

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Thomas A. Russo, Circuit Court Judge

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JAN 31 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DWAYNE CABBAGESTALK,

APPELLANT

APPELLATE CASE NO. 2013- 001378

RECORD ON APPEAL

ROBERT M. PACHAK
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

Attorneys for Respondent

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STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

COURT OF GENERAL SESSIONS
2012-GS-32-00556

STATE OF SOUTH CAROLINA)

vs.)

TRANSCRIPT OF RECORD

DWAYNE L. CABBAGESTALK)

DEFENDANT)

June 17-18, 2013
Lexington, South Carolina

B E F O R E:

HON. THOMAS A. RUSSO, Judge and a jury.

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

KATE W. USRY, ASSISTANT SOLICITOR
SHANNON DAVIS, ASSISTANT SOLICITOR
Attorneys for the STATE

ERIK DRYLIE, ASSISTANT PUBLIC DEFENDER
DAYNE PHILLIPS, ASSISTANT PUBLIC DEFENDER
Attorneys for the DEFENDANT

CAROL M. THUEME, RPR
Official Court Reporter

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1 THE COURT: Recognize Ms. Usry to call the next
2 case.

3 MS. USRY: Thank you, Your Honor. May it please
4 the Court.

5 The State calls Indictment No. 2012-GS-32-556,
6 the State of South Carolina versus Dwayne Lamont
7 Cabbagestalk, indicted for criminal domestic violence.

8 THE COURT: Thank you, ma'am.

9 All right. Ladies and gentlemen, you've heard
10 the State has called Indictment 2012-GS-32-556, State of
11 South Carolina versus Dwayne Lamont Cabbagestalk.
12 Mr. Cabbagestalk is charged with the offense of criminal
13 domestic violence. To that charge Mr. Cabbagestalk has
14 pled not guilty. And that plea of not guilty does two
15 things: It places upon him the presumption of innocence,
16 and it places upon the State the burden of proof. The
17 State must prove the allegations contained in this
18 indictment.

19 As I told you earlier with the charge we had
20 earlier, an indictment is simply a piece of paper that
21 brings this case into the courtroom. It is not in any way
22 evidence of the allegations that it contains. These are
23 just allegations. But I'm going to read to you the
24 allegations that the State has made against Mr.
25 Cabbagestalk in this case.

1 That indictment states that Dwayne Lamont
2 Cabbagestalk did in Lexington County, South Carolina, on
3 or about December 4th of 2012, unlawfully cause physical
4 harm or injury to a family or household member, or offer
5 to attempt or cause physical harm or injury to a family or
6 household member with apparent present ability under the
7 circumstances reasonably creating fear of imminent peril;
8 namely, Tameshia Perry-Payne, by striking her and/or
9 verbally threatening her and the defendant doing so in
10 violation of Section 16-25-65 of the South Carolina Code
11 of Laws, as amended, and South Carolina Section
12 16-25-20(d) of the South Carolina Code of Laws, as
13 amended.

14 Now, as I said, ladies and gentlemen,
15 Mr. Cabbagestalk has pled not guilty to those allegations.

16 Is there any member of jury panel who knows
17 anything about this case based on what I have shared with
18 you today? If so, please stand.

19 (No response.)

20 THE COURT: Thank you. There are none.

21 I'm going to have the attorneys stand and
22 introduce themselves. If you would please listen
23 carefully.

24 Ms. Usry.

25 MS. USRY: Thank you, Your Honor.

1 I'm Kate Usry. I work for the 11th Judicial
2 Circuit for Solicitor Donnie Myers. I'm an assistant
3 solicitor in his office. Working with me today is
4 Assistant Solicitor Shannon Davis. Also working on this
5 case who's not currently in the courtroom is Investigator
6 April Bayne with our office, and you may also see Victim
7 Advocate, Susan Powell.

8 THE COURT: Thank you, m'am.

9 MS. USRY: Yes, sir.

10 THE COURT: Ladies and gentlemen, is there any
11 member of the jury panel who's related by blood, connected
12 by marriage, or have any close business or personal
13 relationship with either Ms. Usry or Ms. Davis? If so,
14 please stand.

15 (No response.)

16 THE COURT: Thank you. There are none.

17 Mr. Drylie, if you would, please.

18 MR. DRYLIE: Thank you, Your Honor.

19 My name is Erik Drylie and I represent Dwayne
20 Cabbagestalk, who is sitting right here with me. And
21 there may be another attorney from my office representing
22 him on this matter, Dayne Phillips.

23 THE COURT: Thank you, sir.

24 Ladies and gentlemen, is there any member of the
25 jury panel related by blood, connected by marriage, or who

1 has any close business or personal relationship with, or
2 who has been represented by either Mr. Drylie or
3 Mr. Phillips or any member of their office? If so, please
4 stand.

5 (No response.)

6 THE COURT: Thank you. There are none.

7 You've met Mr. Cabbagestalk. Is there any
8 member of the jury panel who is related by blood,
9 connected by marriage, or who has any close business or
10 personal relationship with the defendant in this case,
11 Mr. Cabbagestalk? If so, please stand.

12 (No response.)

13 THE COURT: Thank you. There are none.

14 Ladies and gentlemen, as earlier, I'm going to
15 read out to you a few names here. These are folks that
16 are potential witnesses in this case. They may or may not
17 testify. That question as I just asked you regarding Mr.
18 Cabbagestalk is the question that I will be asking you as
19 relates to these folks, and that is, are you related by
20 blood, connected by marriage, or have any close business
21 or personal relationship with any of these folks? These
22 are potential witnesses. And if any of them are in the
23 courtroom, if they would please stand.

24 Kenneth Couch, Nikki Rogers, Tameshia
25 Perry-Payne, Debra Perry, M. Payne Tricia Reese.

1 Any member of the jury panel related by blood,
2 connected by marriage, or have any close or personal
3 relationship with any of those folks?

4 Yes, sir.

5 THE JUROR: I worked for Nikki Rogers.

6 THE COURT: Nikki Rogers. And your name, sir?

7 THE JUROR: Mark Akers, Juror 4.

8 THE COURT: All right. This is Juror No. 4.

9 Sir, the fact that you worked with Nikki Rogers
10 in the past, would that in any way affect your ability to
11 be fair and impartial?

12 THE JUROR: No, Your Honor.

13 THE COURT: Thank you very much. You may have a
14 seat.

15 MS. USRY: Your Honor, may I briefly approach?

16 (A bench conference was held with the judge and
17 attorneys in the presence of the jury but out of the
18 hearing of the jury.)

19 THE COURT: It's been brought to the Court's
20 attention of another possible witness, ladies and
21 gentlemen, Nick Burt.

22 Any member of the jury panel related by blood,
23 connected by marriage, or have any close business or
24 personal relationship with Nick Burt, please stand.

25 (No response.)

1 THE COURT: Thank you. There are none.

2 Now, is there any member of the jury panel or
3 any member of your immediate family who has ever been
4 arrested, charged, or indicted, or accused of committing
5 assault and battery or criminal domestic violence? If
6 so -- or any other crime of violence? If so, please
7 stand.

8 All right. Now, let me -- sir, your name?

9 THE JUROR: Juror 130.

10 THE COURT: No. 130.

11 Now, what I'm going to ask is -- and I don't
12 want any details or anything about it. What I simply want
13 to know is this: Is the fact that you've had that occur
14 or had someone in your family who's had those accusations
15 or whatever, would that in any way affect your ability in
16 this case to be fair and impartial, giving both the State
17 and defense a fair trial?

18 THE JUROR: I would hope not.

19 THE COURT: All right. Well, either you think
20 it would or it would not.

21 THE JUROR: No.

22 THE COURT: Thank you very much, sir. You may
23 have a seat.

24 Yes, ma'am, your name?

25 THE JUROR: Tina Turner.

1 THE COURT: All right.

2 THE JUROR: 270.

3 May I approach, please?

4 THE COURT: Yes, ma'am, Ms. Further.

5 THE JUROR: My husband was arrested for domestic
6 abuse against me, but he wasn't -- they didn't convict
7 him.

8 THE COURT: Okay. Let me ask you this --

9 THE JUROR: Yes, I would.

10 THE COURT: I understand that.

11 THE JUROR: I'm sorry.

12 THE COURT: Sure. Not a problem. I'm going to
13 excuse you from participating in this case, Ms. Turner.
14 So you can just have a seat. I'm going to have -- she'll
15 pull your name out so it doesn't come up.

16 THE JUROR: Thank you. Sorry.

17 THE COURT: That's okay. It's not a problem.

18 THE JUROR: Your Honor, may I also approach the
19 bench?

20 THE COURT: Yes, please. Whoever needs to, come
21 on up.

22 THE BAILIFF: 268, Your Honor.

23 278, Your Honor.

24 THE COURT: All right. Come on up. Yes, ma'am.

25 THE JUROR: I'm a victim of criminal domestic

1 violence. I would be biased.

2 THE COURT: Sure. Why don't we just have you go
3 have a seat, but I'm going to have the clerk pull your
4 name so that it doesn't show up on here.

5 Thank you. Juror 278.

6 THE BAILIFF: 256, Your Honor.

7 THE JUROR: My mother was abused when I was a
8 child and my dad was an abusive alcoholic. I definitely
9 have a bias against it, any family dispute like that.

10 THE COURT: Okay. This is juror number -- what
11 number were you again?

12 THE JUROR: 256.

13 THE COURT: I'm going to get you to have a seat.
14 And don't talk about it with any other jurors, but I will
15 have them pull your name so it doesn't show up.

16 Thank you.

17 THE CLERK: 199, Your Honor.

18 THE COURT: Yes, ma'am.

19 THE JUROR: I'm a criminal domestic abuse
20 survivor. And my sister had a domestic violence case
21 against her husband, and he was caught.

22 THE COURT: So would that affect your ability to
23 be fair and impartial?

24 THE JUROR: Would it what now?

25 THE COURT: I understand. I understand. I'll

1 ask the clerk to pull your name so you won't appear on
2 this case.

3 Thank you.

4 THE BAILIFF: 234, Your Honor.

5 THE COURT: Ms. Hawkins..

6 THE JUROR: I had a criminal domestic abuse case
7 against my husband.

8 THE COURT: That would affect your ability to be
9 fair and impartial obviously, Ms. Hawkins. I'm going to
10 have them pull your name. If you would, just have a seat
11 back in the audience. I'll have them take your name out.

12 THE BAILIFF: 220, Your Honor.

13 THE COURT: Yes, ma'am.

14 THE JUROR: I was the victim of domestic
15 violence.

16 THE COURT: I'm assuming that would affect your
17 ability to be fair and impartial?

18 THE JUROR: Yes, sir.

19 THE COURT: I'm going to have them just take
20 your name out so you don't show up on this case.

21 Thank you, ma'am.

22 All right. Let me just ask if the attorneys --
23 and you can remain where you're at -- when I went over the
24 voir dire questions with the jury on the first case, were
25 you all present in the courtroom for that? So you all

1 made whatever notes you needed to make? I'm not going to
2 repeat those questions since you've already got the
3 answers to those.

4 MS. USRY: The State did do that, yes, sir.

5 MR. DRYLIE: I did as well, Your Honor.

6 THE COURT: All right. And I think -- well, let
7 me get you to come forward on this one.

8 (A bench conference was held with the judge and
9 attorneys in the presence of the jury but out of the
10 hearing of the jury.)

11 THE COURT: Ladies and gentlemen, I'm going to
12 ask the catch-all question that I asked before because
13 obviously, as I said earlier, questions can be asked all
14 afternoon and not address a particular issue someone might
15 have.

16 Is there any member of the jury panel who knows
17 of any reason why you would not be able to be fair and
18 impartial, giving the State and the defense a fair trial
19 if you were selected on this panel? If so, please stand.

20 I will get you all to come forward if I could,
21 please.

22 THE BAILIFF: Juror No. 40, Your Honor.

23 THE COURT: All right. Ms. Bunch.

24 THE JUROR: As a social worker, I have clientele
25 who are victims of domestic violence.

1 THE COURT: And that would affect your ability
2 to be fair and impartial?

3 THE JUROR: Yes, sir.

4 THE COURT: Okay. I'm going to just take your
5 name off the list.

6 Thank you, ma'am.

7 THE BAILIFF: Juror 105, Your Honor.

8 THE COURT: Ms. Hammond.

9 THE JUROR: I was a previous volunteer for
10 SisterCare. I don't know if I could be impartial based on
11 the experience I had there.

12 THE COURT: All right. I'm going to have them
13 take your name out of the computer for this case.

14 THE JUROR: Does that mean I have to stay for the
15 rest of the selection?

16 THE COURT: Yes, if you'd just stay with us and
17 I'll give some instructions in just a moment.

18 THE JUROR: Thank you.

19 THE COURT: Yes, ma'am.

20 THE BAILIFF: 250, Your Honor.

21 THE COURT: Ms. Stevenson.

22 THE JUROR: I was the victim of a CDV.

23 THE COURT: And that would make you unable to be
24 fair and impartial?

25 THE JUROR: Uh-huh.

1 THE COURT: Juror 250 we'll take out.

2 THE BAILIFF: 205, Your Honor.

3 THE COURT: Yes.

4 THE JUROR: My wife being employed with the
5 State, one of her specialities is teaching the clerks and
6 the judges about criminal domestic violence and she also
7 taught that at the academy.

8 THE COURT: Would that affect your ability to be
9 fair and impartial?

10 THE JUROR: I don't believe so, no, sir.

11 THE COURT: Here's what I need. If you were to
12 be selected, and I tell all the jurors this, they're not
13 allowed to discuss the case with family members, so
14 obviously if you'd just adhere to that, you'd be fine.

15 THE JUROR: Yes, sir.

16 THE COURT: Great. Appreciate it.

17 THE BAILIFF: Juror 125, Your Honor.

18 THE JUROR: Yes, sir. In my first marriage and
19 my second marriage also was mental abuse, but it wouldn't
20 affect my judgment.

21 THE COURT: So you don't -- you feel you can be
22 fair and impartial? You just wanted to let us know that
23 you have that experience?

24 THE JUROR: Yes.

25 THE COURT: Thank you very much.

1 She said she can be fair and impartial.

2 THE BAILIFF: Juror No. 53, Your Honor.

3 THE COURT: Yes, ma'am.

4 THE JUROR: In my previous marriage I was
5 mentally and physically abused and I had to go to the
6 hospital, and to this day I just don't want to -- I can't
7 hear this.

8 THE COURT: Sure. That would affect your
9 ability to be fair and impartial; is that correct?

10 THE JUROR: Yes, sir.

11 THE COURT: Okay. I'm going to have them take
12 your name out of the computer. If you'll stay with us.

13 THE JUROR: Do I just go and sit down?

14 THE COURT: Yes, just have a seat, and I'll give
15 you some further instruction.

16 Thank you, ma'am.

17 THE JUROR: Juror 226, Your Honor.

18 THE COURT: All right. Ms. Schirato.

19 THE JUROR: I was a victim of domestic abuse.

20 THE COURT: And that would affect your ability
21 to be fair and impartial?

22 THE JUROR: Yes.

23 THE COURT: I'll have them take your name out of
24 the computer for this case. If you'll have a seat.

25 THE JUROR: Okay.

1 THE COURT: All right. Any further questions
2 from the State?

3 MS. USRY: Nothing further from the State, Your
4 Honor.

5 THE COURT: Anything further from the defense?

6 MR. DRYLIE: No, Your Honor.

7 THE COURT: All right. Ladies and gentlemen,
8 we'll go through the process as we went through earlier.
9 Those of you that I met with and indicated that your name
10 would be removed from the computer, that should occur. If
11 we call -- as we go through this process, if one of those
12 of you who I told that, if your name were to pop up, it
13 shouldn't, but if it did, just remind us of that and we'll
14 excuse you, okay?

15 But we'll go through the same process. And as
16 before, if you have any belongings, bring them with you
17 when you come up in case you end up over here in the jury
18 box, okay?

19 This is five and five.

20 MS. USRY: Yes, Your Honor.

21 THE COURT: Let me get the lawyers to come up
22 here while they're doing this.

23 (A bench conference was held with the judge and
24 attorneys in the presence of the jury but out of the
25 hearing of the jury.)

1 THE COURT: All right. Is the State ready to
2 proceed with jury selection?

3 MS. USRY: The State's ready, Your Honor.

4 THE COURT: Defense ready to proceed with jury
5 selection?

6 MR. DRYLIE: The defense is ready, Your Honor.

7 THE COURT: All right. Madam Clerk.

8 THE CLERK: Juror No. 1, Anthony Abrams, (White
9 male).

10 What say you for the State?

11 MS. USRY: Please present the juror.

12 THE CLERK: What say you for the defense?

13 MR. DRYLIE: Please present Mr. Abrams.

14 THE CLERK: 149, Jennifer Kuhlen, (White
15 female).

16 What say you for the State?

17 MS. USRY: Please present the juror.

18 THE CLERK: What say you for the defense?

19 MR. DRYLIE: Please seat Ms. Kuhlen.

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

21 Juror No. 46, Sherry Chapman, (White female).

22 What say you for the State?

23 MS. USRY: Please excuse this juror.

24 THE CLERK: If you'll return to your seat,
25 ma'am.

1 Juror No. 113, Amy Hatfield, (White female).

2 What say you for the State?

3 MS. USRY: Please present the juror.

4 THE CLERK: What say you for the defense?

5 MR. DRYLIE: Please seat Ms. Hatfield.

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

7 233, David Sims, (White male).

8 What say you for the State?

9 MS. USRY: Please present Mr. Sims.

10 THE CLERK: What say you for the defense?

11 MR. DRYLIE: Please excuse Mr. Sims.

12 THE CLERK: If you'll return to your seat, sir.

13 Juror 166, Susan Marsh, (White female).

14 What say you for the State?

15 MS. USRY: Please present the juror.

16 THE CLERK: What say you for the defense?

17 MR. DRYLIE: Please seat Ms. Marsh.

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

19 Juror 175, Nancy Miller, (White female).

20 What say you for the State?

21 MS. USRY: Please present the juror.

22 THE CLERK: What say you for the defense?

23 MR. DRYLIE: Please excuse Ms. Miller.

24 THE CLERK: If you'll return to your seat,

25 ma'am.

1 Juror 273, Tiffany Vyskocil, (White female).

2 What say you for the State?

3 MS. USRY: Please present the juror.

4 THE CLERK: What say you for the defense?

5 MR. DRYLIE: Please present Ms. Vyskocil.

6 THE CLERK: If you'll have a seat in the jury
7 box.

8 58, Cheryl Crosby, (White female).

9 What say you for the State?

10 MS. USRY: Please present the juror.

11 THE CLERK: What say you for the defense?

12 MR. DRYLIE: Please present Ms. Crosby.

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

14 197, Chloe Perkins, (White female).

15 What say you for the State?

16 MS. USRY: Please present the juror.

17 THE CLERK: What say you for the defense?

18 MR. DRYLIE: Beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 (Pause.)

21 MR. DRYLIE: Please present Ms. Perkins.

22 THE CLERK: Have a seat in the jury box.

23 107, Maribeth Hardy, (White female).

24 What say you for the State?

25 MS. USRY: Please present the juror.

1 THE CLERK: What say you for the defense?

2 MR. DRYLIE: Please excuse Ms. Hardy.

3 THE CLERK: If you'll return to your seat,

4 ma'am.

5 79, Rosemary Esquivel, (White female).

6 What say you for the State?

7 MS. USRY: Please present the juror.

8 THE CLERK: What say you for the defense?

9 MR. DRYLIE: Beg the Court's indulgence.

10 (Pause.)

11 MR. DRYLIE: Please present Ms. Esquivel.

12 THE CLERK: Please have a seat in the jury box.

13 28, Joanne Boulware, (White female).

14 What say you for the State?

15 MS. USRY: Please present the juror.

16 THE CLERK: What say you for the defense?

17 MR. DRYLIE: Please excuse Ms. Boulware.

18 THE CLERK: If you'll return to your seat,

19 ma'am.

20 253, Scott Sturkie, (White male).

21 What say you for the State?

22 MS. USRY: Please present the juror.

23 THE CLERK: What say you for the defense?

24 MR. DRYLIE: Please present Mr. Sturkie.

25 THE CLERK: If you'll have a seat in the jury

1 box, sir.

2 100, Lisa Haase, (White female).

3 What say you for the State?

4 MS. USRY: Please present the juror.

5 THE CLERK: What say you for the defense?

6 MR. DRYLIE: Please present Ms. Haase.

7 THE CLERK: If you'll have a seat in the jury
8 box, ma'am.

9 255, Erin Summers, (Black female).

10 What say you for the State?

11 MS. USRY: Please present the juror.

12 THE CLERK: What say you for the defense?

13 MR. DRYLIE: Please seat Ms. Summers.

14 THE CLERK: If you'll have a seat in the jury
15 box, ma'am.

16 231, Taylor Sigler, (White female).

17 What say you for the State?

18 MS. USRY: Please present the juror.

19 THE CLERK: What say you for the defense?

20 MR. DRYLIE: Please present the juror.

21 THE COURT: All right. We'll have two
22 alternates, one and two on the alternates.

23 THE CLERK: 229, Elizabeth Shealy, (White
24 female).

25 What say you for the State?

1 MS. USRY: Please present the juror.

2 THE CLERK: What say you for the defense?

3 MR. DRYLIE: Please excuse the juror.

4 THE CLERK: If you'll return to your seat,
5 ma'am.

6 192, Donald Padgett, (White male).

7 What say you for the State?

8 MS. USRY: Please present the juror.

9 THE CLERK: What say you for the defense?

10 MR. DRYLIE: Please present the juror.

11 THE CLERK: If you'll have a seat in the jury
12 box, sir.

13 101, Otto Hage, (White male).

14 What say you for the State?

15 MS. USRY: Please present the juror.

16 THE CLERK: What say you for the defense?

17 MR. DRYLIE: Please excuse Mr. Hage.

18 THE CLERK: If you'll return to your seat, sir.

19 261, Bruce Teal, (White male).

20 What say you for the State?

21 MS. USRY: Please present the juror.

22 THE CLERK: What say you for the defense?

23 MR. DRYLIE: Please excuse Mr. Teal.

24 THE CLERK: Return to your seat, sir.

25 269, Sonya Turner, (White female).

1 What say you for the State?

2 MS. USRY: Please present the juror.

3 THE CLERK: What say you for the defense?

4 MR. DRYLIE: Please present Ms. Turner.

5 THE CLERK: If you'll have a seat in the jury
6 box, ma'am.

7 THE COURT: All right. Any motions regarding
8 jury selection from the State?

9 MS. USRY: Nothing from the State, Your Honor.

10 THE COURT: Anything from the defense?

11 MR. DRYLIE: Nothing from the defense, Your
12 Honor.

13 (The jury is impaneled at 1:19 p.m)

14 THE COURT: All right. Now, ladies and
15 gentlemen, I'm going to excuse you in just a moment, but
16 I'm going to excuse you with the same instructions that I
17 gave the last jury but a little further out.

18 You're going to be at some point going home and
19 I'm going to ask you to call.

20 Do they have the number that they need to call?
21 Is it on their sheet?

22 THE CLERK: It's on the card.

23 THE COURT: Call that number on the card after
24 6 o'clock tonight and what you're going to listen for --
25 do we do them as panel one and two?

1 THE CLERK: That's fine.

2 THE COURT: This will be panel two.

3 So there will be instructions for panel one,
4 which will be the main panel out there, and panel two. If
5 you'll follow the instructions for panel two. And it may
6 that we need you back in the morning or it may be that we
7 don't need you until Wednesday, but just whatever
8 instructions are on there, just follow those instructions.

9 Now, it's a little bit different for you because
10 you're going to be going home and you're going to be
11 around family, friends, loved ones, whatever your
12 situation may be, and they're going to be curious as to
13 whether or not -- how did it go today and did you get
14 selected. You can tell them that you have been selected
15 on a jury and that you're going to be calling back, you
16 don't know when you're going to have to come back. Then,
17 of course, the next thing they want to know is what kind
18 of case is it, what is it about, who does it involve, or
19 whatever, and basically telling them that you are on a
20 panel is about all that you can do. You need to let them
21 know that you're not allowed to discuss even the charge.
22 I mean, saying something as innocent as, well, it's a
23 gentleman who's accused of criminal domestic violence,
24 that could elicit a response that could possibly affect
25 your ability to be fair and impartial. So you need to

1 guard that ability to be fair and impartial. So if you
2 talk with anyone, you need to let them know that you're
3 not allowed to talk about the case at all. You can't tell
4 them what the charge is, you can't tell them who the
5 defendant is or anything. But you can tell them if
6 they'll be patient, that you will tell them everything
7 they want to know once the case is over because at that
8 point you're no longer under any restriction. And just
9 explain to them that it's a matter of just protecting your
10 ability to be fair and impartial.

11 So what I'm going to do is excuse you now to go
12 with the bailiff and he'll show you where the jury room is
13 and whenever you have to report back, I don't know when
14 that will be, you'll report back to that jury room. But
15 call back after 6 o'clock tonight and listen for the
16 instructions for jury panel two, okay?

17 All right. So I'm going to let you all be
18 excused.

19 (The jury left open court and was excused for
20 the day at approximately 1:22 p.m.)

21 (The proceedings were concluded for the day, to
22 be reconvened on June 18, 2013.)

23 THE COURT: Folks, if I may, please accept my
24 apology for the delay here. I got tied up in the back
25 talking to Judge Alford about some matters that he and I

1 are kind of double teaming this week. And then I had
2 already scheduled a minor settlement, so that pushed that
3 back, so I had to do that. So I apologize. I don't mean
4 to keep you out here waiting.

5 But I know we have some matters we need to take
6 up pretrial; is that correct?

7 MS. USRY: Yes, sir, Your Honor. The State has
8 a Jackson v Denno motion, and we're prepared go forward on
9 that.

10 THE COURT: All right. You ready to proceed on
11 that?

12 MS. USRY: Yes, sir.

13 THE COURT: Defense ready?

14 MR. DRYLIE: Yes, Your Honor.

15 THE COURT: All right. Let's go ahead and
16 proceed with the Jackson v Denno hearing.

17 MS. DAVIS: Thank you, your Honor.

18 The State calls Deputy Nick Burt.

19 THE COURT: All right, sir. If you'd please
20 come around and be sworn.

21 NICHOLAS EDWARD BURT, after being duly sworn,
22 testified as follows:

23 THE CLERK: Have a seat, please, sir. Once
24 you're seated, state your full name, spelling your last on
25 the record, please.

1 THE WITNESS: Master Deputy Nicholas Edward
2 Burt, B-U-R-T.

3 IN CAMERA DIRECT EXAMINATION

4 BY MS. DAVIS:

5 Q Deputy Burt, where are you employed?

6 A Lexington County Sheriff's Department.

7 Q And what's your rank there?

8 A Master deputy.

9 Q I'm going to take you directly to the statements made
10 on December the 4th of 2011 by the defendant, Dwayne
11 Cabbagestalk. Do you recall that incident?

12 A I do.

13 Q Did the defendant make any statements to you?

14 A He did.

15 Q Okay. Where were those statements made?

16 A At , which is in Lexington County.

17 Q And is that the defendant's residence?

18 A Yes.

19 Q Okay. Was there more than one statement made?

20 A Yes, there was three.

21 Q What were the circumstances surrounding the first
22 statement?

23 A The first statement wasn't made directly towards me;
24 it was made to the victim.

25 Q And what was said?

1 A As we were walking inside, he began yelling at her,
2 We were just arguing.

3 Q Did you ask him any questions to elicit that
4 statement?

5 A No, I did not.

6 Q And that statement was made to the victim?

7 A To the victim.

8 Q And that's Ms. Perry-Payne?

9 A Yes.

10 Q What were the circumstances surrounding the second
11 statement?

12 A Dwayne had become extremely agitated. I placed him
13 in investigative detention, advised him he wasn't
14 currently under arrest, but he was being detained, you
15 know, walking him outside. And he had calmed down, and
16 that's when he started to talk about the incident.

17 Q Was he in handcuffs at this time?

18 A Yes, he was.

19 Q So he was not free to leave?

20 A No, he was not.

21 Q Okay. Was he under arrest?

22 A No.

23 Q What statements did he make to you then?

24 A He began talking about that he was mad because she
25 hadn't bought him cigarettes, also talking about his --

1 her mother had been there approximately an hour ago, and
2 she had probably been the one that called and also made
3 allegations that the argument had been over money.

4 Q Were those statements made in response to any
5 questions from you?

6 A Initially, I didn't ask him any questions. He began
7 talking about what happened. But as we went forward, I
8 was asking him questions walking to the car.

9 Q And what were the circumstances surrounding the third
10 statement made by the defendant?

11 A The third statement, I came out, advised him he was
12 under arrest and read him his Miranda rights.

13 Q Did you read those from a card?

14 A Yes, I did.

15 Q Do you have that with you today?

16 A I do.

17 Q Would you please read that into the record.

18 A Miranda warning: You have the right to remain
19 silent. Anything you say can and will be used against you
20 in a court of law. You have the right to talk to a lawyer
21 and have him present with you while you're being
22 questioned. If you cannot afford to hire a lawyer, one
23 will be appointed to represent you before any questioning,
24 if you wish. You can decide at any time to exercise these
25 rights and not answer any questions or make any

1 statements.

2 The waiver is: Do you understand each of these
3 rights I've explained to you, which he advised he did, and
4 having these rights in mind, do you wish to talk to us
5 now?

6 Q Did he appear to have any trouble understanding those
7 rights?

8 A No.

9 Q And he stated to you that he did understand them?

10 A Yes.

11 Q Did he wish to waive those rights and speak to you?

12 A He did continue to speak with me.

13 Q Okay. And what he tell you?

14 A He told me that she was lying, and that he didn't
15 touch her, and then on the way to jail, he said, "I'm
16 going to be honest with you. I did throw the candle down
17 on the ground because I was made, but I didn't touch her."

18 Q And were those statements made in response to any
19 questions by you?

20 A Not the second part about when he said he was going
21 to be honest with me. That was while en route to the
22 jail.

23 Q Did the defendant appear to be under the influence of
24 any alcohol or drugs?

25 A No, not at the time.

1 Q At the time of any of these statements?

2 A No.

3 Q Did he seem impaired in any way?

4 A No.

5 Q Did he have any physical or mental disabilities that
6 could have caused him to be impaired?

7 A Not that I'm aware of.

8 Q Was he denied any access to any restrooms or
9 telephone or food at that time?

10 A He never asked me for any of that.

11 Q Were there any threats or promises made in exchange
12 for his statements?

13 A No.

14 Q Did the defendant's responses to your questions
15 appear to be rational and responsive?

16 A Can you say -- irrational or rational?

17 Q Rational.

18 A Yes, they did, they appeared to be rational.

19 Q Did you threaten or force him in any way to get these
20 statements?

21 A No.

22 Q Did you give him any kind of reward for these
23 statements?

24 A No.

25 Q Was he ever asked if he wanted an attorney?

1 A Yes, when I read him the Miranda card.

2 Q Did he indicate that he did at any time?

3 A No.

4 Q To the best of your knowledge, were the statements
5 made by the defendant freely and voluntarily?

6 A Yes.

7 MS. DAVIS: Beg the Court's indulgence, Your
8 Honor.

9 (Pause.)

10 MS. DAVIS: No further questions.

11 IN CAMERA CROSS-EXAMINATION

12 BY MR. DRYLIE:

13 Q Good morning.

14 A Good morning.

15 Q When you placed Mr. Cabbagestalk in investigative
16 detention, he was handcuffed?

17 A Yes, he was.

18 Q And he was placed in the back of your patrol car?

19 A Yes.

20 Q And there were two statements made after that point?

21 A One while we were walking, and then the third one was
22 later on after I advised him he was under arrest.

23 Q All right. Which statement occurred after you
24 advised him he was under arrest?

25 A Which was asked him?

1 Q Yes.

2 A The statement after I told him he was under arrest
3 was where he told me, quoted it, "I'm going to be honest
4 with you. I did throw the candle down on the ground
5 because I was mad, but I didn't touch her."

6 Q And when walking to the car was?

7 A That was the statements talking about his version of
8 his side of what had occurred, what the argument was over.

9 MR. PHILLIPS: No further questions.

10 THE COURT: Thank you, sir.

11 Anything further from the State from this
12 witness?

13 MS. DAVIS: No, sir, Your Honor.

14 The State has no further witnesses on this
15 matter.

16 THE COURT: Thank you very much. You may step
17 down.

18 Does defense wish to be heard on this matter?

19 MR. PHILLIPS: Yes, Your Honor.

20 The statement that was made after he was
21 handcuffed and being taken to the car, we would move that
22 it was to be suppressed for not being freely and
23 voluntarily given due to his Miranda rights not being
24 given at the time he was placed into custody.

25 THE COURT: All right. I'm going to deny that.

1 If I recall the testimony, those comments were made by the
2 defendant not in response to any question.

3 MR. PHILLIPS: That's correct, Your Honor.

4 THE COURT: But simply people tend to talk. And
5 so I think that they are appropriate, and I will allow it.

6 MR. PHILLIPS: Thank you, Your Honor.

7 MS. DAVIS: Thank you, Your Honor.

8 THE COURT: Anything other than this? Are there
9 any other pretrial matters that we need to address before
10 the jury? I mean, we have time. It is not 10:30 yet.

11 MS. USRY: Your Honor, the State would just
12 simply make a motion to sequester the witnesses. Our only
13 officer in this case, which would be our investigating
14 officer and the responding officer as well, is sitting at
15 our table today. And the victim is present in the
16 courtroom in the white suit. And we recognize they can
17 stay in the courtroom, but all of the other witnesses, we
18 would ask they be sequestered.

19 THE COURT: All right.

20 MR. DRYLIE: We would oppose that motion, Your
21 Honor.

22 THE COURT: All right.

23 MR. DRYLIE: We ask that the witnesses be
24 allowed in the courtroom, especially since one witness is
25 the minor son of the victim, we would ask that they be

1 allowed to stay in the courtroom.

2 THE COURT: What would be the reason?

3 MR. DRYLIE: We're just opposing it.

4 THE COURT: All right. I'm going to deny that.

5 I think it's even more reason to sequester so that one
6 witness can't basically testify off of the testimony of
7 another witness. I think it assures that each person's
8 testimony is based solely on their recollection of things
9 and not based on what someone else has testified to. So
10 I'm going to require that any other witnesses be
11 suppressed -- sequestered.

12 And, now, that sequestration begins with regards
13 to opening statements, so let's make sure. I'm going to
14 need you all's help. I don't know who all the witnesses
15 are, so whenever we get to that point, you all make sure
16 you let me know if the witnesses are where they need to
17 be. Okay?

18 MR. DRYLIE: Your Honor, I'm sorry. I should
19 have addressed this before.

20 One of the witnesses on my witness list is my
21 paralegal, Tricia Reese, and I'd ask that she be allowed
22 to stay in the courtroom. She is also my investigator.

23 THE COURT: Does the State wish to be heard on
24 that?

25 MS. USRY: Your Honor, we will defer either way,

1 however Your Honor wants to handle that issue.

2 THE COURT: Here's the thing. I guess for
3 sequestration purposes, I was mainly concerned about fact
4 witnesses, and I doubt -- well, she could be a fact
5 witness to talk about what she observed. All right. I
6 will allow that. I will allow her to stay.

7 MS. USRY: That's fine. Thank you.

8 MR. DRYLIE: And then the only other defense
9 motions that we have, and I don't believe the solicitor is
10 opposing it, is we have a motion that the statement that
11 the victim gave to law enforcement that night be redacted.
12 She's actually already redacted it. There's a line in
13 there saying that Dwayne's mad at me because we're going
14 to court for a CDV 3rd charge, and that's a line that had
15 to be redacted.

16 THE COURT: Sure. Yes, that's appropriate. I
17 certainly would grant that motion.

18 MS. USRY: Yes, sir, and I have shown it -- I
19 just want make to clear on the record I have shown it to
20 defense counsel. They've agreed that what I've redacted
21 is the part that they would want redacted.

22 THE COURT: All right. Sure.

23 MS. USRY: If that becomes an issue at trial, we
24 can address it later, if that statement becomes an issue.

25 THE COURT: All right. Let me -- you might want

1 to turn around. Your witness needs you, I think.

2 MS. USRY: Yes, sir. We would beg the Court's
3 indulgence.

4 (Pause.)

5 MS. USRY: Your Honor, may we approach?

6 THE COURT: Uh-huh.

7 (A bench conference was held with the judge and
8 attorneys.)

9 MR. DRYLIE: Your Honor, I gave you a witness
10 list yesterday.

11 THE COURT: You did?

12 MR. DRYLIE: I did.

13 THE COURT: And I agree.

14 MR. DRYLIE: And we'd just make a motion to add
15 one name to that list. It's already been dealt with.
16 It's on the State's witness list, so it's been dealt with
17 with the jury. But M. Payne is also a possible witness
18 for the defense as well.

19 THE COURT: Yeah, and that's fine. You all can
20 call anyone you want to on either one of these lists. I
21 just wanted to make sure that those names were in front of
22 the jury so we could determine whether or not anyone had a
23 conflict. But you're right, I did call that name out from
24 the State's list.

25 Any time I do a trial, whether it's a civil or a

1 criminal trial, I never tell the jury the State's
2 witnesses or defense witnesses or plaintiff's witnesses.
3 I just kind of bunch them all up and say these are
4 potential witnesses. But that name has been put forth
5 before the jury, it's passed that screening or
6 questioning, so sure, you're certainly open to call
7 whoever you would like.

8 Let me ask you all this: As far as exhibit-type
9 evidence, have you all looked at that? Are there any
10 stipulations to anything or can you agree on anything?
11 And have that -- I would like to get -- and it's okay. If
12 you don't agree on any of it, that's fine; if you do,
13 that's good. But regardless, I just at least -- has
14 everything been pre-marked?

15 THE COURT REPORTER: No, sir.

16 THE COURT: I want to pre-mark everything for at
17 least identification purposes. And then if you can
18 stipulation to it, we'll go ahead and put that on the
19 record so that when you are actually in the course of the
20 trial, we don't have to stop and go and deal with that, it
21 can already be in evidence.

22 But go ahead and take a moment to look at the
23 exhibits, see if you can stipulate. If you can, great; if
24 you can't, that's fine, too. But in any regard, let's
25 make sure we get them pre-marked.

1 As a matter of fact, why don't we do that. Why
2 don't you pre-mark them first so that you then can -- if
3 you can say, Judge, you know, we stipulate to 1, not to 3,
4 we agree to 4, not to 7, but I don't know, whatever.
5 Let's go ahead and get them pre-marked.

6 MS. USRY: Yes, sir.

7 (WHEREUPON, State's Exhibits Nos. 1-14 were
8 marked for identification only.)

9 MR. DRYLIE: Your Honor, we're going to put on
10 the record that we'll stipulate to, I think Exhibits 1
11 through 13.

12 MS. USRY: 14.

13 MR. DRYLIE: 14.

14 THE COURT: All right. So the defense
15 stipulates to State's Exhibits 1 through 14?

16 MR. DRYLIE: Yes, Your Honor.

17 THE COURT: All right. So those are stipulated
18 to and they are in evidence. So when you handle those
19 exhibits during the examination, you can go ahead and
20 consider them to be in evidence.

21 MS. DAVIS: Thank you, Your Honor.

22 (WHEREUPON, State's Exhibits Nos. 1-14 were
23 admitted into evidence.)

24 THE COURT: Okay. Anything else we need to take
25 up before we get started?

1 MS. USRY: Nothing from the State, Your Honor.

2 MR. DRYLIE: Nothing from the defense, Your
3 Honor.

4 THE COURT: All right. Here's what we're going
5 to do. We're going to take just a short recess, anybody
6 wants to get something to drink, use the restroom or
7 whatever, and then we'll get started in just about three
8 minutes, okay?

9 MS. USRY: Yes, sir, Your Honor.

10 MR. DRYLIE: Yes, sir.

11 (A break was taken.)

12 THE COURT: State ready to proceed?

13 MS. USRY: State is ready, Your Honor.

14 THE COURT: Defense ready?

15 MR. DRYLIE: Defense is ready, Your Honor.

16 THE COURT: All right. If you would bring in
17 the jury.

18 (The jury came into open court at approximately
19 10:45 a.m.)

20 THE COURT: Welcome back, ladies and gentlemen.
21 I hope everybody had a good night's rest and is ready to
22 go to work here this morning.

23 We're about to begin the trial. But before we
24 do that, and I'm going to ask if you would, please, give
25 Madam Clerk your attention. She is going to place you

1 under your oath for your role as jurors in this trial.

2 THE CLERK: Please stand and raise your right
3 hand.

4 (WHEREUPON, the jury was sworn at 10:46 a.m.)

5 THE COURT: Ladies and gentlemen, before we get
6 started, let me cover a few matters for your comfort and
7 for your need.

8 It's important -- there is no one more important
9 than the 14 of you here. And so I need for you to be
10 comfortable. So if you're uncomfortable, you need to let
11 me know. To the extent we can make you comfortable, I'll
12 try to. Temperature-wise, if you're cold or if you're
13 hot, whatever, let us know.

14 Your seating. We are creatures of habit. My
15 wife and I have been attending the same church over in
16 Florence. We go to Lamb's Chapel Christian Center. Not a
17 big church, kind of small, but we have been sitting in the
18 same seats for more than 14 years. And if we go in church
19 one Sunday morning and somebody is in our seat, we kind of
20 look around, like, what are we going to do now. There is
21 no assigned seating in the church, so we just go sit
22 somewhere else.

23 There really is no assigned seating in the jury
24 box except for three seats in this case, the two
25 alternates will always occupy the two seats that you're

1 in, and the foreperson will occupy this first seat. And I
2 will deal with the foreperson issue in a little bit, a
3 little bit later. But other than those three seats,
4 please feel free to sit wherever you -- I mean, in other
5 words, as you flow in and out, I don't want you to have to
6 step over each other to get to a particular seat because
7 you think you need to be there. Just be -- just flow in
8 and out as you naturally come in and out of the courtroom
9 and sit wherever you happen to be.

10 Now, having said that, some people, they kind of
11 take a hankering to where they're at and they don't want
12 to leave. So if you like where you're at and you don't
13 want to give it up, that's fine, you can sit there. But
14 I'm just wanting you to know that don't feel like you have
15 to sit where you currently are. If your coming or going
16 from the courtroom causes you to get out of order, that's
17 fine. There's no -- there's really no order.

18 Also, if at any time during the trial you have
19 difficulty hearing anyone, please don't hesitate to let me
20 know, and we'll either work on the sound or we'll have
21 them to repeat it, or whatever. It's important that you
22 hear everything.

23 And then finally, as I said earlier, your
24 comfort is what is important because if you're
25 comfortable, you're going to pay more attention and hear

1 the things that are going on which you need to be aware
2 of.

3 So having said that, if at any time any one of
4 you needs a break, if you'll get my attention, I -- it
5 doesn't matter if we're right in the middle of a witness'
6 response to a question -- if you need to take a break, get
7 my attention, and we will stop right where we're at and
8 we'll take a break. We can always start back where we
9 were when we stopped. So don't hesitate to let the Court
10 know if you need to take a break. All right?

11 So having said those things, we are about to
12 begin the trial of this case, the State of South Carolina
13 versus Dwayne L. Cabbagestalk.

14 Now, ladies and gentlemen, before we start, I
15 want to tell you that more than likely, this trial will be
16 very different from what you might expect. Most folks
17 don't have an opportunity or never get an opportunity to
18 sit in on an actual jury trial. Most people's exposure to
19 jury trials are what they've watched on television or
20 they've seen in movies or what they've read in books. And
21 as we all know, those trials are always full of high
22 drama, intense action, rivetting circumstances because
23 those trials are meant to entertain you.

24 Now, while any one of those things or any number
25 of those things may occur during the course of this trial,

1 what is important for you to understand is that this trial
2 is not for your entertainment. This trial is a
3 fundamental part of our democracy. It is a search for the
4 truth in an effort to make sure that justice is done
5 between the parties that are before the Court. Searching
6 for the truth and making sure that justice is done
7 oftentimes is very deliberate, sometimes it's repetitive
8 and sometimes it's rather slow. So it's very different,
9 as you can tell from what I've said, from what you have
10 seen in books or read -- read in books, seen in the movies
11 or seen on television.

12 This courtroom is a place of honor that is
13 dedicated to the protection and to the preservation of
14 citizen's rights through what many people have called the
15 greatest justice system ever created. The attorneys that
16 appear before you are advocates for their sides or the
17 parties that they represent. But first and foremost, they
18 are officers of the court, sworn to uphold the integrity
19 and the fairness of our judicial system and to help you in
20 your search for the truth. You should expect them to be
21 ethical, competent in their performing of their services
22 or their duties.

23 Now, you have just taken an oath to try this
24 case and to reach a fair and impartial verdict, so you are
25 also expected to be fair and reasonable in the performance

1 of your duties, and I have absolutely no doubt that you
2 will do just that. I want to thank you for your
3 contribution to our system of justice here in Lexington
4 County this week.

5 Now, what I'm going to go over with you right
6 now is intended to serve as an introduction to the trial
7 of the case. This is not a charge on the law. I will
8 give you the charge on the law at the close of the
9 evidence. But right now, I'm just going to go through and
10 basically give you an idea of the procedures we're going
11 to follow, which will maybe help you better understand how
12 things are going.

13 Now, in this case, ladies and gentlemen, the
14 defendant, Mr. Cabbagestalk, is charged by an indictment
15 that was filed with this court. That indictment alleges
16 or charges Mr. Cabbagestalk with the offense of criminal
17 domestic violence. The elements of that offense, I will
18 explain to you later when I give you charge on the law.
19 As I told you earlier when we started, this indictment is
20 simply the charge by which the case is brought into this
21 court. And it is not in any sense evidence of any of the
22 allegations that it contains.

23 The defendant has pled not guilty to this charge
24 or to this indictment, and that plea of not guilty places
25 the burden of proving each and every element of the crime

1 on the State, and they must prove those elements beyond a
2 reasonable doubt. It's going to be your duty, ladies and
3 gentlemen, to determine or decide whether or not the State
4 has met that burden.

5 Your purpose as jurors is to find and to
6 determine the facts of this case. You are the sole judges
7 of the facts in this case. If at any time I make any
8 comment regarding the facts, please disregard those
9 comments because only you, the jury, can decide what the
10 facts are in this case. You are to determine the facts
11 from the testimony that you hear from witnesses and any
12 other evidence that may come into this trial or during the
13 course of the case. It is up to you to determine what
14 inferences that you feel may properly be drawn from the
15 evidence. It is especially important that you perform
16 your duty of determining the facts diligently and
17 conscientiously because ordinarily we cannot correct an
18 erroneous determination of facts by a jury.

19 Now, on the other hand, but with equal emphasis,
20 the same law that makes you the judges of the facts, makes
21 me the judge of the law. The law as given by the Court is
22 the only law that you may consider. You must accept and
23 follow it, even though you may disagree with it. I'm not
24 allowed to tell you anything about the facts or anything I
25 think about the facts. And you, on the other hand, are

1 not allowed to disagree with me about what the law is or
2 what the law should be. Your job is to take the law as I
3 give it to you, apply it to the facts as you find from the
4 testimony of witnesses and any other exhibits that may
5 come in during the course of this trial in reaching your
6 verdict.

7 Now, as I told you yesterday, until I tell you
8 it's appropriate, you are not to have any conversation
9 with anybody about this case, even when you go back into
10 your jury room when we take breaks. You can talk about
11 anything in the world other than what's been going on here
12 in the courtroom. You just take in all the evidence as
13 it's presented and just store it away, and at one point
14 when all the evidence is in, you'll then be in a position
15 to deliberate this case.

16 Now, it's important, ladies and gentlemen, that
17 you keep an open mind and that you do not decide any issue
18 in this case until all of the evidence has been presented
19 and the parties have had an opportunity to address you
20 with their closing arguments. It is your solemn
21 responsibility to determine the guilt or innocence of the
22 defendant. And your verdict must be based solely on the
23 evidence as it is presented to you during the course of
24 this trial.

25 Now, in just a moment, the solicitor will make

1 what is called an opening statement in which she will
2 explain to you what the issues are in this case or at
3 least what she believes the issues are in this case. Once
4 she has concluded her remarks, then the defense will have
5 an opportunity to also address you with an opening
6 statement, although they're not required to do that. What
7 is important for you to understand is this: What the
8 lawyers say to you in their opening statements is not
9 evidence. They are not under oath, they are not on the
10 witness stand. It is merely their contention as to what
11 they believe the evidence in this case will show. The
12 evidence in this case is going to be presented to you by
13 the testimony of witnesses who are sworn and placed under
14 oath and who take the witness stand and testify, and then
15 any other exhibits which may come in during the course of
16 the trial.

17 Now, from time to time during the course of the
18 trial, you may hear one of the attorneys say something
19 along these lines: Your Honor, we have a matter of law we
20 need take up with the Court, or Judge, may we approach the
21 bench. During those times, if I can handle a matter up
22 here at the bench, I will do that. But I may find it
23 necessary to ask you to step back into your jury room
24 while I take up a matter of law. If I do that, the only
25 reason I would do that is simply for this: As I told you

1 earlier, you are the judges of the facts in this case.
2 I'm not allowed to have any conversation or any influence
3 over you regarding the facts. Sometimes when I'm taking
4 up a matter of law with the attorneys, it may require that
5 I make some comment about the facts or the testimony in
6 relation to a ruling that I'm having to make on that
7 matter of law. So to protect you from being exposed to
8 that, I may ask you to step back into your jury room so
9 that I can freely address the matter of law without
10 affecting your role as the fact finders.

11 Now, in determining what the true facts are in
12 this case, you're going to have to decide whether or not
13 the testimony of a witness is believable. It's going to
14 be my job to determine whether or not any testimony is
15 allowed into this record. But once testimony is allowed,
16 whether or not you believe it is solely up to you to
17 decide. In determining to believe a witness or what, you
18 have the right to consider the interest of a witness, the
19 bias of any witness, the opportunity for the witness to
20 have seen the matters and the things about which that
21 witness testifies and the way the witness acts on the
22 witness stand.

23 You have the right, ladies and gentlemen, to
24 consider anything that is in this record that will help
25 you to evaluate the testimony of a witness. That means it

1 is your responsibility and your duty to pay close
2 attention to all of the witnesses in this case, observe
3 these witnesses, listen carefully to them, listen to the
4 lawyers as well as to the Court. Do not let your thoughts
5 wander, but pay strict attention to all of the testimony
6 and the evidence that is presented so that at the end of
7 the case after all of the evidence has been presented, the
8 lawyers have addressed you with their closing remarks and
9 I have given you the charge on the law, once you have all
10 of that, you'll then be in a position to go back into the
11 jury room and to deliberate, discuss and arrive at a
12 verdict.

13 Now, before I turn it over to the attorneys, let
14 me first inquire of the State: Are there any objections
15 or exceptions to the Court's opening remarks to the jury?

16 MS. USRY: No, sir, Your Honor.

17 THE COURT: Any from the defense?

18 MR. DRYLIE: No, Your Honor.

19 THE COURT: All right. Ladies and gentlemen,
20 I'm going to turn it over now to the attorneys and ask
21 that you please give them your close and undivided
22 attention.

23 MS. USRY: Your Honor, we briefly have a matter
24 to approach you on before we begin.

25 THE COURT: All right.

1 (A bench conference was held with the judge and
2 attorneys in the presence of the jury but out of the
3 hearing of the jury.)

4 THE COURT: All right. Ms. Usry, if you're
5 ready, ma'am.

6 MS. USRY: Yes, sir, Your Honor. May it please
7 the Court.

8 THE COURT: Yes, ma'am.

9 MS. USRY: Thank you, Your Honor.

10 December 4th, 2011, that's the date on which the
11 incident, the day we're going to talk about occurred,
12 that's the reason that we're here today. Because on
13 December 4th, 2011, the defendant assaulted his live-in
14 girlfriend, the mother of three of his children. He
15 assaulted her, he verbally abused her, he threw items at
16 her and he kicked her.

17 Criminal domestic violence, it occurs between
18 household members. Household members is defined by the
19 domestic violence statute as people with children in
20 common, people who cohabitate. Criminal domestic violence
21 occurs and makes it unlawful when one household member
22 causes physical harm or injury to another household member
23 or assaults with or without accompanying battery another
24 household member, which would reasonably cause that
25 household member to fear imminent peril, apparent imminent

1 peril. And that's the statute, we'll go over it again
2 later, but that's the statute of criminal domestic
3 violence, it's an assault and battery between household
4 members.

5 The State has the burden of proof today. You
6 heard the Judge just say that. The burden of proof for
7 the State is beyond a reasonable doubt, and we welcome
8 that burden. And we plan to prove to you today beyond a
9 reasonable doubt that the defendant assaulted Tameshia
10 Perry-Payne.

11 Now, beyond a reasonable doubt is not beyond all
12 doubt. And, ladies and gentlemen, we don't have a video
13 camera inside the house to tell you what happened that
14 day. We have the evidence officers collected when they
15 got to the scene. We have witnesses that will take the
16 stand today. But we'll never be able to prove to an
17 absolute certainty that this incident happened, but we can
18 prove beyond a reasonable doubt.

19 Now, this is going to be a very short trial. I
20 anticipate we're going to be done by the end of the day,
21 potentially into the next morning. It will be very short.
22 But it's still very important. You're going to hear from
23 the witnesses in this case, and this is a simple assault
24 and battery case. This is going to be a case that is not
25 going to be a sensational case. It's not going to be a

1 made-for-TV case. It's not something that you're going to
2 see. But it's still a violation of the law in South
3 Carolina.

4 You're going to hear from the victim today. In
5 fact, she could be the first person you're going to hear
6 from. The victim isn't going to remember the facts the
7 way they happened, the way she reported them that night.
8 And she, for whatever reason, is going to either minimize
9 or deny. The State does not know at this point which path
10 she is going to take. She will take that stand and make
11 her statements. They will be different from the night
12 that this happened. But I submit to you, ladies and
13 gentlemen, that when the victim reported this incident and
14 told the officer that the defendant had been cursing at
15 her, had thrown items at her and kicked her, that that was
16 the truth, and she told the truth that night. And for
17 whatever reason, she is changing her story today.

18 You're going to hear from the officer that
19 responded. I ask that you just listen to their statements
20 and listen to the testimony. And you'll hear again from
21 me at the end of this trial, and it won't be that long
22 from now. We'll discuss the evidence that was presented
23 to you. And I believe at that point, the State will have
24 proved beyond a reasonable doubt that the defendant
25 assaulted Tameshia Perry-Payne. Thank you.

1 THE COURT: Thank you, ma'am.

2 Mr. Drylie?

3 MR. DRYLIE: Good morning.

4 Disputes. We all have them. Arguments, tempers
5 rise, we get angry, we argue over petty things, we say
6 things we don't mean. These things happen. Now, you just
7 heard from the solicitor the State's version of this case,
8 and that is that Mr. Cabbagestalk assaulted Ms. Tameshia
9 Perry-Payne. And we believe that the evidence is going to
10 show that that is not true. We believe the evidence will
11 show that Mr. Cabbagestalk never harmed, he never
12 attempted to harm Ms. Payne.

13 The solicitor went over the statute with you,
14 and those are the two elements that they have to prove
15 beyond a reasonable doubt, that Dwayne over here assaulted
16 or attempted to harm Ms. Perry-Payne.

17 Now, there was an incident on December 4th,
18 2011, and admittedly, Mr. Cabbagestalk lost his temper,
19 Ms. Payne lost her temper, words were said, voices rose,
20 things got loud, but there was never an assault, there was
21 never a battery. It was an argument over money. We all
22 have those.

23 The solicitor just told you that this is a
24 relatively simple case, and it is. But it's also very
25 important because that is Mr. Cabbagestalk's day in court

1 here.

2 Now, you are going to hear from some witnesses,
3 some of whom were there, some of whom who weren't. And I
4 want you to keep in mind throughout this testimony that
5 what you hear, the State bears the burden of proving
6 beyond a reasonable doubt that Mr. Cabbagestalk assaulted
7 or attempted to assault Ms. Perry-Payne.

8 We're here today to help settle a dispute. Now,
9 it's a dispute between the State of South Carolina and
10 Mr. Cabbagestalk. But at its heart, it's really a dispute
11 that happened on December 4th, 2011, between
12 Mr. Cabbagestalk and Ms. Payne, who is sitting back there.
13 Now, this dispute has been taken up by the State. You're
14 going to hear from the witnesses to the dispute today.
15 And we need your help to find the truth. We need your
16 help to settle that dispute. I want you to keep a fair
17 and impartial mind as you go through this trial.

18 Throughout this trial, as the Judge just told
19 you, he's going to instruct you on the law of this case.
20 You're the finders of fact. Today is Mr. Cabbagestalk's
21 day in court. And we believe that the evidence will show
22 that he never harmed or attempted to harm Ms. Perry-Payne.
23 And at the close of the trial, we're going to ask you to
24 return a verdict of not guilty.

25 My name's Erik Drylie, this is Dayne Phillips

1 and this is Dwayne Cabbagestalk. The two of us represent
2 him. And we thank you for your time and your service
3 today, and we hope you can help us settle this dispute.

4 THE COURT: Thank you, sir.

5 You may call your first witness.

6 MS. USRY: Thank you, Your Honor. The State
7 calls Tameshia Perry-Payne.

8 THE COURT: All right, ma'am, if you'd come
9 around and be sworn, please.

10 TAMESHIA PERRY-PAYNE, after being duly sworn,
11 testified as follows:

12 THE CLERK: Have a seat, please, ma'am. Once
13 you're seated, speak up loud and clear, stating your full
14 name on the record, spelling your last.

15 THE WITNESS: My name is Tameshia Perry-Payne,
16 Perry, P-E-R-R-Y hyphen P-A-Y-N-E, Payne.

17 DIRECT EXAMINATION

18 BY MS. USRY:

19 Q Thank you, Ms. Perry-Payne.

20 Can you tell me how you know the defendant in
21 this case?

22 A He's my daughters' father.

23 Q How many children do you have with him?

24 A Three.

25 Q What are their ages?

- 1 A Seven, six and three.
- 2 Q And have you ever resided with him?
- 3 A No.
- 4 Q Never lived together?
- 5 A No.
- 6 Q Well, where do you currently live?
- 7 A , Lexington, South Carolina 29073.
- 8 Q And do you recall where you lived on December 4th of
- 9 2011?
- 10 A The same address.
- 11 Q The same address. You lived at the same location?
- 12 A Yes.
- 13 Q And I'm going to take you back to December 4th, 2011.
- 14 Do you recall that day?
- 15 A No.
- 16 Q You don't recall that day?
- 17 A No.
- 18 Q Okay. Do you recall the police coming to your house
- 19 that day?
- 20 A Yes.
- 21 Q Do you recall what happened prior to the police
- 22 coming that day?
- 23 A A little.
- 24 Q Who was present at your house?
- 25 A Myself, Dwayne and my kids.

1 Q And who -- please name your children for me.

2 A Nila, Jada, M. Payne and Monte.

3 Q And three of those are with the defendant?

4 A Yes.

5 Q Is that correct?

6 Which child isn't with the defendant?

7 A M. Payne

8 Q And how old is M. Payne

9 A He's 16.

10 Q So your four children, you and the defendant were
11 present; is that correct?

12 A We were in the home, yes.

13 Q You were in the home.

14 And what were you doing that day?

15 A Cleaning, cooking, motherly duties that I do every
16 day.

17 Q And why were the police called to your house that
18 day?

19 A We got into a verbal argument. I wanted him to
20 leave. He just he wouldn't go with me saying bye or
21 leave, so I called the police.

22 Q And you called the police?

23 A I think I called the police. I'm not even sure if I
24 called or if I told M. Payne to call. I'm not sure.

25 Q But somehow you called the police?

1 A Yes.

2 Q And just -- it was just an argument?

3 A It was an argument, yes. Candles were thrown. My
4 wall was damaged by the candle.

5 Q Okay. And backing up, you said -- did you say you
6 were cooking dinner or did you say you were just cleaning
7 the house?

8 A I have absolutely really no idea. If I was cooking,
9 cleaning, changing a diaper, I have no idea.

10 Q What was the defendant doing at your house that day?

11 A Visiting his kids.

12 Q Do you recall how many officers came to your house?

13 A I think one.

14 Q Is it the officer sitting at the table here today?

15 A I don't remember faces, so I'm not sure.

16 Q Do you recall speaking with that officer?

17 A I probably did. If he asked me a question, I
18 responded, I'm sure.

19 Q Do you recall telling him what happened that day?

20 A If he asked me a question, I'm sure I told him
21 something.

22 Q Do you recall writing a statement for him?

23 A If he asked, if it's written, then if there is one,
24 but I don't recall, no.

25 Q Do you recall what you wrote in that statement?

1 A No.

2 (WHEREUPON, STATE'S Exhibit No. 15 was marked
3 for identification only.)

4 BY MS. USRY:

5 Q Ms. Perry-Payne, I'm going to show you State's
6 Exhibit 15. This is just for ID. I only want you to
7 refresh your memory and review that statement. Do not
8 read it out loud. You can read it to yourself.

9 A (Witness reviewing document.)

10 Q Does that refresh your memory?

11 A A little.

12 Q Now, this statement that you wrote that night, is
13 that your handwriting?

14 A It is.

15 Q Do you recognize the writing?

16 A I do.

17 Q You told officers that night in your statement that
18 you asked your son to call the police; is that correct?

19 A I don't -- if it says that, then I did.

20 Q Is that -- you did call --

21 A Because I don't remember calling. I don't remember
22 if I told M. Payne to call. So if I said that, then maybe
23 M. Payne did call.

24 Q And you wanted your son to call the police because
25 you were in fear, you were in danger?

1 A No. I'm not sure why I wanted him to call them.

2 Q But that's what you told the officers in your
3 statement, correct?

4 A I'm not sure as to why I told him to call.

5 Q But do you admit that you wrote in your statement
6 that, that you were danger?

7 A If it's written, I wrote the statement, but I'm not
8 sure if I told him to call because I wanted Dwayne to
9 leave, because I wanted us to leave. It could have been
10 any reason.

11 Q And then you told officers that the defendant
12 physically and verbally abused you; is that correct?

13 A I probably said whatever it took to get Dwayne out of
14 my house.

15 Q And you told them that he kicked you in your leg and
16 threw an iron candleholder at you while you were sitting
17 down?

18 A Whatever it took.

19 Q So you're saying now that this is all a lie, that you
20 lied to police?

21 A I did.

22 Q Do you recall telling the police that the defendant
23 said he was going to pull down the fire alarm and threaten
24 to burn the house down?

25 A No.

1 Q So you don't recall telling them that?

2 A I do not.

3 Q You wrote it in a statement. Do you recall writing
4 it in your statement?

5 A If it's written, then I wrote it because I just saw
6 it, but I do not recall telling the police that.

7 Q And he also threatened to pour water on your TV?

8 A I don't know. If it's written -- like I said, I
9 don't remember the statement. I think this is, like, two
10 years ago. I don't remember everything that I said or did
11 that night.

12 Q And that he also wanted your -- do you recall
13 fighting over money that night?

14 A Arguing over anything. I don't remember the
15 argument, the conversation, what it was about.

16 Q Do you recall that he wanted your debit card and you
17 wouldn't give it to him?

18 A I'm not even sure if I had a debit card. I don't
19 have a checking or banking account.

20 Q Do you recall telling officers you were fighting or
21 arguing over the fact that he wanted you to bring home
22 cigarettes and you had forgotten?

23 A Could have been. I'm not sure. I'm not sure about
24 what the argument was about.

25 Q So you don't remember any of this?

1 A I recall some but not all.

2 Q Well, Ms. Perry-Payne, let's talk about, do you
3 recall the defendant cursing at you?

4 A We cursed at each other.

5 Q But do you recall putting the specific curse words in
6 your statement?

7 A If I said it, he said it. We said it to each other.

8 Q Ms. Perry-Payne, you said you recall the officer
9 coming, and you do recall speaking with him, correct?

10 A If he asked me a question, yes.

11 Q So in addition to writing a statement, you spoke with
12 the officer, correct?

13 A If he asked me a question, I gave him an answer.

14 Q So if the officer wrote in the statement --

15 MR. DRYLIE: Objection. Sounds like hearsay's
16 coming, Your Honor.

17 MS. USRY: It's her statement. I'm not going to
18 say -- I'm going to say what she told the officer that he
19 put in the statement.

20 THE COURT: You can question her as to her
21 statement, so I'll allow it.

22 MS. USRY: With just that specific.

23 BY MS. USRY:

24 Q Do you recall also telling the officer in addition to
25 putting it in your statement, you also told him that the

1 defendant kicked you, correct?

2 A No.

3 Q You verbally told him that?

4 A I don't recall that.

5 Q So when he takes the stand and says that today, he's
6 lying?

7 A I can't tell you if he's lying or not. I don't
8 recall.

9 Q Do you recall taking your jeans off and putting on
10 pants so you could show the officer the bruise on your
11 leg?

12 A No.

13 Q You don't recall that?

14 A I didn't have any -- I'm anemic. My bruises come.

15 Q They just show up?

16 A They just pop up all over my body.

17 Q Where did the argument happen in the house?

18 A I'm not sure, probably right down the -- the
19 downstairs.

20 Q Do you recall telling the officers that it started
21 upstairs in the bedroom?

22 A No, my bedroom's downstairs. I wouldn't say that.

23 Q But it started in the bedroom?

24 A Uh-huh. Well, I don't know if it happened in the
25 bedroom, the living room, the kitchen. If we were

1 arguing, it was probably throughout the downstairs area.

2 I don't just stay in one room and argue.

3 Q All right. Ms. Perry Payne, I'm showing you State
4 Exhibit Number 8 for ID. Do you recognize that?

5 A Yes.

6 THE COURT: All of these exhibits are in
7 evidence.

8 MS. USRY: Oh, yes. Okay.

9 THE COURT: State's 1 through 14.

10 MS. USRY: They're in evidence. Thank you, Your
11 Honor. State's 8 is in evidence. Thank you, Your Honor.

12 BY MS. USRY:

13 Q Do you recognize that?

14 A Uh-huh, that's my candleholder.

15 Q Is that the candleholder the defendant threw at you
16 the night --

17 A No. He threw it down on the floor, and my candles
18 bust my wall.

19 Q Do you recall what type --

20 A That's how the candleholder was dented.

21 Q Do you recall telling officers that he threw at you
22 and it missed --

23 A I'm sure I did.

24 Q -- and it hit the wall?

25 A I'm sure I did to get Dwayne to leave because just me

1 telling them he threw it at something was not going to
2 work.

3 Q So -- but you will admit that you told the officers
4 that he did throw the candlestick holder?

5 A I would not deny it. I said whatever needed to be
6 said that night in order to get Dwayne out of my house.

7 Q Did you call -- did your mother show up here after
8 this incident, Ms. Perry-Payne?

9 A I don't remember. I don't think so.

10 Q She didn't show up?

11 A I don't think -- I don't think so.

12 Q Was she there before this happened?

13 A I don't remember.

14 Q Ms. Perry-Payne, I'm showing you State's 10 and 11.
15 Do you recognize those pictures?

16 A Yes.

17 Q Can you tell me what is in State's 10 and 11?

18 A My fire alarm and my ID.

19 Q And what is in the top picture, that that is
20 State's 10 -- or 11?

21 A I don't know what that is. What is that?

22 Q Is that where the fire -- where this originally was
23 located?

24 A Oh, it may have fallen when he threw the candle at
25 it. When the candle hit it, it fell down.

1 Q Okay. So now the candlestick holder hit that?

2 A No. The candle itself that was in it, I had candles
3 in it, in the candleholder itself, and when he threw the
4 candle and it hit the floor, it hit the fire alarm, which
5 brought it down.

6 Q Well, do you recall telling officers that he
7 threatened to take the fire alarm down and burn the house
8 down?

9 A I don't recall my statement to the officer at all.
10 But if I said it to the officer, it was to get Dwayne to
11 leave.

12 Q Ms. Perry-Payne, I'm showing you State's 5, 6 and 7.
13 Can you tell me what's in those pictures?

14 A That's my TV that he threw the candleholder at, and
15 it busted or cracked on the TV. This one, I don't know.
16 This looks like the cord from my -- to my TV on the floor.

17 Q Okay. So he threw the candlestick holder at the TV?

18 A The candles hit the TV and splattered. When he threw
19 the candles itself, the candleholder, towards the fire, it
20 hit my TV as well. It hit the floor when they were coming
21 down. That's how it was dented.

22 Q So it hit two locations. It hit the fire alarm and
23 the --

24 A And my TV.

25 Q And removed that. And it also hit your TV when he

1 threw it?

2 A When it came down, it hit the TV.

3 Q Well, Ms. Perry-Payne, you have been to the public
4 defender's office and discussed this case, correct?

5 A Several times. Too many times.

6 Q And in their office, you wrote a statement that you
7 wanted to drop the charges, correct?

8 A Absolutely.

9 Q And in your statement, do you recall writing the
10 statement? Do you need to see it to refresh your memory?

11 A Please.

12 (Pause.)

13 THE WITNESS: Okay.

14 BY MS. USRY:

15 Q Now, in that statement, you indicated you told
16 officers that he threw the candlestick holder at you and
17 it hit your leg. Is that the truth or is what you're
18 saying today is the truth?

19 A What I'm saying today is the truth.

20 Q Okay. So when you wrote your drop charges form, you
21 are still saying something that is not the accurate truth?

22 A I've been writing that I want the charges dropped
23 since the incident happened. I've been to court on
24 several incidents. This is my first time being able to
25 speak before the judge to let the judge know. But I've

1 been saying this way before this incident. This is, what,
2 two years old now.

3 Q Ms. Perry-Payne, do you recall telling the public
4 defender's office that he threw the candlestick holder
5 down and it hit your leg?

6 A No. The candlestick never hit my leg. Period.
7 Nothing ever touched me.

8 Q That's what you told the public defender's office is
9 that -- that is what you actually told officers?

10 A Nothing ever touched me. The candlestick hit the
11 fire alarm, came down and hit my TV.

12 MS. USRY: Beg the Court's brief indulgence,
13 Your Honor.

14 THE COURT: Yes, ma'am.

15 (Pause.)

16 BY MS. USRY:

17 Q Ms. Perry-Payne, you have discussed this case with
18 the defendant prior to today, haven't you?

19 A I'm sorry?

20 Q You have discussed the case with the defendant prior
21 to today, haven't you?

22 A No. I don't discuss anything with Dwayne Lamont
23 Cabbagestalk.

24 Q And you called your mom yesterday and told her she
25 didn't remember anything in relation to this case,

1 correct?

2 MR. DRYLIE: Objection.

3 A No. I didn't talk to my mom --

4 THE COURT: Hold on. There is an objection.

5 Yes, sir.

6 MR. DRYLIE: It's not relevant, Your Honor.

7 THE COURT: Overruled.

8 BY MS. USRY:

9 Q And you have called your mom, who is going to testify
10 today, and told her that she wasn't -- she shouldn't
11 remember anything tomorrow when she testified, correct?

12 A My mom's --

13 MR. DRYLIE: Objection. Hearsay.

14 THE WITNESS: My mom's her own person. Trust
15 me --

16 THE COURT: Ma'am, when there is an objection,
17 no one else speaks until I rule on it.

18 THE WITNESS: Okay.

19 THE COURT: Go ahead.

20 MR. DRYLIE: Hearsay, Your Honor.

21 THE COURT: As to what she told her mother?

22 MR. DRYLIE: She's asking her, didn't you call
23 your mom and tell her this, and that's hearsay; Your
24 Honor. It's an out-of-court statement. She's asking --

25 THE COURT: Overruled. That's not hearsay, what

1 she said. She is a witness who's in court and subject to
2 cross-examination.

3 MS. USRY: Your Honor, the State has no further
4 questions.

5 THE COURT: All right.

6 CROSS-EXAMINATION

7 BY MR. DRYLIE:

8 Q Good morning.

9 A Good morning.

10 Q On December 4th, 2011, did Dwayne Cabbagestalk hit
11 you?

12 A No.

13 Q Were you ever in fear of Dwayne Cabbagestalk?

14 A No.

15 Q On that day, did you lie to the police?

16 A Yes.

17 MR. DRYLIE: Beg the Court's indulgence.

18 (Pause.)

19 MR. DRYLIE: No further questions, Your Honor.

20 THE COURT: Anything further for this witness on
21 redirect?

22 MS. USRY: Your Honor, the State has no further
23 questions for this witness.

24 THE COURT: Thank you, ma'am. You may step
25 down.

1 You may call your next witness.

2 MS. USRY: Your Honor, may we approach briefly?

3 THE COURT: Yes, ma'am.

4 (A bench conference was held with the judge and
5 attorneys in the presence of the jury but out of the
6 hearing of the jury.)

7 MS. USRY: Your Honor, the State calls M. Payne
8 Payne.

9 THE COURT: All right.

10 Please have M. Payne brought into court.

11 M. Payne after being duly sworn, testified
12 as follows:

13 THE CLERK: If you'll have a seat in the jury
14 box. State your full name, spell your last name for the
15 record for me, please.

16 THE WITNESS: M. Payne

17 DIRECT EXAMINATION

18 BY MS. USRY:

19 Q Thank you, M. Payne. Just make sure you speak into the
20 microphone when you speak, okay?

21 How do you know Ms. Tameshia Perry-Payne?

22 A She's my mother.

23 Q And how old are you?

24 A Sixteen.

25 Q And how do you know the defendant in this case?

1 A He's my mother's boyfriend.

2 Q And do your mother and the defendant have any
3 children in common?

4 A They do.

5 Q And are they your siblings?

6 A Yes, ma'am.

7 Q Can you tell me their names and ages?

8 A N.P. , and she's seven. And J.C.
9 she's five and M.C. , and she is two --
10 three.

11 Q And, M. Payne do you recall December 4th, 2011?

12 A I do somewhat.

13 Q Who was at the home on December 4th, 2011?

14 A It was me, my mom, Beano and my sisters.

15 Q And tell me, who is Beano?

16 A Dwayne.

17 Q And that's what you call the defendant?

18 A Yes, ma'am.

19 Q Okay. Was your grandmother ever at the house that
20 day?

21 A I don't remember. I don't recall.

22 Q And what do you remember about December 4th, 2011?

23 A Not that much.

24 Q Do you recall the police coming to your home?

25 A I do.

1 Q And how did the police come to arrive at your home?

2 A I called my grandmother, and my grandmother called
3 the police.

4 Q And why did you call your grandmother?

5 A Because Dwayne and my mom had gotten into an argument
6 and started fussing.

7 Q And where were you when you called your grandmother?

8 A I was outside.

9 Q Why were you outside?

10 A Because -- I don't recall. I don't recall.

11 MS. USRY: Beg the Court's indulgence.

12 (Pause.)

13 BY MS. USRY:

14 Q M. Payne but you were not inside the residence that
15 evening, correct?

16 A At one point, I was.

17 Q Okay. And what did you observe when you were in the
18 residence?

19 A Nothing. I was upstairs in my room.

20 Q What did you hear when you were in the residence?

21 A Fussing.

22 Q And because of that, you called the police?

23 A Yes, ma'am.

24 MS. USRY: No further questions, Your Honor.

25 THE COURT: Any questions, Counsel?

1 MR. DRYLIE: Yes, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. DRYLIE:

4 Q M. Payne did you see Dwayne hit your mom on that night?

5 A No. No, sir.

6 Q And Dwayne is not your father, correct?

7 A No, sir.

8 Q And on that night, you didn't call the police,
9 correct?

10 A I didn't?

11 Q You did not call the police; you called your
12 grandmother, correct?

13 A I called my grandmother, yes, sir.

14 Q And so what you heard that night was fussing,
15 correct?

16 A Yes, sir.

17 MR. DRYLIE: Beg the Court's indulgence.

18 (Pause.)

19 MR. DRYLIE: No further questions.

20 MS. USRY: Your Honor, nothing further for this
21 witness.

22 THE COURT: Thank you, sir. You may step down.

23 MS. DAVIS: Your Honor, the State calls Deputy
24 Nicholas Burt.

25 THE COURT: Deputy Burt, come around and be

1 sworn, sir.

2 NICHOLAS EDWARD BURT, after being duly sworn,
3 testified as follows:

4 THE CLERK: Have a seat, please, sir. Once
5 you're seated, state your full name, spelling your last on
6 the record, please.

7 THE WITNESS: Master Deputy Nicholas Edward
8 Burt, B-U-R-T.

9 DIRECT EXAMINATION

10 BY MS. DAVIS:

11 Q Deputy Burt, where are you employed?

12 A Lexington County Sheriff's Department.

13 Q How long have you worked there?

14 A Just over three years.

15 Q And what is your previous law enforcement experience?

16 A I was previously with the Columbia Police Department.

17 Q And what is your rank at Lexington County?

18 A I'm a master deputy.

19 Q What are your duties as a master deputy?

20 A Assistant shift supervisor in the north patrol
21 district.

22 Q How many people do you supervise?

23 A Four.

24 Q Is one of your duties to assist in investigations?

25 A Yes.

1 Q Were you employed with Lexington County on the night
2 of December 4th of 2011?

3 A Yes.

4 Q On that night, did you become involved in an
5 investigation involving the defendant, Dwayne
6 Cabbagestalk?

7 A Yes, I did.

8 Q How did you become involved in that investigation?

9 A I was dispatched the call through our communications
10 center.

11 Q Where were you dispatched to?

12 A

13 Q And is that in Lexington County?

14 A Yes, it is.

15 Q How long did it take for you to get there?

16 A I was given the call at 8:07 p.m., and I arrived at
17 8:09 p.m., so approximately two minutes.

18 Q And is , is that a residence?

19 A Yes, it is. It's in a residential neighborhood.

20 Q Whose residence is that?

21 A At the time, I was told it was the victim's, Tameshia
22 Perry-Payne, as well the defendant's, Dwayne Cabbagestalk.

23 Q When you arrived there, what did you do?

24 A Pulled up to the house, went to the front door, which
25 also had a glass screen door, and the victim came out and

1 met me at the front.

2 Q Did you speak with her?

3 A I did.

4 Q What did she tell you happened?

5 A When I was initially talking with her, she was, you
6 know, very quiet, meek, I was asking her what was going
7 on. The defendant came to the door. He was very irate.
8 I told him I would speak with him in just a moment, if he
9 could step back inside. He told me this is his house, he
10 can stand where he wants, and he didn't want to go inside
11 because he wanted to listen. He eventually stood right
12 in -- just inside the front glass door. I -- due to him
13 standing there in front of her, I asked her was anything
14 physical, she advised it was, said that he had kicked her
15 in her left thigh. Asked her if she needed EMS, was she
16 injured. She declined EMS, but said she felt like she was
17 bruised. But at the time, I couldn't see anything because
18 she was wearing skintight blue jeans.

19 Q So she was wearing jeans when you initially were
20 at --

21 A Yes.

22 Q -- arrived?

23 A Yes.

24 Q What did you do next?

25 A At that point, I asked her if she had any shorts she

1 could change into, and she said she did, and she walked to
2 her bedroom, which is when you walk in downstairs, the
3 very back of the residence.

4 Q And did she go change into shorts?

5 A She did.

6 Q What did you do after that?

7 A I followed in behind her. As soon we came in the
8 living room, the defendant began yelling at her, saying,
9 "We were just arguing." I tried -- I shifted my focus to
10 him to try to get him to calm down. He seemed very
11 agitated. He had sweat beads on his forehead, appeared to
12 be in a rage. She went on, ignoring him, back to her
13 bedroom.

14 I tried to get him to calm down. He wouldn't
15 calm down, so I told him he was going to be placed in
16 investigative detention to resolve -- to save -- officer
17 safety issue at that point.

18 Q And what does "investigative detention" mean?

19 A It's whenever we're investigating a crime that
20 somebody may have committed, is committing or previously
21 did. It can be with or without handcuffs. He's not free
22 to go at that time, but we can detain him while we
23 investigate what's going on further.

24 Q So it is for safety purposes?

25 A At that point, yes.

1 Q And was he put in handcuffs?

2 A Yes, he was.

3 Q And where was he taken?

4 A I led him back outside to my vehicle to separate the
5 two parties.

6 Q And you left him in your patrol car?

7 A I did.

8 Q Then what happened after that?

9 A I went back in the residence to speak with the victim
10 who had now changed into a pair of shorts.

11 Q Okay. And what did she tell you happened?

12 MR. DRYLIE: Objection. Hearsay.

13 MS. DAVIS: Your Honor, for impeachment
14 purposes.

15 THE COURT: Overruled. I'll allow it.

16 Go ahead.

17 BY MS. DAVIS:

18 Q You may answer.

19 A She had said that they had been off and on for about
20 six years, and they have three children in common. She
21 said that her mother had been over there previously, and
22 after her mother left, he, the defendant, became agitated
23 with her because she didn't buy him any cigarettes and was
24 demanding her debit card.

25 Her children had been downstairs at the time.

1 She said they went upstairs, and he began getting more
2 verbally irate. He specifically, she told me, called her
3 a bitch and a mother fucker.

4 She said her children went upstairs, and he went
5 to the -- just outside their bedroom and ripped out the
6 smoke detector alarm, threatening to burn down the house,
7 and that she -- there was a metal candleholder. She said
8 he picked it up and chucked it at her while they were in
9 the living room. It didn't hit her. And he also took one
10 of candles and began throwing it around the house. At
11 that point, she went in the bedroom, following behind her.
12 They don't have a bed frame, it was just a mattress on the
13 ground. She said when she sat down, he came in and kicked
14 her, striking her in the left thigh.

15 Q So she said that he did strike her in the leg?

16 A She -- yeah, she said he kicked her.

17 Q Okay.

18 A She went back out, and that's when she screamed for
19 her son, M. Payne handed her cell phone and told him to go
20 outside and call the police. And apparently he called the
21 grandmother instead, who then called us.

22 Q After you spoke with Ms. Perry-Payne, what happened?

23 A I asked her if she'd be willing to write a written
24 statement, she said she would, and I obtained that. I
25 also got a camera and started taking photographs of the

1 residence.

2 Q So she gave you a written statement as well as an
3 oral statement?

4 A Yes, she did.

5 Q And you took photographs. What did you take
6 photographs of?

7 A The house itself, when you walk in the living room
8 area, the smoke alarm in the kitchen on the island and
9 also the bedroom.

10 Q So you photographed the scene?

11 A Yes.

12 Q Did you see any visible injuries after she changed
13 into shorts?

14 A There was a slight, what appeared to be a bruise on
15 her left thigh.

16 Q Did you take a photograph of that?

17 A Yes, I did.

18 Q After you took these photographs, what did you do
19 next?

20 A I collected the candleholder that was -- said she was
21 thrown at her as evidence, and went back out to the car,
22 advised him he was being placed under arrest for criminal
23 domestic violence.

24 Q So as a result of your investigation, the defendant
25 was arrested for criminal domestic violence?

1 A Based on all the facts that I obtained, yes.

2 Q And did you transport him?

3 A Yes, I did.

4 Q Was that the extent of your investigation?

5 A Yes. I was the only officer to respond that night.

6 Q Okay. Who else was present at the house when you
7 arrived?

8 A It was the victim, Tameshia Perry-Payne, the
9 defendant and her four children.

10 Q And where were the children?

11 A Initially there was a few, I don't remember
12 specifically which ones were downstairs, but then most of
13 them had cleared out and gone upstairs as I was speaking
14 with the victim.

15 Q I'm going to show you State's Exhibit 1. Can you
16 tell the jury what that is?

17 A This is looking at the house at the driveway.

18 Q So that is the residence where you responded to?

19 A Yes, this is

20 Q And this is Exhibit Number 2. When did you take that
21 photograph?

22 A This is as soon as you walk in, it's the -- if you're
23 at the front door, it's the wall where a piece of candle
24 had struck the wall and a piece of it's broken off in the
25 floor.

1 Q So this is where the candle struck the wall?

2 A Yes, in one of the places.

3 Q In one of the places?

4 A Uh-huh.

5 Q Okay. State's Exhibit 3?

6 A This is a wall further going down where another place
7 that had wax, appeared the candle had been thrown.

8 Q Okay. State's Exhibit 4?

9 A Again, another -- as you're walking down towards the
10 wall where the wax had been thrown against -- or the
11 candle had been thrown against the wall.

12 Q And this is State's Exhibit 5.

13 A This is as soon as you walk in, it's the TV on a TV
14 stand. It also had pieces of the same colored wax on it
15 as well.

16 Q So the TV had pieces of candle wax on it?

17 A Yes.

18 Q How about Number 6?

19 A Number 6 is still the same TV, just a different
20 angle.

21 Q Okay.

22 A Showing remnants of the orange-ish colored wax.

23 Number 7 is right in front of the TV. It's hard
24 to see in a photograph. There's -- there's a few little
25 pieces of wax from the candle.

1 Q In the carpet?

2 A Yeah, in the carpet.

3 Q Okay.

4 A Number 8 is the candleholder itself.

5 Q And I'm showing you what has been marked as State's
6 Exhibit 14. Is this the same as what is in the picture of
7 State's Exhibit 8?

8 A Yes, it is.

9 Q And this was the candleholder that the victim told
10 you was thrown at her?

11 A Yes, it is.

12 Q And this is what you found at the house?

13 A Yes.

14 Q Was it missing a candle at that time?

15 A Yes, it was.

16 Q Was that the candle that was against the wall?

17 A That's the candle she told me had been taken out and
18 thrown throughout the house.

19 Q Okay. Was that candle all together or was it in
20 pieces?

21 A No, there was -- there was pieces of it everywhere.

22 Q And which room did you find this in?

23 A That was in the living room area as a kind of a
24 bar/countertop separating the kitchen and the living room.

25 Q So did you put this on the kitchen table or the

1 kitchen counter to take that photograph?

2 A Yeah. From what -- from what I can recall, I believe
3 it was in the living room, and then I had moved it to the
4 counter before I took a photograph of it. So I did move
5 it to the counter.

6 Q So if we're looking at State's Exhibit Number 9,
7 where would you have found this?

8 A I believe it was sitting on the ottoman or just
9 behind here.

10 Q So it was in the living room?

11 A Yes.

12 Q Okay. All right. Tell the jury about State's
13 Exhibit Number 10.

14 A Number 10 is a kitchen island, and a smoke alarm that
15 was on the island when I arrived at the residence.

16 Q And Number 11?

17 A Number 11 is directly leading into the master -- the
18 master bedroom. It's indicating where the smoke alarm had
19 previously been. The wires were hanging down. It was
20 consistent with being ripped and pulled down, not
21 something that was just easily knocked off.

22 Q So the smoke alarm is supposed to originally go here
23 outside the bedroom?

24 A Correct.

25 Q And you found it laying here on the kitchen counter?

1 A Correct.

2 Q Continue with the pictures.

3 A State's 12 is standing at the doorway of the master
4 bedroom. It's just looking straight on at the bed, which
5 is, I believe, the only piece of furniture that was in the
6 room at the time.

7 Q And is this where Ms. Perry-Payne told you she was
8 kicked?

9 A She advised she went and sat down on the bed, he came
10 in and kicked her in the left thigh.

11 Number 13 is a picture of her left thigh, what
12 appears to be two bruising or bruises that she indicated
13 were from when he kicked her.

14 Q Did you find any other bruises all over her body?

15 A No.

16 Q Were you able to see her arms and legs whenever you
17 were taking the pictures?

18 A Yes, I was.

19 Q But you didn't see bruises that popped up everywhere?

20 A No.

21 Q You only saw this one bruise on her leg where she
22 said she had been kicked?

23 A Yes.

24 Q And when you took the photograph, did you look at
25 other parts of her body?

1 A Yes, I did.

2 Q But you didn't see any bruises anywhere but this spot
3 on her leg?

4 A That's the only place I saw a bruise.

5 MS. DAVIS: Beg the Court's indulgence, Your
6 Honor.

7 (Pause.)

8 MS. DAVIS: Deputy Burt, I have no further
9 questions. Please answer any questions the defense has
10 for you.

11 THE WITNESS: Okay.

12 CROSS-EXAMINATION

13 BY MR. DRYLIE:

14 Q Good morning. Just a couple of questions real quick.

15 Now, you said you found the candleholder in the
16 living room?

17 A I believe that's correct. I believe in the living
18 room.

19 Q Were there any --

20 A I --

21 Q Go ahead.

22 A I was just -- I can't remember if it was actually on
23 the ottoman or just behind it in the room.

24 Q And was there any glass on the floor or anything?

25 A No, not that I can recall.

1 Q It wasn't broken?

2 A No.

3 Q And you didn't see the argument that occurred this
4 night, correct?

5 A No, I did not.

6 Q And you didn't see Dwayne Cabbagestalk strike
7 Ms. Payne?

8 A No, I did not.

9 MR. DRYLIE: Beg the Court's indulgence.

10 (Pause.)

11 MR. DRYLIE: Okay. No further questions.

12 MS. DAVIS: No questions, Your Honor.

13 THE COURT: Thank you very much. You may step
14 down, sir.

15 MS. USRY: Your Honor, may we briefly approach?

16 THE COURT: Uh-huh.

17 (A bench conference was held with the judge and
18 attorneys in the presence of the jury but out of the
19 hearing of the jury.)

20 THE COURT: All right. Ladies and gentlemen,
21 we're going take a quick break. I will ask you to step
22 back into your jury room.

23 When you go back, as I told you before, please
24 have no conversation about the case, talk about anything
25 else you like. If you need anything, let us know, snacks,

1 something to drink, whatever. And we'll just take a short
2 break, then start back.

3 (The jury left open court at approximately
4 11:51 a.m.)

5 THE COURT: Hey, guys, let me get you to do me a
6 favor. This may sound odd. But my experience has taught
7 me that it's been a good practice.

8 I absolutely understand the respect you show the
9 jury, when you stand up when they come in. But if you
10 would, don't do that. Just keep your seats. It's
11 absolutely respectful, and I get it, that it's a good
12 thing. But the reason I ask folks to not do it is because
13 sometimes you're busy, all you all at the tables are busy.
14 And sometimes what will happen is, one side will stand or
15 somebody will stand, somebody won't stand because they're
16 writing or they're doing something, and then the jury may
17 look at that as that person being disrespectful, and
18 they're not, they're just busy. And so it's best if
19 everybody stays seated. That way, no one stands out as
20 not doing something to be respectful.

21 Do you understand?

22 MS. USRY: Yes, sir.

23 THE COURT: I know it's kind of odd that, you
24 know, usually you want people to be respectful. And I
25 don't think it's disrespectful to remain seated. And as a

1 matter of fact, when the jury comes back in after the
2 break, I will explain to them that I'm asking everyone to
3 remain seated for that reason so that -- I've actually had
4 jurors early on when lawyers would stand, maybe like one
5 or two weren't standing, the jurors looking out there and
6 looked at each other and start whispering. And I don't
7 know what they were whispering about, but I just want to
8 avoid that situation. So if you would, if the jury comes
9 in and out, if you all would just remain seated, and we'll
10 just let them come in and out.

11 We'll take that 15-minute break. Just let me
12 know.

13 MS. USRY: I will let you know. She should be
14 here any minute. Thank you, Your Honor.

15 THE COURT: Okay. Sounds good.

16 (A break was taken.)

17 THE COURT: All right. Is the State ready to
18 proceed?

19 MS. USRY: Yes, sir, Your Honor, the State's
20 ready.

21 THE COURT: Defense ready?

22 MR. DRYLIE: Yes, Your Honor, defense is ready.

23 THE COURT: All right. Let's bring the jury
24 out, please.

25

1 (The jury came into open court at approximately
2 12:25 p.m.)

3 THE COURT: All right. Ladies and gentlemen, if
4 you recall, when we broke, the State was still presenting
5 their case, and so we'll pick it up with the State.

6 And you may call your next witness.

7 MS. USRY: Thank you, Your Honor. The State
8 calls Ms. Debra Payne.

9 THE WITNESS: Perry.

10 MS. USRY: I'm sorry. Ms. Perry.

11 DEBRA RENEE PERRY, after being duly sworn,
12 testified as follows:

13 THE CLERK: Have a seat, please, ma'am. Once
14 your seated, please state your name on the record,
15 spelling your last, please.

16 THE WITNESS: Debra Renee Perry, P-E-R-R-Y.

17 DIRECT EXAMINATION

18 BY MS. USRY:

19 Q Thank you, Ms. Perry. How do you know the victim in
20 this case?

21 A It's my daughter.

22 Q And how do you know the defendant in this case?

23 A He's her male partner.

24 Q Have you ever known them to live together in the
25 past?

1 A Yes.

2 Q And where have they lived together?

3 A Friarsgate, Lexington where they are now.

4 Q And previous, do you recall the address of that
5 location?

6 A 116 or 113. I don't remember.

7 Q Is the street Red Pine?

8 A Where they are now is in
9 Lexington, yes. I was referring to the Friarsgate
10 address, 116. But I don't remember.

11 Q That's okay. They lived at another location prior to
12 living at --

13 A Yes.

14 Q -- the current location?

15 How long have they lived at the current
16 location?

17 A I think she must have been there about three years
18 now.

19 Q Was she living there on December 4th, 2011?

20 A Yes.

21 Q And do you recall that date, December 4th, 2011?

22 A I do.

23 Q Had you been over to your daughter's residence on
24 that date?

25 A Yes.

1 Q Who lived at that residence?

2 A My daughter, her children, M. Payne Nila, Jada, Monte
3 and Dwayne.

4 Q Are all four of those children your daughter's -- or
5 the defendant's children?

6 A No.

7 Q How many of them?

8 A Three.

9 Q The oldest, M. Payne is not his child?

10 A He is not.

11 Q Can you tell me on the -- when you said you were at
12 the location earlier that day?

13 A Yes, ma'am.

14 Q Can you tell me the state of the residence at that
15 time, how was it on the inside?

16 A Neat, clean and orderly, the way it always is.

17 Q So your daughter keeps a pretty clean house?

18 A She does.

19 Q Did you come to leave that residence?

20 A I'm sorry?

21 Q Did you come to leave at any time?

22 A I did.

23 Q Where did you go when you left?

24 A Home.

25 Q Where do you live?

1 A I live in northeast Columbia in Candlewood
2 subdivision.

3 Q How long is that drive back and forth?

4 A It's about a 30-minute ride.

5 Q Did you make it back to your residence --

6 A Not --

7 Q -- when you left?

8 A Not quite.

9 Q And why not?

10 A I got a phone call.

11 Q Who did you get a phone call from?

12 A My grandson, M. Payne

13 Q And when you heard M. Payne how did he sound on that
14 phone call?

15 A He sounded hurried, rushed, upset, panicked.

16 Q How could you tell he was upset on the phone call?

17 A He was talking fast like he was panicking, like he
18 really need some help.

19 Q And what did M. Payne tell you?

20 A He told me that Beano --

21 MR. DRYLIE: Objection. That is hearsay, Your
22 Honor.

23 MS. USRY: Your Honor, excited utterance.

24 THE COURT: Overruled.

25 BY MS. USRY:

1 Q And tell me what M. Payne told you.

2 A He told me that he had been locked -- Beano had
3 locked him out the house and that he had his momma in the
4 room and he was beating her up.

5 Q What did you do when he told you this information?

6 A I turned around hurriedly and headed back and called
7 911 and asked an officer to meet me there.

8 Q And when you got back to the residence -- and just to
9 clarify, had you left your daughter's house with the
10 defendant, and had you left and gone straight home?

11 I guess what I am getting at is: How long had
12 it been since you left the residence?

13 A I was almost home, so it was about 25 minutes or so.
14 I was almost home.

15 Q And you turned around and went back?

16 A I did.

17 Q When you got back to the residence where your
18 daughter and the defendant were located, what did you
19 observe upon arrival?

20 A I observed that my daughter was in a mess.

21 Q And describe, what do you mean by "a mess"?

22 A Physically. She was not intact, the way I left her.
23 Her hair was wild, she was upset, she had bruises on her
24 arms and on her legs. As far as the house is -- Dwayne,
25 he was upset as well. He was loud and obnoxious. And as

1 far as the house is concerned, the -- what do you call
2 it -- the fire detector from the ceiling had been pulled
3 down from there. There's a candleholder here.

4 Q Which candleholder are you pointing -- you're
5 pointing at this right here?

6 A Yes, ma'am.

7 Q So you're pointing at what's been marked as
8 State's 14. What about this candleholder?

9 A That candleholder, all the candles were out of the
10 candleholder. And just the holder, I think my daughter
11 had that setting on the counter, the kitchen counter. The
12 flat-screen TV had been broken or hit, from what I
13 understand, with the candleholder.

14 Q Well, let me show you pictures of that flat-screen
15 TV. Is this the way you recall seeing it that night? And
16 I'm showing you State's Exhibit 5, 6 and 7 is right below
17 the TV.

18 A Yes, ma'am.

19 Q That's how you recall seeing it that night?

20 A Uh-huh.

21 MS. USRY: Your Honor, permission to publish the
22 photographs to the jury. May I hand them the photographs?

23 THE COURT: All right. Any objection?

24 MR. DRYLIE: No, Your Honor.

25 THE COURT: Yes, ma'am.

1 MS. USRY: Thank you, Your Honor.

2 BY MS. USRY:

3 Q Ms. Perry, I'm going to also show you State's
4 Exhibit 10 and 11.

5 You spoke of the smoke detector?

6 A Uh-huh.

7 Q Is that how it appeared when you returned to the
8 residence that evening?

9 A Yes, ma'am.

10 Q Prior or earlier when you were at the residence, was
11 the smoke detector in that condition?

12 A No, it was intact.

13 MS. USRY: Your Honor, I'm going to continue
14 publishing the photographs to the jury unless there is an
15 objection.

16 MR. DRYLIE: No objections. We already saw the
17 photographs that she has.

18 MS. USRY: Thank you.

19 BY MS. USRY:

20 Q Ms. Perry, can you tell me where that fire or smoke
21 detector is located in the house, do you recall?

22 A It's located when you come in from the garage,
23 there's a -- when you come in from the garage, there's
24 another door there with the bathroom and then the bedroom,
25 and it's right between those two rooms, between the garage

1 and the restroom, right outside the bedroom door.

2 Q Is it located near where that television is set in
3 the house?

4 A No, ma'am.

5 Q Is there another smoke detector located near that
6 television in the house?

7 A Not that I'm aware of.

8 Q And, Ms. Perry, I'm going to also show State's
9 Exhibits 2, 3 and 4.

10 A Yes.

11 Q Take a moment just to review those.

12 A Yes, ma'am.

13 Q What is significant about those pictures to you?

14 A This part -- this picture right here.

15 Q You're looking at State's 2?

16 A Yes. This is in the living room right here behind
17 where the television set.

18 Q Okay.

19 A And the other two pictures appear to be in the
20 bedroom, in Misha's bedroom.

21 Q Were those marks on the wall prior to -- the first
22 time you were at the residence earlier that day, were
23 these marks on the wall then?

24 A No, ma'am.

25 Q Ms. Perry, is your daughter anemic?

1 A Not to my knowledge.

2 Q Did she have bruises on her earlier when you were
3 first at the residence?

4 A No, ma'am.

5 Q Did you see any?

6 A No, ma'am.

7 Q Did she complain of any?

8 A No, ma'am.

9 Q When you came to the residence for the second time
10 after your daughter was assaulted, did she complain of
11 bruises then?

12 A Yes.

13 Q Did she show you those bruises?

14 A She did.

15 MS. USRY: Beg the Court's indulgence.

16 THE COURT: All right.

17 (Pause.)

18 BY MS. USRY:

19 Q Ms. Perry, did you speak to your daughter yesterday?

20 A I did.

21 Q Just tell me the subject of your conversation
22 yesterday.

23 A This hearing today.

24 Q The hearing today?

25 Ms. Perry, have you seen the defendant since

1 this incident?

2 A Yes.

3 MR. DRYLIE: Objection. I don't see how that is
4 relevant, Your Honor.

5 MS. USRY: I'm going to make it relevant.

6 THE COURT: I'm going to give you some leeway,
7 and tie it together.

8 BY MS. USRY:

9 Q Ms. Perry, have you seen him with your daughter since
10 this incident?

11 A Yes.

12 MS. USRY: No further questions, Your Honor.

13 THE COURT: Cross.

14 MR. DRYLIE: Beg the Court's indulgence.

15 THE COURT: Yes, sir.

16 (Pause.)

17 CROSS-EXAMINATION

18 BY MR. DRYLIE:

19 Q Good afternoon. I just have a couple of questions
20 for you. I know it's difficult.

21 Now, when you got back to the house on
22 December 4th, 2011, Dwayne was already in the cop car,
23 correct?

24 A No.

25 Q The cops hadn't arrived yet?

1 A No, the cops didn't arrive until after I got there.

2 Q Okay. So you were there before the police officers
3 got there?

4 A Yes.

5 MR. DRYLIE: Beg the Court's indulgence.

6 (Pause.)

7 BY MR. DRYLIE:

8 Q Now, you testified that you were 25 minutes away,
9 correct?

10 A Uh-huh.

11 Q And so it would have taken you about 25 minutes to
12 get back, right?

13 A Actually, I live about 30 minutes from her. I was
14 about 25 minutes away from home from when I left her house
15 when I received a call from my grandson.

16 Q So you're saying you're only five minutes away when
17 you got the call from your grandson?

18 A No, I was about 25 minutes. I was about five minutes
19 away from my house.

20 Q Yes. So it would have been taken you around 25
21 minutes to go back to the residence?

22 A Probably, yes, sir.

23 Q And you called the cops immediately upon receiving a
24 call from M. Payne

25 A I did.

1 Q Are you aware that there was testimony that after the
2 police officer was dispatched, it only took him two
3 minutes to get there?

4 A I don't know. It could be.

5 Q Okay. You didn't see anything that night, correct?

6 A As far as what?

7 Q You didn't see -- I'm sorry, let me rephrase.

8 You didn't see Mr. Cabbagestalk hit Ms. Perry on
9 December 4th, 2011?

10 A I did not.

11 Q All right. And it's your testimony today that the
12 police officer wasn't there when you returned to the
13 residence?

14 A As I recall, they arrived after I did.

15 Q So did he get a statement from you?

16 A Excuse me?

17 Q Did he get a statement from you?

18 A The officer?

19 Q Yes.

20 A I don't recall giving them a statement.

21 Q Did he ask you what happened or your involvement in
22 the case?

23 A I don't recall that either.

24 MR. DRYLIE: Okay. Beg the Court's indulgence.

25 THE COURT: Yes, sir.

1 (Pause.)

2 MR. DRYLIE: No further questions, Your Honor.

3 THE COURT: Anything on redirect?

4 MS. USRY: Nothing further from the State, Your
5 Honor.

6 THE COURT: Thank you very much, ma'am.

7 THE WITNESS: Yes, sir.

8 THE COURT: You may step down.

9 MS. USRY: Your Honor, I ask that this witness
10 be released.

11 THE COURT: Any objection?

12 MR. DRYLIE: No objection, Your Honor.

13 THE COURT: Ms. Perry, you are free to go,
14 ma'am. Thank you.

15 All right. You may call your next witness.

16 MS. USRY: Your Honor, at this point, the State
17 rests.

18 THE COURT: Ladies and gentlemen, the State has
19 rested their case. And in every case that comes before
20 the court, whether it be a criminal or civil case, I have
21 to take up matters of law at the close of the State's case
22 or the plaintiff's case, depending on what kind of trial
23 we're in. So -- and that usually takes a little bit of
24 time. So we'll -- it's time for lunch, and so we're going
25 to recess at this time for lunch. I'm going to ask you,

1 if you would, to be back in your jury room at 2:15. Okay?

2 Now, when you're away from lunch, now you have
3 heard some of the evidence, but you haven't heard
4 everything, so it's especially important as you're away
5 from the courthouse that you have no conversation about
6 the case or to allow no one to talk with you about the
7 case. If they do attempt to speak to you, you let them
8 know that you're a juror and you're not allowed to talk
9 about it, and that should end it. If it doesn't, you let
10 me know, and I'll make sure that that person is taken care
11 of.

12 Take this opportunity just to, you know, let
13 your mind rest, enjoy your lunch. And if you would, as I
14 said, be back in the jury room at 2:15. And when everyone
15 is reconvened, we'll start back with the afternoon
16 session.

17 Oh, let me mention something to you. I spoke to
18 everyone earlier. Ladies and gentlemen, as I said, when
19 we started this case, you 14 folks are the most important
20 folks in this courtroom. And you may have noticed that
21 everyone stood when you came in and would stand when you
22 would leave. And I have asked them to not do that, and
23 I'll tell you why I've asked them that.

24 No disrespect to you because they do that out of
25 respect for you. And I respect you as well. But what I

1 have found in my years as a trial lawyer and now as a
2 judge is that -- and I can tell you, when you get involved
3 in trials, if you're sitting over there, sometimes you
4 really get involved in what you're doing. And I have
5 found that there are times as the jury comes in and goes
6 out, if everyone stands out of respect for the jury, it's
7 a great thing, but sometimes somebody will be over there
8 and they will be really involved in what they're doing,
9 and they don't even realize the jury's coming in, or
10 whatever, and they don't stand. And I have had a few
11 cases in the past where I've noticed that a couple of the
12 lawyers did not stand and the jury would come back in.
13 And the jury came in and had a seat and looked over and
14 everyone was standing but a couple of lawyers, and then
15 you'd look at the jurors, look over at each other and
16 whisper. I don't know what they're whispering.

17 But what I want to make sure doesn't happen is
18 that you don't view that as somebody being disrespectful
19 because these folks are outstanding people, and they would
20 never be disrespectful to you. But to avoid even that
21 possibility, that someone may not stand because they're
22 busy and for you to think that that person doesn't care, I
23 want to eliminate that. So I've asked them to all remain
24 seated. And then that way, you come and go and nobody
25 stands out as either standing or not standing. Okay?

1 So if you noticed that they didn't stand when
2 you came back in, that is not them being disrespectful.
3 These are fine folks. They're just following my request.
4 And I absolutely respect you, and it's not a disrespect.
5 I just don't want there to be any misunderstanding. So I
6 think it's a better practice for everybody to remain
7 seated, let you come and go.

8 Having said that, enjoy your lunch, and I will
9 see you back here at 2:15.

10 (The jury left open court at approximately
11 12:47 p.m.)

12 THE COURT: All right. At this time, I'll take
13 up any motions at the close of the State's case.

14 MR. PHILLIPS: Your Honor?

15 THE COURT: Yes, sir.

16 MR. PHILLIPS: At this time, the defense would
17 move for a directed verdict of acquittal. The State has
18 failed to prove that there's sufficient evidence or
19 essentially that there is evidence that raises beyond
20 merely the suspicion of guilt under the case law set forth
21 in the South Carolina Supreme Court case Odom and Bostick
22 as well as Arnold. In those cases, essentially the
23 standard is whether or not that the evidence presented by
24 the State raises beyond the mere suspicion the defendant's
25 guilt. At this time, we would move for a directed verdict

1 of acquittal.

2 THE COURT: All right. I'm going to
3 respectfully deny that motion. I think the evidence
4 presented is a factual question for the jury to decide
5 whether or not that rises above the level of mere
6 suspicion. I think there is evidence in the case,
7 depending on how the jury views it and believes it, based
8 on the testimony of Ms. Perry as well as the other
9 evidence that has been presented. I think it's a jury
10 issue as to -- a factual issue as to whether or not the
11 jury finds it to be beyond a mere suspicion. I think the
12 testimony, certainly depending on how it's viewed by the
13 jury, it goes beyond mere suspicion. And I'm intending to
14 charge direct and circumstantial evidence, which I think
15 is appropriate under these facts. So I think it is a jury
16 issue, and I'll respectfully deny your motion.

17 Have you all discussed regarding
18 Mr. Cabbagestalk and whether or not going he's going to
19 take the stand? Have you all had that conversation?

20 MR. DRYLIE: We have, Your Honor.
21 Mr. Cabbagestalk is not planning to take the stand.

22 THE COURT: All right. Do you have other
23 witnesses that are going to testify?

24 MR. DRYLIE: Defense will rest.

25 THE COURT: Okay. And the only reason I'm

1 asking -- and I'm not -- certainly not trying to get you
2 to reveal any strategy or anything of that nature, but it
3 does matter for purposes of this break because if there is
4 no further testimony, you know, I have a jury charge that
5 I need to get together. I want to run it by you guys to
6 let us look at it. If you have any specific requests to
7 charge, I would ask that you submit those to us, and we'll
8 consider whatever you submit.

9 But before we go any further, let me address,
10 Mr. Cabbagestalk, if you would stand, sir.

11 You've discussed with your attorneys your right
12 to remain silent as well as your right to testify; is that
13 correct?

14 THE DEFENDANT: Yes, sir, I have.

15 THE COURT: And you understand that a person who
16 is charged with a criminal offense has the right to remain
17 silent. And they also -- the other side of that coin is
18 they do have the right to testify. And you do understand
19 that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You understand that if you were to
22 testify, and I understand what Mr. Drylie shared with the
23 Court, but just so that I cover both bases, you understand
24 that if you were to testify that -- and I don't know
25 whether you have a prior criminal history or not. But if

1 you had a prior criminal history, depending on what it is,
2 the State may be able to ask you whether or not you have
3 had a certain conviction or not. But what is more
4 important is to understand that you would be required to
5 answer questions not only from your attorney but as well
6 as from the State's lawyer. Do you understand that?

7 THE DEFENDANT: Yes, sir, I understand.

8 THE COURT: Okay. And if there were to be any
9 criminal history that fits under the statute or would be
10 appropriate, the State would have the opportunity to ask
11 you about that. Of course, they can't ask you any details
12 about anything. They would simply be able to ask whether
13 or not you have a conviction for a particular offense, if
14 it even applies. And, again, like I said, I don't know if
15 it does or not. But that is your right to testify, and
16 you have that. You also have the right to put up any
17 other witnesses if you choose to do that in your defense.
18 You understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand that you have that
21 right?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. Now, with regards to your
24 right to not testify, if you exercise that constitutional
25 right, you understand that I will instruct the jury at the

1 close of the case that that is your constitutional right,
2 and that you don't have a burden of proving anything. The
3 burden of proof rests on the State. And I would instruct
4 the jury that they could not hold it against you in any
5 way your decision to exercise that constitutional right to
6 remain silent. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: As a matter of fact, I would go
9 further, and I would instruct them that they -- if you
10 remain silent, that they are not to consider that at all
11 in their deliberations on your guilt or innocence. As a
12 matter of fact, I would tell them that they are not to
13 even discuss that in the jury room. Do you understand,
14 sir?

15 THE DEFENDANT: I understand that.

16 THE COURT: All right, sir. Understanding all
17 of these things, is it correct that you are not going to
18 take the stand in this case?

19 THE DEFENDANT: Yes, sir, correct.

20 THE COURT: And, Mr. Cabbagestalk, you have two
21 good lawyers, and their job and their role in this is to
22 be your counselor, your adviser. And they will give you
23 their advice, and they'll tell you what they think. But
24 you understand that a person's constitutional right and
25 the waiver of that right or the implementation of that

1 right, that has to come from you as an individual. You
2 listen to your lawyers, you hear what they have to say.
3 But the final decision, they can't make the call for you.
4 That is a decision you have to make on your own. Do you
5 understand?

6 THE DEFENDANT: Yes, sir, I do.

7 THE COURT: And you've done that; is that
8 correct?

9 THE DEFENDANT: Yes, I have.

10 THE COURT: Has anybody forced you or coerced
11 you into making that decision?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Has that been a decision you've made
14 based on your own free will and your understanding of your
15 conversations with your lawyers?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay, sir. Thank you very much. I
18 just wanted to cover that.

19 Since a -- you all may have a seat, except you,
20 Mr. Drylie.

21 Since the defense is not going to put up a case,
22 then what I would propose that we do at this time is let
23 me take up motions at the close of all the evidence so
24 that when we come back, I will address -- in other words,
25 I will recognize the defense and allow you to rest on the

1 record before the jury. But rather than have the jury
2 brought out, have you rest and send them back out, take up
3 motions, bring them back in, let's go ahead and I'll take
4 up those motions at the close of all the evidence at this
5 time.

6 MR. DRYLIE: And, Your Honor, we'd simply renew
7 all trial objections and motions, including our motion for
8 directed verdict.

9 THE COURT: All right, sir. And I'm
10 respectfully going to deny those motions. As I said
11 earlier, I think that this is a factual issue that is
12 appropriate for the jury to determine, and I'm going to
13 respectfully deny those motions.

14 Now, just real quick because I don't think it's
15 a very complicated jury charge. As I said earlier, I have
16 been working on a proposed charge to give to you. And I
17 will consider any specific requests if you have any. But
18 let me just tell you real quick what I got. Okay.

19 I've just got the basic boilerplate-type
20 language that talks about the presumption of innocence. I
21 talked about the burden of proof, the State's burden of
22 proof, reasonable doubt, defined reasonable doubt, the
23 duties of the jury and the judge.

24 I have charged on direct and circumstantial
25 evidence, the difference in the two and how the jury is to

1 view those.

2 I talked about the credibility of witnesses and
3 the general boilerplate language involving that.

4 I have a charge that basically it says that the
5 statement of the defendant, that there has been a
6 statement alleged to have been made by the defendant, and
7 that while the Court determines that if the statement is
8 admissible, it's up to the jury to make that ultimate
9 decision as to whether that statement is even made by the
10 defendant and whether it was made voluntarily.

11 I have the charge regarding the defendant's
12 constitutional right to remain silent, and the fact that
13 the jury is not to consider that.

14 And with regards to the criminal domestic
15 charge, I basically have 16-25-20, the statute, and I will
16 just give it to you as I've got it here.

17 The defendant is charged with criminal domestic
18 violence. The State must prove beyond a reasonable doubt
19 that the defendant caused physical harm or injury to a
20 member of the defendant's own household or that the
21 defendant offered or attempted to cause physical harm or
22 injury to a member of the defendant's own household with
23 the apparent present ability to cause harm or injury under
24 circumstances reasonably creating a fear of imminent
25 danger. For purposes of this statute, a household member

1 is a spouse, a former spouse, a parent, child,
2 grandparent, a brother or sister, a grandchild, a person
3 with whom the defendant has a child in common and a person
4 of the opposite sex with whom the defendant has lived or
5 is living or has lived with in the past. That is
6 basically the charge.

7 MS. USRY: Your Honor, I believe that the
8 statute is correct. The household member definition is
9 the old definition. I think it was changed a few years
10 ago. But we can print that out and provide it to you.
11 It's now the household member is just between spouse,
12 former spouse, persons with children together, persons
13 cohabitating or formerly cohabitating. And it took out
14 the other family members.

15 THE COURT: Grandparents and stuff, all that?

16 MS. USRY: Yes, sir, pretty much.

17 THE COURT: Well, I mean, it's up to you all. I
18 mean -- yeah, and I will charge the right thing if you'll
19 get that to me.

20 MS. USRY: Yes, sir. We'll provide that to you.

21 THE COURT: One of things that I like, you know,
22 since obviously this doesn't apply, you know, it doesn't
23 matter, you just send me what the current statute is. But
24 I'd like to carve out all that stuff that doesn't apply,
25 anyway. But I will charge whatever the statute says.

1 Okay?

2 Now, as far the jury charge, that is all I've
3 got, and that's all I believe is appropriate here.

4 However, I don't ever close my mind to anything that you
5 may wish to submit. But what I will do is, I'm going to
6 let you all talk about that over the lunch break, and if
7 you have anything, we'll talk about it, incorporate it, or
8 whatever, when you get back. Okay? So we'll start back
9 at 2:15.

10 I'm going to -- any objection to
11 Mr. Cabbagestalk remaining on his bond until -- or I guess
12 he's technically not on his bond. The bond was withdrawn
13 after the jury was sworn, but --

14 MS. USRY: The State will defer to however Your
15 Honor wishes.

16 THE COURT: Mr. Cabbagestalk, I'm going to let
17 you remain with your lawyers and go to lunch. You
18 understand, though, and I want to make it clear that your
19 bond in this case has been expired now that the jury has
20 been sworn. So technically you're not on bond, but I do
21 want you to understand that whether you return or not,
22 that this case is going to go forward whether you're here
23 or in your absence. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: There is no requirement that you be

1 here. That is a decision you can make. But whether
2 you're here or not, the case will proceed and will go
3 forward with or without you. You understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: All right. So I'm going to let
6 Mr. Cabbagestalk just remain out not on bond, but just
7 remain free, and I'm not going to take him into custody at
8 this point, and we'll just see you all back at 2:15.
9 Okay?

10 MS. USRY: Thank you, Your Honor.

11 MS. DAVIS: Thank you, Your Honor.

12 (Proceedings recessed for lunch.)

13 THE COURT: If you all don't mind, I'll get you
14 all to look at this real quick. Just flip through it.
15 Just take it out and just look through it and see if
16 there's anything we need to change, we'll talk about it,
17 be happy to do it.

18 (Pause.)

19 THE COURT: Ms. Usry and Mr. Drylie, you all
20 reviewed the charge that the Court has here. Any
21 objection or exceptions to the charge from the State?

22 MS. USRY: No objections from the State, Your
23 Honor.

24 MR. DRYLIE: None from the defense, Your Honor.

25 THE COURT: All right. What I'm going to do,

1 then, is I'm going to have the jury come out. After
2 they're out, Mr. Drylie, I'll recognize you from the
3 defense. You can stand and rest on the record. I will
4 then explain to the jury that at the close of that,
5 typically I would take up motions, but we have done that,
6 so now we're ready to move to the next phase of the trial,
7 which would be arguments. I am assuming that you would
8 like final argument?

9 MR. DRYLIE: Yes, Your Honor.

10 THE COURT: All right. Let's go ahead and bring
11 the jury out, please.

12 (The jury came into open court at approximately
13 2:41 p.m.)

14 THE COURT: Ladies and gentlemen, I appreciate
15 everybody being back in a timely fashion. We're ready to
16 proceed.

17 At this time, I would recognize Mr. Drylie on
18 behalf of the defense.

19 MR. DRYLIE: The defense rests, Your Honor.

20 THE COURT: All right. Thank you, sir.

21 Ladies and gentlemen, the defense, they rest
22 their case.

23 Now, typically what occurs is at the close of
24 all of the evidence, I would then take up matters of law
25 after the close of all the evidence. Mr. Drylie indicated

1 to the Court, after I excused you for lunch, that the
2 defense was going to rest their case, and so we went ahead
3 and took up those matters so that we wouldn't waste any
4 more time this afternoon. So I've taken up those matters
5 of law, and we are now ready to proceed to the next phase
6 of the trial, and that would be -- well, essentially the
7 evidence in this case is closed. All the evidence is in.

8 And we have reached the portion of this trial
9 where the attorneys are going to have an opportunity to
10 address you with what we typically call closing arguments
11 or final summation. Now, what I told you about the
12 lawyers' opening statements, that it's not evidence, that
13 also applies to their closing arguments. Their closing
14 argument is not evidence. The evidence is closed.

15 It is the testimony that you heard from
16 witnesses as well as the exhibits that came in during the
17 course of the trial. That is the evidence in the case.
18 However, it is important that you listen carefully because
19 the attorneys, this is their opportunity to argue to you
20 what they believe that evidence in fact has shown. Once
21 they have concluded their arguments, I will then give you
22 the law that is applicable to this case, and then you will
23 be in a position to retire and deliberate and decide on
24 the case.

25 Now, before I turn it over to the attorneys, let

1 me first ask. Mr. Abrams, would you be so kind as to
2 serve as the foreman of the jury, sir?

3 MR. ABRAMS: Yes, sir.

4 THE COURT: If you don't mind, I'm going to get
5 you and this young lady and yourself to swap chairs.

6 And while they're doing that, ladies and
7 gentlemen, let me explain that to you.

8 A foreperson of a jury, any time you have a
9 group of folks that are going to be getting together to
10 deliberate or discuss, it's best that there be one person
11 that is the spokesperson for the panel with regards to the
12 Court. In other words, if during your deliberations at
13 any time you have any questions, any one of you have any
14 questions about anything or need to address a question to
15 the Court, rather than have you all doing it individually,
16 it's better for one person to just be the communicator
17 between the Court and the jury. So if any one person has
18 a question for the Court, then Mr. Abrams, I can get him
19 to just write that question on a piece of paper, pass it
20 out, I will review that. Depending on what the question
21 is, I may just write back and respond or I may have you
22 come out as a panel as a whole and respond. But in any
23 case, that's the main role of the foreperson is to be the
24 liaison, so to speak, between the jury panel and the
25 Court.

1 The other role is that when you do begin your
2 deliberations, you need somebody to start and stop those
3 deliberations, and that is the role of the foreperson as
4 well.

5 I will tell you this now, that when you begin
6 your deliberations, all of you must be present for those
7 deliberations, so that if someone needs to excuse
8 themselves to use the restroom, or whatever, Mr. Abrams,
9 you would stop the discussion and wait until that person
10 returns, and then upon their return, you go ahead and
11 resume your deliberations.

12 Your jury verdict in this case must be
13 unanimous. It is always that way in our system of
14 justice. So because it has to be a unanimous decision,
15 the foreperson's vote or opinion carries no more weight
16 than anyone else on the jury. You are all equal members
17 of the jury. Juries are charged to decide a case. You
18 listen with open minds to everybody. You discuss the
19 case. And at the end of the day, your jury verdict must
20 be unanimous. So the foreperson's opinions or thoughts
21 carry no more weight than anyone else on the jury. You
22 are all equal members of jury. Okay?

23 So when you do retire to deliberate, I will pass
24 back with you a verdict form, and Mr. Abrams, you'll just
25 have that form. And once you have as a jury reached or

1 arrived at a verdict, if you'll just reflect that on the
2 form. The form is easy, and I will go over it with you
3 all, you'll see it, but you will just mark it and then
4 sign it as the foreperson.

5 So having said that, ladies and gentlemen, I'm
6 now going to turn it over to the attorneys. Please give
7 them your undivided attention as they address you with
8 their closing arguments.

9 Ms. Usry.

10 MS. USRY: Thank you, Your Honor. May it please
11 the Court.

12 December 4th, 2011. Today we presented a short
13 case to you, a case of criminal domestic violence.
14 Because it's a short case, you clearly remember everything
15 that was said from the jury box. However, I'm going to go
16 through and briefly present how the State sees the
17 evidence in this case.

18 On December 4th, 2011, an assault occurred. It
19 occurred within Lexington County at the home of Tameshia
20 Perry-Payne. It caused her to have her son go outside to
21 call her mother to have the police arrive, a son who, when
22 he called his grandmother, was upset, anxious, hurried,
23 wanted her to hurry up and told his grandmother that the
24 defendant had his mother in the bedroom and was assaulting
25 her. Now, a son who is 16, took the stand today and

1 didn't testify to that, he did say he went outside to
2 call. December 4th, 2011, about two years ago, he's 16
3 today, he'd be around 14 two years ago. He still is in
4 the custody of his parent, and I would submit to you that
5 that affected how he would testify today.

6 Domestic violence, you know, we spoke earlier
7 today. I'm going to give you the statute again. You'll
8 also hear it from the Judge when he does his closing --
9 when he presents the law to you. If anything that I say
10 is different from the Judge, always go with what the Judge
11 says. He is the judge of the law, what is defined by
12 South Carolina law.

13 Cohabitation, living together as a household
14 member, also having children together is a household
15 member. We know the parties have children together, the
16 victim testified from the stand as such. They also live
17 together as testified by the grandmother, which the victim
18 denied.

19 It says causing visible harm or injury to a
20 person's own household member, causing them harm. The
21 kick. That is the harm in this case, causing actual harm.
22 Or offering or attempting to cause physical harm or injury
23 to one's own household member with apparent or present
24 ability causing fear, reasonable fear of imminent peril.
25 An offer or an attempt. An offer, I'm going to kill you.

1 That's not alleged in this case, that's an example, an
2 offer, which would reasonably cause me to fear that I'm
3 going to be killed.

4 I'm going to burn this house to the ground. An
5 offer to cause harm. I'm going to burn this house to the
6 ground. Throwing a candlestick at someone, an attempt, an
7 attempt to injure.

8 Now, again, the State has the burden of proof.
9 And it's beyond a reasonable doubt. And as I said earlier
10 today, it's not beyond all doubt. This case is a case of
11 criminal domestic violence, and it happened behind closed
12 doors. And we're never going to have a video camera into
13 that. We're never going to have a video camera into that
14 relationship. But we have an officer who responded, took
15 notes from what he saw, made a report and took
16 photographs, which you'll have in your jury room.

17 We have witnesses that took the stand today.
18 And the Judge is going to tell you as the judge of the
19 facts, you can believe all of what someone told you or you
20 can believe nothing that someone told you. You can
21 believe part of what someone told you and not believe the
22 other part. And that is your right as a jury, when you go
23 back to the jury room to evaluate the testimony that
24 you've heard.

25 One of the witnesses you heard was Tameshia

1 Perry-Payne, and she was all over the place. At first,
2 she indicated that she called the police or M. Payne called
3 the police and then maybe that maybe M. Payne actually called
4 the police, and then they called because she wanted the
5 defendant to leave or maybe she wanted them to -- she
6 actually just wanted to leave the house. One of them,
7 something. She ended up saying over and over again, she
8 just wanted him to leave. That's what she ended up with
9 in the very beginning. She wasn't exactly sure where she
10 was going with that.

11 But, ladies and gentlemen, if she just wanted
12 him to leave, she came up with a quick story that matched
13 how the house was set out when officers arrived. That's
14 pretty quick, to be able to explain the smoke alarm being
15 disarmed and on the table, the candles all around. He
16 threw the candles at me. Oh, this bruising, he kicked me.
17 Oh, the fire alarm -- he threw the candlestick holders all
18 over the place. I'll get back to that. But he threw the
19 candlestick holder at the fire alarm and it fell off.
20 Well, today she said she made all that up. So that was
21 pretty quick, making it up to match everything in that
22 house and how it was laid out, that's pretty quick.

23 Now, the candlestick holder, today the first
24 thing she said was, he threw it directly on the ground.
25 That is the first thing she said regarding the candlestick

1 holder. And then she says the candlestick holder was
2 thrown at the wall and knocked the smoke detector off the
3 wall, and then somehow it fell -- and your recollection of
4 the facts, go with that -- fell and it maybe hit the TV or
5 a candle hit the TV. Well, grandmother took the stand and
6 said there was no smoke detector even in that room. The
7 smoke detector is in the hallway where the defendant
8 disarmed it when he was threatening to burn the house
9 down. What she reported, it says that she said that he
10 threw the candlestick holder at her and the candle at her
11 and it missed. And that's the truth, not lots of other
12 things you've heard today.

13 She told us the defendant never lived with her.
14 The mother told us -- her grandmother -- M. Payne
15 grandmother, her mother said that the defendant's lived
16 with her. He's been with her since this, she's seen them
17 together.

18 Power and control, ladies and gentlemen, power
19 and control. The defendant was exerting his power and
20 control over her that day, and he is continuing to do that
21 today.

22 Now, the grandmother, she took the stand,
23 Ms. Debra Perry, today. She has nothing to gain from
24 being here, ladies and gentlemen. Perhaps the only thing
25 that she has to gain is telling the truth, speaking up for

1 her daughter who is not going to speak up for herself. So
2 she has nothing to gain today. Ms. Perry-Payne has
3 something to gain. She's under the control of the
4 defendant, doing what he tells her to do, I submit to you.

5 The grandmother says that she arrived at the
6 house when she got the phone call that I have already
7 spoken of from M. Payne. She got to the house. And she says
8 she got there first, ladies and gentlemen. The officer
9 says he was there when the grandmother -- he doesn't say
10 the grandmother was on the scene. He testified to that.
11 I submit to you she got a call from her grandson who was
12 upset. Her daughter was being assaulted in the bedroom,
13 and she races there and she -- that's what she remembers,
14 she says she got there first. The officer who took notes
15 wrote a report, says he was first.

16 The grandmother told you that she never heard
17 her daughter say she was anemic or bruises easily, never
18 heard that. And she says that her daughter told her that
19 the defendant assaulted her. Well, is the grandmother
20 going to get the defendant out of the house? Because her
21 story today is she only reported it to get the defendant
22 out of house. So what's the purpose of telling her
23 mother, Ms. Debra Perry, that the defendant assaulted her?
24 Because it's the truth. That's the truth. And she also
25 shows her mother the bruise on her leg.

1 Ladies and gentlemen, you'll have the pictures
2 back in the evidence room. And I know today you didn't
3 get to see them. When you get back there, please review
4 them and look at them. It's consistent with the original
5 statement, the statement given that night from Tameshia
6 Perry-Payne to officers. Because on the night of
7 December 4th, 2011, the defendant was angry because she
8 didn't bring him cigarettes and wouldn't give him money.
9 And he began cursing at her while her children were in the
10 home. And he threatened to burn the house down. And in
11 his rage, he picked up this candlestick holder and candles
12 and threw them at her. And the argument continued. And
13 at some point there in the bedroom, he kicks her. And,
14 ladies and gentlemen, that is criminal domestic violence.

15 Now, I submit to you that the State has proved
16 that beyond a reasonable doubt, and when you go back in
17 the jury room and you deliberate over this case, you will
18 find that the defendant is guilty.

19 Thank you.

20 THE COURT: Thank you, ma'am.

21 Mr. Drylie.

22 MR. DRYLIE: "Whatever it takes to get Dwayne
23 Cabbagestalk out of the house. I lied to the police that
24 night." Those are the words that you heard from Tameshia
25 Perry-Payne today on the witness stand.

1 I told you at the beginning of this case that
2 disputes, disagreements, arguments, that we all have them.
3 I am sure we do. And sometimes we say things that we
4 don't mean. Sometimes our voices rise, sometimes we get
5 loud. That's what happened on December 4th, 2011, is that
6 there was an argument. It was a heated argument. It was
7 a dispute, but in no way was it physical.

8 Now, I want to go through the testimony that we
9 heard today. And you've just heard the State's
10 presentation of their case.

11 The first person that we heard from is Tameshia
12 Perry-Payne. And the one thing that we can all agree on
13 is the only person that ever said, ever at any point in
14 time during this case or leading up to this case that
15 Dwayne Cabbagestalk hit her was Ms. Perry-Payne. Where is
16 her credibility at? That's the State's key witness. That
17 is the sole eyewitness, and they just stood up here for
18 the last five minutes bringing down her credibility.
19 Only -- she is the only one that says that she was hit,
20 and she was the only one that ever said that. Today,
21 she's telling the truth. Even if you don't believe that
22 she's telling the truth today, do you believe her
23 statement enough because she is the only witness that says
24 that?

25 The next person we hear from is M. Payne Now,

1 M. Payne very important. M. Payne is 16 years old, he was 14
2 when this happened. He doesn't owe Dwayne Cabbagestalk
3 anything. Tameshia is his mom. Dwayne is his mom's
4 boyfriend. If Dwayne had been beating Tameshia
5 Perry-Payne on that day, if he had been hitting her, M. Payne
6 would have been the first person that called the police.
7 He wouldn't have just called his grandmother. He would
8 have said what happened. He would have protected his
9 mother. But this isn't -- there is no parental argument
10 here. Dwayne is not his father. And I want you guys to
11 keep that in mind as we go throughout this.

12 Now, we heard from Debra Perry, and it wasn't
13 hard to see that she is not a big fan of Mr. Cabbagestalk.
14 Now, she stated that she didn't see anything, she didn't
15 hear anything, that she got a call from M. Payne More than
16 that, she stated that she got to the house before the
17 officer arrived, and that is not in line with what the
18 officer testified to today. I'd submit to you that her
19 testimony was flawed in a couple of respects, and I want
20 you guys to evaluate that.

21 Now, we heard from Officer Burt today. And this
22 isn't an us versus them sort of thing. I think
23 Officer Burt did exactly what he was supposed to do. I
24 think he did his job. He received the call, he went out
25 to the house, he investigated. He got a statement from

1 Ms. Payne. Ms. Payne said Mr. Cabbagestalk attacked me,
2 and for that, Officer Burt placed Mr. Cabbagestalk under
3 arrest for criminal domestic violence. Yet it leaves us
4 just where we were at before. The only person who ever
5 said anything was Tameshia Perry-Payne. She stated that
6 she was hit that night. And the officer did what he is
7 trained to do and what he is supposed to do in those
8 situations. However, Ms. Payne's credibility, as you have
9 seen here today, isn't enough for her to be believed.
10 After all, what we're left with here is essentially a
11 one-witness case in a dispute, a dispute that happened on
12 December 4th, 2011, between Mr. Cabbagestalk and
13 Ms. Payne.

14 Now, the Judge is going to instruct you about
15 reasonable doubt in a few minutes. And I just want to
16 preface that, that reasonable doubt is the kind of doubt
17 that would give pause before a person were to act. He's
18 going to instruct you that any inferences that you can,
19 you have to bring down on the side of Mr. Cabbagestalk in
20 this case because this is his day in court. This isn't
21 one of those situations where we decide that maybe
22 51 percent or 49 percent is one way. We're saying that
23 Mr. Cabbagestalk did not commit this crime. We're saying
24 that he did not commit the crime of criminal domestic
25 violence. He did not assault Ms. Perry-Payne. She was

1 never in fear of him," and he did not offer or attempt to
2 cause harm to her.

3 Now, I want to talk about this candlestick
4 holder for a minute. It's pretty heavy, and you guys are
5 going to see it back there. Now, if I were to take this
6 candlestick holder and throw it up against the wall, it
7 seems like there would be glass or if it hit the floor, it
8 would be broken, there would be candles everywhere. Now,
9 the officer testified that he took the candlestick holder,
10 and he wasn't exactly sure where it was, whether it was on
11 the ottoman or on the floor, but he put it on the counter
12 so he could take a picture that you all get back in the
13 jury room. But the candles weren't everywhere. There
14 wasn't broken glass anywhere.

15 What we're left with is Ms. Payne saying
16 something one day, saying the next thing, something
17 different the next. And to be completely honest, we never
18 know whether she's coming or going. But she says that
19 Dwayne Cabbagestalk did not assault her. The only time
20 she said it was that night, and she's come back and she is
21 not to be believed from that night. We cannot convict
22 just on that credibility alone. We're asking you to
23 return a verdict of not guilty.

24 Thank you.

25 THE COURT: Thank you, Mr. Drylie.

1 Ladies and gentlemen, you have heard from the
2 attorneys for both sides. And during the course of the
3 jury trial, it has been appropriate for me to basically be
4 up on the bench out of the way. I told you that you are
5 the judges of the facts and I'm the judge of the law. And
6 so while the facts have been being presented to you, it
7 has been appropriate for me to be out of the way and let
8 the lawyers do their job. But we have now reached the
9 portion of this trial where you and I are in this
10 together; you as the judges of the facts and me as the
11 judge of the law. So I just think it's appropriate to
12 come down and give you the charge on the law.

13 Mr. Foreman and members of the jury, you have
14 heard all the evidence and the arguments of both parties.
15 I will now explain to you the law which applies to this
16 action.

17 The indictment charges the defendant, Dwayne
18 Lamont Cabbagestalk, with the offense of criminal domestic
19 violence. I remind you that the fact that the defendant
20 was arrested, charged and indicted in this case is not
21 evidence in this case, and it cannot be considered by you
22 as evidence of guilt. Nor does it create any presumption
23 or inference of guilt. The indictment is simply the
24 formal written instrument which contains the charges made
25 against the defendant. It is the formal document by which

1 this case is brought into court.

2 Now, I will give you a copy of these
3 instructions in written form, which I prepared, to take
4 with you into the jury room. During your deliberations,
5 you may refer to these instructions to guide your decision
6 making. You must, however, consider the instructions as a
7 whole and not follow some and ignore others.

8 Now, the defendant has pled not guilty to this
9 charge, and that plea puts the burden on the State to
10 prove the defendant guilty. A person charged with
11 committing a criminal offense in South Carolina is never
12 required to prove him or herself innocent. I charge you
13 that it is an important rule of law, that the defendant in
14 a criminal trial, no matter what the seriousness of the
15 charge may be, will always be presumed innocent of the
16 crime for which the indictment was issued, unless guilt
17 has been proved by evidence satisfying you of that guilt
18 beyond a reasonable doubt.

19 This presumption of innocence does not end when
20 you begin your deliberations, but it accompanies the
21 defendant throughout the trial until you reach a verdict
22 of guilt based on evidence satisfying you of that guilt
23 beyond a reasonable doubt.

24 The presumption of innocence is not a mere legal
25 theory, and it's not just a legal phrase, but it is a

1 substantial right to which every defendant is entitled
2 unless you, the jury, are satisfied from the evidence of
3 the defendant's guilt beyond a reasonable doubt.

4 So, what is a reasonable doubt? The State has
5 the burden of proving the defendant guilty beyond a
6 reasonable doubt. Some of you may have served as jurors
7 in civil cases where you were told that it is only
8 necessary to prove that a fact is more likely true than
9 not true, such as the preponderance or greater weight of
10 the evidence.

11 In criminal cases, the State's proof must be
12 more powerful than that. It must be beyond a reasonable
13 doubt. Proof beyond a reasonable doubt is proof that
14 leaves you firmly convinced of the defendant's guilt.

15 Now, there are very few things in this world
16 that we know with absolute certainty. And in criminal
17 cases, the law does not require proof that overcomes every
18 possible doubt. If, based on your consideration of the
19 evidence, you are firmly convinced that the defendant is
20 guilty of the crime charged, you must find the defendant
21 guilty. If, on the other hand, you think there is a real
22 possibility that the defendant is not guilty, you must
23 give the defendant the benefit of that doubt and find him
24 not guilty.

25 I remind you that during this trial, you and I

1 have certain responsibilities and duties to perform. As
2 the trial judge, it is my responsibility to preside over
3 the trial of this case, and I also have the duty to rule
4 on the admissibility of the evidence offered during this
5 trial. You are to consider only the competent evidence
6 before you. You are to consider only the testimony which
7 has been presented from the witness stand and any exhibits
8 which have been made a part of the record in this case and
9 any stipulations or agreements of counsel.

10 I have the additional duty to charge you the law
11 applicable to this case. As the presiding judge, I am the
12 sole judge of the law of this case. And it is your duty
13 as jurors to accept and to apply the law as I now state it
14 to you. If you already have an idea as to what the law is
15 or what the law ought to be, and it does not agree with
16 what I now tell you the law is, you must abandon your idea
17 because you are sworn to accept the law and to apply the
18 law exactly as I state it to you.

19 In every case tried in this court before a jury,
20 the jury becomes the sole and the exclusive judges of the
21 facts of this case. A trial judge cannot intimate, state,
22 comment on or make any statement to a trial jury about the
23 facts of the case. Since you, the jury, are the sole
24 judges of the facts in this case, you are not to infer
25 from what I have said during the progress of this trial in

1 ruling on the admissibility of evidence or otherwise, or
2 anything that I say now during the course of this
3 instruction to you, that I have any opinion about the
4 facts in this case. The law does not allow me to have an
5 opinion about the facts. This is a matter solely for you,
6 the jury, to determine. As jurors, it is your duty to
7 determine the effect, value, weight and truth of the
8 evidence presented during this trial.

9 Now, there are usually two types of evidence
10 that are presented during -- let me turn this phone off.
11 I apologize.

12 Madam Clerk, take this thing away from me.

13 There are two types of evidence which are
14 generally presented during a trial, ladies and gentlemen.
15 There is direct evidence and there is circumstantial
16 evidence.

17 Now, direct evidence is the testimony of a
18 person who claims to have actual knowledge of a fact such
19 as an eyewitness. It is evidence which immediately
20 establishes the main fact to be proven.

21 Circumstantial evidence is evidence -- is proof
22 of a chain of facts and circumstances indicating the
23 existence of a fact. It is evidence which immediately
24 establishes collateral facts from which the main fact may
25 be inferred. Circumstantial evidence is based on

1 inference and not on personal knowledge or observation.

2 Now, the law makes absolutely no distinction
3 between -- or no distinction as to the weight or value to
4 be given to either circumstantial or direct evidence, nor
5 is there any greater degree of certainty required of
6 circumstantial evidence than of direct evidence. You
7 should weigh all of the evidence in this case. After
8 weighing all of the evidence, if you are not convinced of
9 the guilt of the defendant beyond a reasonable doubt, you
10 would find the defendant not guilty. However, after
11 weighing all of the evidence, if you are convinced of the
12 defendant's guilt beyond a reasonable doubt, you would
13 then find the defendant guilty.

14 Necessarily, you must determine the credibility
15 of the witnesses who have testified in this case. Now,
16 credibility simply means believability. It becomes your
17 duty as jurors to analyze and to evaluate the evidence and
18 to determine which evidence convinces you of its truth.
19 In determining the believability of witnesses who have
20 testified in this case, you may believe one witness over
21 several or several witnesses over one. You may believe a
22 part of the testimony of a witness and reject the
23 remaining part of that testimony. You may believe the
24 testimony of a witness in its entirety or reject that
25 testimony in its entirety. You may consider whether any

1 witness has exhibited to you any interest, bias, prejudice
2 or other motive in this case. You may consider whether a
3 witness is seeking a personal gain, as well as the
4 appearance and the manner of a witness while on the
5 witness stand.

6 Now, I instruct you, and I emphasize, the fact
7 that the defendant in this case did not testify is not a
8 factor to be considered by you in any way in your
9 deliberation and in your consideration on the question of
10 guilt or innocence of the defendant. It is not to be
11 considered by you in any manner whatsoever. A defendant
12 has the Constitutional right to remain silent. And the
13 assertion of this right must not be considered by you in
14 your deliberations.

15 I repeat, under your oath, you are to draw no
16 conclusion whatsoever from the fact that the defendant in
17 this case did not testify. The fact that this defendant
18 did not testify should not even be discussed in the jury
19 room. The burden of proof, as I stated to you, is on the
20 State. The defendant is not required to prove his
21 innocence. The burden of proof remains on the State to
22 prove guilt beyond a reasonable doubt.

23 Now, a statement alleged to have been made by
24 the defendant has been admitted into evidence in this
25 case. While the Court has determined that the statement

1 is admissible, I instruct you that you make the ultimate
2 decision of whether or not the defendant made the
3 statement. If the defendant did make the statement, then
4 you must determine whether the statement was made by the
5 defendant voluntarily and of his own free will. This
6 means that the statement was not caused by pressure,
7 force, fear, threats, coercion, intimidation, or by hope
8 or a promise of leniency or a reward of any kind. In
9 determining whether the statement was voluntary, you
10 should consider both the characteristics of the defendant
11 and the details surrounding the statement. Some of the
12 factors that you may consider are the age of the
13 defendant, the defendant's education or lack thereof, the
14 defendant's mental ability or capacity, the defendant's IQ
15 or intelligence, the defendant's background or
16 environment. The State has the burden of proving beyond a
17 reasonable doubt that the alleged statement was voluntary.
18 If you determine it was, you may give the statement any
19 further consideration that you deem proper. You must
20 decide what weight, if any, should be given to the alleged
21 statement. If you determine the alleged statement was not
22 the free and voluntarily statement of the defendant, you
23 should not consider that statement at all.

24 Now, the defendant, as I said earlier, is
25 charged with criminal domestic violence. The State must

1 prove beyond a reasonable doubt that the defendant caused
2 physical harm or injury to a member of the defendant's own
3 household or that the defendant offered or attempted to
4 cause physical harm or injury to a member of the
5 defendant's own household, with the apparent present
6 ability to cause harm or injury under circumstances
7 reasonably creating a fear of imminent danger.

8 For the purposes of this statute, a household
9 member is defined as a spouse, a former spouse, a person
10 with whom the defendant has a child in common or a male or
11 female with whom the defendant has cohabitated or is
12 cohabitating with at that time. So it's either is
13 currently cohabitating with or has cohabitated with in the
14 past.

15 Mr. Foreman and ladies and gentlemen of the
16 jury, as you retire to begin your deliberations, I wish to
17 express to you the hope that each of you will be mindful
18 of the importance of your responsibility. You're not
19 called upon to serve as jurors very often. And the proper
20 performance of the duty requires each of you to reach the
21 height of freeing your minds of all improper influences.

22 As the presiding judge of this court, I am
23 vitally concerned that whatever verdict you find will be
24 the result of your going into the jury room and confining
25 your consideration to the evidence and to the law that you

1 have heard here in this courtroom, weighing it fairly and
2 impartially, as I have every confidence you will do. Your
3 verdict in this case cannot be based on sympathy,
4 compassion, prejudice or emotion or some other
5 consideration that is not found in the evidence. And
6 remember, ladies and gentlemen, your verdict in this case
7 must be unanimous.

8 Now, this notebook has this jury charge that I
9 have just read to you here in the notebook.

10 And, Mr. Abrams, in the cover of the notebook in
11 front is the verdict form.

12 The verdict form in this case is very simple,
13 ladies and gentlemen. It has the caption of the case at
14 the top, and then it is simply two options; either we, the
15 jury, find Mr. Cabbagestalk to be not guilty or guilty.
16 Those are the two options that are available under this
17 case.

18 Once you have reached a unanimous decision,
19 Mr. Abrams, if you would mark the appropriate box, and
20 then just sign as foreman, and then knock on the door and
21 let the bailiffs know that you have reached a verdict.

22 Now, what I'm going to do, I am going to ask you
23 to step back into your jury room. Do not begin your
24 deliberations quite yet. I am going to confer with the
25 attorneys and just make sure that I haven't missed

1 anything or left anything out. If I need to bring you
2 back out and charge you something additional or make a
3 correction, I will do that. If not, these exhibits, which
4 have been entered into evidence, and this notebook will
5 all be sent back into the jury room. That will be your
6 cue to begin deliberations when you receive these items.
7 Okay? So until then, just relax, and it won't take but a
8 minute, and then we'll get all this stuff back to you and
9 get you started. Okay?

10 (The jury left open court at approximately
11 3:24 p.m.)

12 THE COURT: Are there any objections or
13 exceptions from the State?

14 MS. USRY: No, sir, Your Honor.

15 THE COURT: Anything from the defense?

16 MR. DRYLIE: None, Your Honor.

17 THE COURT: You guys, if you all don't mind,
18 please come up and go over and make sure that all the
19 exhibits that are supposed to be here are here, that
20 nothing goes back that shouldn't go back. And then once
21 that is confirmed, we'll send that stuff back and let them
22 begin their deliberations.

23 (Discussion off the record.)

24 (WHEREUPON, the jury began deliberations at
25 approximately 3:26 p.m.)

1 THE COURT: We have two alternates, I think.

2 Mr. Padgett and Ms. Turner, I want to thank you
3 all for your service. I think everyone is healthy and
4 able to deliberate. And so unfortunately -- you,
5 unfortunately, have the role -- I always relate everything
6 to football. It is like you guys have practiced all week
7 and now it is Saturday afternoon, it's kickoff and the
8 coach isn't going to let you play. That is kind of the
9 unfortunate role of the alternate. But it's really
10 necessary. I have had cases where we have turned the case
11 over to the jury panel or getting ready to and one of the
12 juror members had an emergency or somebody had a situation
13 where a juror got sick. And then, of course, the
14 alternates have to be ready to step in. Of course, if you
15 do that, obviously you needed to have heard everything
16 that they heard. It's kind of a tough role to play. You
17 got to be here, you've got to pay attention, you've got to
18 do everything. But when it's actually time to sit and
19 deliberate and talk about it, you're not allowed to
20 participate. But I want to thank you for your service.

21 Now, this concludes your service for the week,
22 and we're releasing the main panel, and so you're done.

23 Beth, if they need a work excuse, do they just
24 go down to the office?

25 THE CLERK: Just go downstairs if you have any

1 questions.

2 THE COURT: Or if you need a work excuse. If
3 not, they will be sending checks out this week and you
4 should have it by the end of the week. But I want to
5 thank you all for your services. And you're welcome to
6 stay if you want to, but you're also free to go if you
7 want. Okay? Whatever you would like.

8 Thank you, ladies and gentlemen.

9 (Alternates excused at 3:29 p.m.)

10 THE COURT: Folks, if you all want to go
11 somewhere, whatever, if you'll just leave us a way we can
12 find you.

13 MS. USRY: Yes, we'll be here.

14 (A break was taken while the jury was
15 deliberating.)

16 THE COURT: Okay.

17 Ladies and gentlemen, if I can have your
18 attention. I understand that the jury has arrived at a
19 verdict. I don't know what that verdict is. I sit here
20 just as you all do. While I just know this, and that is
21 that -- and I say this at every trial, whether it be a
22 civil trial or a criminal trial, whatever verdict the jury
23 has reached, I would ask that it be received in a
24 professional manner without any outbursts or big emotional
25 thing, whatever. I just -- they worked on this case this

1 week and they've made their decision, and it just needs to
2 be received in a professional manner. And so please let's
3 do that.

4 And having said that, is the State ready to
5 receive the jury verdict?

6 MS. USRY: The State's ready, Your Honor.

7 THE COURT: Defense ready?

8 MR. DRYLIE: Defense is ready, Your Honor.

9 THE COURT: All right. If you would bring the
10 jury in.

11 (The jury came into open court at approximately
12 3:41 p.m.)

13 THE COURT: All right. Mr. Abrams, has the jury
14 reached a unanimous verdict, sir?

15 MR. ABRAMS: Yes, we have, Your Honor.

16 THE COURT: All right. If you would please pass
17 that up.

18 All right. Madam Clerk, if you would please
19 publish that verdict of the jury, please.

20 THE CLERK: Yes, sir, Your Honor.

21 Indictment 2012-GS-32-00556, the State versus
22 Dwayne Lamont Cabbagestalk, we, the jury, find the
23 defendant, Dwayne LaMont Cabbagestalk, guilty of criminal
24 domestic violence. And it so signed Anthony Abrams,
25 Foreman, June 18th, 2013.

1 Mr. Foreman, ladies and gentlemen of the jury,
2 if this is your verdict, please indicate each of you by
3 raising your right hand.

4 All hands raised, Your Honor.

5 THE COURT: All right. Thank you, ladies and
6 gentlemen. I want to thank you for your service.

7 Now, having said that, I've got what I think
8 will be good news for you, I don't know, but this
9 concludes your service for this week. We have had several
10 cases and basically they have all pled guilty, and so this
11 was the -- we thought we had another case after this one,
12 but that case has resolved. So you are -- have somewhat
13 of a short week. Here it is Tuesday, mid-afternoon, and
14 you're done for the week. But I want to thank you for
15 your service.

16 Sometimes it happens like this. Sometimes your
17 service is not very lengthy. Sometimes you are here all
18 week long. But the key for you to understand is that
19 things don't get resolved in court without your
20 willingness to be here, ready to go to work. So even
21 though you sat in on this trial and you decided this case,
22 your being here, you and your fellow jurors, it has
23 resolved many cases this week. Several cases were on the
24 trial roster. All of those cases have pled out.
25 Mr. Cabbagestalk and his case had his day in court and his

1 trial. But your presence has made it possible for all of
2 those other matters to resolve, and so even though you
3 have only heard this one case, trust me, your work has
4 extended far beyond this trial here today. So I want to
5 thank you very much for your service.

6 Now, you have earned an exemption. So for the
7 remainder of this year and for the next two years, if you
8 get a summons for circuit court jury service, you can
9 exercise that exemption and be excused from service. But
10 I want to tell you -- and I always tell folks -- that is
11 just an exemption. It doesn't mean you're not qualified
12 to serve over the next couple of years. And if you do get
13 another summons in that time frame and you wish to serve,
14 I would encourage you to do that.

15 I don't know how many of you have ever been on
16 jury duty besides this time. I'm 58 years old. I have
17 never even been summoned for jury duty but once in my
18 life, and it was about six years ago, and it was during a
19 term of court that I was presiding over. So unfortunately
20 I did not excuse myself. I had to be there. But I've
21 never had the opportunity to do what you have done this
22 week, and it is something that I think, you know, things
23 always look more glorious or romantic when you are not
24 involved in it. But I think it's something that I really
25 would want to do, unfortunately won't get that

1 opportunity. So you have had a rare opportunity, and I
2 hope it was a good experience for you this week.

3 If you need a work excuse -- and I'm about to
4 excuse you for the balance of the week -- if you need a
5 work excuse, you can swing by the clerk's office
6 downstairs, and they can give you an excuse for work.

7 The old adage about your checks being in the
8 mail, I'm going to have to pass that on to you. The
9 checks are in the mail. And as I told you yesterday,
10 please don't look at that and think that is what we think
11 of your time. We couldn't possibly pay you what your time
12 is worth. But I do want to thank you again for your
13 service to Lexington County and to the State of South
14 Carolina in general, if you don't have any questions or
15 anything like that.

16 Now, what I always do with juries is I tell you
17 that you are excused and you're free to go. If any of you
18 are interested or if you want to be present, in just a
19 moment, I am going to take up a couple of motions and
20 legal matters, and then we're going to proceed to
21 sentencing. So if you're interested in that and you want
22 to be present for that, you're free -- I'm going to excuse
23 you to go out the door here, but you're free to come back
24 into the courtroom if you would like to be here for
25 sentencing. That is your decision. But you are also free

1 to go if you choose to do that. All right?

2 So thank you, ladies and gentlemen. If everyone
3 else would remain seated, I'm going to excuse the jury.

4 (The jury left open court and was excused at
5 approximately 3:47 p.m. and the following proceedings
6 were held:)

7 THE COURT: At this time, I will take up any
8 motions at the receiving of the jury's verdict, if are
9 there any?

10 Mr. Drylie.

11 MR. DRYLIE: Your Honor, we'd move for a new
12 trial. We'd also renew all trial motions and objections.

13 THE COURT: All right, sir. I'm going to
14 respectfully deny the motion. As I said earlier when we
15 had our earlier motions on directed verdict, I think this
16 case, as many of these cases are, are heavily fact driven,
17 and I think it boils down to questions of fact for a jury
18 to decide. I didn't see anything in the evidence in this
19 case that would cause me to have any grave concern that
20 the jury acted outside the evidence. I think there is
21 certainly evidence to support the verdict in this case.
22 And so I'm going to respectfully deny that motion.

23 Anything further?

24 MR. DRYLIE: Nothing further from the defendant.

25 THE COURT: All right. Well, if we're ready

1 then to come around for sentencing.

2 Mr. Drylie, before I hear from the defense, let
3 me hear -- obviously, I have heard the facts and -- but
4 let me hear from the State. If Mr. Cabbagestalk has --
5 well, first, if Mr. Cabbagestalk has any prior record and
6 secondly, if the State wishes to address sentencing, I
7 will be happy to take any information you'd like to give
8 me.

9 MS. USRY: Yes, sir, Your Honor. I have the
10 defendant's prior record, and I will proceed to go through
11 that.

12 He has a 1990 petty larceny. In 1991, he has an
13 armed robbery. In 1996, a petty larceny. In 1996, a
14 shoplifting. In '97, he has two counts of fraudulent
15 check. In 1999, he has a simple assault and battery.

16 In 2000, financial transaction card fraud; it
17 appears there are three counts on his record, Your Honor.
18 In 2002, he has his first conviction for criminal domestic
19 violence. In 2003, he has a conviction for criminal
20 domestic violence of a high and aggravated nature. In
21 2004, a conviction for violation of an order for
22 protection. In 2008 -- and I'm going to hand these up to
23 the Court to make it a court record -- he has got two
24 convictions for criminal domestic defense 3rd offense or
25 greater, and that's what we're using to enhance this to --

1 this is a criminal domestic violence 3rd.

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

3 MS. USRY: Yes, sir, Your Honor.

4 And the State's position in this case is that
5 we're asking for the maximum five years.

6 After this case occurred, Your Honor, and I
7 don't have the date written down, but it was about a year
8 later, the defendant picked up an additional criminal
9 domestic violence charge against this same victim. It is
10 still pending today. We have not moved forward on that
11 case, but that's outstanding. And I'm not sure at this
12 point whether we'll move forward with that trial or
13 dismiss it as part of the sentencing today.

14 But he violated his no contact order. He has
15 been living with the victim, Your Honor. We're concerned
16 by that. We're concerned that he has no regard for any
17 court order whatsoever to stay away from this victim. And
18 I understand that she is here to testify for him, and she
19 may be talking to him as well.

20 The State's position is that this is an abusive
21 relationship. The grandmother is not here, but she has
22 given us much more information to this relationship that
23 we did not -- it wasn't appropriate to present at the
24 trial today, it was outside the scope of this trial, but
25 this is an ongoing abusive relationship.

1 THE COURT: All right. Now, Mr. Drylie as well
2 as Ms. Usry, just to confirm, are you all both in
3 agreement that under the statute, that this carries a
4 penalty of not less than one year up to five years; is
5 that correct?

6 MS. USRY: Yes, sir, Your Honor.

7 THE COURT: Mr. Drylie, do you agree with that
8 assessment?

9 MR. DRYLIE: Yes, Your Honor.

10 THE COURT: All right. I just want to make sure
11 that we're on four corners with that. I had a case a
12 couple of weeks ago, and all of us were wrong. It was one
13 those cases that the legislature had recently changed
14 and -- anyway.

15 All right. Thank you, Ms. Usry.

16 Mr. Drylie, I would be happy to hear from you,
17 sir.

18 MR. DRYLIE: Thank you, Your Honor.

19 I'm going to let you know a couple of things.
20 First, obviously we're not commenting on the facts of this
21 case as we will appeal. The pending charges, Your Honor,
22 that's a completely separate case, and there's some
23 different elements that are present in that case.
24 Obviously Mr. Cabbagestalk denies that the second case
25 happened. Just real briefly, the responding officer never

1 responded to a house or an incident. This is something
2 that was reported later at a medical center, and he is
3 denying all of those allegations.

4 THE COURT: Sure.

5 MR. DRYLIE: Your Honor --

6 THE COURT: And I will be honest with you. I
7 mean, I appreciate exactly where the State's coming from
8 on that. That is a pending case. It's not a conviction.
9 I'm not concerning myself with that at this time. That's
10 just information that the State has to give them their
11 concern about this relationship, as Ms. Usry stated.

12 MR. DRYLIE: And, Your Honor, Mr. Cabbagestalk
13 and Ms. Payne have both told me that he is not living
14 there and hasn't been living there, that he has been
15 staying with his mother.

16 Your Honor, I do want to point out that Dwayne
17 is a father, they have three children in common. And
18 according to the testimony today, he was over there
19 visiting his children. He wants to be in their lives. He
20 is working, Your Honor.

21 We'd ask for the minimum sentence of a year in
22 jail. This isn't an especially bad incident of criminal
23 domestic violence, even if whatever the State understands
24 is 100 percent true.

25 Your Honor, I'm sure you've seen much worse, as

1 have I. No one was severely injured in this case, Your
2 Honor. We'd ask for the minimum sentence.

3 And I believe Ms. Payne would like to address
4 the Court.

5 THE COURT: I will hear from Mr. Cabbagestalk or
6 anyone else. No one is required to address the Court, but
7 I'll certainly be willing to listen to anyone that wishes
8 to. All right.

9 MS. PERRY-PAYNE: I'm here to just say that I
10 don't want the maximum sentence for Dwayne. I don't feel
11 like the victim in this case at all. I was here, my
12 objective is to clear up any wrongdoings that I had --
13 involvement in this case. Dwayne did not do the things
14 that I stated in my original statement to the police
15 officer. I've tried to clarify that from the day one
16 before it got to this big court situation today.

17 THE COURT: And I appreciate you sharing that,
18 ma'am, and I will be candid with you, I don't think you're
19 a victim, either. As a matter of fact, I am going to be
20 very disappointed if the State doesn't prosecute you for
21 filing false police reports. You filed a false police
22 report, you lied to law enforcement. You put law
23 enforcement officers in jeopardy, you put them in danger,
24 and I think you should be prosecuted. I hope they will do
25 that. I have no control over that. But -- and if what

1 you're saying is true, then this is on your head what is
2 going to happen with Mr. Cabbagestalk because you're the
3 one who started all this, you're the one who promulgated
4 it. When the officer came to the house, you had the
5 opportunity to tell him the truth then, and you chose to
6 take this on out.

7 Personally, personally, I believe the jury got
8 it right. Here is what I believe -- and I don't know
9 because I haven't spoken to any of the jurors. I believe
10 they feel that you're not an honest person and that your
11 testimony was completely unbelievable, not believable at
12 all, and that they believed, as I do, that
13 Mr. Cabbagestalk did in fact do the things that were
14 alleged.

15 So unfortunately when you choose to live a life
16 of lying and being deceitful, then when you do try to step
17 up and be honest and truthful, it is kind of like the boy
18 who cried wolf. You know, I can't say that you're not
19 telling me the truth or that you are because I don't know
20 because you have not proven yourself to be a believable or
21 an honest person because you admit that you're lying.
22 See, and what I don't know is, were you lying to the
23 police officers then or were you telling the truth then
24 and you're lying now. I don't know. The only thing that
25 you have admitted to is lying. So I don't know -- I don't

1 know what is truth or not truth.

2 MS. PERRY-PAYNE: Well, I can understand that.
3 However -- however I have to be prosecuted in this case or
4 any charges come against me, I didn't come this far to be
5 afraid of that at all.

6 THE COURT: I didn't say it for that purpose.

7 MS. PERRY-PAYNE: Okay. But I don't want Dwayne
8 locked up for five years, neither does his three kids.
9 He's no help at all in jail. If anything, it's a
10 hindrance, it's a bigger burden on me, a single mother of
11 four.

12 THE COURT: Well, maybe you should have
13 considered that while you were lying to the police
14 officers.

15 MS. PERRY-PAYNE: When you're in that type of
16 state of mind, you don't consider a lot, you just react.
17 And that's what I did.

18 THE COURT: And I understand that. I appreciate
19 that.

20 Anything further, Mr. Cabbagestalk?

21 THE DEFENDANT: Yes, sir. I come here today
22 looking you straight in the eye. I got found guilty, but
23 I'm not guilty of these charges. Over the last couple of
24 years, I've been trying to get my life together with God,
25 got a job, working hard trying to take care of my

1 children. You know, I'm trying to get this out of the
2 way, you know, move on, straighten things out in my life.
3 I have a troubled background, I came up without a father,
4 and I'm learning how to be a man. I'm 40 years old now.
5 I have three beautiful little girls and a son that I'm
6 really trying to take care of. I work nights. In fact, I
7 worked this morning and last night trying to take care of
8 them.

9 Now, I just come to the Court and ask for mercy
10 of the Court. Please give me the best and lowest sentence
11 you can so I can get back to doing what I was doing. I
12 was finally on the right track, Your Honor, trying to get
13 things together. I haven't been in any trouble, any
14 tickets or anything. I've just been working hard, trying
15 to stay focused and doing the right things finally in my
16 life, you know, as I've matured.

17 It took awhile, you know, I started young. I
18 was locked up when I was young and then it carried over.
19 But as a 40-year-old man, older, maturer, I'm trying to
20 look forward to life and doing things with my daughters
21 and raising them, showing them the right way that a
22 father's supposed to. And I really hope that I can get an
23 opportunity in the near future to do so and to continue on
24 with what I'm doing.

25 I spoke with my supervisor this morning at my

1 job, and I told him that I would be having a trial this
2 morning and if things didn't work out in my favor and I
3 wasn't able to come back, would they please hold my job
4 for me, and he said everything would be okay. But
5 obviously it's not. But hopefully he will stick to his
6 word, and hopefully the sentence won't be long. I'm
7 begging you, sir, because my life is in your hands.

8 THE COURT: Mr. Cabbagestalk, your whole
9 history, your adult history is involving, well, to some
10 extent, being unable to control either your temper or
11 whatever.

12 Now, I wasn't there. Someone stated it earlier,
13 it may have been the State's counsel or maybe defense
14 counsel, but no one was there with a camera or we don't --
15 no one -- none of us really know what happened in that
16 home, but the one thing that I do kind of have a pretty
17 good idea about, and that is that this wasn't just an
18 argument between two folks. It had escalated beyond that
19 because somebody felt it was so bad that law enforcement
20 needed to be called, and I realize that it was the
21 grandmother. But here's the thing: My wife and I don't
22 agree on everything. We have arguments. But to the
23 extent of involving law enforcement, that just shows me --
24 and then of course when law enforcement arrived, all the
25 other evidence surrounding that -- again, I'm not going to

1 sit here and tell you what happened because I don't know.
2 But I do believe that the evidence strongly supported the
3 jury's verdict.

4 Go ahead.

5 THE DEFENDANT: The reason why I took this trial
6 is because this happened before in Richland County where I
7 was attacked and I was cut up and jumped on, and I called
8 911, and I was arrested because of an officer -- not this
9 officer, it was in another county -- but she told this
10 lady how to get me arrested, what to do. And took it -- I
11 took my bond in Richland County, changed the dates. So I
12 pleaded guilty to 30 days just to get it over with. And
13 this one, I already had this one. This one was coming up.
14 This has happened twice. And I tried to explain it to the
15 people in Richland County, what was going on. I made the
16 call. It happened -- well, I pleaded guilty June 30th,
17 2012.

18 THE COURT: These incidents --

19 THE DEFENDANT: Yes, sir.

20 THE COURT: -- involving this lady?

21 THE DEFENDANT: Yes, sir. And I called 911 for
22 help.

23 THE COURT: May I suggest, I mean, you stay away
24 from her.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: I mean, again, golly, this gets
2 beyond my role as the judge here, but I'm just trying to
3 give some good advice. And that doesn't make either one
4 of you all out to be bad people, but what it does seem to
5 appear to me is that you don't do well together. Okay?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: She may be awesome with someone
8 else, you may be awesome with someone else, but clearly
9 the two of you all don't do well together. You know, I
10 mean, that's obvious.

11 Again, the other one that is pending, that is a
12 pending charge. You are innocent of that charge as far as
13 I'm concerned because you are presumed innocent. But,
14 again, it's another charge involving this lady, so -- and
15 I realize you have children together, so that makes it
16 even more difficult. And I got that, I understand that.
17 But there are couples or folks all over this country that
18 are either not married but have children or were married
19 once and divorced. But, in other words, they have
20 children that they are both responsible for, but they
21 basically do their roles as mother and father separately.
22 And maybe that is not always in the best interest of the
23 kids. Maybe it's always, you know, people will tell you
24 it is always better to have mom and dad getting along and
25 everybody happy. But if you can't -- you know, right now,

1 what your kids are seeing is horrible because they're
2 seeing two people that clearly aren't making it happen
3 together, and it is not an example that I'm sure you would
4 want your children to follow.

5 THE DEFENDANT: No, sir. I'm trying to set a
6 good example.

7 THE COURT: Did you serve any time in jail on
8 this charge, sir?

9 THE DEFENDANT: Yes, sir, about a month.

10 THE COURT: The legislature gives us a
11 sentencing range for a reason. And there's a lot of
12 factors that you take into consideration. This is a
13 situation that -- and I understand, Mr. Drylie, what you
14 shared with the Court, and I would agree with you. In
15 terms of physical injury, I've seen much worse cases,
16 okay, and I understood what you meant by that. But this
17 is as egregious a situation as I've seen. And when I say
18 "situation," I mean this relationship.

19 And, again, this is what concerns the Court, and
20 that is that we are taking resources in our community, law
21 enforcement resources that need to be available for --
22 and, you know, I hesitate to say for true law enforcement
23 intervention. Right now I'm going to take the position
24 that in this case, it was necessary for law enforcement to
25 be there because I think that there was a violent

1 situation here. But if there wasn't, if what
2 Ms. Perry-Payne testified to be the truth, if that's the
3 truth, then she just completely lied about it all just to
4 get him out of the house, that is an egregious abuse of
5 law enforcement resources. It puts police officers in
6 harm's way, it puts people in harm's way, it puts children
7 in harm's way. I mean, there's just so -- everything
8 about this is inappropriate. If you believe
9 Ms. Perry-Payne's testimony. I personally don't. I think
10 it probably was necessary for law enforcement to come out
11 there because I think there was a domestic situation that
12 had escalated into a violent situation. And I applaud law
13 enforcement for the way it was handled and the appropriate
14 way that it was handled.

15 I'm looking at a young man who's got a history
16 of this, and I don't know how to get your attention
17 that -- you say the right words, you're 40 years old, it's
18 time to put this silliness behind you.

19 My father told me this one time, it's always
20 stuck with me, and it is the same thing I tell my
21 children. And you need to hear this, Mr. Cabbagestalk,
22 you really need to hear this.

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: There is nothing that any woman can
25 do that would justify you raising your hand to her. Okay?

1 If you're truly a man, you don't hit a woman, you don't
2 threaten and bully a woman. Even if they're -- it's not
3 the case here -- but even if they were bigger than you and
4 stronger than you, you respect women. And maybe that's
5 old fashioned. Maybe that's not the way it is today.
6 Obviously, it's not the way it is today. But if you want
7 to be the bigger person, if you want to be a man, then do
8 what it says in scripture, turn the other cheek because it
9 doesn't pay. It's not a man that raises his hand to a
10 woman, that is a coward. And you need to understand that
11 because you've got a history of it.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And it may be, from what you said,
14 the way, the situation you had in growing up and what you
15 maybe observed and whatever. But if for nothing else,
16 this day today, you need to hear that that is not
17 appropriate, and it won't be tolerated any longer.

18 On Indictment 2012-GS-32-556, the sentence of
19 the Court is that you be committed to the State Department
20 of Corrections for a period of five years. You're to be
21 given credit for the 30 days time that you have served.

22 I don't know how much of that you'll end up
23 serving, Mr. Cabbagestalk, but I hope that this will be
24 the last time you'll ever be inside a courtroom for this
25 type of conduct.

1 Good luck to you, sir.

2 THE DEFENDANT: Thank you.

3 MR. DRYLIE: Thank you, Your Honor.

4 (WHEREUPON, The Court's Exhibit No. 1 was marked
5 for purposes of the record.)

6
7 (The proceedings were concluded.)

8 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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3
4 CERTIFICATE OF REPORTER5
6 STATE OF SOUTH CAROLINA)
7)8 COUNTY OF LEXINGTON)
9
10

11 I, CAROL M. THUEME, RPR, Official Court Reporter for
12 the 11th Judicial Circuit of the State of South Carolina,
13 do hereby certify that the foregoing is a true, accurate
14 and complete Transcript of Record of the proceedings had
15 and evidence introduced in the trial of the captioned
16 case, relative to appeal, in the Court of General Sessions
17 for Lexington County, South Carolina, on the 17-18th days
18 of June, 2013.

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

21
22 November 30, 201323
24 
25

CAROL M. THUEME, RPR
Circuit Court Reporter

WITNESSES

Lexington County Sheriffs Department

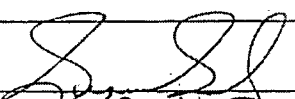
N Burt

Law Enforcement Case #: 11034823

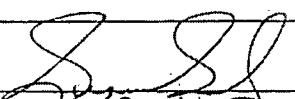
KWU

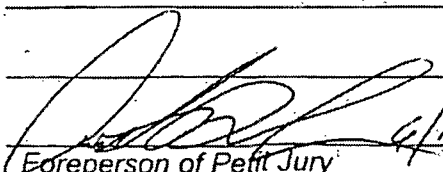
ARREST WARRANT NUMBER

M303660

ACTION OF GRAND JURY

 Foreperson of Grand Jury

Date: 3-12-2012

VERDICT

 GUILTY


 Foreperson of Petit Jury

Date: 4/18/13

DOCKET NO. 2012-GS-32-00556**The State of South Carolina**

County of Lexington

COURT OF GENERAL SESSIONS

MARCH TERM 2012

THE STATE

vs.

Dwayne Lamont Cabbagestalk

CDR #: 3055
Indictment forCriminal Domestic violence 3rd Offense or
Subsequent

§ 16-25-0020(A)

DONALD V. MYERS, SOLICITOR
A TRUE COPY

 Lex. Co. C.C.P., G.S. & F.G.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Criminal Domestic violence 3rd Offense or
Subsequent

§ 16-25-0020(A)

At a Court of General Sessions, convened on March 2012, the Grand Jurors of Lexington County present upon their oath:

That **Dwayne Lamont Cabbagestalk** did Lexington County, South Carolina on or about December 4, 2011 unlawfully, cause physical harm or injury to a family or household member; or offer or attempt to cause physical harm or injury to a family or household member with apparent present ability under circumstances reasonably creating fear of imminent peril, namely **Tameshia Perry-Payne** by striking her and/or verbally threatening her, and the defendant having three (3) prior conviction (s) for the same offense or any combination of Sections 16-25-65 and 16-25-20 within 10 years; in violation of Section 16-25-20, and penalties provided under 16-25-20(D) of the South Carolina Code of Laws(1976), as amended.

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


ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 31, 2014

Robert M. Pachak

Robert M. Pachak
Appellate Defender

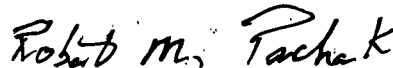
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

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January 31, 2014



Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Lexington County

Thomas A. Russo, Circuit Court Judge

RECEIVED

JAN 31 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

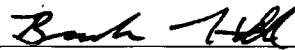
DWAYNE CABBAGESTALK,

APPELLANT

APPELLATE CASE NO. 2013-001378

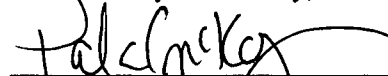
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 31st day of January, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 31st day of January, 2014

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.