyen?
A: I processed them for DNA. I cut from the evidence first, so I had cut these swabs from those various items, and then I take them and I put them in a solution. This solution extracts or takes the DNA off of the swab, and then I will process them with different -- different processes, which is four main different ones. Data extraction is taking the DNA off of the swabs. Quantification, this part is where I'm trying to gauge how much DNA I have. This step is very important. I need to know exactly how much DNA I have, so I can hit a certain range. Outside of that range, I'm not going to get a viable DNA profile. Once I understand how much DNA is contained for each item, I can then amplify it, and what that means is just making many, many copies of the DNA. And once again, that's just so I can try to get a viable DNA profile from these items. And then our last step is known as separation. It's separating the DNA to those different types, those different locations that I stated earlier, and that's developing the whole DNA profile. So, I would do that for the evidence, and then I will come back and do that for the

standards, and this is to prevent any kind of cross contamination. Evidence is always done first, and then standards are done separately.

Q: And you actually developed some DNA profiles in this particular case?

A: Yes, I did.

Q: Now, did you generate a report, a six-page report regarding all of your findings in respect to this case?

A: Yes, I did.

Q: Okay. This case is lab number L21-15304?

A: That is correct.

Q: And is your report dated September 20th, 2021?

A: That is correct.

MS. JOHNSON LEE: Permission to approach?

THE COURT: Yes, ma'am.

BY MS. JOHNSON LEE:

Q: I'm handing you what's marked for identification as State's Exhibit 8; is that the report that you prepared regarding your DNA analysis in this case?

A: Yes, it is.

MS. JOHNSON LEE: At this time, I would like to move the report into evidence.

THE COURT: All right. What -- what exhibit number was that?

MS. JOHNSON LEE: I believe it was 8.

A: 8 is correct.

THE COURT: 8. Okay. Any objection?

MR. HOBBS: Without objection, Your Honor.

THE COURT: All right. State's Exhibit Number 8 is into evidence without objection.

STATE'S EXHIBIT NUMBER 8

ADMITTED INTO EVIDENCE

MS. JOHNSON LEE: Your Honor, and to make it easier for the jury, I'd like to put each page of the report up on the big screen as Agent Stewart discusses each page.

THE COURT: Okay.

MS. JOHNSON LEE: Only about half the page shows up, so if you'd just scroll up as Agent Stewart discusses it.

BY MS. JOHNSON LEE:

Q: Okay. Let's start with page 1, September 20th, 2021, DNA analysis; this is the first page of your report?

A: That is correct.

Q: If you will scroll up, please, ma'am.

Okay. The comparison standards, tell the jury about those?

A: So, those are my known standards that I'm using for comparison purposes. Buccal -- Item 1, buccal swabs of Sylvia Inman, and Item 2, buccal swabs from Daniel Hamer. And on both stating that the DNA profiles developed for both of those items were suitable for a known standard.

Q: Okay. And those are already, I believe, in evidence as State's Exhibit 12. I'm going to hand these to you. And is that the packaging that the standards, the buccal swab standards were put back in?

A: Yes, it is. I recognize the unique SLED number, the L21-15304, and it also has my initials when I entered and exited the heat-sealed pouch. It was my initials on the packing itself.

Q: And let's go back just a minute with those and the other swabs. When items come to you, swabs, buccal swabs, how are they packaged?

A: They're packaged in these heat-sealed packages normally, or they could be in a bag, but usually either it's sealed like this heat-sealed pouch, or if it's in a bag, then it has evidence tape wrapped around it.

Q: Okay. And is that usually tamper resistant or it's always tamper resistant?

A: That is correct.

Q: So, after you opened that package up, do what you need to do, the science of it, do you repackage it again in tamper-proof or tamper-evident packaging?

A: That is correct. Once I'm done or completed my analysis, I seal it back up, and I put it in the secure location in the laboratory.

Q: And you mentioned having you put a mark on it?

A: Yes, my initials and date when I seal the container.
Q: Okay. Let's go to page 2. Okay. Items of evidence, if you'll start with that, please?
A: Yes. So, Item 3 was the black-and-red hammer. Item 3.1, swabs from entire head of black-and-red hammer. Presumptive testing for blood was positive, but the -- DNA profile developed is insufficient for interpretation.
Q: Okay. Explain what that means when the presumptive testing is positive for blood.
A: We did do testing for blood, and it was positive, and that could be either -- some varying factors. I know that it was listed on the -- the evidence report, or my evidence worksheet, that there was rust there. So, the rust could have possibly could have contan -- not contaminated but could've interfered with the testing, or that the individual had a low white blood cell count. Whenever we're testing for blood, we're testing for the red blood cells, but whenever we're developing a DNA profile, it's actually your white blood cells that we're developing a DNA profile from. And this is because the white blood cells actually have the nucleus that contains the genetic material. So, it could be either one of those varying factors, but I got a limited profile that was not suitable for comparison purposes.
Q: Would you need a lot more blood there on that particular swab in order to get a profile?

A: If it was because of, you know, a lack of white blood cells, then that is correct.

Q: All right. What about 3.2?

A: 3.2, swabs from entire head section and handle of the black-and-red hammer. Presumptive testing for blood was negative -- DNA profile was developed, but due to the limited information obtained, and the inability to determine the number of contributors, no further interpretation will be offered. And once again, it was just lack of -- lack of genetic information. The profile just was not seem -- it was not deemed suitable for comparison purposes.

Q: Okay. Item 4.

A: The black-handled knife open laid out, that was item 4.1 with a swab of the entire blade of the black-handled knife. Presumptive testing for blood was positive. A DNA profile suitable for comparison was developed, and likely ratios for this profile were calculated using the STRmix.

I have different sets of propositions, and I just want to state that each proposition is me comparing that known individual to that DNA profile separately.

So, with this first proposition I'm comparing Sylvia Inman. I deemed this profile as a mixture of at least three individuals, and to make sure when I have more than one person contributing their DNA to that item. So, I'm saying that it's either a possibility that Sylvia Inman and two unidentified,

unrelated individuals contributed to the mixture, or is it three unidentified, unrelated individuals that contributed to the mixture. And my results are that the DNA profile is approximately 33 sextillion times more likely that is Sylvia Inman and two unidentified, unrelated individuals rather than -- excuse me -- contributed to the mixture than if it was three unidentified, unrelated individuals contributed to that mixture.

If I may state that this is very strong support for that first proposition that I have -- first HP for Sylvia Inman and two unidentified, unrelated individuals.

Q: Okay. And sextillion, that means 22 zeros behind that 3.3; is that correct?

A: That is correct.

Q: All right. Next page, please, ma'am.

The proposition set 2, this is when I'm comparing Mr. Daniel Hamer to the profile. Once again, I deemed this profile as a mixture originating from three individuals; Daniel Hamer and two unidentified, unrelated individuals contributed to the mixture and or is it three unidentified, unrelated individuals contributing to that mixture. And my results are the DNA profile is approximately 240 times more likely if it's Daniel Hamer and two unidentified, unrelated individuals than if it was three unidentified, unrelated individuals contributing to the mixture.

Q: Okay. And the next proposition?

A: This third proposition, we do this whenever we have more than one person being included as a contributor to the mixture. We do it where we compare both of them at the same time to see if that profile makes sense with both of them being a contributor. So, the DNA profile that was interpreted, once again, is originating from three individuals, Sylvia Inman, Daniel Hamer, and an unidentified, unrelated individual contributed to the mixture or three unidentified, unrelated individuals contributed to the mixture. And my results are that the DNA profile is approximately 44 septillion times more likely if Sylvia Inman, Daniel Hamer, and an unidentified, unrelated individual contributed to the mixture than it was three unidentified, unrelated individuals contributed to the mixture.

And I also have a disparity statement, and this is when we have one person who is obviously much higher in proposition set 1, Ms. Sylvia Inman was 33 septillion. But in proposition set 2 Mr. Daniel was 240. So, when we have that great of disparity or space between individuals who are contributing, we just want to see that if you -- if you're looking at just Mr. Daniel Hamer as the contributor, we want you to put more weight on proposition set 2 rather than proposition set 3, and that's just for non-bias purposes.

Q: Okay. And again, 4.1 where you're getting these results

from, that comes from the blade of the knife; is that correct?

A: That is correct.

Q: Okay. All right. And let's move on to item 4.2, the handle?

A: The swabs from the entire handle of the black-handled knife, once again presumptive testing for blood was done, and it was positive. The DNA profile was developed -- comparisons and likely a ratio -- calculated using STRmix. Once again, I have three proposition sets. This first proposition set is comparing it to Sylvia Inman. The DNA profile was interpreted as a mixture originating from three individuals, Sylvia Inman and two unidentified, unrelated individuals contributed, or three unidentified, unrelated individuals contributed to the mixture. The DNA profile has approximately 2.7 quintillion times more likely for Sylvia Inman and two unidentified, unrelated individuals than if it was three unidentified, unrelated individuals.

Proposition set 2 is comparing Mr. Daniel Hamer to that profile. Once again, it's a mixture originally from three individuals, Daniel Hamer and two unidentified, unrelated individuals contributing to the mixture or three unidentified unrelated individuals contributing to the mixture. And my results are that the DNA profile is 26 times more likely if Daniel Hamer and two unidentified, unrelated individuals contributed to the mixture than if three unidentified,

unrelated individuals contributed to that mixture.
Q: Now, is it harder to get touch DNA if blood is also present?
A: Yes; that is correct.
Q: All right. Let's move on to -- did you go through the disparity, I'm sorry ---
A: I'm sorry. Yes, proposition set 3, once again, because both of them are being included in the LRs, likelihood ratios, proposition set 3 is comparing both of them. The DNA profile was interpreted as a mixture originating from three individuals, Sylvia Inman, Daniel Hamer, and an unidentified, unrelated individual contributed to the mixture, or three unidentified, unrelated individuals contributed to the mixture. And the DNA profile is 17 sextillion times more likely if Sylvia Inman, Daniel Hamer, and an unidentified unrelated individual contributed to the mixture than if three unidentified, unrelated individuals contributed to the mixture. And once again, this one has a disparity statement once again, since it's such a great, vast difference between Sylvia Inman's likely ratio and Mr. Daniel Hamer's likely ratio. If you are just considering him, we want you to put more weight on proposition set 2 versus proposition set 3.
Q: And proposition set 2 is Mr. Hamer on the handle, correct?
A: That's him being compared to the evidence from the

hammer.

Q: Thank you.

Now, the yellow hammer, Item 5?

A: Swabs from the entire head of the yellow hammer, that's Item 5.1. Presumptive testing was positive, but the partial DNA profile developed was insufficient for interpretation.

Q: And 5.2?

A: The DNA -- the swabs from the handle, excuse me, yellow-handled hammer, presumptive testing was positive, but the partial DNA profile developed was insufficient for interpretation. And if you scroll down a little bit more, there's my table, my verbal scale.

Q: And explain what that is?

A: So, this is what we use to try to put more context to those numbers that I stated, mostly affected 4.1 and 4.2. So, for item 4.1 when I'm preparing Ms. Sylvia Inman when she had the 33 sextillion, that would be continued -- that would be considered very strong support. We're looking at that first box for supportive propositions. And therefore, Mr. Hamer for the item 4.1, the 240 that would be considered moderate support. So, this is just us giving more context to those numbers when you're ever looking at the comparisons and trying to put that into -- into more context.

Q: Is there anything else that is contained in your report that you needed to point out to the Court?

A: No, that is all.
Q: Now, I'm going to show you what's marked for identification as State's Exhibit 14. Can you please identify what that is?
A: So, these are my DNA extracts. These are the actual tubes that the DNA was contained or still is contained in that I used for my processing. Whenever we've completed our analysis, we take these DNA tubes and we send it back to the submitting agency for retention, so that they can keep just in case maybe they want to do some testing later on down the line. So, we send it back with the evidence.

MS. JOHNSON LEE: Okay. At this time, I would ask to move that into evidence.

MR. HOBBS: No objection, Your Honor.

THE COURT: All right. State's Exhibit 14 is into evidence without objection.

BY MS. JOHNSON LEE:

Q: And again, everything that either came into SLED's possession or left SLED's possession to go back to the local agency, everything is done in standard operating procedure?
A: Yes; that is correct.
Q: And everything is sealed -- whether coming or going, is it sealed and protected from any contamination or anybody being able to open it and do something to it, put somebody else's DNA in it and close it back up? That's not possible,

right?

A: No, that is not possible. We keep it, as I said, in a secure room that only the other DNA analysts can access. But it's in my care -- it's my area -- I have my own area within the laboratory, and I keep it secure in there. So, no tampering or no contamination was done with this case.

Q: Thank you, sir. Please answer any question that Mr. Hobbs has for you.

CROSS-EXAMINATION OF SAMUEL ALAN STEWART BY MR. HOBBS:

Q: Mr. Stewart, I want to go back through your processes and your conclusions.

A: Okay.

Q: To help me understand them, at least. By the time you start testing these items, you're not actually testing the hammer or the knife, you're testing swabs that were taken off of those items; is that correct?

A: That is correct.

Q: Is there any point where you actually handled the hammers or the knife in this case?

A: I did not.

Q: Okay. So, by the time it comes to you, you have the samples that are taken from these items, and then you test those samples; is that right?

A: That is correct.

Q: Okay. If we start with the first hammer, we say the

black-and-red hammer, you're able to have a presumptive testing that there was some sort of blood on that hammer?

A: That is correct.

Q: Okay. But you're unable to tell us or the jury whose blood that was; is that correct?

A: The profile is too partial for interpretation; that is correct.

Q: So, there is no conclusion as to whose blood was on this particular item; is that correct?

A: That is correct.

Q: Okay. And so, then we go to a knife, and this was, I think, 4.1. Now, again, it appears that there is a presumptive test for blood being present; is that correct?

A: That is correct.

Q: Okay. And when you interpret the DNA, you find three different DNA on that particular sample; is that correct?

A: That's correct. DNA originating from three individuals; that is correct.

Q: Three different individuals. So, you start looking at testing that DNA versus Sam; is that correct, or Sylvia Inman? Excuse me?

A: That is correct.

Q: Okay. And against Daniel Hamer?

A: That is correct.

Q: Okay. And you end up testing them both at the same time

under proposition set 3; is that correct?
A: I'm comparing their profiles at the same time to that mixture; that is correct.
Q: Okay. And this is 4.1, which is swabs from the blade of the handle. Once you do the propositions, what proposition ends up being the most likely?
A: For proposition set 1?
Q: Yes.
A: The proposition that where Sylvia Inman and two unidentified, unrelated individuals contributed to the mixture.
Q: What about proposition set 2?
A: For that one, I'm just comparing Daniel Hamer to it, and that one is more likely that it's Daniel Hamer and two unidentified, unrelated individuals contributed to the mixture.
Q: And then proposition set 3?
A: For that one it is that Sylvia Inman, Daniel Hamer, and an unidentified, unrelated individual contributed to the mixture.
Q: And there seems to be an emphasis as proposition set 2 being more likely than proposition set 3; is that correct?
A: That's only when you're just looking at Mr. Daniel Hamer. We don't want -- because it is inflated because she's so much -- she's very much there, and he's there at 240, when you're

just looking at just at him. So, we put that disparity statement, so if you're just looking and comparing Mr. Daniel Hamer, we want you to put more emphasis on proposition set 2, rather than looking at proposition set 3.

Q: Okay. When you use these really big numbers, that's a way for you to quantify how likely something is; is that correct?

A: That is correct.

Q: Okay. So, very likely that the DNA of Sylvia Inman is on this blade?

A: That is correct, and I'm going by my verbal scale ---

Q: Sure.

A: --- that was on there, because those fall into very strong support.

Q: Okay. Also, very strong support that Mr. Hamer's DNA is on that blade?

A: Well, for his, it was moderate support.

Q: Moderate support. And then what is the likelihood of there being a third unidentified individual; is that guaranteed?

A: There is a third individual there, but I -- I don't know who that person is. Like I said, it's a standard for comparison purposes.

Q: Okay. So, when we're looking at the DNA, are we able to tell what type of DNA that we're looking at for these

individuals, be it touch -- touch DNA or blood?
A: Yes, so I could not say that. I know I tested for blood, but is it possible for touch to be there? That is possible as well.
Q: Okay. So, you can say that there was blood present or there was a presumptive positive for blood?
A: That is correct.
Q: But you cannot identify whose blood when you do the DNA results; is that correct?
A: That is correct, because it is a mixture. So, I can't say definitively whose blood it is; that is correct.
Q: Okay. And then we go into 4.2, which is the handle; is that correct?
A: That is correct.
Q: Again, we have positive for blood; is that correct?
A: That is correct.
Q: And it appears again we have three different individuals with their DNA on the handle?
A: That is correct.
Q: Okay. And again, in that particular testing, was there a way to tell whose DNA was blood and whose DNA was touch DNA?
A: No, I cannot tell that.
Q: Okay. But you can say that there -- what were the probabilities of let's say Ms. Inman and her DNA being on the handle?

A: Yes, like I said, the likelihood of her and 2 unidentified, unrelated individuals; that is correct.
Q: And also Mr. Hamer?
A: Him and two unidentified, unrelated individuals; that is correct.
Q: Okay. But again, no way to tell, even though there was a presumptive positive, whose blood was in the test; is that correct?
A: That is correct.
Q: Okay. Lastly, we get to, again, swabs from the entire -- let's see here we have, again -- excuse me -- we'll move on to the yellow-handled hammer. Okay?
A: Okay.
Q: Any, any presumptive positive for blood from that hammer?
A: Item 5.2, the swabs from the entire handle of the yellow-handled hammer, that one was the presumptive testing for blood was positive, but it was a partial DNA profile not suitable for interpretation.
Q: Okay. So, both hammers end up having presumptive testing for blood as positive?
A: On certain items, yes. 3.1, the swabs from the entire head of the hammer, that one had presumptive testing for blood was positive, but not 3.2; that one was negative. And 5.1, the presumptive testing was negative; but for 5.2 that one was positive.

Q: Any way to determine, based on your testing, whose DNA or whose blood was on either of those hammers?
A: No; there is not.
Q: Okay. You mentioned earlier that you didn't actually handle these items?
A: That is correct.
Q: Okay. Are you able to determine how the blood would've gotten on these particular items?
A: No; there is not.
Q: Is there any part of your investigation or your analysis that tells us how DNA would've gotten on these items?
A: No; there is not.
Q: And again, while we have presumptions of presumptive testing for blood as positive, there is no way to associate any of your DNA results to actual blood versus touch DNA; is that correct?
A: Can you rephrase the question?
Q: I will try to. Obviously, I'm out of my -- out of my field of expertise. However, while there was blood present on these items, you are unable to associate that blood to any particular person's DNA result and match them; is that correct?
A: That is correct.
Q: Okay. And when we do these tests, and you have a positive profile for DNA, there is three individuals who

essentially have their DNA on these objects?

A: For those items, that is 4.1 and 4.2, that is correct.

Q: Thank you. No further questions, Your Honor.

THE COURT: All right.

Anything further.

MS. JOHNSON LEE: No, Your Honor, and I'd ask that the witness be excused.

THE COURT: All right. Any objection?

MR. HOBBS: No objection, Your Honor.

THE COURT: All right. Mr. Stewart, thank you for being here. You are excused.

COURT REPORTER: Sir, can you hand me that exhibit?

A: This.

COURT REPORTER: Yeah, whatever is up there.

MS. JOHNSON LEE: May we approach, Your Honor?

THE COURT: Yes, ma'am.

(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)

BY THE COURT:

THE COURT: All right. Ladies and gentlemen, again, thank you for your patience and your attention. We may or may not need you for the rest of this afternoon. Okay? But we're gonna take about a very short five to ten-minute break. As soon as we realize what we're going to do. If we do need you it will only be for a few minutes. All right. So, you'll be

on the way home, you know, by ten minutes to 5:00 anyway. But if we don't need you, then we'd ask you to come back in the morning. You know, but I'll send you that direction in just a few minutes. All right?

I appreciate it again.

(REPORTER'S NOTE: Jury exits courtroom @ 4:36 p.m.)

MR. HOBBS: Judge, I'm going to take an opportunity to speak to my defendant.

THE COURT: That's fine. Well, let me ask you this?

MR. HOBBS: Yes, sir.

THE COURT: In any event, is there any reason why we shouldn't just come back in the morning and rest or do what we're going to do? I'm just trying to -- what's on your mind, Mr. Hobbs?

MR. HOBBS: Nothing, Your Honor. I feel like we are at the end. I think the only caveat is whether the defendant is gonna testify, but I know that there are things that need to be put on the record in that regard as far as questioning him, making sure he's advised of his rights. So, there might be an evitability that we have to come back tomorrow if we don't push past 5:00, which is something I know ---

THE COURT: Well, I mean there's no reason to push past 5:00. I mean, we're -- I'm not going to ask the jury to do that when, certainly, no matter what we've got to argue and charge and do all that, and so -- and so as far as that goes,

I'm gonna go ahead and release the jury.

MR. HOBBS: Yes, sir.

THE COURT: I'm gonna ask them to be back at 9:15, so we can start at 9:30. Let's see -- or should I ask them to be here at 9:30? What's realistic? I don't want them to sit around, but I know we've got to put some stuff on the record.

MS. JOHNSON LEE: If we could all be here at 9:00 and have the jury come at 9:30, I think that would be sufficient.

THE COURT: Okay. Is there any objection to letting the bailiff dismiss the jury, or would y'all like me to bring them back in?

MS. JOHNSON LEE: None from the state.

THE COURT: Mr. Hobbs?

MR. HOBBS: No, Your Honor; that's fine.

THE COURT: All right, sir. And ask them not to talk about the case. Okay?

THE BAILIFF: Okay.

THE COURT: Thank you.

MR. HOBBS: That was all I was going to ask, Judge.

THE COURT: Sure, so take this opportunity to decide whether or not your client wants to testify. I'll probably give him the evening to make that decision, and then in the morning we'll -- we'll go from there.

MR. HOBBS: Thank you, Your Honor.

RECESS - 4:39 P.M. - END OF DAY 2

*******OFF THE RECORD*******

DECEMBER 8, 2021 - DAY THREE

ON THE RECORD - 9:50 A.M.

THE COURT: Just whenever you're ready.

MS. JOHNSON LEE: May it please the Court?

THE COURT: Yes, ma'am.

MS. JOHNSON LEE: Your Honor, the defendant, Daniel Hamer, has decided at this time to enter a plea, and it's pursuant to *North Carolina v. Alford*. On indictment 2021-GS-17-708, which is the indictment for domestic violence of a high and aggravated nature, he is entering a plea to the lessor offense of domestic violence first degree. Again, that's pursuant to *North Carolina v. Alford*.

And on indictment number 2021-GS-17-709 for resisting arrest, and that's under subsection (a), he also is entering a *North Carolina v. Alford* plea. And I have the sentencing sheets to hand up to the Court.

THE COURT: All right. Mr. Hobbs -- I'm sorry go ahead. Take your time.

MR. HOBBS: Your Honor, we're fine, we were just catching up on a couple of issues.

THE COURT: All right. Well, take your time, absolutely, and then whenever you're ready come around and have your client sworn.

All right. Mr. Hamer, if you will please, raise your

right hand.

DANIEL MALLOY HAMER, JR., HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

MR. HAMER: I do.

THE COURT: All right. Thank you, sir.

All right. Mr. Hobbs, have you explained the nature of these charges to Mr. Hamer?

MR. HOBBS: I have, Your Honor.

THE COURT: And have you explained to him the possible penalties and his constitutional rights?

MR. HOBBS: I have, Your Honor.

THE COURT: And you believe he understands those?

MR. HOBBS: Yes, Your Honor.

THE COURT: All right. And do you agree at this time with his decision to plead guilty?

MR. HOBBS: I do, Your Honor.

THE COURT: All right. And, sir, you're Mr. Daniel Malloy Hamer, Jr.?

MR. HAMER: Yes, sir.

THE COURT: All right. And you're 58 years old; is that right?

MR. HAMER: Yes, sir.

THE COURT: Today are you under the influence of any drugs or alcohol?

MR. HAMER: No, sir.

THE COURT: All right. Do you suffer from any mental or physical illnesses, infirmities, or impairments that would prevent you from understanding exactly what you're doing?

MR. HAMER: Not that I'm aware of.

THE COURT: All right. So, you understand that at this point in time, you're here pleading guilty before the Court to resisting arrest and domestic violence in the first degree; do you understand that?

MR. HAMER: Yes, sir.

THE COURT: All right.

MR. HAMER: I'm taking the Alford plea.

THE COURT: Sir?

MR. HAMER: I'm taking the Alford plea.

THE COURT: I understand. And you're doing it -- so, you're entering your plea today pursuant to *North Carolina v. Alford*; is that right?

MR. HAMER: Yes, sir.

THE COURT: All right. And you understand that pursuant to *North Carolina v. Alford*, you're telling this Court that the facts that the state has to prove you guilty that you've heard throughout this trial this week are indeed the facts that you are concerned that you would be found guilty before a jury?

MR. HAMER: Yes, sir. I believe it would not be good for me to continue this.

THE COURT: I understand. All right. Do you have any questions about that, what *North Carolina v. Alford* means?

MR. HAMER: No, sir, I understand it.

THE COURT: All right. And you understand, obviously, that you had a right, or you have a right to a jury trial ---

MR. HAMER: Yes, sir.

THE COURT: And we're in the middle of your jury trial at this time; you understand that?

MR. HAMER: Yes, sir.

THE COURT: And you still have a right to continue with that jury trial prior to the Court accepting this plea; do you understand that?

MR. HAMER: Yes, sir.

THE COURT: And you understand that at the jury trial, after the state presents its case, then you have an absolute right if you chose to do so, to take the stand; you understand that?

MR. HAMER: Yes.

THE COURT: You could testify on your own behalf if you chose to do so; you understand that?

MR. HAMER: Yes, sir.

THE COURT: You could also present any witnesses that you might have on your own behalf, you could present any defenses that you might have, you could enter any evidence that you might have on your own behalf.

MR. HAMER: Yes, sir.

THE COURT: But, when you plead guilty here and the Court accepts your guilty plea, all of those rights are given up; do you understand that?

MR. HAMER: Yes, sir.

THE COURT: Is that what you want -- wish to do?

MR. HAMER: Yes, sir.

THE COURT: All right. And you understand that the domestic violence in the first degree carries up to ten years in prison?

MR. HAMER: Yes, sir.

THE COURT: And the resisting arrest carries up to one year in prison?

MR. HAMER: Yes, sir.

THE COURT: You understand that?

MR. HAMER: Yes, sir.

THE COURT: And you understand that this is straight up; there is no recommendation from the state. In other words, it's completely the Court's decision as to what you would receive as far as a sentence on both of these indictments; do you understand that?

MR. HAMER: Yes, sir.

THE COURT: All right. You also understand that domestic violence in the first degree is a violent crime?

MR. HAMER: Yes, sir.

THE COURT: All right. You understand what that means?

MR. HAMER: Yes, sir.

THE COURT: It's also a serious crime; do you understand what that means?

MR. HAMER: I apologize, I'm hard of hearing.

MR. HOBBS: One second, Your Honor, if I could just reiterate this for him?

THE COURT: Sure.

(REPORTER'S NOTE: Defendant confers with counsel.)

THE COURT: All right. Mr. Hamer, did you have a discussion about violent crime and serious crimes with your attorney?

MR. HAMER: Yes, sir.

THE COURT: And do you understand what the implications are?

MR. HAMER: Yes, sir.

THE COURT: Do you understand that when the Court accepts this plea today, then you would have at least one serious strike on your record; do you understand that?

MR. HAMER: Yes, sir.

THE COURT: And potentially, if you were convicted or if you were convicted of one more and charged with another, then the state could notice that they intended to seek life without parole for three strikes; do you understand that?

MR. HAMER: Yes, sir.

THE COURT: Any questions about that?

MR. JAMER: No, sir.

THE COURT: You still wish to go forward?

MR. HAMER: Yes, sir.

THE COURT: All right. Has anybody threatened you, promised you, or coerced you in any way to get you to plead guilty?

MR. HAMER: No, sir.

THE COURT: You're pleading guilty freely and voluntarily?

MR. HAMER: Yes, sir.

THE COURT: Okay. Is it your decision to plead guilty?

MR. HAMER: Yes, sir.

THE COURT: And you plead -- and are you pleading guilty because of the facts that you've heard on the record this week pursuant to *North Carolina v. Alford*?

MR. HAMER: Yes, sir. I believe it's in my best benefit to plead; yes, sir.

THE COURT: All right. And for the record, you are receiving a benefit of being allowed to plead to a lessor included offense; do you understand that?

MR. HAMER: Yes, sir.

THE COURT: Are you completely satisfied with the services of your lawyer?

MR. HAMER: Yes, sir. He's been exceptionally, yes.

THE COURT: Is there anything else that he needs to do for you in connection with this case?

MR. HAMER: Not unless he'll let me borrow some money.

THE COURT: I understand. Is there any complaints whatsoever again Mr. Hobbs?

MR. HAMER: No, sir.

THE COURT: You understand if you don't agree with the outcome of this plea, then you have ten days from today's date to appeal this decision?

MR. HAMER: Yes, sir.

THE COURT: And you have to do that in writing to this Court; you understand that?

MR. HAMER: Yes, sir.

THE COURT: All right. For the record, we're gonna have to hear the facts again for this plea. Okay? And then I'll ask you some questions about those. Okay?

MR. HAMER: Yes, sir.

THE COURT: All right.

MS. JOHNSON LEE: Yes, Your Honor. On May 27th, 2021, in Dillon County, here in the town of Dillon on Cleveland Street, the defendant did point a knife at the victim, Samuel -- excuse me, Sylvia Sam Inman. She did grab that knife to get it away from him, when he did the knife in her direction, and did get some cuts on her hand. He then, after the ambulance had left -- they came and treated her; she refused to be

transported -- did take a hammer and pop or hit her on the head with the hammer, also resulting in bleeding from the head. Now, she has what's known in domestic violence realm as a cottage cheese -- well, not a cottage cheese memory, but a Swiss cheese memory, where there are holes in things, and you saw that. She not only has that Swiss cheese memory; she has additional issues as came out, some of it, during cross examination yesterday, where her memory comes in bits and pieces. She may remember the knife being pointed at her, her grabbing it one minute; ten minutes later, she can't recall it. She does have issues with her memory, Your Honor, but at the end of the day, her testimony was very credible.

And, Your Honor, there is a prior record, and there are some pending charges. And I want to go ahead and put on the record now, if I may, that there are pending charges that will be dismissed as a result of his plea. He has a domestic violence second degree from September 25th, 2018 that will be dismissed. There is a resisting arrest from January 13th of this year; a domestic violence third from December 11th, 2018; and dv first from January 17th, 2019.

THE COURT: Those are all pending, or those are ---

MS. JOHNSON LEE: I believe those are all pending, yes, sir, and those will all be dismissed as a result of this plea.

THE COURT: All right.

MS. JOHNSON LEE: We had actually -- this case, one of --

he's in prison right now for -- he pled guilty on July 1st of threatening the life of a public official, received two years; resisting arrest and a DV third. He's at SCDC right now through January of 2022. So, he had just pled to those. They were set for trial in July, and he pled before trial, and the procedure was to set these in trial, but as a result of today's plea, I think it's satisfactory just to dismiss all of them.

THE COURT: Okay. Mr. Hamer, did you have an opportunity to hear and understand the facts as stated by the solicitor?

MR. HAMER: Yes, sir. Yes, sir.

THE COURT: All right. And are those the facts that you are choosing to plead guilty pursuant to *North Carolina v. Alford*, and the reality or what you believe the reality to be is that the jury would likely find you guilty if you were to continue with your jury trial?

MR. HAMER: Yes, sir. Yes, sir.

THE COURT: All right. I find there's a substantial factual basis for your plea. I find that your plea is entered freely, voluntarily, and intelligently, and that you have had the advice of counsel from whom you say you're satisfied with. And that's -- now that I think about it, I don't think that we heard the resisting arrest facts.

MS. JOHNSON LEE: I apologize, Your Honor.

Your Honor, and he did once Ricky Day questioned the

victim apart from him, and she told him about the knife and the hammer being used by the defendant against her, he did go to the defendant to tell him he was under arrest. The defendant initially did not hear him, but once he realized he was being arrested, he did struggle with the officers. They did have to go down to the ground with him. Ricky Day did hurt his knee, not enough to go to the doctor or anything, and that of course played on the video yesterday.

THE COURT: All right. And, Mr. Hamer, did you hear those facts as stated by the solicitor with regard to the resisting arrest?

MR. HAMER: Yes, sir. It happened just the way she just said it. That did happen; yes, sir.

THE COURT: All right. All right. So, I find there is substantial factual basis for the resisting arrest as well. I also find that on both charges, you've had -- that you're entering these pleas freely, voluntarily, and intelligently, and that you've had the advice from counsel with a lawyer whom you say you're completely satisfied with, and I will accept your pleas.

I want to go back to the solicitor just for a moment, so that there's five -- how many?

MS. JOHNSON LEE: The pending charges that were being dismissed DV second, resisting arrest, DV third, and DV first. And then also the prior record to go through as far as the

actual convictions, because there are other cases that are dismissed, but -- and they're all the same victim, Your Honor. Ms. Inman is the victim. She loves him, as you heard her say yesterday, she loves him. She just wants him to quit hitting her, but she won't leave him.

THE COURT: Okay. And I'll hear his prior record.

MS. JOHNSON LEE: Your Honor, going back to November 15th of 1989, he was charged with murder, which he pled down to voluntary manslaughter and was sentenced to 15 years in Department of Corrections. He had an assault and battery with intent to kill. So, in June of 1990, he was brought back to enter a plea to the ABWIK and was sentenced to one year concurrent. He was out by January 2002, because on January 9th, 2002, he pled guilty to CDV; April 2nd of 2002, obscene phone calls; January 2nd, 2003, CDV; September 21st, 2005, he went back to SCDC after being sentenced to three years for resisting arrest with a deadly weapon; February 25th, 2009, assault and battery third; May 22nd -- excuse me -- May 21st, 2014, assault and battery second degree; June 5th, 2015 domestic violence second degree; February 10th, 2016 he went back to the Department of Corrections on domestic violence second degree and assaulting an officer while resisting arrest; August 8th, 2017, DV second; August 9th, 2018, DV third; July 1st, 2019, unlawful use of a telephone; July 24th, 2019, public disorderly conduct; September 30th, 2020, public

disorderly conduct; and then of course July 1st of this year, DV third, resisting arrest, and threatening the life of a public official.

THE COURT: All right. Any exceptions to the record as read by the state?

MR. HOBBS: None from defense counsel, Your Honor.

THE COURT: Mr. Hobbs?

MR. HOBBS: Thank you, Your Honor. First of all, I do appreciate the state in their work on us securing this guilty plea here today and this resolution. I also want to thank the Court for the Court's time and patience throughout this entire process in this trial.

Your Honor, the issues between Sam and Dan go back several years as you've heard. This is an issue that I think had alerted the solicitor and law enforcement of just the constant trouble that seemed to arise out of this home.

You've heard certain information, Your Honor, about the actions of the defendant, as well as the actions of the victim in this case on the date in question, including substantial alcohol and prescription drug consumption, and even to the point where law enforcement is there checking on Ms. Inman and she almost gets arrested for disordering conduct for cursing at the officer and -- and being aggressive towards him. None of that is to undermine her rights as a victim and her being a victim in this case, but I do think it's important for the

Court to know that the reputation between these two in the community is a reputation of them drinking, them getting at each other, and then it escalating into some sort of difficulty between them, and it's just not just Mr. Hamer. Mr. Hamer has been the person who has caught the vast majority of charges for their altercations. It's my belief Ms. Inman has also been arrested for domestic violence as to Mr. Hamer. None of that negates or rectifies the notion of her being assaulted or her being wounded that day, Your Honor, nor does her substance abuse or her mental health issues. One of the things I would want to reiterate to the jury is that when we talk about those issues, I wasn't trying to make light or to say that she deserved something in some way or another, but to talk about how we were really unable to understand the how of this happening, and that there was a lot of confusion about what occurred that day, and also some inconsistencies, and some inconsistent facts. And one of the things that I think very much stands out about what happened that day, other than the significant substances consumed and blacking out is that two calls were made to law enforcement that day, and both of them were made by Mr. Hamer. The first was asking for EMS help because she -- alleging that the victim had cut her hand. The second was calling and protesting the way that Cpl. Cox had treated the victim when he was there earlier. These weren't issues of somebody reporting domestic violence;

instead, the domestic violence was rooted in the investigation that Sgt. Day did after he showed up on scene.

Your Honor, there is a consistent issue between these parties. And I feel like that is one of the reasons that law enforcement and the solicitor's office felt so adamant about pushing this charge forward, even when there were these -- these gray areas and this Swiss cheese memory, because of the way these two seem to affect each other. You hear Mr. Hamer on the video, the Court got to review it. There's a level of intoxication; he had been drinking; I think he had taken some Tylenol PM that night as well. When you hear him on that video and him yelling at law enforcement that I didn't do it or cussing, and then you contrast that with his -- his actions sober, and his demeanor sober, they are night and day. Even law enforcement, speaking to Sgt. Day, he's like, this gentleman right here, when he's not drinking, and they're not in this situation, is a completely different human being. And that is unfortunate and that doesn't change the nature of -- of the plea here today or what he stands accused of, but certainly I would want the Court to know that these hostilities and the issues between these parties seem to be something of -- of constant repetition, and they seem to be fueled by alcohol consumption.

Your Honor, after this arrest happened, even after the conviction earlier this year, Mr. Hamer and Sam are talking on

a daily basis. They were talking last week, I'm pretty sure they were talking last night. These two genuinely love each other and care about each other, and that is apparent the way he talks to me about her, the way that she talks about him. But this relationship, and the way that these two act, and the way that Mr. Hamer acts in these circumstances is unlawful at times, but also it's the root of these issues. If I was to make a recommendation, I would say, hey, y'all need to stay away from each other. Y'all are -- y'all are creating this circumstance and that you should no longer be in this position. I would tell Sam the same thing. Get the hell out of his house, leave, you don't ever have to see this man again. You don't have to talk to him on the phone. But we can't tell -- we can't tell them that; we don't have the control over that. And they're not gonna listen, because they genuinely seem to care and love each other.

Judge, I don't know what the long-term result is here. I think that the victim has every ability to avoid contact with the defendant, has every ability to leave the home that the defendant owns. And I hope that in the future, that they do take advantage of that, and that they do give each other the space to where these situations don't bear repetition. But I do want the Court to understand that Mr. Hamer genuinely cares for Sam. She genuinely cares for him. And that the actions that day, and his actions in calling for EMS, his actions for

calling law enforcement and asking for them to investigate what was done to Sam, is reflective of -- of a genuine care for her. And that while is a history here, I do want the Court to understand that this is a volatile circumstance that time and time again seems to result in a bad situation. And while Mr. Hamer is responsible for his actions, I do feel that these two are mutually inflammatory to each other, and that they are getting to each other's throat, they're yelling at each other, they're cussing at each other, they're drinking huge amounts of alcohol, and bad things are happening perhaps as we might expect to happen.

So, Your Honor, there is history here. Mr. Hamer is 58 years old. I think one of the concerns that we had in talking about them is, you know, am I going to be in prison for the rest of my life at 58 years old? How many more years do I have? He spoke to me about his dad and whether or not he's going to be out of prison when his dad passes away, and I think these are all fair and legitimate concerns. But I think while the Court heard a lot of really bad stuff over the past couple of days, the Court also saw someone who was not indifferent to Sam, who was not just trying to hurt her or kill or her or cause great bodily injury, but instead, something happened at that home, and two times, he felt the need to call law enforcement out there to investigate it, which ultimately resulted in his own arrest. So, I do think

that there's mitigation there, Your Honor. I do think that there is a circumstance here that while the record paints this very bad picture, that it's a little bit more complicated than that, and this relationship in and of itself seems to be the fuel of what keeps happening here. So, I would ask the Court to take that into consideration.

The Court's heard, we've got sentences of zero to ten years and zero to one year. I would ask the Court to, you know, consider showing him some grace and some consideration for his plea here today, some grace and mercy in consideration of the complex nature of this relationship, and what was happening in that home, and would ask the Court to take that into consideration, his age and allow him to serve a prison sentence, but a prison sentence that's not going to result him in being in prison for the rest of his life, and that would be my request to the Court.

He did ask me, Your Honor -- we talked a little bit about intoxication. There is different factual contentions about what Mr. Hamer says happened that day. I do what to emphasize that the injuries sustained by the victim were such that there was a cut on her hand that bled a lot, but didn't seem to require stitches, and then a wound on her head that also did not require medical attention. So, this is not a circumstance of great bodily injury. I think that the Court in seeing great bodily injury has an appropriate response to feel like

that needs to be taken into consideration, but I think the other side of the coin is when there is not great bodily injury, that that's given some consideration as well, and that this woman was not injured in a way where she needed hospitalization, or she did not suffer great bodily injury. And so, I do want to emphasize that to the Court as also a mitigating factor and would ask the Court for whatever mercy and consideration that the Court can give Mr. Hamer under the circumstances.

THE COURT: All right. How much time is entitled to for credit on this charge; do you know? I mean -- and roughly is fine. I know they're gonna do that calculation, but ---

MR. HOBBS: So, I think that it would just be a little bit over a month, Your Honor. If you look at the dates here, you've got May 27th until July 1st, and July 1st he received a new sentence -- he's looking at me -- but I think that that's the appropriate calculation is that the time between May 27th and July 1st when he received a new sentence would be the time period that he would be subject to time served for.

MS. JOHNSON LEE: I've got a calculator on my phone that determines the number of days if I could pull that out?

THE COURT: So, you don't think he would get credit for the time in SCDC?

MR. HOBBS: I would want him to, Your Honor. I'm not sure that that is something that -- that the Court would give

him credit for, or that he's asking if there should be any credit for time served in SCDC, and we certainly would ask for it if the Court was inclined to take that into consideration.

MR. DANIEL: I don't think you're entitled to that, whatever the Court wants to do, but by law, the way SCDC calculated, I don't believe -- I think Mr. Hobbs is correct, from the time the warrant is served to the time some other sentence on some other thing, which is what happened in July. I think SCDC will calculate it in that way absent some change in your order.

THE COURT: Okay. So, we're talking about another 120 days or so?

MR. HOBBS: As far as the potential?

THE COURT: Right.

MR. HOBBS: So, from July until -- I would say getting close to maybe 150 to 160 days, but I'm not very good with math. So, Mary Thomas will help us with that, Your Honor.

MS. JOHNSON LEE: Are you saying from the date he was arrested until today, Your Honor?

THE COURT: Well, has he been incarcerated that whole entire time?

MS. JOHNSON LEE: He has.

MR. HOBBS: Yes.

MS. JOHNSON LEE: It's 194 days from May 28th until today, if he obtained credit for the SCDC on the other charge.

MR. HOBBS: Judge, in all candor, I think he has -- I think we'd all agree he has been incarcerated that entire time.

THE COURT: Mr. Hamer, is there anything you need to tell the Court?

MR. HAMER: We don't have enough time, Your Honor.

THE COURT: I understand. You're welcome to take all the time you need or not, you know, it's up to you.

MR. HAMER: They ain't nothing worse than drinking.

THE COURT: I understand. Anything further?

MS. JOHNSON LEE: I didn't know if the victim or the officers wanted to address the Court.

Ms. Inman, does want to say something.

THE COURT: All right. Ms. Inman?

MS. INMAN: Good morning. I'd like to say that he is a good man when he don't drink. And he worked. And I mean, it's just the drinking. Maybe he could go to alcohol classes or something, but I would hate for him to do prison time, because it's my -- I mean, I'm an instigator; I'm no saint. And I do start a lot of the problems when I drink liquor. So, you know, I had quit drinking. I'm doing a lot better, but I wish you could take that as consideration like ---

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

MS. JOHNSON LEE: And, Your Honor, I'd ask you to hear from Sgt. Day as well?

THE COURT: Okay.

MR. DAY: Yes, Your Honor. We go to that house more times than I can count. It's not just one shift, it's several shifts keep going over and over and over. And most time it is because of Mr. Hamer and Ms. Inman are both intoxicated. I understand that they get intoxicated. I understand that things happen, but at the same point, I don't think that's a reason, no matter how intoxicated you get to assault someone or to that point, or with that amount of blood or -- regardless if it's Mr. Hamer or her, Ms. Inman, because we've been there for both of them. And like I said, it's a constant thing, and we can probably answer a call there two or three times that day, and then the next shift comes in and they'll have to go there two or three times. So, it's -- and I've been with the city approximately four years, and it's -- I've been there more than I've been at my own home. And, but again, no matter how intoxicated you get I don't think that, you know, that gives reason for any kind of assault or anything like that.

THE COURT: I understand. Thank you.

MS. JOHNSON LEE: And, Your Honor, he does have not only those cases that are getting dismissed, but multiple prior convictions all related to her as well as other dismissed cases all related to her. Her arm has been broken before, she's been raped anally before. It's an ongoing thing. And

it's just the level it goes from one end of the spectrum to the other, and it needs to stop.

THE COURT: I understand. I'll certainly give you ---

MR. HOBBS: Judge, I think that there have been accusations -- I don't believe that there is a rape conviction on Mr. Hamer's record or any factual contention there as far as that, but certainly I respect and understand that there has been a significant history between these two. And I think Sgt. Day is right; that's not a defense to a domestic abuse. But again, Your Honor, I think that what I would ask the Court to consider is mitigating circumstances around what happened that day, the nature of the injuries that she sustained. Of course, we listened to her and what she wants, but I don't think that this is a circumstance where the Court feels it would be appropriate to not give any time. So, I recognize that. I would ask the Court to consider these things and, again, I think that some separation between these two would likely be a positive for both of them. And I would ask that the Court allow Mr. Hamer to hopefully have a life after this prison sentence as he's getting older.

THE COURT: Anything further, Mr. Hamer?

MR. HAMER: No. I have been accused of a lot of things that I didn't do; some things I have done. And if I did it, I admit to it. There's no shame in me. If I did it, I'll admit to it. Because of the history that I have, some things get

blown out of proportion from what they really are, but I'm not trying to undercut anything, but this particular case here, I admit that I did resist arrest. I admit that. But I have not tried to hurt Sam. I've did nothing to her.

THE COURT: All right, sir.

MR. HAMER: The only reason I'm taking the plea, is because I don't think the jury -- I think it's beneficial for me to take the plea.

THE COURT: I understand. All right. And what's, you know, there's no question the Court is struggling with, you know, your violent history from 30 years ago.

MR. HAMER: Yes, sir, Judge. A bunch of these cases, I could say I'm unlucky. But I'll be honest with you, Your Honor, them cases, if I had not done what I done, I would not be here.

THE COURT: I agree. I understand.

All right. The current sentence he's serving is two years?

MS. JOHNSON LEE: Two years, and he maxes out near the end of January.

SENTENCE OF THE COURT:

THE COURT: All right. I've tried my best to take everything into consideration; your record, the facts of this case, the facts and the circumstances that surrounded that day and time, your pleading guilty. I've tried to take everything

into consideration, and, you know, I may not get it right, but I've tried my best and that's all I know to say.

So, the sentence of the Court on indictment number 2021-GS-17-0709 for resisting arrest is that the defendant is committed to the State Department of Corrections for a term of one year, and I'm giving credit for time served pursuant to South Carolina Code 24-13-40 to be calculated and applied by the South Carolina Department of Corrections. So, however they determine that you should get credit for the time you've served, that's what it will be. And that's to run concurrent with indictment number 2021-GS-17-708 for domestic violence in the first degree. The defendant is committed to the State Department of Corrections for a term of six years, given credit for that time served. That's to run concurrent with this resisting arrest, and also the charges that you're serving your sentences on now.

MS. JOHNSON LEE: Thank you, Your Honor.

MR. HAMER: Thank you.

THE COURT: Sir, will you bring us the jury?

THE BAILIFF: Yes, sir.

THE COURT: We'll wait just a second for them to get out of the hallway. Did you hear me?

THE BAILIFF: Sir?

THE COURT: Wait just a second for them to be able to get out of the hall.

(REPORTER'S NOTE: Jury enters courtroom @ 10:31 a.m.)

BY THE COURT:

All right. Ladies and gentlemen, thank you for your patience again. I apologize for having you here this morning and not having you out before now. But like I said, what has transpired here is that the defendant accepted the plea. Okay? And he pled guilty to domestic violence in the first degree, which was one level down from what he was charged with that y'all were hearing the facts of, which was a domestic violence high and aggravated nature. So, he entered his plea this morning and the Court sentenced him. We heard from a number of people as far as -- there was no recommendation, but I'll tell you, he got six years in prison. Okay? Now, he certainly had a lengthy record that y'all hadn't heard about, and there were some other factors that may have gone into that decision.

So, I thank y'all for being here. I thank you for your service. And honestly, without the jury process, this system of justice just doesn't turn. Okay? And it doesn't work, and it doesn't continue to go forward. So, you've done a credit service to the State of South Carolina and to the County of Dillon. I thank you for that. And you're going to get paid for that, but don't get mad at me when you see how much the check is, because certainly I doubt anybody could afford to pay for what your time is worth and you're certainly not gonna

feel real good about the amount of the money, I'm sure, but that's not, you know, I don't set that.

But anyhow, if you have any questions or concerns, please let us know. If you need anything, excuses for work or anything of that nature, the clerk's office can provide that, and that's all we have for you this week. You will have earned your exemption for the next three years, I think. So, if you get called back up here, you can waive that paper if you like to, or if you want to serve again, that would be -- you are more than welcome to do that. If you get picked again, come anyway.

But thank you again, and like I said, if you have any questions, we'll be happy to answer.

All right. So, you're free to go.

(REPORTER'S NOTE: Jury exits courtroom @ 10:34 a.m.)

ADJOURNED - 10:34 A.M.

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina v. Daniel Hamer, held in the Court of General Sessions for Dillon County, Dillon County Courthouse, Dillon, South Carolina, on December 6-8, 2021.

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

_____

Kay H. Richardson

Official Court Reporter

December 5, 2022.

WITNESSES

Ricky L Day

Dillon Police Dept

Law Enforcement Case #: 2021-05188
347

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

_____
Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

_____

_____
Defendant

ARREST WARRANT NUMBER
2021A1720100291

ARRESTED ON: 2021-05-28

ACTION OF GRAND JURY

TRUE BILL

Christopher Johnson
Grand Jury Foreperson

Date 9-21-2021

VERDICT

_____

_____

_____

_____
Petit Jury Foreperson

_____
Date

DOCKET NUMBER:
2021-GS-17-0708

The State of South Carolina

County of Dillon

COURT OF GENERAL SESSIONS

Term:
August 2021

THE STATE

vs.

Daniel Malloy Hamer Jr

INDICTMENT FOR

Domestic / Domestic violence of a high and aggravated nature

§16-25-0065(A)

CDR Code: 3814

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)

INDICTMENT FOR

Domestic / Domestic violence of a high and aggravated nature

§16-25-0065(A)

At a Court of General Sessions, convened on August 26, 2021, the Grand Jurors of Dillon County present upon their oath:

DOMESTIC VIOLENCE
HIGH AND AGGRAVATED NATURE

CDR: 3814 16-25-0065

That Daniel Malloy Hamer Jr did in Dillon County on or about May 27, 2021, commit the offense under circumstances manifesting extreme indifference to the value of human life and great bodily injury results to Sylvia Inman, which involved the use of a deadly weapon or resulted in serious bodily injury to the victim, in violation of Section 16-25-65, S. C. Code of Laws, 1976, as amended.

FILED
GWEN T HYATT
2021 DEC -8 A 10:54
CLERK OF COURT
DILLON COUNTY

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

William B. Rogers

WILLIAM B. ROGERS, JR.
SOLICITOR

248

8-10 yrs

STATE OF SOUTH CAROLINA)
COUNTY OF DILLON)
STATE)
VS.)
Daniel Malloy Hamer Jr)
AKA:)
Race: White Sex: M Age: 58)
DOB: [redacted]-1963 SS# [redacted])
Address: [redacted] E Cleveland St)
City,State,Zip: Dillon, SC 29536)
DL#: [redacted] SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021-GS-17-0708

A/W#: 2021A1720100291
Date of Offense: 5/27/2021
S.C. Code § : 16-25-0065(A)
CDR Code #: 3814

SENTENCE SHEET

NC Alford

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Domestic Violence 1st Degree

in violation of § 16-25-20(B) of the S.C. Code of Laws, bearing CDR Code # 3811

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st pr CSC w/minor 3rd)

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

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

Johnson-Lee, Mary T — SC Bar# 65347 — Defendant — Hobbs, Kyle M — Attorney for Defendant — SC Bar# SCB78268

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,

for a determinate term of 6 days/months/years/Time Served ☐ Youthful Offender Act not to exceed _____ years

and/or to pay a fine of $ _____ provided that upon the service of _____ days/months/years/Time Served and or payment

of $ _____ ; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

The sentence shall run
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
_____ days/months
☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-26-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

FILED
GWEN T HYATT
2021 DEC -8 A 11:54
CLERK OF COURT
DILLON COUNTY

STATE VS Daniel Malloy Hamer Jr INDICTMENT/CASE#: 2021-GS-17-0708

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol testing

☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning : _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment 0 _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

☐ Other: _____

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

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

Payment Term _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:		$
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ Beginning _____		
§14-1-208 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§14-1-212 (Law Enforce. Funding)	$25	$
§14-1-213 (Drug Court Surcharge)	$150	$
§34-11-70(b)and(c), and 34-11-80(c)and(d) (Admin Fraud Check Court Costs)	$41	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)	TBD	$
☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.	$500	$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	$
	TOTAL	$

Clerk of Court/ Deputy Clerk: [signature]

Court Reporter: [signature]

Presiding Judge: [signature]

Judge Code: 2771

Sentence Date: 12-8-2021

WITNESSES

Ricky L Day

Dillon Police Dept

Law Enforcement Case #: 2021-05188
347

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
2021A1720100292

ARRESTED ON: 2021-05-28

ACTION OF GRAND JURY

TRUE BILL

Christopher Rhoades
Grand Jury Foreperson

Date 8-24-2021

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2021-GS-17-0709

The State of South Carolina

County of Dillon

COURT OF GENERAL SESSIONS

Term:
August 2021

THE STATE

vs.

Daniel Malloy Hamer Jr

INDICTMENT FOR

Resisting / Resisting Arrest; Oppose, resist, or assault law enforcement officer serving process; penalty statute 1: 16-09-0320(A); misdemeanor Class C; report to SLED

§16-09-0320(A)

CDR Code: 0326

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)

INDICTMENT FOR

Resisting / Resisting Arrest; Oppose, resist, or assault law enforcement officer serving process; penalty statute 1: 16-09-0320(A); misdemeanor Class C; report to SLED

§16-09-0320(A)

At a Court of General Sessions, convened on August 26, 2021, the Grand Jurors of Dillon County present upon their oath:

RESISTING ARREST

CDR: 0326 16-09-0320(A)

That Daniel Malloy Hamer Jr did in Dillon County on or about May 27, 2021, knowingly and willfully oppose or resist an arrest being made by one whom the defendant knew or reasonably should have known was a Law Enforcement Officer, in violation of Section 16-09-0320(A), S. C. Code of Laws, 1976, as amended.

FILED
GWEN T HYATT
2021 DEC -8 A 10:54
CLERK OF COURT
DILLON COUNTY

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

William B. Rogers, Jr.

WILLIAM B. ROGERS, JR.
SOLICITOR

252

6 - 1 year

STATE OF SOUTH CAROLINA)
COUNTY OF DILLON)
STATE)
VS.)
Daniel Malloy Harner Jr)
AKA:)
Race: White Sex: M Age: 58)
DOB: [redacted]-1963 SS# [redacted])
Address: [redacted] East Cleveland Street)
City,State,Zip: Dillon, SC 29536)
DL#. [redacted] SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021-GS-17-0709

A/W#: 2021A1720100292
Date of Offense: 5/27/2021
S.C. Code § : 16-09-0320(A)
CDR Code #: 0326

SENTENCE SHEET

NC Alford

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: RESISTING ARREST

in violation of § 16-09-0320(A) of the S.C. Code of Laws, bearing CDR Code # 0326

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

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

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

M Johnson-Lee — 65347 — Daniel M. Harner Jr. — SCB78266
Johnson-Lee, Mary T — SC Bar# — Defendant — Hobbs, Kyle M — SC Bar#
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,

for a determinate term of 1 days/months/years/Time Served ☐ Youthful Offender Act not to exceed _____ years

and/or to pay a fine of $ _____ provided that upon the service of _____ days/months/years/Time Served and or payment

of $ _____ ; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

The sentence shall run
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
_____days/months
☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

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

FILED
GWEN HYATT
2021 DEC -8 A 11:54
CLERK OF COURT
DILLON COUNTY

STATE VS Daniel Malloy Hamer Jr INDICTMENT/CASE# 2021-GS-17-0709

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol testing

☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning : _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment 0 _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

☐ Other: _____

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

Total $ _____ plus 20% fee: _____ $ _____

Payment Term _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts of $ _____ Beginning _____ $ _____

§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§14-1-212 (Law Enforce. Funding)	$25	$
§14-1-213 (Drug Court Surcharge)	$150	$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	$41	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)	TBD	$
☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.	$500	$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	$
	TOTAL	$

Clerk of Court/ Deputy Clerk: [signature] Presiding Judge: [signature]

Court Reporter: Kay Rickardson Judge Code: 2771

Sentence Date: 11-8-2021

SCCA/217 (07/2021)

254

STATE OF SOUTH CAROLINA

County of Dillon

In the Court of Common Pleas

Daniel Mallory Hamer Jr
Full name and prison number (if any) of Applicant,

vs.

State of South Carolina
Name of Respondent.

2022-CP-17-411

APPLICATION FOR POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Kershaw Correctional

2. Name and location of Court which imposed sentence Dillon County, SC

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
   (a) 2021A1720100291 - Domestic Violence 1st Degree
   (b) 2021A1720100292 - Resisting Arrest
   (c)

4. The date upon which sentence was imposed and the terms of the sentence:
   (a) 12-8-21 - 2021A1720100291 - 6 years
   (b) 12-8-21 - 2021A1720100292 - 1 year
   (c)

FILED
CLERK OF COURT
DILLON COUNTY
2022 AUG 22 P 12:50

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓ Alford

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

No

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. [illegible]

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) Attorney failed to respond

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of counsel

(b) Prosecutorial misconduct

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) Attorney would not return phone calls or letters

(b) Attorney did not research case

(c) Attorney did not acquire evidence

(d) I would not have plead if my attorney had adequately represented me

(e) At sentencing, prosecutor falsly alledged I was a convicted rapist

(f) Charges sued and disposed of at prior plea hearing brought back this time

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? No

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No

(d) any other petitions, motions or applications in this or any other Court?

No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i.

ii.

iii.

iv.

(b) the name and location of the Court in which each was filed:

i.

ii.

iii.

iv.

(c) the disposition thereof:

i.

ii.

iii.

iv.

(d) the date of each such disposition:

i.

ii.

iii.

iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i.

ii.

iii.

iv.

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) No appeal was filed

(b) _____

(c) _____

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? na

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Michael Hobbs P.O. Box 1405 Fort Mill S.C 29716
Hobbs & Threet [redacted] 115 Confederate St. Fort Mill SC 29715

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. plea

ii. sentencing

iii. _____

18. State clearly the relief you seek in filing this application.

A new trial and adequate representation

19. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

County of Dillon

VERIFICATION

I, Daniel Maloy Hamer Jr., being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Daniel M. Hamer Jr.

SWORN to and subscribed before me this 16th

day of August, A.D. 2022

Cathrine A Arasa (L.S.)
Notary Public

My Commission Expires: 1-22-2029

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Daniel Maloy Hamer Jr., hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Daniel M. Hamer Jr.
Applicant

SWORN or affirmed to and subscribed before me this

16th day of August, A.D. 2022

Cathrine A Arasa
Notary Public

My Commission Expires 1-22-2029.

STATE OF SOUTH CAROLINA COUNTY OF DILLON	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICIAL CIRCUIT
Daniel M. Hamer, Jr., #161814, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2022–CP–17–411 **RETURN** (Counsel Appointed)

In response to Applicant Daniel M. Hamer, Jr.'s application for post-conviction relief (PCR) commenced on September 1, 2022, Respondent, the State of South Carolina, makes the following Return:[1]

FILED
2024 FEB 15 A 10:4
CLERK OF COURT
DILLON COUNTY

PROCEDURAL HISTORY

Applicant is presently confined with the South Carolina Department of Corrections (SCDC) pursuant to the Dillon County Clerk of Court's orders of commitment. During the August 2021 term, the Dillon County Grand Jury indicted Applicant for Domestic Violence of a High and Aggravated Nature (DVHAN) (2021–GS–17–0708) and Resisting Arrest (2021–GS–17–0709) Applicant was represented by Kyle M. Hobbs, Esquire (Plea Counsel). Fourth Circuit Assistant Solicitor Mary T. Johnson-Lee prosecuted the case.

[1] Respondent's return was due to be filed within sixty days of receipt of Applicant's instant post-conviction relief application. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

On December 6-8, 2021, Applicant proceeded to a jury trial before the Honorable H. Steven DeBerry, IV. On December 8, 2021, the third day of trial, Applicant entered a guilty plea pursuant to Alford[2] to the lesser-included offense of Domestic Violence 1st Degree and Resisting Arrest. Judge DeBerry sentenced Applicant to six years imprisonment for Domestic Violence 1st Degree and one-year imprisonment for Resisting Arrest. All sentences to run concurrently.

Applicant did not appeal his convictions or sentences.

CURRENT APPLICATION

On July 20, 2023, Applicant filed this application for post-conviction relief, in which Applicant alleges he is being held in custody unlawfully based on the following:

1. Ineffective Assistance of Plea Counsel
   a. Plea Counsel failed to return phone calls and letters.
   b. Plea Counsel failed to research case.
   c. Plea Counsel failed to acquire evidence.
   d. Involuntary Guilty Plea
2. Prosecutorial Misconduct
   a. Prosecutor falsely alleged Applicant was a convicted rapist.

Applicant requests relief in the form of "a new trial and adequate representation."

Attached to this return and incorporated by reference are the Dillon County Clerk of Court records regarding the subject's convictions and sentences, Applicant's records from the SCDC, Applicant's trial and plea transcript, and the records of the current PCR action. Respondent reserves the right to amend this return upon receiving any relevant materials.

RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

Applicant alleges Plea Counsel was constitutionally ineffective for various reasons. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S.

[2] North Carolina v. Alford, 400 U.S. 25 (1970).

668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [defective] as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably

competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." Harrington, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential[, as] it is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 8 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional

assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Id. The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id.

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," **not** whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show that the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 693 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel." Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56.

The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58–59. Specifically,

when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 367 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting Strickland's high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. at 368-369 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a showing of 'prejudice' from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Lee, 582 U.S. at 369. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences. Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, "do not establish mechanical rules[;] . . . [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

In the present case, Applicant has asserted that Plea Counsel was ineffective for various reasons. Because these allegations likely raises questions of fact not conclusively refuted by the record, the State requests an evidentiary hearing to fully resolve the issues. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

RESPONSE TO ALLEGATION OF INVOLUNTARY GUILTY PLEA

Applicant further claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

The State submits Applicant cannot satisfy the requirements of Strickland or Hill. However, the record likely does not refute or disprove Applicant's allegations. Therefore, the State requests an evidentiary hearing to fully resolve the issues. See Sharper, 279 S.C. at 265, 305 S.E.2d at 248 (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the

record before the lower court").

RESPONSE TO PROSECUTORIAL MISCONDUCT

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Therefore, Respondent submits that this allegation be summarily dismissed.

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has retained an attorney, the attorney, not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. Id., 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery

processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last-minute resulting in undue prejudice to the State. See Love, 428 S.C. 231, 834 S.E.2d 196.

CONCLUSION

WHEREFORE, the State respectfully requests an evidentiary hearing be held on the claims of ineffective assistance of Plea Counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

D. RUSSELL BARLOW, II
Assistant Attorney General

By: D. Russell Barlow II
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

February 12, 2024

State of South Carolina	)	In the Court of Common Pleas
	)	Fourth Judicial Circuit
County of Dillon	)	Case No. 2022-CP-17-00411
	)	
	)	
Daniel Malloy Hamer,	)	
	)	
Applicant,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

May 26, 2026
Darlington, South Carolina

B E F O R E:

The Honorable Carmen Tevis Mullen, Judge

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

Kindle K. Johnson, Esquire
Attorney for the Applicant

McConnell-Harison, Esquire
Mackinnon Westraad, Esquire
Attorneys for the Respondent/State

Krystal J. Smith
Official Circuit Court Reporter III

I N D E X

WITNESS/DESCRIPTION	PAGE NUMBER
Post-Conviction Relief Hearing	4
State's Motion to Dismiss	4
Applicant's Motion for a Continuance	4
Ruling	5
Court Reporter Certification	7

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.

(No Exhibits Presented)

COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption or change in thought
ellipses	. . .	trailing off
[*ph*]		phonetically written
[*sic*]		written as said

MAY 26, 2026

(WHEREUPON, the proceedings began at 10:31 AM. The applicant was not present.)

THE COURT: Do you want to go ahead and call the case?

MS. HARISON: Yes, Your Honor. May it please the Court.

THE COURT: Yes, ma'am.

MS. HARISON: McConnell Harison on behalf of the State of South Carolina. This is the PCR matter of Daniel M. Hamer, Jr. versus the State, Case Number 2022-CP-17-411 out of Dillon County.

Your Honor, the applicant doesn't seem to be present here. He's not incarcerated within the South Carolina Department of Corrections anymore. So, at this time, I would move for a failure to prosecute this case.

THE COURT: Okay. And I see that the defense counsel, which is Kyle Hobbs, is here and has been here since an hour and 15 minutes or so. So, anyway.

So, Ms. Johnson?

MS. JOHNSON: Thank you, Your Honor.

My client -- I did call for my client. He has not answered. I have spoken with my client a few times before. He did indicate to me that he wanted to proceed with his PCR, that he actually wanted to move forward.

So I am going to ask for the record today that my client be given a continuance in this matter.

THE COURT: Okay. Has this matter ever been continued before?

MS. JOHNSON: I do know it's been pending for quite some time.

MS. HARISON: Your Honor, it was continued December 16th of 2024. That's on the public index.

THE COURT: Okay. And I see this was a case where Mr. Hobbs went to trial for two days on a DVHAN and resisting arrest. On the third day, the applicant pled guilty to domestic violence, first degree, and resisting arrest. He got a 6-year sentence on it.

And I'm going to go ahead and say this. Mr. Hobbs, your mitigation was excellent. In reading your guilty plea, I went through the entire thing. I thought Judge DeBerry was very kind, but on top of it, it was probably one of the best mitigations I've ever heard on a guilty plea, certainly more than reasonable, given his background.

RULING

THE COURT: This case has already been continued one time. I am going to go ahead and deny your motion, respectfully, and we will dismiss for failure to prosecute. All right?

MS. HARISON: Thank you, Your Honor.

MS. JOHNSON: Thank you, Your Honor.

THE COURT: Can you do a proposed order for me.

MS. HARISON: Yes, Your Honor.

THE COURT: Thank you.

MS. HARISON: The State will have it to you.

THE COURT: I appreciate it.

MR. HOBBS: I appreciate you, Judge.

THE COURT: Good to see you, Mr. Hobbs, absolutely.

MR. HOBBS: Thank you for your time, Judge.

THE COURT: Thank you, all.

(WHEREUPON, the proceedings ended at 10:33 AM.)

--- END REQUESTED TRANSCRIPT ---

State of South Carolina)

) Certificate

County of Florence)

I, the undersigned, Krystal J. Smith, Official Court Reporter III for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 6, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Dillon County, South Carolina, held in Darlington County, South Carolina, on the 26th day of May, 2026.

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

s/*Krystal J. Smith*

Court Reporter

Florence, South Carolina

August 27, 2026

STATE OF SOUTH CAROLINA COUNTY OF DILLON	)	IN THE COURT OF COMMON PLEAS FOURTH JUDICIAL CIRCUIT
Daniel M. Hamer, Jr., Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2022-CP-17-00411 **ORDER OF DISMISSAL WITH PREJUDICE**

FILED
MARQUITA BRITTON
2026 JUN -1 A 11:35
CLERK OF COURT
DILLON COUNTY

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Daniel M. Hamer, Jr. (Applicant) September 1, 2022. Respondent, the State of South Carolina, filed its Return on February 15, 2024, requesting an evidentiary hearing.

A hearing into the matter convened on Tuesday, May 26, 2026, before the Honorable Carmen T. Mullen, at the Darlington County Courthouse. Applicant was not present at the hearing, but represented by Kindle K. Johnson, Esquire. Assistant Attorney General O. McConnell Harison represented Respondent.

At the outset of the hearing, Respondent informed the Court that Applicant was not present. Consequently, Respondent moved to dismiss for failure to prosecute. "For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him." Rule 41(b), SCRCP. In order to grant a dismissal for failure to prosecute, there must be some showing of indifference to the rights of the defendant. McComas v. Ross, 368 S.C. 59, 62-63, 626 S.E.2d 902, 904 (Ct. App. 2006). The Court must consider four factors before dismissing a case for failure to prosecute: "(1) the plaintiff's degree of personal responsibility; (2) the amount of prejudice caused the defendant; (3)

the presence of a drawn out history of deliberately proceeding in a dilatory fashion; and (4) the effectiveness of sanctions less drastic than dismissal." McComas, 368 S.C. at 63, 626 S.E.2d at 904.

The Court finds that PCR Counsel has made a reasonable effort to inform Applicant of his hearing and to represent Applicant to the fullest in his PCR action. However, Applicant failed to appear and to participate in his evidentiary hearing and has failed to present a case to this Court. As such, there is no purpose to the further expenditure of the State's scarce resources or the time and availability of the judiciary. Dismissal is appropriate in this case. Accordingly, Respondent's motion to dismiss for failure to prosecute is **GRANTED,** and the application for post-conviction relief is **DISMISSED WITH PREJUDICE.**

IT IS THEREFORE ORDERED:

The application for post-conviction relief is dismissed with prejudice.

AND IT IS SO ORDERED this 27 day of May, 2026.

CARMEN T. MULLEN
Presiding Judge
Fourth Judicial Circuit

Darlington, South Carolina