

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Abbeville County

Clifton Newman, Circuit Court Judge

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S.C. Supreme Court

ANTJUAN TOBIAS GREENE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001535

A P P E N D I X

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STATE OF SOUTH CAROLINA)
COUNTY OF ABBEVILLE)

IN THE COURT OF GENERAL SESSIONS
OF THE EIGHTH JUDICIAL CIRCUIT
2009-GS-01-209-211

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

TRIAL TRANSCRIPT OF RECORD

vs)

ANTJUAN GREENE,)

DEFENDANT.)

NOVEMBER 9-10, 2009
ABBEVILLE, SOUTH CAROLINA

BEFORE: THE HONORABLE EUGENE GRIFFITH

FOR THE STATE:

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JURY SELECTION

5

1 **THE COURT:** FOR THE RECORD, I NOW FIND THIS JURY PANEL TO BE
2 QUALIFIED TO SERVE DURING THIS TERM OF GENERAL SESSIONS COURT AND
3 DO YOU WANT TO PICK THIS JURY RIGHT NOW AND GET THAT DONE,
4 SOLICITOR? ARE YOU PREPARED?

5 **MS. BOLEN:** YES, SIR. WE'RE PREPARED TO PROCEED.

6 **THE COURT:** ALL RIGHT. LADIES AND GENTLEMEN, WHAT WE ARE
7 GOING TO DO IS --

8 **MS. BELL:** I'M SORRY. MY VOIR DIRE. (HANDS DOCUMENT TO THE
9 JUDGE)

10 **THE COURT:** LADIES AND GENTLEMEN, I'M GOING TO DO MY BEST TO
11 MINIMIZE THE INCONVENIENCE ON Y'ALL'S TIME. I'VE HELD COURT ALL OVER
12 THE EIGHTH CIRCUIT AND THE UPSTATE, I'VE NOT FOUND MANY JURORS
13 THAT REALLY, REALLY WANTED TO BE HERE. BUT IT IS IMPERATIVE THAT WE
14 AS A COMMUNITY AND A STATE HAVE TRIALS BY JURY BECAUSE IF YOU EVER
15 THINK OF WHAT THE ALTERNATIVE TO THIS IS, IT'S UNBELIEVABLE SOME OF
16 THE STORIES YOU HEAR IN OTHER COUNTRIES AND HOW THEY RESOLVE
17 CHARGES AGAINST ONE. OUR CONSTITUTION, BOTH THE UNITED STATES
18 CONSTITUTION AND OUR STATE'S CONSTITUTION, ALLOWS ANYONE WITH A
19 CIVIL CASE OR A CRIMINAL CASE THAT HAS A QUESTION OF FACT TO STAND A
20 JURY TRIAL IF THEY SO REQUEST AND IT MUST BE OF TWELVE
21 DISINTERESTED MEMBERS. YOU, AS A GROUP, WILL COMPRISE THE BODY
22 FROM WHICH WE WILL SELECT THE TWELVE TO HEAR THIS FIRST CASE AND
23 SO OTHER THAN SERVING YOUR COUNTRY IN WAR, I BELIEVE THAT SERVING
24 YOUR COUNTRY AND YOUR COMMUNITY AS A JUROR IS PROBABLY THE
25 SECOND HIGHEST CALLING FOR SERVICE TO YOUR COMMUNITY.

JURY SELECTION

1 WE ARE READY TO SELECT THE FIRST JURY. I'LL TELL YOU THIS,
2 THERE ARE SOME BAILIFFS AROUND. THE BAILIFFS ARE HERE TO DO
3 ANYTHING THEY CAN TO MAKE YOUR INCONVENIENCE MORE CONVENIENT.
4 THEY ARE HERE TO HELP YOU AND SHOW YOU WHERE TO GO. WHAT THEY
5 CAN DO IS HELP YOU KNOW WHEN TO COME BACK, GIVE YOU A PHONE
6 NUMBER, WHATEVER, BUT MS. WEBB, BACK HERE IN THE BACK WILL ALWAYS
7 GENERALLY BE SITTING RIGHT THERE. MISTER BUSBY AND MISTER BOGGS,
8 THEY ARE GENERALLY OVER HERE ON MY LEFT AND THEY WILL DO
9 ANYTHING THAT THEY CAN TO MAKE SURE YOUR SERVICE IS MORE
10 CONVENIENT AND MORE PLEASURABLE AND SO ANYTHING THEY CAN DO,
11 YOU NEED SOMETHING OR NEED TO ASK A QUESTION, THEY ARE THE
12 PERSON YOU CAN CONTACT TO GET WORD TO ME THAT YOU HAVE AN ISSUE
13 OR WHAT TIME TO COME BACK AFTER LUNCH, ANYTHING OF THAT SORT.
14 THAT IS THEIR JOB AND THEY ARE MORE THAN HAPPY TO HELP YOU GET
15 WHERE YOU ARE SUPPOSED TO BE OR LET YOU KNOW WHEN YOU'RE NOT
16 SUPPOSED TO BE HERE IN ORDER TO NOT INCONVENIENCE YOU. ANYWAY,
17 THE OTHER PEOPLE IN THE COURTROOM, AS I WAS TELLING YOU, MY COURT
18 REPORTER IN FRONT OF ME IS MS. JO RICE. SHE WAVED TO YOU EARLIER.
19 SHE'S TAKING DOWN WHAT I'M SAYING AND SO IT'S HER JOB TO TRANSCRIBE
20 EVERYTHING THAT'S SAID IN THIS COURTROOM SO THAT IF THERE IS EVER A
21 REVIEW OR DISPUTE AS TO WHAT WAS SAID OR A QUESTION WAS ASKED BY
22 ANY PARTY, SHE HAS A RECORD OF THAT. THE YOUNG LADY SEATED TO MY
23 RIGHT IS MY LAW CLERK, LINDSEY MCCLAIN. IT'S HER JOB TO MAKE CERTAIN
24 I HAVE THE APPROPRIATE LAW, THE CASES ORGANIZED, THE CASE BEHIND
25 THIS ONE IS READY TO GO AS SOON AS THIS ONE IS DONE AND HELP KEEP

JURY SELECTION

7

1 THINGS MOVING ALONG SO WE DON'T HAVE TO INCONVENIENCE YOU ANY
2 MORE THAN WE HAVE TO. THE LADY SEATED RIGHT HERE TO MY FRONT IS
3 MS. EMILY MCMAHAN. SHE'S YOUR CLERK OF COURT HERE IN ABBEVILLE
4 COUNTY. SHE'S ELECTED TO MANAGE AND ORGANIZE ALL THE REAL ESTATE
5 DOCUMENTS, WHETHER IT BE DEEDS OR MORTGAGES, CIVIL COURT
6 LAWSUITS FILED BY WHOMEVER, THE FAMILY COURT DOCKET AS WELL AS
7 THE GENERAL SESSIONS DOCKET WHICH IS THE ONE WE ARE HERE IN
8 COURT FOR HERE TODAY. THE COURT OF GENERAL SESSIONS IS ACTUALLY
9 A LEGAL WORD FOR CRIMINAL COURT. THESE ARE CRIMINAL CHARGES
10 BROUGHT BY THE ABBEVILLE COUNTY GRAND JURY, SO WE WILL BE HEARING
11 CRIMINAL CASES THIS WEEK. OUR SOLICITOR, IS SOLICITOR PEACE HERE?
12 DID I SEE HIM?

13 **MS. BOLEN:** NO, YOUR HONOR. THERE'S COURT IN LAURENS.

14 **THE COURT:** ALL RIGHT. JERRY PEACE IS AN ELECTED OFFICIAL AS
15 WELL. HE'S IN COURT, BECAUSE THERE IS A COURT GOING ON OVER IN
16 LAURENS. HE IS REPRESENTED HERE BY SEVERAL OF HIS ASSISTANT
17 SOLICITORS. FIRST CASE IS BEING REPRESENTED BY MS. PATRICIA BOLEN.
18 REPRESENTING THE OTHER SIDE IS MS. ALEXIS BELL WHO IS REPRESENTING
19 – I'M NOT SURE OF THE CASE. IS IT MISTER – THE STATE VERSUS ANTJUAN
20 GREENE?

21 **MS. BELL:** YES, SIR.

22 **THE COURT:** ALL RIGHT. THAT BEING SAID, IS THERE ANY VOIR DIRE
23 FROM EITHER OF THE PARTIES REGARDING THIS MATTER OTHER THAN THE
24 STANDARD QUESTIONS WHICH I AM ABOUT TO ASK?

25 **MS. BELL:** WE HAVE ONE TO PASS UP, YOUR HONOR.

JURY SELECTION

8

1 **MS. BOLEN:** YOUR HONOR, THE STATE HAS PASSED UP A VOIR DIRE AS
2 WELL.

3 **THE COURT:** ALL RIGHT. MY LAW CLERK IS DOING HER JOB. SHE
4 ALREADY HAD THE QUESTIONS AND I DIDN'T KNOW IT. ALL RIGHT. WITH
5 REGARD TO THIS PARTICULAR CASE, I NOW MUST GIVE YOU THE
6 OPPORTUNITY TO RESPOND WHETHER YOU HAVE ANY PECULIAR OR
7 PARTICULAR KNOWLEDGE OF THIS PARTICULAR CASE. IF YOU DO, I NEED TO
8 KNOW ABOUT IT. SINCE I'M ASKING THE QUESTIONS AND I DON'T WANT MORE
9 RESPONSE THAN IS APPROPRIATE BECAUSE – WELL, LET ME ASK THE
10 QUESTION SO THAT IF YOU NEED TO RESPOND TO A QUESTION, YOU STAND
11 UP AND LET ME SOLICIT THE INFORMATION FROM YOU, AS AN
12 INAPPROPRIATE RESPONSE WOULD BE, "OH, YEAH, I KNOW THAT FELLOW
13 AND HE'S BEEN IN TROUBLE HIS WHOLE LIFE" AND THEN THE REST OF THE
14 JURY HEARS THAT, THAT DOESN'T HELP A WHOLE LOT. WELL, I'M FROM
15 NEWBERRY. I DON'T KNOW MANY OF THE CITIZENS FROM ABBEVILLE. I HAVE
16 A FEW FRIENDS OVER HERE BUT I DON'T KNOW THE FIRST THING ABOUT THIS
17 CASE AND SO IT WILL BE A STORY UNFOLDING FOR ME. IF IT'S NOT A STORY
18 UNFOLDING FOR YOU, I NEED TO KNOW ABOUT IT, BUT LET ME ASK THE
19 QUESTIONS SO WE DON'T GET TOO MUCH OF WHAT YOU KNOW TO IMPOSE
20 UPON THE OTHER JURORS.

21 **MS. BOLEN:** YOUR HONOR, I HAVEN'T FORMERLY CALLED THE CASE.
22 WOULD YOU LIKE ME TO DO THAT NOW?

23 **THE COURT:** THAT WOULD BE FINE.

24 **MS. BOLEN:** THE STATE CALLS THE STATE VERSUS ANTJUAN TOBIAS
25 GREENE ON THREE INDICTMENTS. 2009-GS-01-209, WHICH IS A CHARGE OF

JURY SELECTION

9

1 BURGLARY. 2009-GS-01-210, WHICH IS CRIMINAL DOMESTIC VIOLENCE OF A
2 HIGH AND AGGRAVATED NATURE. 2009-GS-01-211, WHICH IS MALICIOUS
3 INJURY TO REAL PROPERTY.

4 THE COURT: AS YOU HAVE JUST HEARD, THE STATE HAS NOW
5 FORMALLY CALLED THE CASE OF THE STATE OF SOUTH CAROLINA VERSUS
6 ANTJUAN GREENE. THERE ARE THREE INDICTMENTS WHICH COMPRISE THIS
7 CASE. THESE ARE THE DOCUMENTS WHICH PLACE HIM ON NOTICE OF WHAT
8 HE IS BEING CHARGED WITH. THEY ARE PROOF OF NOTHING OTHER THAN
9 THE CHARGES THE STATE ALLEGE AGAINST HIM. WITH THAT IN MIND, IS
10 THERE ANY MEMBER OF THIS JURY PANEL WHO HAS BEEN REPRESENTED BY
11 ANY OF THE ATTORNEYS; MS. PATRICIA BOLEN, MS. ALEXIS BELL, REGARDING
12 ANY PRELIMINARY MATTERS OR ANY OTHER MATTERS, IF YOU HAVE HAD ANY
13 INVOLVEMENT WITH EITHER OF THESE ATTORNEYS, PLEASE STAND.

14 (NO ONE STANDS)

15 THE COURT: THE POTENTIAL WITNESSES IN THIS CASE ARE: LATOYA
16 GREENE, THERESA SULLIVAN, RONNIE COLLINS, LEANN COLLINS, JUDY DAVIS,
17 MARK HALL, MIKEY RUCKER, WAYNE PLESS, MICHAEL BELCHER, DOCTORS
18 JORDAN OR ABERNATHY, LINDA CHAMPEAUX, CHARLENE EVANS OR RODNEY
19 GREENE. THERE IS A LONG LIST OF WITNESSES. DOES ANY MEMBER OF
20 THIS JURY PANEL HAVE A CLOSE PERSONAL RELATIONSHIP OR RELATED BY
21 BLOOD OR MARRIAGE TO ANY OF THE WITNESSES WHICH I JUST READ. IF SO,
22 PLEASE STAND. NO ONE IS STANDING.

23 IS THERE ANY MEMBER OF THIS JURY PANEL THAT KNOWS ANY
24 REASON AT ALL WHY THEY CANNOT GIVE THE STATE OF SOUTH CAROLINA
25 OR MISTER ANTJUAN GREENE A FAIR TRIAL IN THIS MATTER HERE TODAY? IF

JURY SELECTION

10

1 SO, PLEASE STAND. NO ONE IS STANDING.

2 ALL RIGHT. ANY OTHER QUESTIONS?

3 MS. BELL: YOUR HONOR, MAY WE APPROACH?

4 THE COURT: SURE.

5 (BRIEF BENCH CONFERENCE OFF THE RECORD)

6 THE COURT: MISTER ALLEN, YOU SERVED IN 2007? (THE CLERK OF
7 COURT CONFIRMS TO THE COURT THAT MISTER ALLEN, JUROR #6, SERVED
8 ON A GENERAL SESSIONS JURY IN 2007)

9 MR. ALLEN: YES, SIR.

10 THE COURT: YOU MAY CLAIM YOUR EXEMPTION. THANK YOU FOR
11 COMING.

12 MR. ALLEN: THANK YOU.

13 THE COURT: IS THERE ANY MEMBER OF THIS JURY PANEL WHO EITHER
14 PERSONALLY OR A MEMBER OF THEIR FAMILY OR CLOSE PERSONAL FRIEND,
15 EVER BEEN A VICTIM OF A VIOLENT CRIME, THAT IS, A ROBBERY, A
16 BURGLARY, ASSAULT AND BATTERY WITH INTENT TO KILL AND CRIMINAL
17 DOMESTIC VIOLENCE, SOMETHING ALONG THOSE LINES? DOES ANY MEMBER
18 OF THIS JURY PANEL HAVE ANY FAMILY MEMBER OR CLOSE FRIEND OR
19 PERSONALLY HAVE BEEN A VICTIM OF A CRIME OF THAT SORT? IF SO,
20 PLEASE STAND. YES, MA'AM. YOUR NAME IS...

21 MS. GILMER: DARLENE GILMER.

22 THE COURT: MS. GILMER.

23 MS. GILMER: MY GRANDMOTHER WAS MURDERED --

24 THE COURT: WHUP. I NEED TO ASK THE QUESTIONS.

25 MS. GILMER: OKAY.

JURY SELECTION

11

1 THE COURT: YOUR GRANDFATHER?

2 MS. GILMER: MY GRANDMOTHER WAS MURDERED.

3 THE COURT: AND WAS THAT CASE PROSECUTED?

4 MS. GILMER: YES. IT WAS.

5 THE COURT: THE FACT THAT YOUR GRANDFATHER WAS A VICTIM OF A
6 VIOLENT CRIME CAUSE YOU NOT TO GIVE EITHER SIDE OF THIS CASE, EITHER
7 THE STATE OR THE DEFENSE, A FAIR AND IMPARTIAL TRIAL OR WOULD THAT
8 INFLUENCE YOUR DECISION MAKING?

9 MS. GILMER: YES. IT WOULD.

10 THE COURT: VERY WELL. I'M GOING TO EXCUSE YOU FOR THIS TRIAL.
11 YES, MA'AM, IN THE MIDDLE.

12 MS. GILMER: LEAVE NOW?

13 THE COURT: NO. YOU STAY RIGHT HERE. TELL ME YOUR NAME AND
14 NUMBER, PLEASE.

15 MS. JENKINS: JEANNIE JENKINS, 63.

16 THE COURT: MS. JENKINS. TELL ME, WERE YOU A VICTIM OF THIS
17 CRIME?

18 MS. JENKINS: NO. I WASN'T.

19 THE COURT: A MEMBER OF YOUR FAMILY OR FRIEND?

20 MS. JENKINS: A FAMILY MEMBER.

21 THE COURT: AND WHAT WAS THE NATURE OF THE CRIME?

22 MS. JENKINS: I HAD TWO UNCLES WHO WERE MURDERED.

23 THE COURT: ALL RIGHT. WOULD THE FACT THAT YOU HAD TWO
24 UNCLES WHICH HAVE BEEN VICTIMS OF VIOLENT CRIMES, WOULD THAT
25 CAUSE YOU TO NOT BE FAIR AND IMPARTIAL TO BOTH THE DEFENSE AND THE

JURY SELECTION

12

1 STATE OR WOULD THAT CAUSE YOU SOME -- INFLUENCE YOUR DECISION
2 MAKING?

3 MS. JENKINS: NO. IT WOULD NOT.

4 THE COURT: SO, YOU THINK YOU COULD LISTEN TO THE TESTIMONY
5 PROVIDED BY EACH SIDE AND THE INSTRUCTIONS ON THE LAW AS I GIVE
6 THEM AND ACT FAIRLY AND IMPARTIALLY FOR THIS TRIAL?

7 MS. JENKINS: I CAN.

8 THE COURT: VERY WELL. YOU MAY BE SEATED. YES, MA'AM, THE LAST
9 ONE STANDING. YOUR NAME AND NUMBER.

10 MS. WHITE: RUBY WHITE, I'M 138.

11 THE COURT: MS. BRIGHT?

12 MS. WHITE: WHITE.

13 THE COURT: MS. WHITE. TELL ME, WERE YOU THE VICTIM OF A CRIME?

14 MS. WHITE: NO. I WASN'T.

15 THE COURT: A FAMILY MEMBER OR A FRIEND?

16 MS. WHITE: MY BROTHER.

17 THE COURT: YOUR BROTHER. AND WAS HE A VICTIM OF A CRIME OR
18 ACCUSED OF A CRIME?

19 MS. WHITE: HE WAS ACCUSED.

20 THE COURT: ALL RIGHT. WOULD THE FACT THAT YOUR -- WAS YOUR
21 BROTHER PROSECUTED?

22 MS. WHITE: YES.

23 THE COURT: WOULD THE FACT THAT HE HAS BEEN PROSECUTED FOR
24 A CRIME CAUSE YOU ANY UNDUE INFLUENCE AS TO YOUR DECISION MAKING
25 IN THIS TRIAL OR COULD YOU LISTEN TO THE TESTIMONY FROM THE STATE

JURY SELECTION

13

1 AND FROM THE DEFENSE AND THE LAW AS THE COURT INSTRUCTS IT AND
2 MAKE A DECISION BASED UPON THE FACTS AND THE LAW AS HEARD IN THIS
3 COURTROOM? IN OTHER WORDS, COULD YOU BE FAIR AND IMPARTIAL TO
4 BOTH SIDES?

5 **MS. WHITE:** I THINK SO.

6 **THE COURT:** YOU THINK SO. WHAT CAUSES YOU TO HESITATE?

7 **MS. WHITE:** I THINK I COULD BE FAIR.

8 **THE COURT:** OKAY. VERY WELL. THANK YOU, MA'AM.

9 **MS. CANNON:** MY NAME IS LINDA CANNON. MY AUNT WAS KILLED BY
10 MY UNCLE. HE SHOT HER.

11 **THE COURT:** PARDON ME, MA'AM. I CAN'T HEAR YOU, PLEASE.

12 **MS. CANNON:** MY AUNT WAS KILLED.

13 **THE COURT:** YOUR AUNT?

14 **MS. CANNON:** UH-HUH.

15 **THE COURT:** AND THAT WAS – WOULD THE FACT THAT YOU HAD A
16 FAMILY MEMBER WHO WAS THE VICTIM OF A VIOLENT CRIME, WOULD THAT
17 CAUSE YOU NOT TO BE A FAIR AND IMPARTIAL JUROR HERE TODAY? OR IN
18 OTHER WORDS, COULD YOU LISTEN TO BOTH SIDES, THE TESTIMONY FROM
19 THE STATE AND FROM THE DEFENSE, INSTRUCTIONS OF LAW AS I WILL GIVE
20 AT THE CONCLUSION OF THE TRIAL AND MAKE A DETERMINATION OF THE
21 GUILT OR INNOCENCE BASED UPON WHAT YOU HEAR IN THIS COURTROOM
22 OR WOULD THE FACT THAT YOUR FAMILY HAVING AN ISSUE, BEING A VICTIM,
23 CAUSE YOU SOME – INFLUENCE YOUR DECISION MAKING ABILITY?

24 **MS. CANNON:** I COULD LISTEN TO BOTH SIDES, YOU KNOW.

25 **THE COURT:** THAT'S EXACTLY WHAT THE JURY INSTRUCTIONS ARE

JURY SELECTION

14

1 AND I ALWAYS GIVE A PRELIMINARY INSTRUCTION THAT THE DECISION
2 MAKING OF THE JURY IS TO LISTEN TO BOTH SIDES AND THEN THE
3 INSTRUCTIONS ON THE LAW AT THE VERY END TO MAKE A DECISION. COULD
4 YOU DO THAT AND ACT FAIRLY AND IMPARTIALLY AND SET ASIDE YOUR
5 FAMILY ISSUES?

6 **MS. CANNON:** I THINK SO.

7 **THE COURT:** VERY WELL.

8 **COURT REPORTER:** WE NEED HER NAME.

9 **THE COURT:** MA'AM, TELL ME YOUR NAME. ARE YOU MS. CANNON?

10 **MS. CANNON:** YES, SIR. 151.

11 **CLERK OF COURT:** 151.

12 **THE COURT:** ANY MEMBER OF THE JURY PANEL A MEMBER OF ANY OF
13 THE ORGANIZATIONS SUCH AS SADD, OR MADD OR THE CITIZENS AGAINST
14 VIOLENT CRIMES WHICH IS CAVC? ANY MEMBER OF THE JURY PANEL
15 MEMBERS OF ANY OF THOSE ORGANIZATIONS? IF SO, PLEASE STAND. NO
16 ONE IS STANDING.

17 DOES ANY MEMBER OF THE JURY PANEL HAVE ANY REASON OR KNOW
18 OF ANYTHING REGARDING THE EVENTS OF FEBRUARY 22, '09 WHICH LED TO
19 THESE CHARGES, READ ABOUT IT IN THE NEWSPAPER, HEARD ABOUT IT ON
20 THE STREET, KNOW FOR ANY REASON THAT THEY HEARD SOMETHING ABOUT
21 THIS CASE PRIOR TO THIS MORNING? IF SO, PLEASE STAND. IS THERE ANY
22 MEMBER OF THIS JURY PANEL WHO CANNOT BE FAIR TO BOTH THE STATE
23 AND TO THE DEFENDANT, MISTER ANTIJUAN GREENE? IF SO, PLEASE STAND.

24 **POTENTIAL JUROR:** ARE YOU GOING TO HAVE IT WHERE WE CAN COME
25 UP TO TALK TO YOU?

JURY SELECTION

15

1 THE COURT: SURE. I CAN DO THAT RIGHT NOW. ANY JURY MEMBER
2 WITH AN ISSUE REGARDING ANY QUESTIONS I'VE STATED THUS FAR, MAY
3 COME FORWARD NOW.

4 THE COURT: TELL ME YOUR NUMBER?

5 MR. MCMURTURY: 83.

6 THE COURT: WHAT'S YOUR PROBLEM?

7 MR. MCMURTURY: I KNOW JERRY PEACE. MY COUSIN'S SON WHO I
8 WAS REAL CLOSE TO, HE WAS MURDERED AND ANYBODY THAT'S GOT
9 ANYTHING TO DO WITH JERRY PEACE IS SCUM, I DON'T WANT TO HAVE ANY
10 THING TO DO WITH THEM.

11 THE COURT: YOU DON'T LIKE THE PROSECUTORS?

12 MR. MCMURTURY: HECK NO.

13 THE COURT: YOU CAN'T SET ASIDE THOSE FEELINGS —

14 MR. MCMURTURY: NO. NO.

15 THE COURT: — AND BE FAIR AND IMPARTIAL?

16 MR. MCMURTURY: NO.

17 THE COURT: WHO IS YOUR COUSIN'S SON?

18 MR. MCMURTURY: BRANDON ROOK. HE WAS MURDERED IN CLINTON.
19 HE WAS A FOOTBALL PLAYER.

20 THE COURT: ALL RIGHT. WHAT'S YOUR NAME?

21 MR. MCMURTURY: MCMURTRY. NUMBER 83.

22 THE COURT: ALL RIGHT. I'M GOING TO TRANSFER YOU TO A CIVIL
23 WEEK.

24 MR. MCMURTURY: HE PLAYED FOR CLINTON AND WE WERE PRETTY
25 TIGHT. HE WAS MURDERED AND I FEEL LIKE IT WAS HANDLED SLIPSHOD ALL

JURY SELECTION

16

1 THE WAY AROUND. JERRY PEACE STUNK.

2 THE COURT: YOU WILL BE REASSIGNED TO A CIVIL WEEK. MS.

3 MCMAHAN WILL SEND YOU NOTICE. YOU ARE EXCUSED FOR THE DAY.

4 THE BAILIFF: JERRY ADDISON.

5 THE COURT: ALL RIGHT. MISTER ADDISON.

6 MR. ADDISON: I'M WANTING TO SERVE BUT I CANNOT HEAR GOOD

7 ENOUGH. I'M TRYING MY BEST TO HEAR, BUT ---

8 THE COURT: WE'RE ALMOST DONE HERE. EVERYTHING ELSE WILL BE

9 DONE ON A LOT MORE PERSONAL LEVEL. MOST PEOPLE WILL BE SEATED

10 THERE AND I'M YELLING ACROSS THE ROOM AND WE CAN FIX THAT. AS LONG

11 AS WE SPEAK UP A LITTLE BIT, YOU'LL BE ABLE TO HEAR AND SERVE FOR

12 ME?

13 MR. ADDISON: YES. IF YOU SPEAK UP MORE.

14 THE COURT: ALL RIGHT. GOT YOU COVERED. THANK YOU, MISTER

15 ADDISON.

16 MR. GROSE: I WANT TO MOVE TO STRIKE RUBY WHITE FOR CAUSE. I

17 DON'T THINK EITHER SIDE REALLY WANTS HER. SHE'S THE ONE THAT STOOD

18 UP AND SAID THAT HER BROTHER HAD BEEN PROSECUTED. THE LADY ON

19 THE LEFT SIDE. FIRST OF ALL, I'VE BEEN HER BROTHER'S LAWYER FOR

20 ALMOST TEN YEARS.

21 THE COURT: WE'LL STRIKE HER. YOU'VE TOLD ME ENOUGH.

22 MR. GROSE: AND HER MOTHER GOT KILLED BY A DRUNK DRIVER.

23 CLERK OF COURT: 138.

24 THE COURT: THAT'S NOT A PROBLEM. I DON'T BELIEVE EITHER SIDE

25 WANTS HER. OKAY.

JURY SELECTION

17

1 (THE JUDGE RETURNS TO THE BENCH)

2 THE COURT: LADIES AND GENTLEMEN, I'M WAITING FOR A FEW
3 MOMENTS. I DO KNOW WHAT TO SAY NEXT, BUT ONE JUROR HAD TO RETURN
4 TO THE RESTROOM VERY QUICKLY AND SO I'M WAITING ON THEIR RETURN
5 AND SO THAT'S THE ONLY REASON FOR THIS DELAY. THE NEXT STEP IN THIS
6 PROCESS, AND THEY WILL UNDERSTAND IT WHEN THEY COME IN, WILL BE,
7 THE CLERK OF COURT IS GOING TO RANDOMLY SELECT NAMES. AS YOUR
8 NAME IS CALLED -- AND I WILL BE ABLE TO REPEAT THIS TO THE OTHER
9 JUROR -- AS YOUR NAME IS CALLED I'M GOING TO LET YOU COME FORWARD
10 TO THE CENTER OF THE COURTROOM AND TURN AND FACE THE ATTORNEYS
11 AND THE CLIENTS. THAT WILL BE WHEN THEY WILL MAKE COMMENTS SUCH
12 AS, "PLEASE SEAT THE JUROR, PLEASE SWEAR THE JUROR, PLEASE EXCUSE
13 THE JUROR. THAT'S WHEN THEY GET TO LOOK AT YOU AND DECIDE IF THEY
14 WANT TO GET YOU TO SIT. NOW, PLEASE UNDERSTAND, THERE IS NO
15 REASON AND SOMETIMES THERE'S AN ABSOLUTE REASON. IF YOU GET
16 SELECTED, GOOD FOR YOU. IF YOU DON'T GET SELECTED, SORRY ABOUT
17 THAT, BUT WE'LL TRY TO GET YOU NEXT TIME. LADIES AND GENTLEMEN, WE
18 WILL NOW SELECT THE JURY. ALL RIGHT, MS. BOGGS WILL NOW SELECT OUR
19 JURY. WHEN MS. MCMAHAN CALLS YOUR NAME, PLEASE BRING YOUR
20 BELONGINGS TO THE FRONT AND FOLLOW THE INSTRUCTIONS OF THE
21 BAILIFFS.

22 CLERK OF COURT: 22, CARROLL A. BROCK.

23 (WHEREUPON A WHITE MALE COMES TO THE FRONT OF THE
24 COURTROOM)

25 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

JURY SELECTION

18

1 MS. BOLEN: PLEASE PRESENT MISTER BROCK.

2 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENSE?

3 MS. BELL: PLEASE EXCUSE THIS JUROR.

4 CLERK OF COURT: OKAY. YOU MAY TAKE A SEAT BACK IN THE
5 AUDIENCE. 79, HENRY D. MCCLELLAN.

6 (WHEREUPON, A WHITE MALE COMES TO THE FRONT OF THE
7 COURTROOM)

8 MR. GROSE: WOULD YOU TELL ME THE NUMBER OF THE JUROR AGAIN,
9 PLEASE?

10 CLERK OF COURT: 79.

11 MR. GROSE: THANK YOU.

12 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

13 MS. BOLEN: PLEASE PRESENT MISTER MCCLELLAN.

14 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENSE?

15 MS. BELL: PLEASE SEAT THIS JUROR.

16 CLERK OF COURT: YOU MAY TAKE A SEAT IN THE JURY BOX. 89,
17 KAYLEN A. NORRIS.

18 (WHEREUPON, A WHITE FEMALE COMES TO THE FRONT OF THE
19 COURTROOM.)

20 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

21 MS. BOLEN: PLEASE PRESENT MS. NORRIS.

22 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENSE?

23 MS. BELL: PLEASE SEAT THIS JUROR.

24 CLERK OF COURT: YOU MAY TAKE A SEAT IN THE JURY BOX. 25, HALEY
25 F. BROWN-BAGWELL.

JURY SELECTION

19

1 (WHEREUPON, A WHITE FEMALE COMES TO THE FRONT OF THE
2 COURTROOM)

3 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

4 MS. BOLEN: PLEASE PRESENT MS. BROWN-BAGWELL.

5 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENSE?

6 MS. BELL: WHAT WAS HER NUMBER, PLEASE?

7 CLERK OF COURT: 25.

8 MS. BELL: THANK YOU. PLEASE EXCUSE THIS JUROR.

9 CLERK OF COURT: YOU MAY HAVE A SEAT BACK IN THE AUDIENCE. 12,
10 SARAH B. BALDRIDGE.

11 (WHEREUPON, A WHITE FEMALE COMES TO THE FRONT OF THE
12 COURTROOM)

13 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

14 MS. BOLEN: PLEASE PRESENT MS. BALDRIDGE.

15 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENSE?

16 MS. BELL: PLEASE SEAT THIS JUROR.

17 CLERK OF COURT: YOU MAY HAVE A SEAT IN THE JURY BOX. 113,
18 BRANDY W. SELLERS.

19 (WHEREUPON, A WHITE FEMALE COMES TO THE FRONT OF THE
20 COURTROOM)

21 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

22 MS. BOLEN: PLEASE PRESENT MS. SELLERS.

23 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENSE?

24 MS. BELL: PLEASE SEAT THIS JUROR

25 CLERK OF COURT: YOU MAY TAKE A SEAT IN THE JURY BOX. 108,

JURY SELECTION

20

1 **DAVID R. SCHLABACH.**

2 **(WHEREUPON, A WHITE MALE COMES TO THE FRONT OF THE**
3 **COURTROOM)**

4 **CLERK OF COURT: WHAT SAY YOU FOR THE STATE?**

5 **MS. BOLEN: PLEASE EXCUSE MISTER SCHLABACH.**

6 **CLERK OF COURT: YOU MAY TAKE A SEAT BACK IN THE AUDIENCE.**

7 142, **JESSE A. WILLEY.**

8 **(WHEREUPON, A WHITE MALE COMES TO THE FRONT OF THE**
9 **COURTROOM)**

10 **THE COURT: I'M SORRY. HE'S NOT TO BE SELECTED. MISTER WILLEY**
11 **MADE COMMENTS DURING THE SELECTION AND HE IS TO REMAIN IN THE**
12 **COURTROOM DURING THE PENDING TRIAL. HE WAS NOT TO BE SELECTED**
13 **BECAUSE OF THE REASONS HE STATED TO ME ON THE RECORD EARLIER AND**
14 **I INADVERTENTLY DID NOT PLACE IT ON THE RECORD AND SO MISTER WILLEY**
15 **IS NOT ELIGIBLE TO BE SELECTED IN THIS TRIAL.**

16 **CLERK OF COURT: 80. BENNY G. MCCURRY.**

17 **(WHEREUPON, A WHITE MALE COMES TO THE FRONT OF THE**
18 **COURTROOM)**

19 **CLERK OF COURT: WHAT SAY YOU FOR THE STATE?**

20 **MS. BOLEN: PLEASE PRESENT MISTER MCCURRY.**

21 **CLERK OF COURT: WHAT SAY YOU FOR THE DEFENSE?**

22 **MS. BELL: PLEASE SEAT THIS JUROR.**

23 **CLERK OF COURT: YOU MAY HAVE A SEAT IN THE JURY BOX.**

24 13, **JOHN A. BANNISTER.**

25 **(WHEREUPON, A WHITE MALE COMES TO THE FRONT OF THE**

JURY SELECTION

21

1 COURTROOM)

2 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

3 MS. BOLEN: PLEASE EXCUSE MISTER BANNISTER.

4 CLERK OF COURT: YOU MAY HAVE A SEAT BACK IN THE AUDIENCE. 96,

5 REMOND F. PAUL.

6 (WHEREUPON, A BLACK MALE COMES TO THE FRONT OF THE

7 COURTROOM)

8 MR. GROSE: WHAT WAS THE NUMBER?

9 CLERK OF COURT: 96. WHAT SAY YOU FOR THE STATE?

10 MS. BOLEN: PLEASE PRESENT MISTER PAUL.

11 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENSE?

12 MS. BELL: PLEASE SEAT THIS JUROR.

13 CLERK OF COURT: YOU MAY TAKE A SEAT IN THE JURY BOX. 116,

14 MARTEZ D. SMITH.

15 (WHEREUPON, A BLACK MALE COMES TO THE FRONT OF THE

16 COURTROOM)

17 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

18 MS. BOLEN: PLEASE PRESENT MISTER SMITH.

19 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENSE?

20 MS. BELL: PLEASE SEAT THIS JUROR. 32, JAMES L. CHALMERS.

21 (WHEREUPON, A BLACK MALE COMES TO THE FRONT OF THE

22 COURTROOM)

23 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

24 MS. BOLEN: PLEASE PRESENT MISTER CHALMERS.

25 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENSE?

JURY SELECTION

22

1 MS. BELL: PLEASE SEAT THIS JUROR.

2 CLERK OF COURT: YOU MAY TAKE A SEAT IN THE JURY BOX. 117,

3 WILLIAM S. SOWELL.

4 (WHEREUPON, A WHITE MALE COMES TO THE FRONT OF THE
5 COURTROOM)

6 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

7 MS. BOLEN: PLEASE PRESENT MISTER SOWELL.

8 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENSE?

9 MS. BELL: PLEASE EXCUSE THIS JUROR.

10 CLERK OF COURT: YOU MAY TAKE A SEAT BACK IN THE AUDIENCE. 72,

11 ANGELA D. LATIMER.

12 (WHEREUPON, A WHITE FEMALE COMES TO THE FRONT OF THE
13 COURTROOM)

14 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

15 MS. BOLEN: PLEASE PRESENT MS. LATIMER.

16 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENSE?

17 MS. BELL: PLEASE SEAT THIS JUROR.

18 CLERK OF COURT: YOU MAY TAKE A SEAT IN THE JURY BOX. 137,

19 SHEILA A. WEITKAMP.

20 (WHEREUPON, A WHITE FEMALE COMES TO THE FRONT OF THE
21 COURTROOM)

22 MS. BELL: WOULD YOU PLEASE SAY THE NUMBER AGAIN, PLEASE?

23 CLERK OF COURT: 137.

24 MS. BELL: THANK YOU.

25 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

JURY SELECTION

23

1 **MS. BOLEN:** PLEASE PRESENT MS. WEITKAMP.

2 **CLERK OF COURT:** WHAT SAY YOU FOR THE DEFENSE?

3 **MS. BELL:** PLEASE SEAT THIS JUROR.

4 **CLERK OF COURT:** YOU MAY HAVE A SEAT IN THE JURY BOX. 105.

5 PATRICE K. ROSENBERG.

6 (WHEREUPON, A WHITE FEMALE COMES TO THE FRONT OF THE
7 COURTROOM)

8 **CLERK OF COURT:** WHAT SAY YOU FOR THE STATE?

9 **MS. BOLEN:** PLEASE EXCUSE MS. ROSENBERG.

10 **CLERK OF COURT:** YOU MAY TAKE A SEAT BACK IN THE AUDIENCE.

11 149, LATOYA M. WRIGHT.

12 (WHEREUPON, A BLACK FEMALE COMES TO THE FRONT OF THE
13 COURTROOM)

14 **CLERK OF COURT:** WHAT SAY YOU FOR THE STATE?

15 **MS. BOLEN:** PLEASE PRESENT MS. WRIGHT.

16 **CLERK OF COURT:** WHAT SAY YOU FOR THE DEFENSE?

17 **MS. BELL:** PLEASE SEAT THIS JUROR.

18 **CLERK OF COURT:** YOU MAY HAVE A SEAT IN THE JURY BOX.

19 52, JOHN P. GREER.

20 (WHEREUPON, A WHITE MALE COMES TO THE FRONT OF THE
21 COURTROOM)

22 **CLERK OF COURT:** WHAT SAY YOU FOR THE STATE?

23 **MS. BOLEN:** PLEASE PRESENT MISTER GREER.

24 **CLERK OF COURT:** WHAT SAY YOU FOR THE DEFENSE?

25 **MS. BELL:** PLEASE SEAT THIS JUROR.

JURY SELECTION

24

1 CLERK OF COURT: YOU MAY TAKE A SEAT IN THE JURY BOX. 7,

2 CLARENCE J. ALLISON.

3 (WHEREUPON, A WHITE MALE COMES TO THE FRONT OF THE
4 COURTROOM)

5 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

6 MS. BOLEN: PLEASE PRESENT MISTER ALLISON.

7 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENSE?

8 MS. BELL: PLEASE SEAT THIS JUROR.

9 CLERK OF COURT: YOU MAY TAKE A SEAT IN THE JURY BOX.

10 THE COURT: ALL RIGHT. ARE THERE ANY ISSUES OR MATTERS OF LAW
11 REGARDING THE SELECTION PROCESS EMPLOYED OR THE COMPOSITION OF
12 THE JURY THAT EITHER THE STATE OR THE DEFENSE WISHES TO MAKE?
13 PLEASE LET ME KNOW.

14 MS. BOLEN: NONE FROM THE STATE, YOUR HONOR.

15 MS. BELL: NOTHING FROM THE DEFENSE, YOUR HONOR.

16 THE COURT: ALL RIGHT. WAS IT MY UNDERSTANDING FROM THE
17 ATTORNEYS THAT YOU WISH TO START JUST AFTER LUNCH BECAUSE WE
18 HAVE SOME PRE-TRIAL MATTERS AND OTHER UNRELATED MATTERS THAT
19 WE WISH TO DO? IS THAT RIGHT?

20 MS. BOLEN: YES, SIR. I BELIEVE THERE ARE THREE MOTIONS, BEFORE
21 THE JURY.

22 MS. BELL: YES, SIR.

23 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'VE GOT
24 THIRTEEN OF YOU. THERE ARE TWELVE JURORS. MR. ALLISON, YOU ARE
25 THE ALTERNATE. YOU WILL MAINTAIN THAT SEAT. WE WILL SELECT A

JURY SELECTION

25

1 FOREPERSON AFTER LUNCH. I'M GOING TO ALLOW MISTER BUSBY TO SHOW
2 YOU THE JURY ROOM SO Y'ALL WILL KNOW WHERE IT IS AND THEN I'M GOING
3 TO ASK Y'ALL TO COME BACK TO THE JURY ROOM AT ONE-THIRTY. SO, Y'ALL
4 WILL HAVE A BREAK, GET YOU SOME LUNCH, COME BACK TO THE JURY ROOM
5 AT ONE-THIRTY. YOU'LL BE OVER HERE AND WE WILL START THE TRIAL
6 SHORTLY AFTER THAT.

7 NOW, REMEMBER I TOLD YOU EARLY ON, I WANT YOU TO CONFINE
8 YOUR DECISION MAKING TO WHAT'S DISCUSSED AND HEARD IN THIS
9 COURTROOM AND SO AFTER EVERY BREAK, IT WILL BE MY INTENT TO TELL
10 YOU TO PLEASE REMEMBER, DON'T DISCUSS THIS CASE WITH ANYONE. THE
11 REASON BEING RIGHT NOW YOU REALLY DON'T HAVE ANY WORRIES
12 BECAUSE I REALLY HAVEN'T TOLD YOU WHAT THIS CASE IS ABOUT.
13 HOWEVER, UNTIL YOU HEAR ALL THE EVIDENCE, ALL THE WITNESSES AND
14 RECEIVED INSTRUCTION FROM THE COURT, YOU ARE NOT ALLOWED TO
15 DISCUSS THE CASE EVEN AMONG YOURSELVES OR WITH YOUR PETS OR
16 YOUR SPOUSES. AND SO, TO THAT END, Y'ALL HAVE A GOOD LUNCH AND BE
17 BACK AT ONE-THIRTY. ALL RIGHT, SHOW THEM THE JURY ROOM AND WE'LL
18 GET THEM OUT OF HERE.

19 (JURY OUT AT 11:11 A.M.)

20 THE COURT: OTHER MEMBERS OF THE JURY –MADAM SOLICITOR, DO
21 YOU WISH THEM TO CALL BACK TUESDAY AFTER SIX? WILL YOU HAVE AN
22 IDEA BY THEN?

23 MS. BOLEN: I BELIEVE WE'LL KNOW BY THEN. THAT MIGHT BE
24 APPROPRIATE.

25 THE COURT: ALL RIGHT. EVERYONE ELSE, YOU GOT A JUROR

PRE-TRIAL MOTIONS

26

1 INFORMATION CARD WHEN YOU CAME IN. IT HAS A NUMBER FOR THE
2 ABBEVILLE CLERK'S OFFICE, DO YOU NOT? ALL RIGHT. CALL THAT NUMBER
3 AFTER SIX P.M. TUESDAY. OKAY? AND IT WILL TELL YOU TO CALL BACK OR
4 TO COME IN OR THANK YOU FOR YOUR SERVICE. IT WILL SAY SOMETHING
5 ALONG THOSE LINES. NOW, IT'S A STATE HOLIDAY ON WEDNESDAY. MS.
6 MCMAHAN, THIS COURTHOUSE WILL BE CLOSED SO WE WILL NOT BE
7 HOLDING COURT WEDNESDAY AND SO WHAT I'M TRYING TO DO IS GIVE YOU
8 APPROPRIATE NOTICE TUESDAY AFTERNOON, TUESDAY NIGHT AT SIX
9 O'CLOCK OR THEREAFTER WHETHER TO COME BACK THURSDAY OR NOT.
10 OKAY? SO, YOU'RE FREE ON WEDNESDAY, BUT I WANT YOU TO CALL BACK
11 TUESDAY NIGHT. UNDERSTAND? I WANT TO THINK Y'ALL FOR COMING AND
12 Y'ALL MAY BE EXCUSED.

13 (JURY POOL OUT AT 11:12 A.M.)

PRE-TRIAL MOTIONS

15 THE COURT: MS. BELL, DO YOU WISH TO ARGUE YOUR MOTIONS IN ANY
16 PARTICULAR ORDER?

17 MS. BELL: YES, YOUR HONOR, JUST TO GIVE YOU A BETTER IDEA. THE
18 FIRST TWO MOTIONS ARE GOING TO BE BROUGHT FORTH BY CHARLES
19 GROSE. HE'S GOING TO PUT A MOTION ON REGARDING DISCOVERY ISSUES
20 AND THEN HE IS ALSO DOING THE MOTION REGARDING THE PREGNANCY AND
21 THEN THE NEXT ONE I WILL BE ARGUING IS THE SERIOUS BODILY INJURY
22 FOLLOWED BY A SHORT BRIEF MOTION ABOUT SOME OF THE PHOTOS AND
23 FINALLY REGARDING THE LETTERS THAT WE SENT TO YOU, THE MOTIONS
24 PRE-TRIAL, YOUR HONOR.

25 THE COURT: AND SO, WE ACTUALLY HAVE THREE FILED MOTIONS AND

PRE-TRIAL MOTIONS

27

1 TWO ADDITIONAL MOTIONS AND SO IT'S FIVE?

2 MS. BELL: YES, SIR.

3 MR. GROSE: YOUR HONOR, THE FIRST MOTION IS SOMETHING THAT
4 HAS JUST COME UP AND I DON'T KNOW IF IT IS AS MUCH OF A MOTION AS, I
5 GUESS IT'S A MOTION FOR THE COURT TO INTERVENE AND MAKE CERTAIN
6 THAT WE HAVE BEEN GIVEN EVERYTHING THAT'S DISCOVERABLE IN THIS
7 CASE. THIS CASE HAS BEEN ON THE TRIAL DOCKET SINCE PROBABLY JULY,
8 IT'S BEEN UP PRETTY HIGH. SINCE IT'S BEEN ON THE TRIAL DOCKET, WE'VE
9 BEEN GIVEN SOME PHOTOGRAPHS THAT WERE TAKEN BY VARIOUS PEOPLE,
10 INCLUDING LAW ENFORCEMENT AND THIS MORNING THEY GAVE US A TWO-
11 PAGE STATEMENT, THE FRONT AND PART OF THE BACKSIDE OF A PIECE OF
12 PAPER FROM THE VICTIM IN THE CASE AND MY UNDERSTANDING IS THAT
13 THIS WAS NOTICED BECAUSE A POLICE OFFICER OPENED A FILE AND THE
14 SOLICITOR LOOKED AT IT AND SAID, "WHAT'S THAT?" BECAUSE SHE HAD
15 NEVER SEEN IT BEFORE. TO BE CLEAR, I'M NOT ASKING -- THIS MOTION
16 REALLY DOESN'T HAVE MUCH TO DO WITH THE SOLICITOR'S OFFICE, BUT
17 UNDER BRADY AND KYLES VERSUS WHITLEY FROM THE U.S. SUPREME
18 COURT AND RIDDLE VERSUS OSMENT FROM THIS STATE, WE'RE ENTITLED TO
19 BRADY MATERIAL THAT IS IN POSSESSION OF A LAW ENFORCEMENT AGENCY
20 AND IT'S CONCERNING THAT WE ALREADY HAVE A JURY SELECTED AND
21 STATEMENTS ARE COMING FORTH AND, YOU KNOW, BEING BROUGHT
22 FORWARD. THE SOLICITOR SAYS THE ONLY THING THAT WAS IN THE FILE
23 WAS THE STATEMENT AND THE INCIDENT REPORT AND A CRIMINAL HISTORY.
24 WELL, YOU KNOW, THEY HAVE MULTIPLE FILES. SO, YOU KNOW, THERE ARE
25 THINGS THAT WE HAVE BEEN PROVIDED THAT AREN'T IN THE FILE THAT

PRE-TRIAL MOTIONS

28

1 SHE'S LOOKED AT AND SO WE NEED TO HAVE, AND I THINK THE COURT
2 NEEDS TO HAVE, SOME ASSURANCE THAT THEY'VE COMPLIED WITH BRADY,
3 THEY'VE COMPLIED WITH THE ADMINISTRATIVE ORDERS REQUIRING
4 DISCOVERY TO BE HANDED OVER TO THE SOLICITOR'S OFFICE AND THAT'S
5 WHAT I MEAN. IT'S JUST UNACCEPTABLE TO US THAT WE'RE GETTING
6 THINGS THIS LATE. I THINK IT'S UNACCEPTABLE TO THE SOLICITOR'S OFFICE,
7 TOO.

8 THE COURT: MS. BOLEN OR MS. WHITE, WHOEVER IS RESPONDING TO
9 THAT ONE?

10 MS. BOLEN: YOUR HONOR, THE STATE REALLY DOESN'T HAVE MUCH
11 OF A RESPONSE OTHER THAN WHAT MISTER GROSE STATED IS ACCURATE. I
12 JUST GOT THE STATEMENT TODAY AND HANDED IT OVER TO MS. BELL. THE
13 STATEMENT IS CONSISTENT WITH WHAT IS IN THE REPORT AND WHAT'S
14 BEEN GIVEN TO THEM BEFORE. I'VE GIVEN THEM EVERYTHING IN MY FILE
15 AND I'VE GOT DOCUMENTATION OF HAVING GIVEN THEM EVERYTHING THAT I
16 HAVE.

17 MR. GROSE: BUT UNDER KYLES AND RIDDLE VERSUS OSMENT,
18 EVERYTHING IN HER FILE IS NOT SUFFICIENT TO COMPLY WITH THE
19 CONSTITUTION. THE BRADY REACHES MATERIAL THAT'S IN THE POSSESSION
20 OF LAW ENFORCEMENT. IF IT TURNED OUT LATER THAT THEY HAVE
21 SOMETHING -- THIS STATEMENT CAN BE CONSTRUED, THERE'S PART OF IT
22 THAT CAN BE CONSTRUED TO BE INCONSISTENT WITH OTHER STATEMENTS
23 WHETHER IT'S MAJOR INCONSISTENCY OR MINOR INCONSISTENCY, I DON'T
24 KNOW, BUT INCONSISTENT STATEMENTS, IMPEACHMENT INFORMATION IS
25 DISCOVERABLE AND SOMEBODY NEEDS TO IDENTIFY ALL THE MATERIAL

PRE-TRIAL MOTIONS

29

1 THEY HAVE IN THEIR POSSESSION AND SOMEBODY NEEDS TO MAKE A
2 REVIEW OF IT. I DON'T HAVE THE POWER TO DO ANY OF THOSE THINGS
3 OTHER THAN BRING A MOTION UNDER BRADY AND KYLES AND RULE FIVE,
4 THERE COULD BE SOMETHING IN THERE NECESSARY FOR THE DEFENSE,
5 PREPARE FOR THE DEFENSE, I MEAN, I JUST DON'T KNOW. I MEAN, I -- AND
6 THAT'S THE PROBLEM, WE DON'T KNOW.

7 THE COURT: MS. BOLEN, I'M GOING TO DIRECT YOU IN REGARD TO THIS
8 TO, DURING THE LUNCH HOUR TO EITHER AS MY ORDER FROM THE BENCH
9 OR AS A SUBPOENA FROM THE COURT, EITHER ONE, TO EXAMINE ALL THE
10 FILES DIRECTLY AND INDIRECTLY RELATED TO THIS MATTER AND YOU MAKE
11 THE DETERMINATION THAT ALL DOCUMENTS HAVE BEEN RETRIEVED FROM
12 LAW ENFORCEMENT AND ARE IN YOUR POSSESSION.

13 MS. BOLEN: YES, SIR.

14 THE COURT: ALL RIGHT?

15 MS. BOLEN: YES, SIR.

16 THE COURT: MISTER GROSE, I HOPE THAT WE CAN ACCOMPLISH THAT
17 BETWEEN NOW AND ONE-THIRTY OR TWO O'CLOCK.

18 MR. GROSE: I DON'T KNOW WHY WE COULDN'T. THANK YOU, YOUR
19 HONOR.

20 THE COURT: ALL RIGHT.

21 MR. GROSE: OUR NEXT MOTION IS OUR MOTION TO EXCLUDE
22 EVIDENCE THAT THE VICTIM WAS PRESENT AT THE TIME OF THE ASSAULT.
23 MY CO-COUNSEL SAID THAT I SAID SHE WAS PRESENT, BUT I MEANT THAT
24 SHE WAS PREGNANT AT THE TIME OF THE ASSAULT. THE PREGNANCY
25 REALLY DOESN'T RELATE TO ANY ISSUE IN THE CASE. THERE IS A C-D-V HIGH

PRE-TRIAL MOTIONS

30

1 AND AGGRAVATED NATURE CHARGE. THERE'S NO EVIDENCE THERE WAS
2 ANY INJURY RESULTING FROM THE PREGNANCY THAT WOULD MEET THE
3 DEFINITION OF SERIOUS BODILY INJURY. WE FEEL LIKE THAT INFORMATION --
4 THERE IS NOT GOING TO BE ANY DISPUTE THAT TWO PEOPLE MEET THE
5 DEFINITION OF HOUSEHOLD MEMBERS. THE DISPUTE REALLY IS GOING TO
6 BE UNDER SECTION, YOU KNOW, §16-25-4, WHETHER THEY WERE
7 COHABITING AT THE TIME AND THEREFORE A DEFENSE TO THE BURGLARY
8 OR WHETHER THEY HAD FORMALLY COHABITED AND THEREFORE THE ISSUE
9 OF, YOU KNOW, ENTERING WITHOUT PERMISSION IS ASSOCIATED WITH THAT.
10 WE FEEL LIKE THE ONLY REASON TO TELL THE JURY THAT SHE WAS
11 PREGNANT WOULD BE TO TRY TO APPEAL TO THEIR SYMPATHY, THEIR
12 PASSION, THEIR PREJUDICE TO CREATE SOME EMOTIONAL FACTOR IN THE
13 CASE THAT IS LIKELY TO CAUSE THIS TO BE DECIDED ON EMOTIONAL
14 GROUNDS AND NOT ON THE FACTS OF WHAT IS IN DISPUTE. AND SO, YOU
15 KNOW, WE WOULD MOVE TO EXCLUDE THAT AS NOT RELEVANT. IF IT IS
16 RELEVANT, WE BELIEVE THE PREJUDICIAL EFFECT OUTWEIGHS ANY
17 PROBATIVE VALUE.

18 THE COURT: ALL RIGHT. MS. BOLEN.

19 MS. BOLEN: THANK YOU, YOUR HONOR. THE STATE BELIEVES THAT
20 THE FACT THAT THE VICTIM IN THIS CASE WAS PREGNANT IS AN IMPORTANT
21 FACT THAT GOES TO RATHER THIS WAS A HIGH AND AGGRAVATED AND ALSO
22 BELIEVES THAT IT IS NOT UNDULY PREJUDICIAL TO THE DEFENDANT. YOUR
23 HONOR, THE C-D-V-H-A-N STATUTE STATES THAT SERIOUS BODILY INJURY OR
24 USE OF A DEADLY WEAPON OR RISK OF SERIOUS BODILY INJURY AND IN THIS
25 CASE THE VICTIM WAS BEING THROWN, HIT, THROWN ON THE GROUND,

PRE-TRIAL MOTIONS

31

1 KICKED WHILE SHE WAS SIX MONTHS PREGNANT AND THIS WOULD
2 CERTAINLY CAUSE HER AND ANYONE IN HER POSITION TO FEAR RISK OF
3 SERIOUS BODILY INJURY TO HER AS WELL AS RISK OF MISCARRIAGE, WHICH
4 WOULD BE A SERIOUS BODILY INJURY.

5 ADDITIONALLY, YOUR HONOR, ALTHOUGH THE STATE, WE HAVE NOT,
6 HAVING BEEN JUST HANDED THIS MOTION THIS MORNING I HAVEN'T HAD
7 SUFFICIENT TIME TO RESEARCH CASE LAW ON IT HOWEVER, THINKING BACK
8 TO OTHER CASES I'VE RESEARCHED WITH SIMILAR SORTS OF SITUATIONS
9 AND ONE THAT COMES TO MIND IS THAT IN THESE SORTS OF CASES THE
10 DEFENDANT TAKES THE VICTIM AS THEY ARE. IF A VICTIM IS EIGHTY YEARS
11 OLD AND IN A WHEELCHAIR AND A HEALTHY BODIED PERSON WOULDN'T
12 SUFFER INJURY THAT THAT PERSON DID, THAT'S NOT TO BE HELD AGAINST
13 THAT VICTIM FOR THE CONDITION IN WHICH THEY ARE IN AND IT'S A SIMILAR
14 SITUATION HERE, YOUR HONOR, WHERE THE FACT THAT SHE IS PREGNANT
15 AT THE TIME GOES TO WHETHER SHE SUFFERED OR COULD HAVE SUFFERED
16 SERIOUS BODILY INJURY. THE DEFENDANT KNEW SHE WAS PREGNANT AND I
17 BELIEVE THAT SHE SHOULD BE -- THAT THE EVIDENCE OF HER PREGNANCY
18 SHOULD NOT BE EXCLUDED FROM THE TRIAL OF THE CASE.

19 THE COURT: WHAT'S THE NATURE OF THE -- THE MOTHER, I MEAN, THE
20 VICTIM DIDN'T SUFFER ANY INJURIES AS A RESULT OF HER UNBORN CHILD. IS
21 THAT CORRECT?

22 MS. BOLEN: SHE WAS PUT, SHE'D HAD SOME CONTRACTIONS AND PUT
23 ON A FETAL HEART MONITOR WHILE SHE WAS AT THE HOSPITAL. THERE WAS
24 NOT A MISCARRIAGE OR ANYTHING LIKE THAT.

25 THE COURT: BUT HER INJURIES AND THE PICTURES YOU ARE SHOWING

PRE-TRIAL MOTIONS

32

1 OF HER INJURIES, DO THEY SHOW ANY INJURIES TO THE BODY PARTS IN
2 PARTICULAR? I MEAN, YOU SAID THE HEAD, FACE AND BROKEN NOSE, I
3 THOUGHT.

4 MS. BOLEN: HEAD, FACE, ARMS, CHEST AREA, SHE WILL TESTIFY ALSO,
5 YOUR HONOR, TO BEING KICKED WHILE SHE'S LYING DOWN. AND YOUR
6 HONOR, I WOULD JUST LIKE TO POINT OUT THAT THE STATUTE ACTUALLY
7 SAYS TO ATTEMPT TO CAUSE SERIOUS BODILY INJURY, WHICH I BELIEVE THE
8 ACTIONS OF THE DEFENDANT GIVEN THE CONDITION OF THE VICTIM COULD
9 CERTAINLY BE SEEN AS AN ATTEMPT TO CAUSE SERIOUS BODILY INJURY.

10 MR. GROSE: CAN I HAVE JUST A MOMENT, YOUR HONOR?

11 THE COURT: SURE.

12 MR. GROSE: THERE'S ACTUALLY A FACTUAL DISPUTE AS TO WHETHER
13 OR NOT THERE WERE ANY CONTRACTIONS. THE MEDICAL RECORDS THAT
14 MS. BELL HAS RECEIVED DOESN'T REALLY BEAR THAT OUT. I KNOW SHE'S
15 MADE STATEMENTS TO THAT EFFECT THAT DOESN'T BEAR THAT OUT. YOU
16 KNOW, THE PROBLEM THAT WE'RE GETTING INTO HERE TOO IS, THE STATE IS
17 WANTING TO ARGUE INJURIES OR THE THREAT OF INJURIES TO THE UNBORN
18 CHILD. THAT WOULD BE, UNDER SOUTH CAROLINA LAW THERE IS A LINE OF
19 CASES ABOUT, YOU KNOW, VIABLE FETUSES BEING PERSONS AND THAT
20 SORT OF THING AND MISTER GREENE IS NOT INDICTED FOR DOING ANYTHING
21 TO THE UNBORN CHILD AND THE, OR WE BELIEVE AND YOU HAVE A MOTION
22 ON THAT, WHAT WE BELIEVE, YOU KNOW, THE DEFINITION OF SERIOUS
23 BODILY INJURY, YOU KNOW, CERTAINLY IF THERE WAS A CHILD THAT WAS
24 VIABLE AND MISCARRIED THAT, YOU KNOW, THE CASE LAW WOULD ALLOW
25 PROSECUTION FOR THAT, BUT HE'S NOT BEEN INDICTED FOR THAT. THE

PRE-TRIAL MOTIONS

33

1 MISCARRIAGE AND LOSS OF THAT CHILD WOULD NOT BE THE INJURY TO THE
2 MOTHER. THAT WOULD BE A SEPARATE INJURY. IN FACT, THERE IS A LINE
3 OF CASES INCLUDING DEATH PENALTY CASES THAT SEPARATE OUT —

4 THE COURT: WAS THIS CHILD CARRIED TO TERM?

5 MS. BOLEN: YES, SIR.

6 THE COURT: ALL RIGHT. WELL, PRELIMINARILY, AND SINCE THESE
7 MOTIONS WERE FILED THIS MORNING, I WILL GIVE YOU AN OPPORTUNITY TO
8 REVISIT IF YOU'D LIKE. PRELIMINARILY, I BELIEVE YOU'VE GOT ENOUGH
9 OTHER EVIDENCE OF INJURY TO THE OTHER PARTS OF THE BODY. I DON'T
10 WANT TO CREATE MORE ISSUES THAN WE NEED REGARDING THE THREATS
11 TO THE UNBORN CHILD. I THINK THAT MAY BE COMPLICATING THINGS WHEN
12 THE VICTIM, ASSUMING WHAT YOU'VE TOLD ME, HAS INJURIES WHICH CAN BE
13 TESTIFIED TO FULLY AS MUCH AS YOU WOULD LIKE TO GO INTO ON DIRECT
14 WITH HER WITHOUT THE NECESSITY OF GOING ALONG WITH SHE WAS
15 PREGNANT BECAUSE THUS FAR, THE ONLY THING THAT YOU HAVE TOLD ME
16 IS THAT SHE GOT SOME CONSULTATION FROM A PHYSICIAN AND WAS PUT ON
17 A MONITOR TO MONITOR THE BABY'S HEALTH AND APPARENTLY THE BABY
18 WAS HEALTHY AT THAT TIME AND MAYBE I'M OVERSTEPPING MY FACTUAL
19 SUMMARY, BUT PRELIMINARILY, I AM GOING TO LIMIT AND DENY THE
20 ADMISSIBILITY OF EVIDENCE OF HER BEING PREGNANT AT THE TIME OF THE
21 ASSAULT. IT'S NOT FINAL. YOU'VE GOT LUNCHTIME, BUT LET ME KNOW
22 ABOUT THAT. OKAY?

23 MS. BOLEN: YES, SIR.

24 MS. BELL: YOUR HONOR, NEXT AND MISTER GROSE TOUCHED ON IT
25 BRIEFLY, WE PUT A MOTION BEFORE YOU TO GO AHEAD AND DEFINE THE

PRE-TRIAL MOTIONS

34

1 DEFINITION OF SERIOUS BODILY INJURY. WITH THE C-D-V-H-A-N, IT MENTIONS
2 SERIOUS BODILY INJURY AS A FACTOR BUT IT DOES NOT GO OUT AND DEFINE
3 IT. THERE ARE VARIOUS CASES AND VARIOUS STATUTES THAT DEFINE AND
4 INTERCHANGE THE WORDS SERIOUS BODILY INJURY WITH GREAT BODILY
5 INJURY AND WE'D ASK THAT YOU TAKE THE DEFINITION PROVIDED BY THOSE
6 CASES AND STATUTES IN OTHER AREAS AND APPLY THAT FOR THIS ONE.
7 THAT PARTICULAR DEFINITION IS THAT SERIOUS BODILY INJURY MEANS A
8 PHYSICAL CONDITION OR BODILY INJURY WHICH CREATES A SUBSTANTIAL
9 RISK OF DEATH OR WHICH CAUSES SERIOUS OR PERMANENT
10 DISFIGUREMENT OR IMPAIRMENT OF THE FUNCTION OF ANY BODILY MEMBER
11 OR ORGAN. THE CASES CAME FROM EVERYTHING FROM CAR ACCIDENTS
12 INVOLVING SERIOUS INJURY -- I BELIEVE THAT WE ALSO HAD A NUMBER
13 FROM, A NUMBER OF STATUTES AND CASES THAT DEFINE AND INTERCHANGE
14 THE GREAT BODILY INJURY WITH SERIOUS BODILY INJURY AND I HAVE
15 COPIES OF THOSE I CAN PROVIDE TO BOTH THE STATE AND YOUR HONOR.

16 THE COURT: ALL RIGHT. MS. BOLEN, I KNOW BACK IN CHAMBERS WE
17 DISCUSSED A LITTLE BIT OF THIS AND YOU, AGAIN, HAD NOTED TO THE
18 COURT THAT YOU NEEDED A LITTLE ADDITIONAL TIME TO DO SOME
19 RESEARCH REGARDING THINGS. TELL ME REGARDING THE DEFINITION AND
20 I'M READING THE LAST THREE LINES, PHYSICAL CONDITION OR BODILY
21 INJURY WHICH CREATES SUBSTANTIAL RISK OF DEATH OR -- BECAUSE THAT
22 WOULD NOT BE AS EASY TO PROVE -- WHICH CAUSES SERIOUS OR
23 PERMANENT DISFIGUREMENT OR PROTRACTED LOSS OR IMPAIRMENT OF
24 THE FUNCTION OF A BODILY MEMBER OR ORGAN. AS I UNDERSTAND IT, THE
25 PARTIES WISH THIS DEFINITION TO BE MADE FOR THE PURPOSES OF THE

PRE-TRIAL MOTIONS

35

1 JURY INSTRUCTION AND FOR PURPOSES OF PRESENTING EVIDENCE ON
2 BOTH SIDES DURING THE PRESENTATION OF THE EVIDENCE. GIVE ME YOUR
3 COMMENTS OR YOUR CONCERNS REGARDING THE DEFINITION PROVIDED BY
4 MS. BELL. UNDERSTANDING THESE ARE KIND OF FIRST BLUSH.

5 MS. BOLEN: YES, YOUR HONOR. THE STATE'S CONCERNS ARE THAT
6 JUST AS THE DEFENSE STATES IN THEIR BRIEF, THE LEGISLATURE DOES NOT
7 PROVIDE A DEFINITION OF SERIOUS BODILY INJURY IN THEIR STATUTE.
8 THEY'VE DONE SO ELSEWHERE, WHICH IMPLIES THAT IF THEY INTENDED TO
9 DEFINE SERIOUS BODILY INJURY THAT WAY, THEY WOULD HAVE DONE SO IN
10 THIS STATUTE. THE FACT THAT THE LEGISLATURE DOES NOT DEFINE
11 SERIOUS BODILY INJURY AND DOES NOT SAY IT GIVES THE DEFINITION IN
12 ANOTHER CODE SECTION AND DOES NOT EVEN REFER TO ANOTHER CODE
13 SECTION SHOWS, I BELIEVE, SHOWS THAT THE LEGISLATURE DOES NOT
14 INTEND FOR IT TO BE DEFINED IN THE SAME WAY AS IN THE STATUTE MS.
15 BELL CITED. YOUR HONOR, VERY BRIEF RESEARCH THAT I HAVE DONE IN
16 BETWEEN PICKING THE JURY AND NOW, I BELIEVE THE DETERMINATION OF A
17 SERIOUS BODILY INJURY IS A JURY ISSUE. THE ONLY CASE I HAVE, I HAVEN'T
18 PINNED DOWN THE CITE, STATE VERSUS RYE, IS A SELF DEFENSE CASE AND
19 THE JURY IS INSTRUCTED AS TO WHETHER A SERIOUS BODILY INJURY
20 OCCURRED IS A FACTUAL ISSUE FOR THE JURY. ALSO, STATE VERSUS
21 MCLEOD §354 S.C. 40, THIS IS A C-D-V-H-A-N STATUTE. IN THIS CASE, THE
22 FACTS, JUST FROM A VERY BRIEF PERUSAL OF THE CASE, THE FACTS SEEM
23 TO BE THAT THE DEFENDANT HIT THE VICTIM WITH A CLOSED FIST, HIT HER
24 IN THE HEAD, PULLED HER HAIR AND SCRATCHED HER NECK. SHE HAD
25 SWELLING AND BRUISING TO HER RIGHT EYE WHICH REQUIRED MEDICAL

PRE-TRIAL MOTIONS

36

1 TREATMENT AT THE HOSPITAL AND THAT WAS APPARENTLY CONSIDERED
2 SUFFICIENT TO BE SERIOUS BODILY INJURY UNDER THE C-D-V-H-A-N
3 STATUTE.

4 THE COURT: WHAT WAS THAT CITE?

5 MS. BOLEN: §354 S.C. 40.

6 THE COURT: AND THE CITE FOR THE FIRST ONE?

7 MS. BOLEN: I DON'T KNOW THE CITE FOR THE FIRST ONE YET.

8 THE COURT: SPELL THE NAME OF THE CASE ON THE FIRST ONE.

9 MS. BOLEN: IT'S STATE V. RYE, IT APPEARS TO BE §375 S.C. 119. YOUR
10 HONOR, THE STATE JUST BELIEVES THAT THE ABSENCE OF THE DEFINITION
11 IN THE STATUTE -- THIS WAS A STATUTE RECENTLY REWRITTEN, I BELIEVE IN
12 2006 -- SO, IT'S NOT AN OLD STATUTE THEY HAVEN'T REVISITED. THE
13 LEGISLATURE IN REVISITING IT IN 2006 COULD HAVE, CLEARLY COULD HAVE
14 BROUGHT THIS IN ALIGNMENT WITH OTHER STATUTES INVOLVING SERIOUS
15 BODILY INJURY AND DID NOT DO SO AND I DON'T THINK THAT THAT IS
16 SOMETHING THEY DID NEGLIGENTLY. I THINK THAT WAS SOMETHING DONE
17 ON PURPOSE BECAUSE WHETHER SOMEONE SUFFERED SERIOUS BODILY
18 INJURY IS A JURY ISSUE, YOUR HONOR. AND ADDITIONALLY, THE STATUTE
19 ALSO INCLUDES THE RISK OF A SERIOUS BODILY INJURY WHICH I BELIEVE IS
20 ALSO AN ISSUE LEFT TO THE JURY. YOUR HONOR, IF I COULD I WOULD LIKE A
21 LITTLE TIME TO DO SOME ADDITIONAL RESEARCH ON THIS.

22 THE COURT: ALL RIGHT. YES, MA'AM?

23 MS. BELL: I NEED TO PULL UP THOSE CASES THAT SHE CITED DURING
24 HER SECTION, BUT REGARDING THE LEGISLATURE'S INTENT, WE GO BACK TO
25 EVERY SINGLE TIME SERIOUS BODILY INJURY HAS BEEN DEFINED, IT'S BEEN

PRE-TRIAL MOTIONS

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1 DEFINED THE SAME WAY AND WE'VE PROVIDED A LONG LIST OF CASES IN
2 WHICH IT'S BEEN DEFINED AND SO WE ARE STILL AT THE POINT THAT IT
3 SHOULD STILL BE DEFINED THE SAME WAY. AND THEN, IF THE COURT ISN'T
4 WILLING TO DEFINE IT, THE STATUTE MAY ALSO BE VAGUE AND OVER BROAD
5 AND UNCONSTITUTIONAL, YOUR HONOR.

6 THE COURT: ALL RIGHT. I'M GOING TO DO A LITTLE RESEARCH OVER
7 LUNCH AND IT IS MY HOPE THAT WE CAN RESOLVE THIS MATTER BEFORE
8 OPENING ARGUMENTS. THAT WOULD BE MY IDEA. I'M GOING TO DO A LITTLE
9 RESEARCH ON THESE TWO CASES. MS. BOLEN YOU'LL HAVE AN
10 OPPORTUNITY IF YOU FIND SOMETHING --

11 MS. BOLEN: THANK YOU, YOUR HONOR.

12 THE COURT: -- OR MS. BELL. I MEAN, YOU MAY HAVE DONE ALL THE
13 RESEARCH YOU WANT TO DO BUT AFTER YOU READ THESE CASES AND YOU
14 SEE ANYTHING ELSE, THE DOOR IS STILL OPEN FOR YOU IF YOU SEE
15 ANYTHING YOU'D LIKE.

16 MS. BELL: YES, SIR.

17 THE COURT: SO, LET ME STUDY THAT AND WE'LL MAKE EVERY
18 ATTEMPT TO DEFINE THIS PRIOR TO OPENING ARGUMENTS SO YOU CAN
19 UTILIZE WHAT YOU EXPECT TO BE MY INSTRUCTION ON THIS PARTICULAR
20 ISSUE.

21 MS. BELL: YES, SIR. THERE'S TWO OTHER MOTIONS BEFORE YOU. ONE
22 SHOULD BE VERY BRIEF. THERE ARE NUMEROUS PHOTOS THAT WERE
23 PROVIDED TO OUR OFFICE, MOST OF WHICH WE ARE NOT BRINGING
24 FORWARD ON OUR MOTION TODAY, BUT THERE ARE A FEW PHOTOS OF THE
25 VICTIM AND I BELIEVE SHE'S AT THE HOSPITAL IN WHICH THEY HAVE A TON

PRE-TRIAL MOTIONS

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1 OF BLOOD ASSOCIATED WITH THEM AND WE WOULD REQUEST THAT THOSE
2 PHOTOS BE EXCLUDED, YOUR HONOR, UNDER STATE VERSUS MIDDLETON.
3 STATE VERSUS MIDDLETON, I HAVE A COPY OF THAT CASE FOR BOTH THE
4 SOLICITOR'S OFFICE AND YOU IF YOU'D LIKE ME TO PASS IT UP YOUR HONOR.
5 (MS. BELL HANDS A DOCUMENT TO MS. BOLEN AND THE JUDGE) IT WAS
6 ACTUALLY A MURDER CASE IN WHICH AN AUTOPSY PHOTO WAS PRODUCED
7 IN COLOR AND THE COURT DETERMINED THAT THAT PARTICULAR PHOTO
8 WAS MORE OVERLY PREJUDICIAL THAN PROBATIVE JUST DUE TO THE OTHER
9 TESTIMONY THAT WAS AVAILABLE THROUGH THE CORONER AND VARIOUS
10 DOCTORS INVOLVED IN THE CASE AND IN THIS PARTICULAR CASE THERE ARE
11 OTHER PHOTOS THAT MORE DEFINE THE INJURIES THAT ARE ALLEGED TO
12 HAVE OCCURRED WITHOUT THE BLOOD WHERE YOU CAN ACTUALLY SEE THE
13 STITCHES INVOLVED AND THE BRUISING AND WE JUST PROPOSE THAT
14 THOSE PHOTOS ARE MORE – SHOULD BE UTILIZED AND NOT THE ONES WITH
15 THE BLOOD AND THE ONES WITH THE BLOOD WOULD BE OVERLY
16 PREJUDICIAL AND WE'RE WILLING TO STIPULATE THAT THE INJURIES
17 HIGHLIGHTED IN THE NON-BLOODY PHOTOS ARE INDEED THE INJURIES THAT
18 OCCURRED, YOUR HONOR.

19 THE COURT: ALL RIGHT, MS. BOLEN.

20 MS. BOLEN: THANK YOU, YOUR HONOR. IF I MAY JUST HAVE A MOMENT
21 TO PULL UP THE CASE THEY ARE CITING. I NOTICED IN READING THIS, UNDER
22 PARAGRAPH TWO ON PAGE THREE, STATES THAT PHOTOGRAPHS SAID TO BE
23 USED TO AROUSE SYMPATHIES, PREJUDICES OF THE JURY SHOULD BE
24 EXCLUDED IF THEY ARE IRRELEVANT OR UNNECESSARY TO THE ISSUES AT
25 TRIAL.

PRE-TRIAL MOTIONS

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1 **THE COURT:** ALL RIGHT. HOW ARE YOUR PHOTOGRAPHS NECESSARY
2 TO THE ISSUES AT TRIAL? THAT WOULD BE YOUR...

3 **MS. BOLEN:** YES, SIR, YOUR HONOR. WELL, AS YOUR HONOR HAS
4 ALREADY HEARD, ONE OF THE MAIN ISSUES OF THIS TRIAL IS WHETHER THE
5 VICTIM SUFFERED SERIOUS BODILY INJURY. AND I THINK THAT THESE
6 PICTURES TAKEN DIRECTLY AFTER THE ATTACK WHILE SHE WAS AT THE
7 HOSPITAL SHOW -- HELP TO ESTABLISH WHETHER SHE SUFFERED SERIOUS
8 BODILY INJURY AND ALSO WE ARE NOT USING THEM TO INCITE THE
9 SYMPATHIES OF THE JURY, WE ARE USING THEM TO SHOW WHAT STATE SHE
10 WAS IN DIRECTLY AFTER THE ATTACK OF THE DEFENDANT. YOUR HONOR,
11 THE STATE HAS PROVIDED DEFENSE WITH NUMEROUS PICTURES OF THE
12 VICTIM AT THE HOSPITAL. THERE'S SEVERAL THAT WE ARE WILLING TO
13 EXCLUDE WHICH SHOW THE VICTIM HAD A BROKEN NOSE THAT BLED DOWN
14 SUBSTANTIALLY INTO HER NIGHTGOWN. THE PICTURES, INCLUDING THE
15 BLOODY NIGHTGOWN, ARE ONES WE WOULD BE WILLING TO NOT SHOW THE
16 JURY, BUT THERE ARE SOME SHOWING THE INJURIES TO HER FACE FROM
17 THE HOSPITAL THAT THE STATE BELIEVES ARE PROBATIVE TO THE ISSUE OF
18 WHETHER SHE SUFFERED SERIOUS BODILY INJURY.

19 **THE COURT:** ALL RIGHT. LET'S MAKE CERTAIN WHICH ONES WE ARE
20 AGREEING ON AND WHICH ONES WE ARE DISPUTING. MS. BELL, CAN YOU
21 IDENTIFY THE ONES THAT MS. BOLEN HAS THAT YOU ARE CONCERNED
22 ABOUT UNDER THIS RULE?

23 (MS. BELL AND MS. BOLEN LOOK THROUGH PHOTOGRAPHS)

24 **MS. BELL:** THANK YOU, YOUR HONOR. THE STATE HAS MARKED THE
25 PHOTOGRAPHS THAT ARE IN DISPUTE AT THIS TIME, YOUR HONOR. THEY

PRE-TRIAL MOTIONS

40

1 ARE STATE'S EXHIBITS #1 THROUGH #6 AND THEN #8, YOUR HONOR.

2 (MS. BELL HANDS THE PHOTOGRAPHS TO THE JUDGE)

3 MS. BELL: THOSE ARE THE PHOTOGRAPHS THAT ARE CONNECTED TO
4 THIS MOTION, YOUR HONOR.

5 THE COURT: ALL RIGHT, MS. BOLEN. PICTURE NUMBER SEVEN HAS
6 BEEN WITHDRAWN.

7 MS. BOLEN: YES, SIR. WE'RE NOT PROCEEDING WITH THAT.

8 THE COURT: ALL RIGHT. MS. BELL, THE BASIS FOR YOUR MOTION TO
9 EXCLUDE THESE, PLEASE STATE THAT FOR THE RECORD.

10 MS. BELL: OKAY. THANK YOU, YOUR HONOR. WE FIND THAT BECAUSE
11 OF THE BLOOD COVERING UP THE ACTUAL INJURIES AND MAKING IT LOOK
12 LIKE SHE HAS TONS OF SCRAPES THAT ARE NOT ACTUALLY THERE WHEN
13 THE BLOOD HAS BEEN CLEANED OFF AND BLOCKING THE JURY OF THE
14 STITCHES SHE HAD ON THE EYE AND BRUISING THAT SHE HAD, WE FIND THAT
15 THESE PICTURES ARE MORE PREJUDICIAL THAN PROBATIVE, YOUR HONOR,
16 AND THAT THEY FALL VERY WELL UNDER THE STATE VERSUS MIDDLETON
17 ARGUMENT THAT IT'S ACTUALLY, THE INJURIES ARE MORE VISIBLE IN OTHER
18 PHOTOS IN WHICH THERE IS NO BLOOD AND YOU CAN ACTUALLY MAKE OUT
19 THE BRUISES AND STITCHES THAN THERE ARE IN THESE PARTICULAR
20 PHOTOS WHEN ALL YOU CAN SEE IS BLOOD, YOUR HONOR.

21 THE COURT: ALL RIGHT. MS. BOLEN.

22 MS. BOLEN: YOUR HONOR, THE STATE WOULD ARGUE THAT THE
23 SUBSTANTIAL BLOOD LOSS IS IN AND OF ITSELF AN INJURY WHICH CAN BE
24 CONSIDERED BY THE JURY IN DETERMINING WHETHER THERE IS SERIOUS
25 BODILY INJURY AND THAT THESE PHOTOGRAPHS DO NOT SHOW, WELL, THEY

PRE-TRIAL MOTIONS

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1 SHOW THE LOSS OF BLOOD, THEY SHOW THE INJURIES, THERE ARE
2 CERTAINLY PHOTOGRAPHS THAT HAVE MUCH MORE BLOOD WHICH THE
3 STATE HAS WITHDRAWN FROM SEEKING TO ADMIT. AND YOUR HONOR, THE
4 DEFENSE'S ARGUMENT THAT SOME OF THE PHOTOGRAPHS MAKE IT LOOK
5 LIKE SHE HAD SCRAPES ALL OVER HER FACE, SHE ACTUALLY DOES HAVE
6 LOTS OF LITTLE INJURIES ON HER FACE IN ADDITION TO SEVERAL MAJOR
7 INJURIES AND THAT THE STATE BELIEVES THAT THE PHOTOS SHOW THE
8 EXTENT OF THE INJURIES SHE HAD AND THAT, THEREFORE, THE
9 PHOTOGRAPHS SHOULD BE ADMISSIBLE.

10 THE COURT: LET ME SEE ALL SEVEN AGAIN BECAUSE I'LL KNOW WHICH
11 ONES, BECAUSE Y'ALL HAD THEM ALL IN YOUR HANDS. (LOOKS AT
12 PHOTOGRAPHS) ALL RIGHT, MS. BELL, I'VE GOT PICTURES #3, #5, #6 THAT'S
13 BASICALLY A LEFT SIDE, RIGHT SIDE AND A FRONT SHOT OF THE VICTIM'S
14 FACE. TELL ME WHAT INJURIES THIS SHOWS THAT ARE NOT, I THINK YOU
15 DESCRIBED IT AS NOT ACTUALLY INJURIES. I'LL HAND THESE BACK TO YOU
16 TO EXAMINE THEM.

17 MS. BELL: THANK YOU, OUR HONOR. (MS. BELL RETRIEVES
18 PHOTOGRAPHS)

19 THE COURT: THE OTHER PICTURES SEEM TO BE DUPLICATES, BUT
20 THOSE SEEM TO SHOW THREE VIEWS OF THE VICTIM AND I'LL HAND THESE
21 BACK TO YOU, TOO, IF YOU WOULD LIKE TO SUGGEST... (HANDS
22 PHOTOGRAPHS TO MS. BELL) AS I READ YOUR CASE, AS YOU ARE WALKING
23 BACK, THE PHOTOS WHICH WERE EXCLUDED WERE AUTOPSY PHOTOS
24 WHICH WERE NOT A RESULT OF THE ATTACK BY OR AS A RESULT OF THE
25 CRIME. THEY WERE AUTOPSY PHOTOGRAPHS AFTER A PATHOLOGIST HAD

PRE-TRIAL MOTIONS

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1 MODIFIED THE VICTIM WHO WAS DECEASED, OBVIOUSLY.

(2 MS. BELL: I THINK STATE'S EXHIBIT #3, I BELIEVE IT'S WHERE THE
3 TUBING HAD BEEN. THERE'S NOW A BLOOD TRAIL THAT IS NOT ACTUALLY A
4 RESULT OF ANY INJURY, BUT IT'S HARD BECAUSE OF THE WAY THE TUBING
5 WAS, IT MAKES IT LOOK LIKE THERE MIGHT BE MORE INJURY THERE THAN
6 ACTUALLY WAS AND ADDITIONALLY, THERE'S CAKED BLOOD AND SOME OF IT
7 COULD BE MISTAKEN FOR ANOTHER INJURY. WITH REGARDS TO, I BELIEVE
8 IT'S STATE'S EXHIBIT #6, IT'S ONE THAT I THINK THIS ONE IS MORE OUT OF
9 FOCUS AND IT'S HARDER TO TELL WHAT PART IS DRIED BLOOD AND WHAT
10 PART ARE ACTUAL INJURIES, YOUR HONOR. STATE'S EXHIBIT #5, I THINK THE
11 ONLY ISSUE I WOULD REALLY RAISE, BECAUSE YOU CAN TELL WHICH
12 PORTIONS ARE BLOOD, IS THE TUBING MIGHT BE MORE PREJUDICIAL THAN
(13 PROBATIVE FOR THAT PARTICULAR PHOTO.

14 THE COURT: ALL RIGHT. TELL ME HOW THE MEDICAL DEVICES, THE
15 OXYGEN TUBE -- IT MAY BE SOMETHING ELSE, BUT THAT'S WHAT IT LOOKS
16 LIKE TO ME -- HOW IS THAT PREJUDICIAL IF THE TESTIMONY IS GOING TO BE
17 AS A RESULT OF THIS INJURY SHE WENT TO THE HOSPITAL AND WAS
18 TREATED. HOW DOES THAT HURT YOU?

19 MS. BELL: I THINK IT MIGHT MAKE IT LOOK TO THE JURY THAT SHE WAS
20 NEEDING MORE MEDICAL ASSISTANCE THAN THEY WERE PROVIDING TO HER
21 AT THE TIME. THE JURY -- AND THE DOCTOR MIGHT END UP EXPLAINING IT
22 BETTER THAN WHAT A JUROR MIGHT KNOW, BUT THEY MIGHT BELIEVE THAT
23 SHE NEEDED THIS IN ORDER TO SURVIVE, YOUR HONOR. AND SO THAT
(24 WOULD BE MY CONCERN WITH THAT.

25 THE COURT: ALL RIGHT. MS. BOLEN?

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1 MS. BOLEN: AND YOUR HONOR, THAT'S SOMETHING THAT THE
2 DEFENSE CAN ARGUE TO THE JURY. I DON'T THINK THAT THE PRESENCE OF
3 MEDICAL TUBING CERTAINLY WAS NOT PUT THERE FOR THE SAKE OF TAKING
4 THE PICTURE. IT WAS SOMETHING SHE NEEDED. THEY CAN ARGUE TO THE
5 JURY THAT, YOU KNOW, SHE WAS NOT ON ANY LIFE SUPPORT. I DON'T THINK
6 THE PRESENCE OF A MEDICAL TUBE WHICH WAS SOMETHING THE VICTIM
7 NEEDED IS PREJUDICIAL. IT SHOWS THE STATE SHE WAS IN AT THE
8 HOSPITAL WHEN SHE ARRIVED.

9 ADDITIONALLY, YOUR HONOR, I'D LIKE TO DIRECT THE COURT'S
10 ATTENTION TO THE CASE, I'VE JUST FOUND THE CITE IS §353 S.C.190. IT IS
11 STATE VERSUS JEFFREY THOMAS HASELDEN. THIS ALSO INVOLVED THE
12 ADMISSION OF PICTURES AND THE COURT FIRST STATES THAT THE
13 ADMISSION OF PICTURES IS SOLELY WITH THE TRIAL COURT'S DISCRETION.
14 THEN IT STATES THAT THE MAJORITY OF THE CHALLENGED PHOTOGRAPHS
15 WERE NECESSARY TO CORROBORATE THE PATHOLOGISTS TESTIMONY TO
16 UNDERSTAND THE TRUE NATURE OF THE ATTACK ON JOSHUA AND WERE
17 RELEVANT TO DEMONSTRATE THE AGGRAVATING CIRCUMSTANCE OF
18 PHYSICAL TORTURE AND I THINK WE HAVE A SIMILAR SITUATION HERE. THE
19 PRESENCE OF BLOOD ON THE VICTIM SHOW THIS WAS NOT JUST A ONE
20 STRIKE ATTACK. THIS WAS A LONG DRAWN OUT CONTINUED ATTACK ON
21 THIS VICTIM BY THE DEFENDANT WHICH IS WHY SHE ENDED UP SO BLOODY
22 AND I THINK THE BLOOD LOSS AS I STATED BEFORE IS, IN FACT, A BODILY
23 INJURY WHICH GOES TO WHETHER SHE SUFFERED SERIOUS BODILY INJURY,
24 BUT I THINK THE PICTURES ARE RELEVANT TO SHOW WHETHER THE
25 INJURIES WERE OF A SERIOUS NATURE AND ALSO TO SHOW, AS THIS CASE

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1 STATES, THE NATURE OF THE ATTACK ON THE VICTIM. AND I THINK ANY
2 OBJECTION THE DEFENSE HAS TO ANY MEDICAL DEVICES PRESENT IN THE
3 PICTURES IS REALLY WITHOUT MERIT. THE VICTIM WILL TESTIFY THAT SHE
4 WAS BROUGHT TO THE HOSPITAL AND WAS PUT, YOU KNOW, HAD A TUBE
5 PUT IN AND DOCTORS WILL TESTIFY TO THAT AS WELL. I DON'T SEE HOW
6 INCLUDING THAT IN A PICTURE HAS ANY DEGREE OF PREJUDICE WHEN
7 THERE IS TESTIMONY TO IT THAT SHOWS HER STATE WHEN SHE WAS IN THE
8 HOSPITAL, YOUR HONOR.

9 THE COURT: ALL RIGHT, MS. BELL.

10 MS. BELL: THANK YOU. WE MAY NEED A FEW MINUTES TO RE-READ
11 STATE VERSUS PASLIN. BUT AT FIRST GLANCE AT IT AS IT WAS POINTED OUT
12 TO ME, IT APPEARS TO ME THAT THIS SEEMS TO BE RELATED TO A
13 SENTENCING PHASE IN A CAPITAL CASE AND THE SENTENCING PHASE OF A
14 CAPITAL CASE IS A COMPLETELY DIFFERENT SITUATION. THEIR SCOPE OF
15 PHOTOGRAPHS ALLOWED IS BROADER BECAUSE IT'S GOING MORE GOING
16 TOWARDS MITIGATION FOR SENTENCING, OR AGGRAVATION FOR
17 SENTENCING, YOUR HONOR. WE WANT TO RE-READ THAT TO MAKE SURE WE
18 DIDN'T MIS-READ THAT, BUT THAT'S OUR INITIAL BELIEF ON FIRST READING
19 OF THAT.

20 THE COURT: ALL RIGHT.

21 MS. BELL: AND ADDITIONALLY, JUST TO RESPOND TO A COUPLE OF
22 COMMENTS. WITH REGARDS TO -- I CAN'T REMEMBER HOW MS. BOLEN
23 PHRASED IT, IT'S A LONG PHRASE, BUT SHE'S TALKING ABOUT NEEDING THE
24 PHOTOS IN ORDER TO SHOW THE INJURIES AND THERE ARE PHOTOS THAT
25 CLEARLY DELINEATE THAT THERE WERE CLEARLY INJURIES NOT ONLY ON

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1 HER FACE BUT OTHER PHOTOS OF OTHER BODY PARTS AND I BELIEVE
2 THOSE CAN BE UTILIZED WITHOUT PREJUDICE, WITHOUT THE PREJUDICE
3 THAT THESE PHOTOS HAVE, YOUR HONOR.

4 **THE COURT:** ALL RIGHT. LET ME READ THOSE CASES ALSO. I'M
5 INCLINED TO LET THE THREE IDENTIFIED IN. HOWEVER, I WANT TO READ
6 BOTH THESE CASES Y'ALL PRESENTED A LITTLE MORE THOROUGHLY. SO,
7 WE'LL DECIDE THAT PRIOR TO OPENING ARGUMENTS ALSO AND SO YOU
8 BOTH HAVE AN OPPORTUNITY TO BE RE-HEARD ON THAT IF YOU'D LIKE. ALL
9 RIGHT.

10 **MS. BELL:** ONE FINAL ONE REGARDING SOME LETTERS. THE STATE
11 HAS PROVIDED A COUPLE DIFFERENT LETTERS THAT WERE WRITTEN BY
12 MISTER GREENE AND AT THIS TIME WE WOULD JUST ASK FOR YOU TO
13 DETERMINE -- THE ONES THAT SHE'S INTENDING TO INPUT, THE
14 ADMISSIBILITY OF THEM AND WE ALSO NEED TO JUST MAKE SURE THAT THE
15 PORTIONS SHE'S USING AREN'T TAKEN OUT OF CONTEXT AND USED IN A WAY
16 THAT CREATES MORE OF A PREJUDICE AND MIS-CHARACTERIZATION OF
17 WHAT WAS REALLY HAPPENING WITH THE LETTERS, YOUR HONOR. AND
18 ALTHOUGH I THINK SHE'S FREE TO PROVIDE LETTERS, I DON'T KNOW WHICH
19 ONE, IF ANY, SHE'S ACTUALLY INTENDING TO USE. WHEN THAT'S VERIFIED
20 WE CAN ACTUALLY LOOK AT THE LETTERS AND FIGURE OUT FROM THERE,
21 YOUR HONOR.

22 **THE COURT:** ALL RIGHT. MS. BOLEN?

23 **MS. BOLEN:** YOUR HONOR, I CAN JUST MARK THIS BEFORE WE START.
24 (HAS DOCUMENT MARKED AS AN EXHIBIT) YOUR HONOR, IF I CAN HAVE JUST
25 A MOMENT TO REVIEW THE LETTER. (LOOKS AT DOCUMENT) YOUR HONOR,

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1 THE STATE TURNED OVER THESE LETTERS JUST AS PART OF A RULE 5
2 BRADY. WE'RE NOT SURE WE ARE GOING TO USE THEM AT ALL BUT TO THE
3 EXTENT THAT WE DID USE THEM, THE THIRD LETTER WHICH I PROVIDED MS.
4 BELL HAS TWO P.S.'S AND THE PORTION THAT WE WOULD POSSIBLY ADMIT
5 WOULD BE THE SECOND P.S. WHERE THE DEFENDANT IS WRITING TO THE
6 VICTIM AND IS WRITING ABOUT WHAT HAPPENED AND SAYS SOMETHING
7 ABOUT ASKING HER WHY IT TOOK SO LONG TO OPEN THE DOOR, SAYING
8 THAT HE WOULD LEAVE IF SHE DIDN'T WANT HIM THERE, REFERENCING YOUR
9 HOUSE, MEANING THE VICTIM'S HOUSE. IF THE STATE WERE TO USE THESE
10 LETTERS. IT WOULD JUST BE TO QUESTION THE DEFENDANT ABOUT THAT,
11 ABOUT WHETHER IT WAS HER HOUSE AT THE TIME. YOUR HONOR, IF I COULD
12 JUST CLARIFY. I'M SORRY, JUST TO CLARIFY WHAT I STATED. IN THE
13 SECOND P.S. OF THE LETTER HE WRITES, "I ASKED YOU WHAT TOOK YOU SO
14 LONG TO OPEN THE DOOR. YOU SAID SOMETHING AND I ASKED YOU HOW
15 COULD YOU NOT OPEN THE DOOR WHEN I STILL HAD STUFF THERE." THEN
16 HE CONTINUES FROM THERE.

17 THE COURT: IS IT MY UNDERSTANDING YOU'VE NOT DECIDED
18 WHETHER OR NOT YOU ARE GOING TO ATTEMPT TO UTILIZE THE LETTERS
19 DEPENDING ON THE DEFENDANT'S TESTIMONY?

20 MS. BOLEN: THAT'S CORRECT, YOUR HONOR.

21 THE COURT: ALL RIGHT, MS. BELL. HOW DOES THAT AFFECT YOUR
22 ARGUMENT OR MOTION?

23 MS. BELL: THERE ARE JUST OTHER PORTIONS OF THAT PARTICULAR
24 SECTION WE WOULD WANT INCLUDED ALSO IF SHE WERE TO INTRODUCE
25 THAT AND ACCORDING TO, THERE IS A CASE THAT —

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1 **THE COURT:** IF SHE BRINGS IT IN, YOU CAN BRING IT ALL IN.

2 **MS. BELL:** AND THEN I GUESS THE OTHER PART OF OUR ARGUMENT
3 WOULD DEAL WITH WHETHER WE COULD BRING THAT IN. THERE ARE CASES,
4 THERE IS CASE LAW, I CITED THEM IN OUR MOTION, YOUR HONOR, THAT
5 ALLOWS FOR CONTEMPORANEOUS INTRODUCTION SO THAT IF SHE BRINGS
6 IN THAT LETTER INSTEAD OF HAVING TO WAIT FOR CAUSE, I'M ALLOWED TO
7 INTRODUCE SECTIONS AND THAT'S THE ONLY THING, THERE ARE A FEW
8 OTHER SECTIONS ---

9 **THE COURT:** SURE. HE'S THE AUTHOR OF THE LETTER. ISN'T HE?

10 **MR. BELL:** YES, SIR.

11 **THE COURT:** YOU CAN BRING IT IN WHENEVER YOU LIKE.

12 **MS. BELL:** AND AS FAR AS MAKING SURE WE CAN UTILIZE THIS CASE
13 LAW TO BE ABLE TO BRING THEM IN CONTEMPORANEOUSLY INSTEAD OF
14 HAVING TO WAIT FOR CAUSE SO THAT THEY ARE MORE CLEAR AND NOT
15 MIS-CHARACTERIZED, YOUR HONOR.

16 **THE COURT:** I THINK THAT IS TRIAL STRATEGY YOU MAY EMPLOY.
17 MS. BOLEN WILL EMPLOY HER TRIAL STRATEGY, BUT I THINK YOU CALL THAT
18 RUNNING OUT FRONT.

19 **MS. BELL:** YES, SIR. THAT WAS IT FOR THAT MOTION, YOUR HONOR.
20 WE ALL NEED TO DO A LITTLE RESEARCH ON SOME OF THE OTHER
21 REMAINING ISSUES.

22 **THE COURT:** ALL RIGHT. WE WILL STAND AT EASE UNTIL 1:30 P.M.

23 **MS. BELL:** THANK YOU, YOUR HONOR.

24 **THE COURT:** WE'VE GOT TWO MOTIONS WE'VE NOT RULED ON. IS
25 THAT RIGHT?

PRE-TRIAL MOTIONS

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1 MS. BOLEN: THAT'S CORRECT, YOUR HONOR.

2 MS. BELL: YES, SIR.

3 (BREAK FOR LUNCH)

4 THE COURT: REGARDING ANY OF THE MOTIONS WHICH WE ARGUED
5 AND HEARD BEFORE THE BREAK, MS. BOLEN, DO YOU HAVE ANY
6 SUPPLEMENTAL MEMORANDA OR CASE OR LAW THAT YOU WOULD LIKE TO
7 PROPOSE REGARDING ANY OF THOSE ISSUES?

8 MS. BOLEN: YES, SIR, YOUR HONOR. WE HAVE SUPPLEMENTAL
9 ARGUMENT TO MAKE WITH RESPECT TO BOTH THE PREGNANCY MOTION AND
10 THE DEFINITION OF SERIOUS BODILY INJURY MOTION, YOUR HONOR.
11 REGARDING THE DEFENSE'S PROPOSAL TO DEFINE SERIOUS BODILY INJURY,
12 AS I STATED BEFORE, YOUR HONOR, THIS DEFINITION THAT THEY ARE
13 PROVIDING IS JUST THAT. IT IS A DEFINITION THAT THEY ARE PROVIDING.
14 IT'S NOT ONE THAT'S IN THE ACTUAL STATUTE. IT'S NOT ONE THAT THE
15 LEGISLATURE HAS PROVIDED. WHAT THEY ARE ASKING TO DO IS ACTUALLY
16 CREATE LAW WHICH I DON'T BELIEVE IS THE APPROPRIATE AVENUE FOR
17 DOING SUCH, THAT IS LEFT TO THE LEGISLATION. AS I MENTIONED BEFORE,
18 THIS STATUTE WAS REWRITTEN IN 2006 AND ALTHOUGH LEGISLATION COULD
19 HAVE INCLUDED A DEFINITION, COULD HAVE REFERRED TO OTHER
20 STATUTES, COULD HAVE PROVIDED THE DEFINITION RIGHT IN THIS STATUTE,
21 THEY DID NOT DO SO. THE DEFENSE HAS DRAWN YOUR ATTENTION TO
22 GREAT BODILY INJURY, WHICH HAS BEEN DEFINED I BELIEVE IN THE D-U-I
23 STATUTE. THE STATE WOULD LIKE TO POINT OUT THAT SERIOUS BODILY
24 INJURY IS ALSO LANGUAGE USED IN THE OFFENSE OF ABHIAN AND IT IS NOT
25 DEFINED IN ABHIAN. IT HAS BEEN DEFINED THROUGH CASE LAW. THE STATE

PRE-TRIAL MOTIONS

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1 BELIEVES THAT SIMILARLY, THE SERIOUS BODILY INJURY AND C-D-V-H-A-N IS
2 LEFT TO THE PROVINCE OF THE JURY, THAT THIS IS FACTUAL ISSUE FOR THE
3 JURY.

4 YOUR HONOR, THE STATE WOULD ALSO LIKE TO POINT OUT THAT IF
5 THE DEFENSE IS ALLOWED TO PROVIDE THIS DEFINITION TO ADD TO THE
6 STATUTE AND PROVIDE A DEFINITION, THEN THAT REALLY GETS INTO A
7 SLIPPERY SLOPE ARGUMENT WHERE IF WE CAN PROVIDE, LAWYERS OR
8 PROSECUTION OR WHOEVER, CAN PROVIDE A DEFINITION TO A STATUTE IN
9 THIS CASE, WHAT'S TO STOP US FROM DOING IT IN ANY OTHER STATUTE AND
10 THAT IS WHY I BELIEVE IT IS INAPPROPRIATE TO ALLOW THIS DEFINITION TO
11 BE PUT IN THERE WHERE THE LEGISLATURE HAS CLEARLY LEFT IT AS NOT
12 DEFINED, WHICH I BELIEVE MEANS IT IS AN ISSUE FOR THE JURY.

13 YOUR HONOR, IN TERMS OF THE DEFENSE MOTION TO EXCLUDE
14 EVIDENCE THAT THE VICTIM WAS PREGNANT, THE STATE HAS SEVERAL
15 ARGUMENTS TO MAKE AND ONE CASE WHICH I WILL HAND UP SHORTLY. THE
16 FIRST ARGUMENT IS THE FACT THAT SHE WAS PREGNANT IS A FACT OF THE
17 CASE. IT IS SOMETHING THAT IS PRESENT IN THE CASE. THAT IT IS ONE OF
18 THE FACTS OF THIS CASE. IT'S JUST LIKE, THERE'S A CASE STATE V.
19 WAGNER 373 S.C. 103, WHERE IT'S A C-S-C OF A MINOR CASE AND THE VICTIM
20 IS TWO YEARS OLD. IN THAT CASE, THE STATE IS NOT PRECLUDED FROM
21 SAYING, "THIS VICTIM IS TWO YEARS OLD." IT'S A FACT OF THE CASE.
22 SIMILARLY, THERE ARE MULTIPLE CASES WHERE A RAPE VICTIM IS IN HER
23 LATE SEVENTIES OR EIGHTIES. ONE IS STATE V RIDDLE, 301 S.C. 68, WITH A
24 SEVENTY-SIX-YEAR OLD RAPE VICTIM. THIS FACT IS ALSO NOT KEPT FROM
25 THE JURY. THE VULNERABILITY OF THE VERY YOUNG OR A VERY OLD VICTIM

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1 OR A VICTIM IN PHYSICAL VULNERABILITY SUCH AS THIS CASE WHERE THE
2 VICTIM IS PREGNANT, GOES TO AGAIN, IS AN ISSUE FOR THE JURY TO
3 DECIDE. IT'S A FACT OF THE CASE. IT'S NOT SOMETHING THAT SHOULD BE
4 EXCLUDED BECAUSE IT IS THE CONDITION IN WHICH THE VICTIM WAS WHEN
5 THE DEFENDANT ATTACKED HER.

6 ALSO, YOUR HONOR, THE DEFENSE MENTIONED IN ITS BRIEF OR IN ITS
7 MOTION, EXCUSE ME, SOMETHING ABOUT ONE OF THE ELEMENTS OF C-D-V
8 HIGH AND AGGRAVATED IS THAT THE DEFENDANT AND VICTIM HAVE TO BE
9 HOUSEHOLD MEMBERS AND THAT'S DEFINED SEVERAL WAYS IN THE
10 STATUTE AND, AGAIN, I WOULD LIKE TO POINT OUT THAT THE LEGISLATURE
11 CLEARLY DEFINED HOUSEHOLD MEMBER AND, AGAIN, IF THEY WANTED TO
12 CLEARLY DEFINE SERIOUS BODILY INJURY, I THINK THEY WOULD HAVE DONE
13 SO IN THE SAME STATUTE. UNDER THAT DEFINITION OF HOUSEHOLD
14 MEMBER, IT IS SPOUSE OR FORMER SPOUSE THAT COHABITAT OR FORMERLY
15 COHABITATED OR HAVE A CHILD IN COMMON. WE DO NOT HAVE TO PICK
16 WHICH ONE OF THOSE WE ARE PROVING. THEY HAVE SAID THAT THEY WILL
17 STIPULATE THAT THEY WERE HOUSEHOLD MEMBERS. WE ARE NOT
18 STIPULATING TO THAT. ONE OF THE ELEMENTS OF THIS CHARGE THAT THE
19 STATE CAN PROVE IS THAT THEY HAVE A CHILD IN COMMON WHICH IS THE
20 CHILD THAT SHE WAS PREGNANT WITH AT THE TIME.

21 ALSO, YOUR HONOR, THE DEFENSE SAID SOMETHING IN THEIR
22 ARGUMENT THAT A MISCARRIAGE WOULD ACTUALLY BE GREAT BODILY
23 INJURY TO THE CHILD AND THE STATE WOULD JUST LIKE TO ARGUE THAT
24 THE MISCARRIAGE IS ACTUALLY GREAT BODILY INJURY TO THE WOMAN.
25 WITH A LITTLE BIT OF NOTICE WE COULD BRING FERTILITY DOCTORS IN THAT

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1 MISCARRIAGES ESPECIALLY THAT WAY COULD CAUSE SERIOUS FERTILITY
2 PROBLEMS AND CAN --

3 THE COURT: YOU DON'T HAVE TO ARGUE THAT. WE AREN'T
4 CONSIDERING THAT IN THIS CASE.

5 MS. BOLEN: I'M JUST SAYING THAT THERE'S THAT CHANCE. AND ALSO,
6 YOUR HONOR, THE FACT THAT SHE IS PREGNANT ALSO GOES TO THE FACT
7 THAT SHE IS NOT ABLE TO DEFEND HERSELF WHICH GOES TO THE RISK THAT
8 SHE BELIEVES SHE IS UNDER THE RISK OF SERIOUS BODILY HARM OR EVEN
9 DEATH BECAUSE SHE IS REALLY NOT ABLE TO FIGHT BACK BECAUSE SHE IS
10 SIX MONTHS PREGNANT AND IS PROTECTING HER CHILD. AND YOUR HONOR,
11 REALLY WHAT THE DEFENSE IS ASKING YOU TO DO IS TO SAY THAT THE FACT
12 THAT HE DID THIS, THE FACT THAT HE ATTACKED A SIX MONTH PREGNANT
13 WOMAN IS SO HORRIBLE THAT THE JURY SHOULDN'T KNOW ABOUT IT AND I
14 THINK THAT ALONE SHOWS THAT IT IS SOMETHING THAT THE JURY SHOULD
15 KNOW BECAUSE IT IS A MATERIAL FACT OF THE CASE. IT AFFECTS WHETHER
16 THERE WAS SERIOUS BODILY INJURY, IT AFFECTS WHETHER SHE BELIEVES
17 SHE WAS AT RISK FOR SERIOUS BODILY INJURY OR EVEN DEATH. AND LIKE I
18 SAID BEFORE, IT IS A FACT OF THE CASE. THE DEFENDANT TAKES THE
19 VICTIM AS HE FINDS HER AND IN THIS CASE, HE FOUND HER SIX MONTHS
20 PREGNANT. AND SO WE WOULD ASK THAT THE EVIDENCE OF HER BEING
21 PREGNANT NOT BE EXCLUDED FROM THE JURY. OH, AND YOUR HONOR, I'M
22 SORRY, SOLICITOR WHITE DID FIND ONE CASE. I WILL PASS UP A COPY TO
23 THE BAR AS WELL AS TO THE DEFENSE TABLE.

24 (MS. BOLEN GIVES DOCUMENT TO MS. BELL AND THE JUDGE)

25 MS. BOLEN: THE CITE IS STATE V. KELLY, 343 S.C. 350. YOUR HONOR, I

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1 SHOULD NOTE FOR THE RECORD THIS CASE WAS OVERTURNED ON
2 DIFFERENT GROUNDS. THE GROUNDS ON WHICH IS WAS OVERTURNED HAD
3 TO DO WITH PAROLE ELIGIBILITY. HOWEVER, IN THIS CASE, THE DEFENDANT
4 MURDERED THE VICTIM WHO WAS IN THIS CASE I THINK WAS TWENTY-THREE
5 WEEKS PREGNANT. THE DEFENDANT GAVE A FULL CONFESSION TO THIS
6 INCLUDING MENTIONING THAT HE KNEW SHE WAS PREGNANT AND
7 DIRECTING YOUR ATTENTION YOUR HONOR, TO PAGE THREE DURING THE
8 GUILT PHASE OF THE TRIAL, THE APPEAL ARGUED THAT THE TRIAL COURT
9 SHOULD HAVE EXCLUDED EVIDENCE OF HER PREGNANCY FROM THE JURY.
10 THE TRIAL COURT ALLOWED THE JURY TO KNOW THAT SHE WAS PREGNANT.
11 THIS DECISION BY THE TRIAL COURT WAS UPHELD. THE COURT HERE
12 WRITES THAT KELLY, THE DEFENDANT, CONTENDS THAT THE TRIAL COURT
13 SHOULD HAVE REDACTED HIS STATEMENT TO MERE REFERENCES THAT SHE
14 WAS PREGNANT BECAUSE THE EVIDENCE WAS NOT RELEVANT OR
15 ALTERNATIVELY THE PROBATIVE VALUE OF THIS EVIDENCE WAS
16 OUTWEIGHED BY THE UNFAIRLY PREJUDICIAL IMPACT AND THE COURT
17 STATES IT DISAGREES AND THEN FURTHER STATES THAT EVIDENCE IS
18 RELEVANT AND ADMISSIBLE IF IT HAS ANY TENDENCY TO MAKE THE
19 EXISTENCE OF ANY FACT THAT IS OF CONSEQUENCE TO THE
20 DETERMINATION OF THE ACTION MORE PROBABLE OR LESS PROBABLE THAN
21 IT WOULD BE WITHOUT THE EVIDENCE. IN THIS CASE, THE FACT THAT SHE IS
22 PREGNANT AGAIN, GOES TO WHETHER SHE THINKS SHE IS UNDER THE RISK
23 OF SERIOUS BODILY INJURY AND WHETHER SHE WAS UNDER THE RISK OF
24 SERIOUS BODILY INJURY.
25 FURTHERMORE, YOUR HONOR, IN THIS SAME CASE ON PAGE FOUR,

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1 SECOND FULL PARAGRAPH, THE COURT STATES, "WE BELIEVE THE EVIDENCE
2 THAT SHE WAS PREGNANT WAS RELEVANT TO THE ISSUE OF INTENT,
3 I.E., WHETHER KELLY ACTED IN MALICE BECAUSE KELLY KNEW SHE WAS
4 PREGNANT AND THUS PARTICULARLY VULNERABLE AND THE JURY COULD
5 INFER THAT KELLY HAD CONSCIOUSLY SELECTED "THE PERFECT VICTIM."
6 THERE'S A SIMILAR ARGUMENT TO BE MADE HERE THAT HE KNOWS THAT SHE
7 WAS PARTICULARLY VULNERABLE AND KNOWS THAT SHE IS NOT GOING TO
8 BE ABLE TO DEFEND HERSELF BECAUSE SHE IS PREGNANT. AND, YOUR
9 HONOR, I WOULD JUST LIKE TO POINT OUT FOR THE COURT THAT IN THIS
10 CASE, THE STATE V. KELLY, THIS IS SOMETHING THAT THE DEFENDANT KELLY
11 HAD CONFESSED, ADMITTED TO ALL OF THE FACTS IN THIS CASE AND THE
12 COURT STILL FOUND THAT ADMITTING TO THE JURY THAT THE VICTIM WAS
13 PREGNANT AT THE TIME WAS NOT UNDULY PREJUDICIAL. AND THE STATE
14 WOULD RESPECTFULLY ASK THE COURT TO DENY THE DEFENSE'S MOTION
15 TO EXCLUDE THE EVIDENCE OF THE VICTIM'S PREGNANCY AND ALSO TO
16 DENY THE DEFENSE'S MOTION TO DEFINE SERIOUS BODILY INJURY.

17 **MR. GROSE:** RESPONDING TO THE KELLY CASE FIRST, YOUR HONOR. I
18 THINK THE LAST PART THAT SHE TALKED ABOUT EXPLAINS WHY IT IS NOT
19 APPLICABLE. IN KELLY THEY HAD TO PROVE MALICE AND IT WENT TO INTENT,
20 AND MALICE IS NOT REQUIRED TO BE PROVEN UNDER THE C-D-V STATUTE OR
21 THE C-D-V HIGH AND AGGRAVATED NATURE STATUTE. GOING BACK TO
22 RIDDLE FOR A SECOND, THEY HAVE DONE THIS SEVERAL TIMES TODAY NOW.
23 THEY SITE THE SENTENCING PHASES OF THE DEATH PENALTY CASE FOR
24 WHAT IS RELEVANT IN THE GUILT PHASE AND THAT'S EXACTLY WHAT IS
25 GOING ON IN RIDDLE. RIDDLE IS A RE-SENTENCING HEARING. SO THE

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1 EVIDENCE THAT IS RELEVANT FOR RE-SENTENCING IS NOT THE SAME
2 EVIDENCE THAT IS RELEVANT FOR THE GUILT OR INNOCENCE PHASE. AND
3 SO, JUST BECAUSE IT WAS RELEVANT FOR SENTENCING DOESN'T MEAN IT
4 COULD HAVE BEEN ADMITTED IN THE FIRST PART OF THE TRIAL.

5 I HAVEN'T LOOKED AT THE CASE THEY SITED ABOUT C-S-C WITH A
6 MINOR WITH A CHILD BEING TWO YEARS OLD, BUT THAT IS AN ELEMENT OF
7 THE CRIME. I MEAN, THAT IS SOMETHING THAT HAS TO BE PROVEN THERE.
8 THE PREGNANCY IS NOT AN ELEMENT OF THE CRIME. IF THEY WANT TO
9 PROVE WHETHER OR NOT THEY ARE HOUSEHOLD MEMBERS BASED ON A
10 CHILD IN COMMON MEET THE DEFINITION OF A CHILD. THE SUPREME COURT
11 HAS HELD IN THESE CASES THAT THEY HAVE TO PRODUCE EVIDENCE THAT IT
12 IS A VIABLE FETUS AND WE JUST REALLY DON'T KNOW. I MEAN, IF IT'S NOT
13 VIABLE IT'S ONE THING AND IF IT IS VIABLE IT'S SOMETHING ELSE. IF THAT'S
14 THEIR INTENTION, THEN THEY HAVE NOT COMPLIED WITH RULE 5 AND
15 PROVIDED US WITH THAT INFORMATION, WHO IS GOING TO TESTIFY THAT
16 THIS WAS A VIABLE FETUS, BECAUSE THAT IS WHAT IS REQUIRED UNDER THE
17 LAW. THERE IS GOING TO BE NO DISPUTE THAT THEY WERE HOUSEHOLD
18 MEMBERS AND REGARDLESS OF WHAT, YOU KNOW, THEY WANT TO SAY,
19 THAT, YOU KNOW, THEY DON'T HAVE TO BE MADE TO STIPULATE TO
20 SOMETHING, BUT IF YOU GO BACK AND LOOK AT THE BAD ACT CASE, THE
21 ORIGINAL LYLE CASE, I MEAN, THE REASON THAT SOME OF THE EVIDENCE
22 WAS INADMISSABLE IN THAT CASE WAS BECAUSE THE DEFENDANT CAME TO
23 COURT AND, YOU KNOW, TOLD THE JUDGE THAT, YOU KNOW, THAT WASN'T
24 AN ISSUE IN THE CASE. I THINK SOME OF THE FORGERIES THEY ADMITTED
25 THAT WHOEVER DID THESE HAD THE INTENT TO COMMIT A FORGERY. AND SO

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1 THEY DIDN'T HAVE -- THAT WAS NOT SOMETHING THAT HAD TO BE PROVEN,
2 SO THE EVIDENCE OF THAT DIDN'T COME IN. NOW EVIDENCE OF SOME
3 OTHER CRIMES IN LYLE CAME IN BUT IT WAS AN ENTIRELY, YOU KNOW,
4 DIFFERENT ISSUE . IT WAS ON THE ISSUE OF IDENTITY OR ON ALIBI. SO, YOU
5 KNOW, I THINK THAT, YOU KNOW, THE COURT HAS, YOU KNOW, NOT ONLY
6 THE PREROGATIVE BUT PROBABLY EVEN AN OBLIGATION TO FIND AND
7 NARROW THE ISSUES FOR TRIAL. I MEAN, WHETHER OR NOT THESE TWO
8 PEOPLE ARE HOUSEHOLD MEMBERS IS NOT AN ISSUE. AND SO, YOU KNOW, I
9 THINK IN RULE 403 YOU HAVE GOT THE RELEVANCY STUFF AND UNDER RULE
10 403, YOU KNOW, THINGS THAT ARE GOING TO WASTE THE TIME AND
11 CONFUSE THE JURY AND THINGS THAT MIGHT INCITE THE JURY FOR
12 EMOTIONAL REASONS, YOU KNOW, SHOULD BE EXCLUDED.

13 MS. BELL: THIS IS TO RESPOND TO THE SERIOUS BODILY INJURY
14 DEFINITION AND I WANTED TO RESPOND TO TWO THINGS. A COUPLE OF
15 CASES THAT SHE HAD CITED PRIOR TO US BREAKING FOR LUNCH AND I HAVE
16 HAD TIME TO KIND OF LOOK OVER BOTH OF THOSE. IN STATE V. RYE, THE
17 PORTION THAT WAS QUOTED WAS FROM THE DISSENT OF THE CASE. THAT
18 ACTUAL CASE WAS REGARDING THE DEFENSE OF COHABITATION. UNDER
19 STATE V. MCLEOD, IT WAS AN INDICTMENT ISSUE AND NOT A JURY
20 INSTRUCTION ISSUE. WITH REGARDS TO THE LEGISLATURE INTENT ON THE
21 DEFINITION, EVERY TIME THAT IT HAS EVER BEEN DEFINED, IT'S BEEN
22 DEFINED THE SAME WAY, YOUR HONOR. IT'S NOT CHANGED AROUND ANY
23 WHEN THEY'VE -- ABOUT THE ONLY THING THEY'VE CHANGED IS SOMETIMES
24 THEY CALL IT SERIOUS BODILY INJURY AND OTHER TIMES THEY CALL IT
25 GREAT BODILY INJURY, BUT THE SUPREME COURT'S RECOGNIZED THAT THE

PRE-TRIAL MOTIONS

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1 TWO TERMS ARE INTERCHANGEABLE. AND SO I THINK THAT IN THIS CASE
2 THEY KNEW THAT THAT WAS THE DEFINITION WHEN THEY WROTE IT AND SO
3 THEY -- I BELIEVE THIS DEFINITION IS THE ONE WE SHOULD USE TODAY,
4 YOUR HONOR.

5 THE COURT: ALL RIGHT. WELL, TELL ME THIS. REGARDING THE
6 PREGNANCY ISSUE, IS THAT PART OF THE DEFINITION OF ONE OF THE
7 AGGRAVATED CIRCUMSTANCES IN C-D-V-H-A-N, WHICH IS A DISPARITY IN
8 AGES FOR PHYSICAL CONDITIONS OF THE PARTIES?

9 MR. GROSE: THAT IS NO LONGER A PART OF C-D-V-H-A-N. LET ME GET
10 THAT BACK ON MY SCREEN HERE. MS. BOLEN HAS -- IN FACT, I THINK THAT
11 MAY BE WHERE SOME OF THE CONFUSION MIGHT COME IN. ONE OF THE
12 CASES THAT SHE CITED FOR YOU TO LOOK AT DURING LUNCH WAS PRIOR TO
13 THE AMENDMENT IN THE STATUTE. WHEN THE STATUTE --

14 THE COURT: THE OTHER SIXTH AMENDMENT.

15 MR. GROSE: HUH?

16 THE COURT: THE OTHER SIXTH AMENDMENT.

17 MR. GROSE: YES, SIR. AND WHEN THE STATUE WAS AMENDED, IT USED
18 TO BE THAT THE STATUTE SAID THAT THE ELEMENTS OF ABHAN, YOU KNOW,
19 IF THE ELEMENTS OF ABHAN ARE PRESENT THEN YOU WILL BE GUILTY OF
20 C-D-V HIGH AND AGGRAVATED NATURE. NOW, IT HAS TO BE SOMEBODY WHO
21 VIOLATES SECTION §25-20(A) SO THAT BRINGS IN THE HOUSEHOLD MEMBER.
22 AND IT HAS TO BE AN ASSAULT AND BATTERY WHICH INVOLVES THE USE OF
23 A DEADLY WEAPON OR RESULTS IN SERIOUS BODILY INJURY TO THE VICTIM
24 OR AN ASSAULT WITH OR WITHOUT A BATTERY WHICH WOULD REASONABLY
25 CAUSE A PERSON TO FEAR IMMINENT SERIOUS BODILY INJURY OR DEATH,

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1 YOU KNOW, AND SO THE DIFFERENCES IN AGES, DISPARITY, GENDER, ALL OF
2 THOSE THINGS ARE NO LONGER A CONSIDERATION FOR C-D-V HIGH AND
3 AGGRAVATED NATURE LIKE THEY USED TO BE UNDER THE PRIOR STATUTE.

4 **THE COURT:** WELL IN THAT CASE, ONE OF THOSE PRIOR CASES OF
5 C-D-V-H-A-N, WHICH HAD THE AGGRAVATING CIRCUMSTANCES – ONE OF
6 THEM WAS THE INFLICTION OF SHAME OR DISGRACE AND THE COURT DIDN'T
7 DEFINE IT AT ALL. IT READ IT IN THERE AS ONE OF THE AGGRAVATING
8 FACTORS AND THAT WAS FOUND TO BE NON ERROR BECAUSE IT SHOULD BE
9 AN OBVIOUS COMMON UNDERSTANDING OF WHAT INFLICTION OF SHAME OR
10 DISGRACE WAS. IS THAT NOT THE CASE HERE? THAT WE READ THE
11 STATUTE AND THE ASSAULT AND BATTERY WHICH INVOLVES OR RESULTS IN
12 SERIOUS BODILY INJURY TO THE VICTIM AND SERIOUS BODILY INJURY IS
13 SERIOUS BODILY INJURY? YOU KNOW, THAT'S WHAT MS. BOLEN IS
14 SUGGESTING.

15 **MR. GROSE:** I MEAN I – THE LEGISLATURE HAS DEFINED SERIOUS
16 BODILY INJURY AND GREAT BODILY INJURY ON A NUMBER OF OCCASIONS
17 AND EVERY TIME THAT THEY'VE DONE IT THEY HAVE CONSISTENTLY GIVEN
18 THE SAME DEFINITION. AND IRONICALLY, THE BILL THAT THE SOLICITOR IS
19 SUGGESTING THAT THE LEGISLATURE ADOPT TO CODIFY ASSAULT
20 OFFENSES, THEY ARE USING THE SAME LANGUAGE THAT THE LEGISLATURE
21 HAS REPEATEDLY USED. THERE IS A DIFFERENCE BETWEEN BODILY INJURY
22 AND GREAT BODILY INJURY OR SERIOUS BODILY INJURY AND IF THE COURT
23 DOESN'T DEFINE THAT DIFFERENCE FOR THE JURORS, THEN THE JURY IS
24 LEFT TO SPECULATE AND I THINK THAT YOU ARE REQUIRED TO GIVE THEM A
25 CHARGE ON THE LAW THAT EXPLAINS WHAT THE LAW IS AND DEFINES THE

PRE-TRIAL MOTIONS

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1 APPLICABLE LAW IN THE CASE AND WE BELIEVE THAT INCLUDES A
2 DEFINITION OF SERIOUS BODILY INJURY.

3 THE COURT: ALL RIGHT, WELL, IF I DO THE CHARGES Y'ALL ALLOW THAT
4 THERE WAS A -- I DON'T REMEMBER THE EXACT LANGUAGE, BUT IT'S IN THE
5 LATTER HALF OF IT, THAT THERE WAS INJURY TO ANY MEMBER OR BODILY
6 PART. I MEAN, WOULD MS. BOLEN BE FREE TO ARGUE THAT THERE WERE
7 INJURIES TO THE ARMS WITHIN YOUR DEFINITION? FROM WHAT I
8 UNDERSTAND WHAT YOU ARE ASKING FOR, BECAUSE IF I ARGUE THAT THEN I
9 WANT TO MAKE CERTAIN WHAT LATITUDE SHE HAS. THE PORTION OF IT IS,
10 THE IMPAIRMENT OR FUNCTION OF A BODILY MEMBER. WOULD NOT THE
11 ARMS BE BODILY MEMBERS? I AM JUST TRYING TO --

12 MR. GROSE: YEAH. WELL, I MEAN, I THINK THAT UNDER OUR
13 DEFINITION IF THERE WAS EVIDENCE OF PERMANENT DISFIGUREMENT OR
14 PROTRACTED LOSS OR IMPAIRMENT TO AN ARM, THEN THEY COULD ARGUE
15 THAT.

16 THE COURT: OKAY.

17 MR. GROSE: I THINK THAT COMES UP IN A PERSONAL INJURY CONTEXT
18 AN AWFUL LOT. I DON'T THINK THEY HAVE EVIDENCE OF THAT IN THIS CASE,
19 BUT IF THEY DID.

20 THE COURT: WELL, HERE IS WHAT I WANT TO DO. FOR Y'ALLS
21 COMMENTS ON OPENING, I WANT YOU TO RESTRICT YOUR COMMENTS, IF
22 YOU ARE GOING TO COMMENT ON THE LAW, TO THE DEFINITION OF THE
23 STATUTE, WHICH IS ASSAULT AND BATTERY WITH SERIOUS -- AND SAY
24 SERIOUS OR GREAT BODILY INJURY. I AM GOING TO CONSIDER THIS A LITTLE
25 MORE AS TO HOW TO DEFINE IT, BUT I DON'T THINK THAT IS GOING TO

PRE-TRIAL MOTIONS

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1 PREJUDICE EITHER PARTY IN THE OPENING STATEMENT. THEY CAN'T - I
2 MEAN YOU CAN FLESH OUT ALL THE FACTS YOU WANT, BUT LET ME THINK
3 ABOUT THAT A LITTLE LONGER, BECAUSE I DON'T WANT A DEFINITION BEING
4 GIVEN BY EITHER OF THE ADVOCATES IN THEIR OPENING STATEMENTS.

5 MR. GROSE: WELL, I MEAN, CAN - IN ONE OF THE AGGRAVATING
6 FACTORS FOR BURGLARY IS BODILY. AND SO, I MEAN, THE STATUTES ARE,
7 YOU KNOW, USING DIFFERENT LANGUAGE CONTEMPLATING DIFFERENT
8 THINGS. IT JUST SEEMS FAIR NOT ONLY TO THE LAWYERS BUT TO THE
9 JURORS THAT WE TRY TO RESOLVE THIS BEFORE OPENINGS SO THAT
10 EVERYBODY KNOWS WHAT THE RULES OF THE GAME ARE.

11 THE COURT: YOU ARE MORE THAN WELCOME TO STATE THE ELEMENTS
12 OF THE OFFENSE AND SAY IT REQUIRES GREAT BODILY OR SERIOUS BODILY
13 INJURY. I DON'T WANT YOU TRYING TO DEFINE THAT QUITE YET.

14 MR. GROSE: BUT WE COULD ARGUE, OR MS. BELL COULD ARGUE, THAT
15 IT IS NOT EVIDENCE OF SERIOUS BODILY INJURY OR STATE THAT IN
16 OPENING?

17 THE COURT: SURE.

18 MR. GROSE: JUST NOT GIVE THE DEFINITION.

19 THE COURT: SHE IS NOT GOING TO BE ABLE TO SAY," AND THE JUDGE
20 WILL INSTRUCT YOU THAT GREAT BODILY INJURY IS THE SAME AS SERIOUS
21 BODILY INJURY WHICH IS" AND GIVE MY DEFINITION. I AM NOT GOING TO
22 HAND THAT TO YOU YET. I HAVE NOT DECIDED THAT. YOU MAY RECITE THE
23 ELEMENTS OF ANY OF THE OFFENSES.

24 MR. GROSE: OKAY.

25 THE COURT: AND ON THE PREGNANCY ISSUE.

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1 MS. BOLEN: YOUR HONOR?

2 THE COURT: YES, MA'AM.

3 MS. BOLEN: I THINK AT SOME POINT IN THERE YOU HAD POSED A
4 QUESTION ABOUT WHETHER HER BEING PREGNANT WAS AN ELEMENT OF
5 THE C-D-V-H-A-N AND I WOULD LIKE TO JUST VERY BRIEFLY RESPOND TO
6 THAT.

7 THE COURT: WELL, IT IS UNDER THE OLD DEFINITION, BUT IT IS NOT
8 NOW.

9 MS. BOLEN: WELL, EVEN IN THE NEW DEFINITION, YOUR HONOR, THE
10 STATE WOULD JUST LIKE, FOR THE RECORD, THAT UNDER SECTION (A)(2),
11 WHICH IS AN ASSAULT WITH OR WITHOUT AN ACCOMPANYING BATTERY
12 WHICH WOULD REASONABLY CAUSE A PERSON TO FEAR IMMINENT SERIOUS
13 BODILY INJURY OR DEATH, THAT THE STATE'S POSITION ON THAT IS ANY
14 ASSAULT ON OR ANY BATTERY ON A WOMAN WHO IS SIX MONTHS PREGNANT
15 AND AT RISK OF MISCARRIAGE WOULD REASONABLY CAUSE THAT PERSON
16 TO FEAR IMMINENT SERIOUS BODILY INJURY.

17 THE COURT: ALL RIGHT. MY INITIAL REACTION IS THAT HER STATUS OF
18 BEING PREGNANT IS NOT RELEVANT TO THE ISSUES OF THE
19 CIRCUMSTANCES OF AGGRAVATION, SO I AM NOT GOING TO ALLOW THOSE. I
20 THINK YOU HAVE GOT, AT LEAST FROM WHAT I'VE BEEN TOLD, ALL SORT OF
21 EVIDENCE JUST FROM LOOKING AT THE PICTURES AND WHAT Y'ALL HAVE
22 BEEN ARGUING. I DON'T THINK THAT IS YOUR – I JUST DON'T THINK THAT IS
23 RELEVANT TO THE NATURE OF THESE INJURIES AND SO I AM NOT GOING TO
24 ALLOW THAT.

25 MS. BOLEN: AND YOUR HONOR, TO FOLLOW-UP ON THOSE PICTURES

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1 BEFORE WE BRING THE JURY IN, DID YOU HAVE A FINAL RULING ON THE
2 PICTURES FROM THE HOSPITAL?

3 **THE COURT:** I THINK THE PICTURES SHOW A CONDITION AND THEY ARE
4 SUBJECT TO CROSS EXAMINATION OF HER OR THE DOCTOR OR WHOMEVER
5 PRESENTS THEM AND TOOK THEM. THE CASES THAT I HAVE READ WHERE
6 PICTURES REGARDING A MEDICAL PROCEDURE OR AN AUTOPSY WHICH
7 SHOWED A MODIFIED CONDITION OF THE PERSON OR THE VICTIM AFTER A
8 CRIME AND I THINK THOSE ARE RULED IRRELEVANT, BUT I BELIEVE THESE
9 PICTURES SHOW WHAT SHE LOOKED LIKE, BUT IF THERE IS AN EXPLANATION,
10 YOU KNOW, OF ONCE SHE IS CLEANED UP, THEY ARE ARGUABLE. BUT THEY
11 ARE HER IN THE HOSPITAL AND, AS I UNDERSTAND IT, SHORTLY AFTER
12 THESE INJURIES OR OF THIS ASSAULT.

13 **MS. BOLEN:** OKAY. AND WHICH – ALL THE ONES PRESENTED OR WERE
14 YOU GOING TO GOING TO LIMIT?

15 **THE COURT:** I THINK THERE ARE DUPLICATIVE, BUT ALL OF THEM ARE
16 ABOUT THE SAME TO ME. THERE IS NOT ONE – THE ONE THAT YOU SAID YOU
17 WOULD NOT INTRODUCE –

18 **MS. BOLEN:** WITH THE SHIRT. YES.

19 **THE COURT:** EXHIBIT #7.

20 **MS. BELL:** YOUR HONOR, YOU MENTIONED THEY ARE DUPLICATIVE.
21 ARE YOU WILLING TO LIMIT THEM TO THOSE THREE THAT YOU MENTIONED
22 PRIOR TO THE BREAK?

23 **THE COURT:** WELL, IF Y'ALL CAN SHOW ME THE THREE THAT SHOW
24 FRONT, RIGHT AND LEFT.

25 (DISCUSSION OF THE PHOTOGRAPHS BY COUNSEL)

PRELIMINARY INSTRUCTIONS BY THE COURT

62

1 THE COURT: I DON'T WANT TO RESTRICT YOU TO THREE, BUT THE
2 THREE SEEM TO BE PRETTY CUMULATIVE.

3 MS. BOLEN: I THINK WE HAVE IT DOWN TO - THERE WAS ONE THAT I
4 THINK WE HAD PRESENTED BECAUSE WE WERE IN AGREEMENT, SO I THINK I
5 HAVE A FEW MORE.

6 THE COURT: THAT'S FINE. BEING THAT THESE ARE SUBJECT TO
7 CROSS-EXAMINATION, MS. BELL WILL HAVE AMPLE LATITUDE THAT, YOU
8 KNOW, SHE WILL BE GIVEN PLENTY OF LATITUDE AS FAR AS CROSS
9 EXAMINATION ON WHAT THE PICTURES DEPICT.

10 THE COURT: ARE WE READY TO BRING THE JURY IN?

11 MS. BOLEN: I BELIEVE SO, YOUR HONOR. I HAVE JUST GOT TO MAKE
12 SURE I AM READY.

13 THE COURT: READY?

14 MS. BOLEN: YES, SIR, YOUR HONOR.

15 THE COURT: BRING THE JURY IN, PLEASE.

16 (JURY IN AT 2:25 P.M.)

17 THE COURT: ALL RIGHT, MS. MCMAHAN WILL YOU PLACE THE JURY
18 UNDER OATH?

19 (THE JURY IS DULY SWORN BY THE CLERK OF COURT)

20 THE COURT: LADIES AND GENTLEMEN, I APOLOGIZE FOR THE DELAY.
21 WE HAD SEVERAL PRELIMINARY MATTERS. THERE WAS A YOUNG MAN HERE
22 FROM THE DEPARTMENT OF CORRECTIONS THAT IS NOT INVOLVED IN THIS. I
23 HAD TO GET HIM TAKEN CARE OF FOR THE DEPARTMENT OF CORRECTIONS
24 EMPLOYEES SO I COULD GET HIM BACK WHERE HE NEEDED TO BE.
25 NEVERTHELESS, IT IS NOW Y'ALL'S TIME TO HEAR THIS CASE AND I HAVE

PRELIMINARY INSTRUCTIONS BY THE COURT

63

1 SOME PRELIMINARY INSTRUCTIONS TO YOU. TO KIND OF GIVE YOU A
2 THUMBNAIL SKETCH TO YOU WHAT TO EXPECT AND AS I AM CERTAIN ALL OF
3 YOU HAVE TELEVISIONS IN YOUR HOMES. THERE ARE A LOT OF DOCTOR
4 TELEVISION SHOWS AND LAWYER SHOWS, BUT THAT IS TELEVISION. WHAT
5 HAPPENS HERE IS WHAT HAPPENS HERE. I CAN NOT PROMISE YOU A BIG
6 LIGHT SHOW OR FANCY TESTIMONY. IT IS ABBEVILLE COUNTY AND THE
7 FACTS OF THIS CASE ARE THE FACTS OF THIS CASE. WE DON'T HAVE ANY
8 CONTROL OVER THAT. THIS IS A VERY IMPORTANT CASE TO THIS
9 COURTROOM AND SO TO THAT END I AM GOING TO TELL Y'ALL AGAIN THAT
10 Y'ALL ARE TO CONFINE YOUR DECISION MAKING AND YOUR EVALUATION OF
11 THIS CASE TO WHAT YOU HEAR FROM THIS WITNESS STAND RIGHT HERE.
12 LISTEN TO THE TESTIMONY PROVIDED BY THE WITNESSES, LISTEN TO AND
13 EXAMINE THE EVIDENCE THAT THE PARTIES PRESENT AND TO ITS
14 CONCLUSION, EVERYONE'S TESTIMONY. BECAUSE IN A CASE LIKE THIS THE
15 STATE GOES FIRST AND THE DEFENSE GOES SECOND, THEN WHEN THAT IS
16 DONE THE PARTIES ARE ALLOWED TO SUMMARIZE THEIR POSITIONS TO YOU.
17 AT THE CONCLUSION OF THOSE SUMMARY COMMENTS THEN I GET TO
18 INSTRUCT YOU ON THE APPLICABLE LAW OF SOUTH CAROLINA AND HOW TO
19 EVALUATE WHAT YOU'VE HEARD OVER THE NEXT DAY OR SO. I DON'T
20 EXPECT THIS CASE TO GO BEYOND TOMORROW. I THINK WE WILL BE
21 THROUGH WITH IT BY TOMORROW AFTERNOON AND SO Y'ALL'S
22 CONSIDERATION WILL BEGIN AT THE CONCLUSION OF ALL THE TESTIMONY
23 AND WHATNOT.

24 AS I TOLD YOU EARLIER THE SOLICITOR READ OUT THREE
25 INDICTMENTS. I HAVE THOSE INDICTMENTS IN MY HAND AND THOSE

PRELIMINARY INSTRUCTIONS BY THE COURT

64

1 DOCUMENTS ARE PREPARED ON A WORD PROCESSOR AND THEY ARE
2 NOTICE FROM THE STATE OF SOUTH CAROLINA, WHO IS SEATED CLOSER TO
3 YOU, TO MISTER ANTJUAN GREENE WHO IS SEATED AT THE FAR RIGHT-HAND
4 TABLE OVER HERE. THOSE ARE THE CHARGES HE HAS PENDING AGAINST
5 HIM. THEY ARE NOT PROOF OF ANYTHING. THEY ARE ONLY NOTICE TO HIM
6 OF WHAT TO COME HERE TO COURT TODAY TO DEFEND. AND SO, THOSE
7 WILL BE HERE IN MY POSSESSION UNTIL THE APPROPRIATE TIME WHEN Y'ALL
8 WILL GO BACK TO THE JURY ROOM AND Y'ALL SEE THESE INDICTMENTS.
9 NOW, AS I HAVE TRIED TO EXPLAIN TO YOU, EVERYBODY IN THE COURTROOM
10 HAS A JOB TO DO. SINCE THIS IS A CRIMINAL CASE, THE STATE OF SOUTH
11 CAROLINA IS THE PROSECUTING ENTITY OF THE SOLICITOR'S OFFICE OF ALL
12 CRIMES HERE IN ABBEVILLE COUNTY AND FOR THAT MATTER EVERY COUNTY
13 IN THE STATE. BECAUSE THE STATE HAS THE BURDEN OF PROVING THESE
14 CHARGES AGAINST MISTER GREENE, THEY SIT AT A TABLE A LITTLE BIT
15 CLOSER TO THE JURY. MISTER GREENE HAS ABSOLUTELY NOTHING TO
16 PROVE AND HE SITS FARTHER AWAY. IN EVERY COURTROOM, WHEREVER
17 THE JURY BOX IS, THAT'S WHERE THE STATE'S TABLE IS, THE ONE CLOSEST.
18 THAT'S HOW IT WORKS. IF Y'ALL WERE SEATED OVER HERE, OBVIOUSLY
19 THEY WOULD BE FLIPPED AROUND AND SO THE STATE'S JOB IS TO PROVE
20 THE CASE SO THEY GO FIRST. THEY ARGUE TO YOU FIRST. THEY PRESENT
21 THEIR EVIDENCE AND THEIR WITNESSES FIRST. AT EVERY OPPORTUNITY IN
22 THEIR PRESENTATION THE DEFENSE OVER HERE, MS. BELL, GETS TO CROSS
23 EXAMINE THE WITNESSES, SHE MAY CONTEST EVIDENCE PRESENTED BY THE
24 STATE, AND IF THAT COMES UP ON DECISION MAKING ON WHETHER
25 EVIDENCE COMES IN THE COURT OR NOT, THAT'S WHERE I COME IN. THAT IS

PRELIMINARY INSTRUCTIONS BY THE COURT

65

1 MY JOB TO RULE UPON THE ADMISSIBILITY OF CERTAIN EVIDENCE AND THE
2 INADMISSIBILITY OF CERTAIN EVIDENCE. I AM MORE OR LESS THE REFEREE
3 DURING THE TRIAL AND THE INSTRUCTOR OF THE LAW AT THE CONCLUSION
4 OF THE PRESENTATION. SO TO THAT END, I AM A REFEREE. SO IF YOU HEAR
5 DURING THE TESTIMONY OF A WITNESS, ONE PARTY WHO IS NOT
6 QUESTIONING SAY "I OBJECT", THAT IS MY CUE TO GET TO WORK. I HAVE
7 GOT TO MAKE MY DETERMINATION. SO I MAKE A DETERMINATION AS TO
8 WHETHER OR NOT THE QUESTION IS PROPER OR NOT AND WE WILL MOVE
9 FORWARD. PLEASE DON'T KEEP COUNT OF WHO OBJECTS THE MOST OR
10 WHO OBJECTS THE LEAST. LISTEN TO THIS TESTIMONY. IT IS Y'ALL'S
11 EVALUATION OF THE TESTIMONY. THAT IS WHY Y'ALL ARE HERE BECAUSE
12 Y'ALL AS A GROUP HAS TO DECIDE WHETHER THE INDICTMENTS HAVE BEEN
13 PROVEN BEYOND A REASONABLE DOUBT BY THE STATE. IT IS AS SIMPLE AS
14 THAT. NOW, IN ORDER, AS I COMMENTED EARLIER, THAT MISTER GREENE
15 GETS A FAIR TRIAL IT IS IMPORTANT THAT YOU DON'T JUMP TO
16 CONCLUSIONS. THE STATE IS GOING FIRST. THEY ARE GOING TO PRESENT
17 THE FIRST WITNESS. IF YOU MAKE YOUR DECISION RIGHT THEN AND DON'T
18 WAIT FOR THE THIRD WITNESS OR THE FOURTH WITNESS OR ANY OF MISTER
19 GREENE'S WITNESSES, THEN YOU HAVE NOT FOLLOWED MY INSTRUCTIONS
20 BECAUSE IT IS Y'ALL'S JOB AND DUTY TO DECIDE THE CASE AFTER YOU HEAR
21 ALL THE EVIDENCE AND THE INSTRUCTIONS ON THE LAW. SO Y'ALL'S JOB IS
22 MOST IMPORTANTLY TO LISTEN CAREFULLY. IF YOU NEED A BREAK LET THE
23 BAILIFFS KNOW. WE WILL TAKE BREAKS AS I SAID ABOUT EVERY HOUR OR
24 SO AT APPROPRIATE PLACES. GENERALLY WITNESSES RUN EVERY THIRTY
25 TO FORTY-FIVE MINUTES OR SOMETHING LIKE THAT. THERE ARE SOME

PRELIMINARY INSTRUCTIONS BY THE COURT

66

1 LONGER, SOME SHORTER, BUT WHEN WE GET THROUGH WITH A WITNESS I
2 GENERALLY LOOK TO TAKE A BREAK AT THAT TIME BECAUSE IT'S NOT A
3 GOOD TIME TO STOP IN THE MIDDLE OF A SENTENCE OR A QUESTION TO
4 TAKE A BREAK.

5 NOW, ADDITIONALLY, IF YOU HEAR ONE OF THE LAWYERS JUMP UP AND
6 SAY "YOUR HONOR, I HAVE GOT A MATTER OF LAW" WELL, THAT IS WHEN MY
7 JOB COMES IN AGAIN. AND AS MS. RICE, SHE'S LOOKING AT ME, TAKING
8 DOWN EVERYTHING I'M SAYING. IF AN ATTORNEY HAS A MATTER OF LAW,
9 Y'ALL ARE THE JUDGES OF THE FACTS, I AM THE JUDGE OF THE LAW. THAT
10 MEANS THE LAWYERS WANT TO TALK TO ME TO ARGUE LAW AND FOR THAT
11 REASON I HAVE TO TAKE A BREAK AT THAT TIME AND EXCUSE Y'ALL WHILE I
12 HEAR THEIR ARGUMENTS ON THE LAW BECAUSE THAT HAS VERY LITTLE TO
13 DO WITH Y'ALL'S EVALUATION OF THE FACTS. SO IF YOU HEAR THAT AND WE
14 EXCUSE, YOU PLEASE UNDERSTAND I AM DOING MY JOB WHICH MEANS IT IS
15 REQUIRED OF ME TO MAKE MY RULINGS ON THE RECORD, TO MAKE THEIR
16 ARGUMENTS ON THE RECORD AND FOR Y'ALL TO HAVE A BREAK AT THAT
17 TIME. THAT IS JUST THE WAY THE COURT PROCEEDINGS WILL GO.

18 NOW, Y'ALL JUST TOOK YOUR OATH AND PLEASE REMEMBER THAT IS
19 AN OATH TO BE TAKEN VERY SERIOUSLY. THE STATE, IN JUST A MOMENT
20 WILL GIVE THEIR OPENING COMMENTS. THAT IS NOT EVIDENCE. THAT IS
21 JUST ARGUMENT AND PRESENTATION ON WHAT THEY BELIEVE THEY ARE
22 GOING TO BE ABLE TO PROVE. LIKEWISE, WHEN MS. BELL GETS UP TO MAKE
23 HER COMMENTS, IT IS THE SAME THING. SHE IS COMMENTING TO YOU WHAT
24 THE FACTS WILL SHOW OR WON'T BE ABLE TO SHOW. AS THIS GOES
25 FORWARD, PLEASE LISTEN VERY CAREFULLY TO ALL PARTIES. WE ARE

PRELIMINARY INSTRUCTIONS BY THE COURT

67

1 GOING TO TRY MINIMIZE Y'ALL'S IMPOSITION OF BEING HERE AWAY FROM
2 YOUR FAMILIES AND YOUR HOMES AND YOUR JOBS AND WE APPRECIATE
3 YOUR SERVICE HERE IN THE COURT SYSTEM. WE COULD NOT DO THIS IF IT
4 WAS NOT FOR JURORS SUCH AS YOURSELVES. NOW, BEFORE THE OPENING
5 ARGUMENTS. SIR, I AM TRYING TO REMEMBER YOUR NAME.

6 **MR. CHALMERS:** YOU MEAN ME?

7 **THE COURT:** YES, SIR.

8 **MR. CHALMERS:** JAMES CHALMERS.

9 **THE COURT:** MR. CHALMERS, YOU ARE MY FOREPERSON. SO YOU HAVE
10 AN EXTRA JOB TO DO. YOU MUST BE THE COMMUNICATOR FOR THE TWELVE.

11 **MR. CHALMERS:** YOUR HONOR?

12 **THE COURT:** YES, SIR?

13 **JUROR:** I DON'T MEAN NO HARM, BUT WOULD IT BE FAIR TO GET
14 SOMEBODY ELSE? I'D RATHER SOMEBODY ELSE DO THAT.

15 **THE COURT:** ALL RIGHT. I APPRECIATE YOUR CANDOR. MA'AM, TRADE
16 SEATS WITH HIM.

17 **MS. BALDRIDGE:** ME?

18 **THE COURT:** YES, MA'AM. I WANT YOU TO TRADE SEATS WITH MISTER
19 CHALMERS. I WANT THE FOREPERSON TO SIT RIGHT THERE IN THE CORNER.
20 IT IS VERY IMPORTANT. THE REASON IS THAT YOU ARE THE COMMUNICATOR.
21 ALL RIGHT, MA'AM, TELL ME YOUR NAME.

22 **JUROR:** SARAH BALDRIDGE

23 **THE COURT:** MS. BALDRIDGE, YOU HAVE TWO JOBS. YOU
24 COMMUNICATE WITH THE OTHER JURORS AND IF YOU HAVE ANY QUESTIONS
25 YOU WRITE THEM DOWN AND COMMUNICATE THEM TO THE BAILIFF TO LET

OPENING STATEMENT - MS. BOLEN

68

1 US KNOW WHAT YOU NEED. IF YOU'RE IN THE BACK AND YOU WANT COCA-
2 COLA AND YOU WOULD LIKE SOME, YOU LET THE BAILIFF KNOW. IF DURING
3 DELIBERATIONS YOU HAVE A QUESTION, YOU WILL WRITE IT DOWN AND GIVE
4 IT TO THE BAILIFF WHO WILL BRING IT TO ME. SO YOU ARE THE
5 COMMUNICATOR OR THE REPRESENTATIVE COMMUNICATIONS PERSON FOR
6 THE JURY. YOU WILL PRESIDE OVER THE DELIBERATIONS AND THAT SORT OF
7 THING. YOU DON'T GET PAID ANY EXTRA. YOUR VOTE ONLY COUNTS AS ONE,
8 BUT I NEED YOU TO SIT RIGHT THERE THROUGHOUT THE WHOLE TRIAL. AND
9 YOU, SIR, ARE MY ALTERNATE, YOU WILL RETAIN THAT SEAT. AND IF ONE
10 JUROR IS UNABLE TO COMPLETE THE TRIAL, THEN I WILL MOVE YOU IN. IF
11 THAT DOESN'T HAPPEN YOU WILL SIT THROUGHOUT THE TRIAL BUT THEN
12 YOU WON'T HAVE TO GO BACK TO DELIBERATIONS. ALL RIGHT, MS.
13 BALDRIDGE, AND LADIES AND GENTLEMEN OF THE JURY, I DIRECT YOUR
14 ATTENTION TO THE SOLICITOR AND THE DEFENSE ATTORNEY.

15 MS. BOLEN: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT.

16 THE COURT: YES, MA'AM.

17 **OPENING STATEMENT BY MS. BOLEN**

18 ON FEBRUARY 22, 2009, MS. SULLIVAN WENT TO BED. SHE IS
19 AWAKENED A COUPLE OF HOURS LATER BY A LOUD KNOCKING ON THE
20 DOOR. SHE LIVES IN A FAIRLY RURAL AREA. SHE GOT UP, ASKED WHO IT
21 WAS AND RECOGNIZED THE VOICE OF THE DEFENDANT. SHE DID NOT OPEN
22 THAT DOOR. IN FACT, SHE STARTED TO MOVE HER DRYER. AS YOU WALK
23 INTO HER HOUSE, THERE IS A DRYER RIGHT BESIDE THE FRONT DOOR. SHE
24 STARTED TO MOVE THE DRYER AGAINST THE DOOR BECAUSE SHE HEARD
25 HIM NOT ONLY KNOCKING BUT YELLING AND BECOMING VERY LOUD. SO SHE

OPENING STATEMENT - MS. BOLEN

69

1 STARTED TO MOVE THE DRYER IN FRONT OF THE DOOR, BUT BEFORE SHE
2 WAS ABLE TO COMPLETELY SECURE THE DOOR BY MOVING THE DRYER, THE
3 DEFENDANT KICKED IN THE DOOR AND PROCEEDED TO ENTER HER HOUSE
4 WITHOUT HER CONSENT. ONCE HE GOT INSIDE, HE STRUCK HER ONCE IN
5 THE HEAD AND THEN HE CONTINUED TO STRIKE HER AND KICK HER AND
6 THROW HER ON THE BED. THROUGHOUT THE FRONT HALL OF HER HOUSE,
7 THE KITCHEN, AND THE BEDROOM, THE FIGHT WENT THROUGHOUT THE
8 ENTIRE HOUSE, HE CONTINUED TO FIGHT AND HIT AND KICK THE VICTIM,
9 MS. SULLIVAN. SHE WAS FINALLY ABLE TO MAKE IT OUTSIDE. SHE LIVES IN A
10 RURAL AREA. HER PARENTS LIVE UP THE STREET. SHE WAS ABLE TO GRAB
11 A PHONE AND DIAL 9-1-1 AND SHE MADE IT TO HER PARENTS HOUSE WHERE
12 SHE PROCEEDED TO BE TAKEN TO THE HOSPITAL WHERE SHE WAS
13 TREATED FOR HER INJURIES.

14 NOW, MS. SULLIVAN KNEW THE DEFENDANT. SHE KNEW THE PERSON
15 WHO KICKED DOWN HER DOOR AND ENTERED HER HOUSE AND BEAT HER.
16 THEY HAD DATED. IN FACT THEY HAD LIVED TOGETHER FOR LESS THAN A
17 YEAR, A FEW MONTHS. BUT THEY WERE NOT LIVING TOGETHER AT THE TIME
18 THAT HE KICKED DOWN HER DOOR AND ENTERED HER HOUSE WITHOUT HER
19 CONSENT.

20 AS THE JUDGE SAID, THE STATE PRESENTED TO YOU THREE
21 INDICTMENTS. ONE FOR DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED
22 NATURE. THROUGH THAT, WE HAVE TO SHOW THAT THE VICTIM AND THE
23 DEFENDANT WERE HOUSEHOLD MEMBERS AND THE FACT THAT THEY
24 FORMERLY COHABITATED IS ENOUGH TO SHOW THEY WERE HOUSEHOLD
25 MEMBERS. AND WE NEED TO SHOW THE DEFENDANT CREATED SERIOUS

OPENING STATEMENT - MS. BOLEN

70

1 BODILY INJURY TO THE VICTIM. THE STATE BELIEVES IT WILL PROVIDE YOU
2 WITH SUFFICIENT EVIDENCE THAT YOU WILL BE CONVINCED BEYOND A
3 REASONABLE DOUBT THAT THIS DEFENDANT DID CREATE SERIOUS BODILY
4 INJURY TO THIS VICTIM.

5 THE BURGLARY CHARGE REQUIRES THE STATE TO PROVE THAT THE
6 DEFENDANT ENTERED WITHOUT CONSENT THE HOME OR THE DWELLING OF
7 ANOTHER WITH THE INTENT TO COMMIT A CRIME THEREIN. AGAIN, THEY HAD
8 BROKEN UP. HE NO LONGER LIVED THERE. HE DID NOT HAVE A KEY. HE DID
9 NOT HAVE CONSENT TO ENTER. IN FACT, SHE TRIED TO PREVENT HIM FROM
10 ENTERING. THE STATE BELIEVES WE ARE GOING TO PROVE TO YOU THAT
11 MISTER GREENE, THE DEFENDANT , ALSO COMMITTED A CRIME OF
12 BURGLARY, FIRST DEGREE.

13 THE THIRD CHARGE IS MALICIOUS INJURY TO REAL PROPERTY AND AS
14 YOU WILL SEE FROM THE EVIDENCE, THE DEFENDANT NOT ONLY CAUSED
15 HARM AND INJURY TO THE VICTIM BUT ALSO TO THE DOOR WHEN HE KICKED
16 IT IN. THERE WAS DAMAGE TO IT AND THE STATE BELIEVES IT WILL PROVE
17 BEYOND A REASONABLE DOUBT THAT HE ALSO COMMITTED THAT CRIME.

18 NOW, I ASK YOU TO LISTEN VERY CAREFULLY TO ALL THE WITNESSES
19 WHO TESTIFY AND TO LOOK AT ALL THE EVIDENCE IN THIS CASE. AT THE
20 END OF HIS TRIAL, WE WILL COME BACK AND ASK YOU TO FIND MISTER
21 ANTJUAN GREENE GUILTY OF CRIMINAL DOMESTIC VIOLENCE HIGH AND
22 AGGRAVATED, BURGLARY FIRST, AND MALICIOUS INJURY TO REAL
23 PROPERTY. THANK YOU.

24 MS. BELL: MAY IT PLEASE THE COURT?

25 THE COURT: YES, MA'AM, MS. BELL.

OPENING STATEMENT - MS. BELL

71

1 OPENING STATEMENT BY MS. BELL:

2 LADIES AND GENTLEMEN OF THE JURY, AT THE END OF THIS TRIAL, WE
3 ARE NOT GOING TO ASK YOU TO FIND THAT MISTER GREENE IS A PERFECT
4 PERSON. WE ARE NOT GOING TO ASK THAT YOU FIND THAT HE WAS
5 CORRECT IN HIS ACTIONS THAT NIGHT. WHAT WE ARE ASKING YOU TO DO IS
6 TO LOOK CLOSELY TO ALL OF THIS INFORMATION PROVIDED BY THE
7 WITNESSES WHO TESTIFY TODAY AND TOMORROW.

8 WE ARE ASKING YOU TO PAY CLOSE ATTENTION AND TO LISTEN TO ALL
9 THE EVIDENCE THAT IS PRESENTED HERE TO YOU AND THEN WE ARE ASKING
10 THAT YOU PLEASE THINK CLOSELY ABOUT THE CHARGES PRESENTED TO
11 YOU. HE IS CHARGED WITH BURGLARY IN THE 1ST DEGREE. THE SOLICITOR
12 MENTIONED EARLIER THAT IT REQUIRES YOU TO ENTER THE DWELLING OF
13 ANOTHER WITH THE INTENT TO COMMIT A CRIME. YOU ARE GOING TO SEE
14 EVIDENCE THAT NOT ONLY WAS HE LIVING THERE, MISTER GREENE ALSO DID
15 NOT ENTER THE HOUSE WITH THE INTENT TO COMMIT ANY CRIME.

16 ADDITIONALLY, THEY HAVE CHARGED MISTER GREENE WITH CRIMINAL
17 DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE. AFTER YOU
18 HAVE HEARD ALL THE TESTIMONY WE WILL ASK YOU TO FIND THAT THIS
19 CHARGE, TOO, IS INCORRECT AND THAT HE DID NOT COMMIT SERIOUS
20 BODILY INJURY OR DO ANYTHING THAT WOULD CAUSE A REASONABLE
21 PERSON TO BELIEVE SERIOUS BODILY INJURY OR DEATH MIGHT HAVE
22 OCCURRED.

23 FINALLY, YOU HAVE HEARD THAT HE IS ALSO CHARGED WITH
24 MALICIOUS INJURY TO REAL PROPERTY. AFTER ALL THE EVIDENCE IS HEARD
25 WE ASK THAT YOU FIND THAT THIS CHARGE WAS ALSO NOT CORRECT.

OPENING STATEMENT - MS. BELL

72

1 AS I MENTIONED BEFORE, HE IS NOT HERE AT THIS TRIAL ASKING YOU
2 TO FIND THAT HE IS A PERFECT PERSON OR IF HE'S CORRECT. WE ARE
3 GOING TO COME BACK AND ASK YOU TO FIND THAT THE CHARGES THAT ARE
4 AGAINST HIM TODAY ARE NOT THE CORRECT CHARGES. THANK YOU.

5 MS. BOLEN: THE STATE CALLS THERESA SULLIVAN.

6 THE COURT: MS. SULLIVAN PLEASE COME FORWARD AND BE SWORN.

7 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, THERESA
8 SULLIVAN TESTIFIED AS FOLLOWS:)

9 DIRECT EXAMINATION OF THERESA SULLIVAN BY MS. BOLEN:

10 Q GOOD AFTERNOON, MS. SULLIVAN. COULD YOU PLEASE STATE YOUR
11 FULL NAME FOR THE RECORD?

12 A THERESA MARIE SULLIVAN.

13 Q AND MS. SULLIVAN WHERE DO YOU LIVE?

14 A DONALDS, SOUTH CAROLINA.

15 Q AND IS THAT IN ABBEVILLE COUNTY?

16 A YES. IT IS.

17 Q HOW LONG HAVE YOU LIVED IN DONALDS?

18 A ABOUT TWO YEARS.

19 Q WHAT ADDRESS DO YOU LIVE AT IN DONALDS?

20 A DRIVE.

21 Q IS THAT THE ADDRESS YOU HAVE LIVED AT THE WHOLE TIME THAT YOU
22 HAVE LIVED IN DONALDS?

23 A YES.

24 Q CAN YOU DESCRIBE YOUR HOUSE FOR THE JURY? WHAT SORT OF
25 HOUSE IS IT?

DIRECT EXAMINATION OF THERESA SULLIVAN BY MS. BOLEN

73

- 1 A A SINGLE WIDE MOBILE HOME IN THE COUNTRY.
- 2 Q DO YOU RENT IT OR OWN IT?
- 3 A I RENT.
- 4 Q ARE YOU THE ONLY PERSON ON THE LEASE?
- 5 A YES.
- 6 Q DO YOU KNOW ANTJUAN GREENE?
- 7 A YES.
- 8 Q AND HOW DO YOU KNOW HIM?
- 9 A HE WAS A FORMER BOYFRIEND.
- 10 Q WHEN DID YOU MEET MISTER GREENE?
- 11 A IN MARCH OF 2008.
- 12 Q WHAT WAS THE NATURE OF YOUR RELATIONSHIP IN MARCH OF '08?
- 13 A A BOYFRIEND.
- 14 Q DID THE DEFENDANT EVER MOVE IN WITH YOU?
- 15 A YES.
- 16 Q AND DO YOU RECALL APPROXIMATELY WHEN THAT WAS?
- 17 A AROUND MAY OF 2008.
- 18 Q AND HE MOVED TO YOUR HOUSE IN DONALDS?
- 19 A RIGHT.
- 20 Q DID HE HAVE A KEY TO YOUR HOUSE?
- 21 A NO.
- 22 Q WAS HE ON THE LEASE?
- 23 A NO.
- 24 Q DID HE HAVE ANY PERSONAL BELONGINGS THERE?
- 25 A CLOTHES AND THAT'S IT. SHOES.

DIRECT EXAMINATION OF THERESA SULLIVAN BY MS. BOLEN

74

1 Q CAN YOU STATE APPROXIMATELY HOW LONG HE LIVED THERE?

2 A ABOUT NINE MONTHS.

3 Q I WOULD LIKE TO DIRECT YOUR ATTENTION TO FEBRUARY OF 2009.

4 WERE YOU LIVING WITH THE DEFENDANT, MISTER GREENE, IN

5 FEBRUARY OF 2009?

6 A YES.

7 Q FOR THE WHOLE MONTH OR --

8 A NO. NO.

9 Q OKAY. DO YOU RECALL ABOUT WHEN HE STOPPED LIVING WITH YOU IN
10 YOUR HOUSE?

11 A HE BROKE UP WITH ME FEBRUARY 19TH.

12 Q DID HE LEAVE YOUR HOUSE AT THAT TIME?

13 A YES. I TOOK HIM TO CLINTON, TO HIS FAMILY'S HOUSE. THE NEXT DAY,
14 THE 20TH, I TOOK HIM ALL HIS CLOTHES, ALL HIS SHOES, ALL HIS
15 BELONGINGS.

16 Q SO, HE LEFT ON THE 19TH?

17 A RIGHT.

18 Q AND HE LEFT HIS STUFF IN THE HOUSE?

19 A RIGHT.

20 Q AND ON THE 20TH YOU SAY YOU TOOK -- WHERE DID YOU TAKE HIS
21 CLOTHES AND OTHER BELONGINGS?

22 A TO HIS SISTER'S HOUSE.

23 Q AND WHERE IS THAT?

24 A IN CLINTON.

25 Q DID HE HAVE ANY OTHER BELONGINGS LEFT IN THE HOUSE AFTER YOU

DIRECT EXAMINATION OF THERESA SULLIVAN BY MS. BOLEN

75

- 1 DID THAT?
- 2 A NO.
- 3 Q WHEN WAS THE NEXT TIME YOU SAW THE DEFENDANT AFTER YOU
- 4 DROPPED HIS CLOTHES OFF?
- 5 A WHEN HE KICKED MY DOOR IN AND CAME IN MY HOUSE.
- 6 Q AND DO YOU RECALL THAT DATE?
- 7 A THE 22ND.
- 8 Q DID YOU HAVE ANY SORT OF COMMUNICATION WITH HIM IN BETWEEN,
- 9 WHEN HE LEFT YOUR HOUSE AND MOVED OUT?
- 10 A NO. HE HAD TOOK MY CELL PHONE. THAT WAS MY ONLY WAY. I HAD
- 11 NO HOME PHONE. I HAD NO WAY OF COMMUNICATING WITH HIM.
- 12 Q SO THERE WAS NO COMMUNICATION BETWEEN WHEN HE LEFT --
- 13 A RIGHT.
- 14 Q AND THAT DATE?
- 15 A RIGHT.
- 16 Q NOW, I WOULD LIKE TO TALK ABOUT WHAT HAPPENED ON THE EVENING
- 17 OF THE 22ND. DO YOU KNOW ABOUT WHAT TIME YOU WENT TO BED?
- 18 A ABOUT TEN, TEN-THIRTY.
- 19 Q WAS THERE ANYONE ELSE IN THE HOME WITH YOU?
- 20 A MY TWO-YEAR-OLD SON.
- 21 Q OKAY. WERE YOU WOKEN UP AT ANY POINT AFTER GOING TO BED?
- 22 A WHEN HE CAME BEATING ON MY DOOR.
- 23 Q OKAY. NOW CAN YOU DESCRIBE -- YOU LIVE IN A RURAL AREA OR AN
- 24 URBAN AREA? WHAT SORT OF AREA?
- 25 A IT IS RURAL. IT'S REAL COUNTRY.

DIRECT EXAMINATION OF THERESA SULLIVAN BY MS. BOLEN

76

1 Q SO YOU HEARD KNOCKING ON YOUR DOOR?

2 A YES.

3 Q DID THIS WAKE YOU UP?

4 A I KNOW HE WAS BEATING ON IT AND KICKING IT.

5 Q WHAT DID YOU DO WHEN YOU HEARD THIS? THIS KNOCKING AND
6 BEATING ON YOUR DOOR?

7 A I WENT TO THE DOOR AND I ASKED, "WHO IS IT", AND HE SAID, "LET ME
8 IN" AND, YOU KNOW, HE JUST KEPT BEATING AND KICKING THE DOOR.

9 Q DID YOU RECOGNIZE THE PERSON'S VOICE?

10 A YES.

11 Q AND WAS IT THE VOICE OF THE DEFENDANT?

12 A YES.

13 Q DID YOU LET THE DEFENDANT IN YOUR HOUSE?

14 A NO. I DIDN'T WANT TO.

15 Q WHAT DID YOU DO?

16 A I KNEW SOMETHING WASN'T RIGHT THE WAY HE SOUNDED AND
17 BEATING AND KICKING MY DOOR. YOU KNOW, I WAS SCARED. SO I
18 TRIED SLIDING THE DRYER IN FRONT OF THE DOOR. I GOT IT ABOUT AN
19 INCH OR TWO IN FRONT OF THE DOOR. I HAD THE WASHING MACHINE
20 BESIDE THE DRYER, SO WHEN HE KICKED THE DOOR, IT CAME OPEN
21 AND THEN HE PUSHED THE DRYER SIDEWAYS AND THEN CAME IN.

22 Q OKAY. NOW, WAS YOUR DRYER BASICALLY RIGHT NEXT TO YOUR
23 DOOR?

24 A RIGHT.

25 Q WHEN HE CAME IN, WHAT DID HE DO?

DIRECT EXAMINATION OF THERESA SULLIVAN BY MS. BOLEN

77

- 1 A HE ASKED ME -- AS HE WAS WALKING TOWARD ME, HE WAS ASKING ME
2 HOW WAS I NOT GOING TO LET HIM IN WITH HIS STUFF THERE AND HE
3 PUNCHED ME IN THE EYE AND I FELL BACK AGAINST THE
4 REFRIGERATOR. THEN HE GRABBED ME BY MY HAIR, PULLED ME
5 AROUND TO MY BEDROOM STILL PUNCHING ME AND SLAPPING ME AND
6 PULLING MY HAIR. YOU KNOW, I WOULD FALL TO THE GROUND AND HE
7 WOULD KICK ME. IT JUST WENT ON AND ON. THE ONLY THING I COULD
8 THINK WAS TO GET HIM OUT OF THE HOUSE. YOU KNOW, MY TWO-
9 YEAR-OLD SON WAS IN THERE. I DIDN'T WANT HIM TO WAKE UP TO
10 THIS SO, YOU KNOW, IT LASTED PROBABLY TEN OR FIFTEEN MINUTES
11 IN THE HOUSE. I FINALLY GET HIM OUTSIDE TO WHERE HE'S STILL
12 HITTING ME AND, YOU KNOW, AND I THOUGHT THAT WHOEVER
13 BROUGHT HIM THERE WOULD BE OUT THERE TO STOP IT, BUT I DIDN'T
14 SEE ANYONE.
- 15 Q OKAY. STOP RIGHT THERE AND LET ME KIND OF BRING YOU BACK SO
16 WE CAN BREAK IT UP KIND OF PIECE BY PIECE.
- 17 A OKAY.
- 18 Q YOU SAY HE WAS KNOCKING ON YOUR DOOR. WAS IT A LOUD KNOCK?
19 WAS IT QUIET?
- 20 A IT WAS POUNDING, KICKING.
- 21 Q AND YOU SAY HE KICKED THE DOOR. HOW DO YOU KNOW HE KICKED
22 IT? WAS THERE --
- 23 A YOU COULD HEAR HIM, YOU KNOW, KICKING THE DOOR.
- 24 Q WERE YOU TRYING TO MOVE THE DRYER AT THE SAME TIME HE WAS
25 POUNDING AND TRYING TO KICK?

DIRECT EXAMINATION OF THERESA SULLIVAN BY MS. BOLEN

78

- 1 A NO. NO.
- 2 Q WAS YOUR DOOR DAMAGED?
- 3 A YES.
- 4 MS. BOLEN: YOUR HONOR, PERMISSION TO APPROACH THE WITNESS?
- 5 THE COURT: PROCEED.
- 6 Q MS. SULLIVAN I AM GOING TO HAND UP TO YOU WHAT HAS BEEN
- 7 MARKED FOR IDENTIFICATION PURPOSES STATE'S EXHIBIT #27. DO
- 8 YOU RECOGNIZE WHAT IS IN THAT PICTURE?
- 9 A YES.
- 10 Q AND CAN YOU DESCRIBE WHAT THAT IS?
- 11 A IT IS THE DOOR, THE INSIDE PART OF THE DOOR WHERE IT LATCHES.
- 12 AND THE DRYER.
- 13 Q AND IS THAT PICTURE A FAIR AND ACCURATE DEPICTION OF WHAT
- 14 YOUR DOOR AND DRYER LOOKED LIKE AFTER THE DEFENDANT KICKED
- 15 IT IN?
- 16 A YES.
- 17 Q YOUR HONOR, AT THIS TIME THE STATE MOVES TO ADMIT THIS
- 18 PICTURE INTO EVIDENCE AND ALSO PUBLISH IT TO THE JURY.
- 19 MS. BELL: NO OBJECTION, YOUR HONOR.
- 20 THE COURT: WITHOUT OBJECTION. WILL THIS BE STATE'S EXHIBIT #1
- 21 OR #27?
- 22 MS. BOLEN: IT'S #27.
- 23 THE COURT: ALL RIGHT. THEY ALL OUGHT TO BE PRE-MARKED IF THEY
- 24 AREN'T ALREADY.
- 25 MS. BOLEN: THEY HAVE ALL BEEN PRE-MARKED, YOUR HONOR.

DIRECT EXAMINATION OF THERESA SULLIVAN BY MS. BOLEN

79

1 THE COURT: LADIES AND GENTLEMEN, THERE WERE NUMEROUS
2 EXHIBITS THAT WERE DISCUSSED BY THE PARTIES AND BETWEEN THEM
3 THEY MARKED AND NUMBERED THEM ALL IN A PARTICULAR ORDER WITH MY
4 COURT REPORTER AND SO Y'ALL WILL GET TO VIEW THE ONES THEY ARE
5 ABLE TO USE AND SO THIS IS PRE-NUMBERED #27, THEY DIDN'T SKIP THE
6 PREVIOUS TWENTY-SIX. THEY MAY GO BACK TO #2 OR #3 OR #4. SO THE
7 MARK IS VIRTUALLY HOW MY COURT REPORTER NUMBERS IT. ALL RIGHT,
8 STATE'S #27 IS NOW BEING ENTERED INTO EVIDENCE.

9 (WHEREUPON, A PHOTOGRAPH IS ENTERED INTO EVIDENCE AS
10 STATE'S EXHIBIT #27, WITHOUT OBJECTION)

11 Q MS. SULLIVAN, JUST TO CLARIFY FOR THE JURY, THIS IS THE LOCK ON
12 YOUR DOOR. IS THAT CORRECT? (DISPLAYS PHOTOGRAPH ON LARGE
13 SCREEN)

14 A THAT IS THE PART WHERE IT LATCHES.

15 Q AND THIS IS YOUR DRYER?

16 A YES.

17 Q AND THIS IS, WHAT EXACTLY?

18 A THAT IS THE INSIDE OF THE DOOR THAT IT LATCHES INTO WHEN THE
19 DOOR SHUTS AND THAT LITTLE PIECE GOES INTO THAT HOLE.

20 Q MS. SULLIVAN, I AM GOING TO HAND UP TO YOU ANOTHER PICTURE
21 THAT HAS BEEN MARKED AS STATE'S EXHIBIT #26. DO YOU RECOGNIZE
22 THAT PICTURE?

23 A YES.

24 Q AND WHAT IS THAT OF?

25 A IT IS THE INSIDE OF THE DOOR, THE ACTUAL DOOR.

DIRECT EXAMINATION OF THERESA SULLIVAN BY MS. BOLEN

80

1 Q AND IS THAT A FAIR AND ACCURATE DEPICTION OF WHAT THE INSIDE
2 OF YOUR DOOR LOOKED LIKE AFTER THE DEFENDANT KICKED IT IN?

3 A YES.

4 Q YOUR HONOR, AT THIS TIME THE STATE MOVES TO ADMIT EXHIBIT #26
5 AND PUBLISH IT TO THE JURY.

6 MS. BELL: NO OBJECTION, YOUR HONOR.

7 THE COURT: STATE'S EXHIBIT #26 ADMITTED WITHOUT OBJECTION.

8 (WHEREUPON, A PHOTOGRAPH IS ENTERED INTO EVIDENCE AS
9 STATE'S EXHIBIT #26, WITHOUT OBJECTION)

10 Q SO, MS. SULLIVAN, JUST TO CLARIFY FOR THE JURY, THIS IS THE LOCK
11 OF YOUR DOOR? (DISPLAYS PHOTOGRAPH ON LARGE SCREEN)

12 A YES.

13 Q I AM GOING TO HAND YOU TWO OTHER PICTURES MARKED AS STATE'S
14 #29 AND STATE'S #25. LOOKING FIRST AT #25. CAN YOU DESCRIBE
15 WHAT IS IN THAT PICTURE? BUT FIRST, DO YOU RECOGNIZE THAT
16 PICTURE?

17 A YES.

18 Q PLEASE DESCRIBE WHAT IS IN IT, PLEASE.

19 A THE DRYER THAT IS AT MY BACK DOOR.

20 Q OKAY, AND IS THE DOOR – IS THERE ANY DAMAGE TO THAT DOOR?

21 A YES. IT'S BENT ALL THE WAY ACROSS.

22 Q WAS THAT BENDING OF THE DOOR PRESENT BEFORE?

23 A NO.

24 Q IS THAT A FAIR AND ACCURATE DEPICTION OF WHAT THAT DOOR AND
25 DRYER LOOKED LIKE AFTER THE DEFENDANT KICKED IT IN?

DIRECT EXAMINATION OF THERESA SULLIVAN BY MS. BOLEN

81

1 A YES.

2 Q AND NOW MOVING TO STATE'S #29. WOULD YOU PLEASE DESCRIBE
3 THAT FOR THE JURY?

4 A BLOOD ON THE DOOR. THE SCREEN DOOR AT THE BOTTOM KICKED IN.
5 BLOOD ON THE WALLS.

6 Q IS THAT A FAIR AND ACCURATE DEPICTION OF WHAT YOUR DOOR
7 LOOKED LIKE AFTER THE DEFENDANT KICKED IT IN? (DISPLAYS
8 PHOTOGRAPH ON LARGE SCREEN)

9 A YES.

10 Q SPECIFICALLY, THAT MARK, WERE THOSE PRESENT PRIOR TO THIS
11 INCIDENT?

12 A NO.

13 Q YOUR HONOR, AT THIS TIME THE STATE MOVES TO ADMIT STATE'S #25
14 AND #29 AND ALSO ASKS PERMISSION TO PUBLISH TO THE JURY.

15 MS. BELL: WITHOUT OBJECTION, YOUR HONOR.

16 THE COURT: #29 AND #25 ADMITTED WITHOUT OBJECTION.

17 (WHEREUPON, TWO PHOTOGRAPHS ARE ENTERED INTO
18 EVIDENCE AS STATE'S EXHIBITS #25 AND #29, WITHOUT OBJECTION)

19 Q OKAY, MS. SULLIVAN, THIS IS YOUR DRYER AND WITH IT BEING JUTTED
20 OUT, IS THAT USUALLY HOW IT IS? WHERE IT IS KIND OF AT AN ANGLE?

21 A NO.

22 Q AND WHY IS IT THAT WAY IN THIS PICTURE?

23 A WHEN I TRIED TO SLIDE IT IN FRONT OF THE DOOR, AS HE KICKED THE
24 DOOR IN THEN HE HAD TO PUSH THE DRYER SIDEWAYS WITH THE
25 DOOR TO GET IT TO, TO GET THE DOOR OPEN.

DIRECT EXAMINATION OF THERESA SULLIVAN BY MS. BOLEN

82

1 Q AND THIS MARK ON THE DOOR. WAS THAT PRESENT BEFORE THE
2 DEFENDANT KICKED THE DOOR IN? (DISPLAYING ON LARGE SCREEN)

3 A NO.

4 Q AND SO THIS IS YOUR SCREEN DOOR?

5 A YES.

6 Q AND WAS THAT DENT PRESENT BEFORE THE DEFENDANT KICKED YOUR
7 DOOR IN?

8 A NO.

9 Q AND THIS PICTURE IS ALSO OF YOUR DOOR?

10 A THAT'S THE WALL.

11 Q THAT IS THE WALL. AND ON THIS PICTURE HERE, WERE THESE MARKS
12 HERE PRIOR TO THE DEFENDANT KICKING YOUR DOOR IN?

13 A NO.

14 Q SO, ONCE THE DEFENDANT KICKED YOUR DOOR IN AND YOU SAY HE
15 STRUCK YOU, WHERE ON YOUR BODY DID HE STRIKE YOU?

16 A HE PUNCHED ME IN MY EYE.

17 Q WHAT DID HE PUNCH YOU WITH?

18 A WITH HIS FIST.

19 Q WAS IT OPEN OR CLOSED?

20 A CLOSED.

21 Q WHAT HAPPENED AT THAT POINT?

22 A I FELL BACK AGAINST THE REFRIGERATOR AND LIKE I SAID, HE
23 GRABBED ME BY MY HAIR AND PULLED ME AROUND TO THE BEDROOM.

24 Q WHERE IS YOUR BEDROOM IN RELATION TO WHERE THE
25 REFRIGERATOR IS?

DIRECT EXAMINATION OF THERESA SULLIVAN BY MS. BOLEN

83

- 1 A IT SITS RIGHT AROUND THE CORNER A COUPLE OF STEPS, AND HE
2 CONTINUED BEATING ME, YOU KNOW, AND PUNCHING ME INTO MY
3 FACE, ARMS, PULLING ME BY MY HAIR. I FALL. HE KICKED ME,
4 STOMPED ME. I STAND BACK UP AND HE REALLY PULLS ME BACK UP
5 AND CONTINUES HITTING ON ME.
- 6 Q CAN YOU TELL THE JURY SPECIFICALLY WHERE ON YOUR BODY HE
7 STRUCK YOU OR KICKED YOU AND HOW?
- 8 A BOTH OF MY EYES, HE PUNCHED ME IN BOTH OF MY EYES. THEY WERE
9 SWOLLEN SHUT. MY NOSE WAS BROKE. I WAS BLEEDING
10 EVERYWHERE. I HAD FOUR STITCHES UNDER MY RIGHT EYE FROM A
11 PUNCH, I'M ASSUMING. SCRAPES ON MY NECK AND ARMS FROM
12 STOMPING ME AND --
- 13 Q I'M SORRY, WHEN YOU SAY HE STOMPED YOU, WERE YOU LYING ON
14 THE GROUND AT THAT POINT?
- 15 A YES.
- 16 Q AND HOW DID YOU GET TO THE GROUND?
- 17 A FROM HIM PUNCHING ME AND I FELL DOWN.
- 18 Q AND WOULD HE STOMP YOU WITH HIS FOOT OR ANOTHER PART OF THE
19 BODY?
- 20 A HIS FOOT.
- 21 Q AND WHEN HE WOULD STOMP YOU, WOULD HE PUT HIS FOOT ON TOP
22 OF YOUR BODY OR WAS HE KICKING OR BOTH?
- 23 A I REMEMBER HIM STOMPING THE SIDE OF MY HEAD. HIS FOOT AGAINST
24 MY HEAD. HE PUT HIS FOOT UP UNDER MY NECK AND, YOU KNOW,
25 JUST PUSHED IT REAL HARD.

DIRECT EXAMINATION OF THERESA SULLIVAN BY MS. BOLEN

84

1 Q WAS HE WEARING SHOES AT THIS TIME?

2 A YES.

3 Q DO YOU RECALL THE KIND OF SHOES?

4 A I'M NOT SURE. TENNIS SHOES.

5 Q DID YOU NOTICE YOURSELF BLEEDING AT ALL DURING THIS?

6 A OH, YES.

7 Q OKAY.

8 A YEAH, WHEN WE WERE RIGHT THERE AT THE BEDROOM MIRROR, I

9 SEEN MYSELF JUST COVERED WITH BLOOD. DIDN'T KNOW EXACTLY

10 WHERE IT WAS COMING FROM AT THAT TIME BUT WAS POURING

11 BLOOD, BLOOD DRIPPING, THE WALLS COVERED WITH BLOOD, THE

12 BED.

13 Q SO WHEN YOU SAY YOU SAW YOURSELF IN THE MIRROR COVERED IN

14 BLOOD, CAN YOU SAY SPECIFICALLY WHAT PART OF YOUR BODY OR

15 PARTS OF YOUR BODY WERE COVERED?

16 A MY FACE WAS COVERED WITH BLOOD. MY HAIR, JUST YOU KNOW, HAD

17 BLOOD IN IT. CLOTHES, BLOOD ALL OVER THE FRONT OF MY CLOTHES.

18 Q AND WHAT WERE YOU WEARING AT THE TIME?

19 A PAJAMAS.

20 Q DID ANY OF THE BLOOD GET ON ANYTHING IN THE HOUSE?

21 A YES. IT WAS ALL OVER THE WALLS, MY BED, THE FLOORS, THE DRYER.

22 EVERYWHERE FROM THE BACK DOOR TO THE BEDROOM.

23 Q SO WHEN HE HIT AND KICKED AND STOMPED YOU, THIS WAS

24 HAPPENING IN THE FRONT ROOM AS WELL AS THE BEDROOM?

25 A YES. FROM THE BACK DOOR THROUGH THE HALLWAY, THE KITCHEN,

DIRECT EXAMINATION OF THERESA SULLIVAN BY MS. BOLEN

85

- 1 AROUND THE CORNER TO MY BEDROOM.
- 2 Q CAN YOU ESTIMATE, IF YOU ARE ABLE, ABOUT HOW LONG THIS
- 3 HAPPENED INSIDE THE HOUSE?
- 4 A I WOULD SAY TEN OR FIFTEEN MINUTES.
- 5 Q DID YOU HAVE A PHONE SO YOU COULD CALL FOR HELP?
- 6 A I DIDN'T. HE TOOK MY PHONE.
- 7 Q DID YOU HAVE A LAND LINE?
- 8 A NO.
- 9 Q WAS THERE ANYONE NEAR LIKE NEXT DOOR NEIGHBORS WHERE, YOU
- 10 KNOW -
- 11 A NOT CLOSE. NO.
- 12 Q WERE YOU IN FEAR DURING THIS?
- 13 A YES.
- 14 Q WERE YOU ABLE TO GET OUTSIDE OF THE HOUSE?
- 15 A YES, YOU KNOW, FINALLY. AND I WAS HOPING WHOEVER BROUGHT
- 16 HIM THERE WOULD BE OUTSIDE. THAT WAS, YOU KNOW, MY HOPE TO
- 17 GET HIM OUT OF THE HOUSE, YOU KNOW, SO MY SON WOULDN'T WAKE
- 18 UP TO THIS. SO, WE EVENTUALLY MADE OUR WAY OUTSIDE.
- 19 Q OKAY. YOU SAY YOU SAW YOURSELF IN THE MIRROR. DID YOU ALSO,
- 20 AS A RESULT OF THIS, HIM HITTING, PUNCHING, KICKING YOU, DID YOU
- 21 HAVE ANY MARKS OR BRUISES OR INJURIES IN THE DAYS AFTER THIS?
- 22 A YES.
- 23 Q OKAY. CAN YOU DESCRIBE, YOU KNOW, A FEW DAYS AFTER, WHAT
- 24 YOUR INJURIES WERE?
- 25 A BOTH OF MY EYES WERE SWOLLEN SHUT. MY NOSE WAS SWOLLEN.

DIRECT EXAMINATION OF THERESA SULLIVAN BY MS. BOLEN

86

1 LIKE I SAID, IT WAS BROKE, FRACTURED. BRUISES UP AND DOWN MY
2 ARMS, MY CHEST.

3 Q DO YOU KNOW ABOUT HOW LONG THOSE INJURIES AND BRUISES
4 LASTED AFTER?

5 A IT TOOK A COUPLE OF WEEKS TO BE GONE.

6 **MS. BOLEN:** BEG THE COURTS INDULGENCE, YOUR HONOR. (MS.
7 BOLEN HANDS MS. BELL A DOCUMENT) YOUR HONOR, PERMISSION TO
8 APPROACH THE WITNESS.

9 **THE COURT:** YES, MA'AM.

10 **MS. BOLEN:** THANK YOU, YOUR HONOR.

11 Q MS. SULLIVAN, I AM HANDING TO YOU WHAT HAS BEEN PREVIOUSLY
12 MARKED FOR IDENTIFICATION PURPOSES AS STATE'S #31, WHICH
13 CONTAINS THREE PICTURES. DO YOU RECOGNIZE THOSE PICTURES?

14 A YES.

15 Q ANS WHAT ARE THEY OF?

16 A MY EYE AND MY LEG.

17 Q THAT'S BOTH OF YOUR LEGS?

18 A YES.

19 Q AND DO YOU KNOW ABOUT HOW LONG AFTER THE 22ND THESE
20 PICTURES WERE TAKEN, APPROXIMATELY?

21 A TWO OR THREE DAYS, I THINK.

22 Q AND ARE THOSE PICTURES A FAIR AND ACCURATE DEPICTION OF WHAT
23 YOUR EYE AND YOUR LEGS LOOKED LIKE TWO OR THREE DAYS AFTER?

24 A YES.

25 **MS. BOLEN:** YOUR HONOR, THE STATE MOVES TO ADMIT #31 AS

DIRECT EXAMINATION OF THERESA SULLIVAN BY MS. BOLEN

87

1 EVIDENCE AND PUBLISH TO THE JURY?

2 MS. BELL: NO OBJECTION, YOUR HONOR.

3 THE COURT: #31 IN EVIDENCE WITHOUT OBJECTION.

4 (WHEREUPON, THREE PHOTOGRAPHS ARE ENTERED INTO EVIDENCE
5 AS STATE'S EXHIBIT #31, WITHOUT OBJECTION.)

6 Q SO THESE ARE BRUISES ON YOUR LEGS? IS THAT CORRECT?

7 (DISPLAYING PHOTOGRAPHS ON LARGE SCREEN)

8 A YES.

9 Q OKAY. AND IT'S SORT OF HARD TO SEE WITH THIS LIGHT. IS THAT
10 YOUR EYE, BLACK?

11 A YES.

12 Q ALSO HANDING UP TO YOU WHAT HAS BEEN MARKED AS STATE'S #32.
13 DO YOU RECOGNIZE THAT -- THOSE PHOTOGRAPHS?

14 A YES.

15 Q AND CAN YOU PLEASE DESCRIBE THEM?

16 A THOSE ARE MORE BRUISES ON MY LEGS.

17 Q IS THAT -- WAS THAT TAKEN SEVERAL DAYS AFTER?

18 A YES. THAT IS TWO OR THREE DAYS LATER.

19 Q THAT IS A FAIR AND ACCURATE DEPICTION OF WHAT YOUR LEGS
20 LOOKED LIKE AFTER?

21 A YES.

22 Q YOUR HONOR, THE STATE MOVES TO ADMIT #31 INTO EVIDENCE AND
23 PUBLISH IT TO THE JURY.

24 MS. BELL: WITHOUT OBJECTION, YOUR HONOR.

25 COURT REPORTER: #32.

DIRECT EXAMINATION OF THERESA SULLIVAN BY MS. BOLEN

88

1 MS. BOLEN: I'M SORRY. #32.

2 THE COURT: YOU HAVE #32?

3 MS. BOLEN: YES, SIR, THAT IS THE ONE I AM PUBLISHING, YOUR HONOR.

4 THE COURT: OKAY, WITHOUT OBJECTION.

5 (WHEREUPON, TWO PHOTOGRAPHS ARE ENTERED INTO EVIDENCE AS

6 STATE'S EXHIBIT #32, WITHOUT OBJECTION)

7 Q MS. SULLIVAN, THOSE ARE MORE BRUISES TO YOUR LEGS AND AGAIN
8 ANOTHER BRUISE TO YOUR LEG? (DISPLAYING ON LARGE SCREEN)

9 A YES.

10 Q MS. SULLIVAN, I AM HANDING YOU UP A SERIES OF PHOTOGRAPHS
11 MARKED STATE'S #11, #12, #13, AND #14. COULD YOU PLEASE TAKE A
12 LOOK AT THEM AND TELL ME IF YOU RECOGNIZE THESE PICTURES?

13 A YES. THAT IS A BRUISE ON MY LEFT ARM. A BIG BRUISE ON MY RIGHT
14 ARM. MY FACE WHERE BOTH MY EYES WERE BLACK. STITCHES IN MY
15 EYE. MY CHEST. A BUNCH OF BRUISES ON MY CHEST.

16 Q AND IS THIS WHAT YOU LOOKED LIKE SEVERAL DAYS AFTER THE
17 DEFENDANT —

18 A YES.

19 Q THANK YOU. IS THIS A FAIR AND ACCURATE DEPICTION OF HOW YOU
20 LOOKED SEVERAL DAYS AFTER?

21 A YES.

22 MS. BOLEN: YOUR HONOR, THE STATE MOVES TO ADMIT INTO
23 EVIDENCE AND PUBLISH TO THE JURY.

24 MS. BELL: WITHOUT OBJECTION, YOUR HONOR.

25 THE COURT: WHAT WERE THOSE NUMBERS?

DIRECT EXAMINATION OF THERESA SULLIVAN BY MS. BOLEN

89

1 MS. BOLEN: #11, #12, #13, AND #14.

2 THE COURT: EXHIBITS #11, #12, #13, AND #14 ADMITTED WITHOUT
3 OBJECTION.

4 (WHEREUPON, FOUR PHOTOGRAPHS ARE ADMITTED INTO EVIDENCE AS
5 STATE'S EXHIBITS #11, #12, #13 AND #14, WITHOUT OBJECTION.)

6 Q IS THAT YOUR ARM? ONE OF THE BRUISES ON YOUR ARM?

7 (DISPLAYING PHOTOGRAPHS ON LARGE SCREEN)

8 A YES.

9 Q YOUR OTHER ARM, A BRUISE?

10 A YES.

11 Q THIS SHOWS TWO BLACK EYES AND SOME STITCHES?

12 A YES.

13 Q AND THIS IS SOME BRUISING TO YOUR CHEST?

14 A YES.

15 Q YOU ALSO MENTIONED THAT WHILE YOU WERE BEING HIT AND KICKED
16 BY THE DEFENDANT, THAT YOU BLED ON ITEMS IN YOUR HOUSE. CAN
17 YOU DESCRIBE WHERE IN YOUR HOUSE YOU BLED?

18 A BLOOD WAS EVERYWHERE. YOU KNOW, FROM HE HIT ME AT MY
19 REFRIGERATOR IN THE KITCHEN, MY FIRST HIT, WENT INTO THE
20 BEDROOM, MY CARPET, MY BEDSPREAD, THE WALLS, DRESSER.
21 BLOOD WAS JUST EVERYWHERE AND WHEN I WENT BACK OUT, BLOOD
22 WAS ALL OVER THE KITCHEN, THE HALLWAY, THE DRYER, THE BACK
23 DOOR.

24 Q HOW WERE YOU ABLE TO GET OUT OF THE HOUSE?

25 A HE WAS GETTING WORKER'S COMP. CHECKS MAILED TO MY ADDRESS

1 AND I HAD GONE -- THAT WAS A SATURDAY -- I HAD GONE FOR THE MAIL
2 AND IT WAS STILL IN MY CAR AND SO I HAD TOLD HIM THE CHECKS
3 WERE IN THE CAR, YOU KNOW, TRYING TO GET HIM TO LEAVE MY
4 HOUSE AND GO OUTSIDE. I GAVE HIM MY CAR KEYS AND WE HEADED
5 OUTSIDE.

6 Q AND BRINGING THIS BACK UP FOR A MINUTE. YOU STATED YOU HAD
7 GONE TO BED AROUND TEN. DO YOU KNOW ABOUT WHAT TIME THIS
8 WAS HAPPENING?

9 A IT WAS TWELVE-THIRTY, ONE O'CLOCK IN THE MORNING.

10 Q ONCE YOU GOT OUTSIDE, WAS THERE ANYONE OUTSIDE?

11 A NO. NOT THAT I SEEN.

12 Q WHAT DID YOU DO ONCE YOU GOT OUTSIDE?

13 A HE WAS STILL HITTING ME AND I REALLY DON'T KNOW WHAT I COULD
14 DO AT THAT POINT, YOU KNOW. MY SON WAS IN THE HOUSE. I
15 COULDN'T LEAVE. YOU KNOW, I COULDN'T TRY TO RUN. SO, YOU
16 KNOW, I JUST BEGGED HIM TO STOP, YOU KNOW, AND HE WOULDN'T,
17 YOU KNOW, AND THEN --

18 Q DID HE CONTINUE TO HIT YOU AS YOU WERE EXITING THE HOUSE?

19 A YES.

20 Q WAS HE HOLDING ON TO YOU IN ANYWAY?

21 A YES. HE HAD ME BY MY HAIR.

22 Q OKAY. WHERE WAS HE HITTING YOU AND WITH WHAT?

23 A IN MY FACE WITH HIS FIST. AND HE WAS PULLING ME AROUND BY MY
24 HAIR. AND THEN I SEEN SOMEONE COMING TOWARDS US FROM
25 AROUND IN FRONT OF THE TRAILER. WE WAS AT THE BACK OF THE

DIRECT EXAMINATION OF THERESA SULLIVAN BY MS. BOLEN

91

1 TRAILER AND IT WAS HIS BROTHER. SO, YOU KNOW, I GOT AWAY FROM
2 ANTJUAN AND RAN TO HIS BROTHER AND ASKED HIM TO HELP ME. SO
3 HE WENT OVER AND GRABBED ANTJUAN AND THEY FELL TO THE
4 GROUND AND AS THEY WERE ON THE GROUND FIGHTING, I WENT TO
5 THE CAR THAT HE HAD CAME FROM IN FRONT OF THE HOUSE AND HIS
6 BROTHER'S GIRLFRIEND GAVE ME A PHONE TO CALL 9-1-1.

7 Q DID YOU CALL 9-1-1 AT THAT TIME?

8 A YES.

9 Q WHAT DID YOU DO ONCE YOU WERE IN THAT CAR?

10 A MY SON HAD CAME OUT SOMETIME DURING THIS AND HE WAS ON THE
11 BACK PORCH SO ANTJUAN'S BROTHER WENT AND GOT MY SON OFF
12 THE BACK PORCH AND WE ALL GOT IN THE CAR. ANTJUAN HAD WENT
13 TOWARDS MY CAR - I DON'T KNOW. BUT WE GOT INTO HIS BROTHER'S
14 CAR AND THEY STARTED TO LEAVE AND THEN I SAID, "NO, I CAN'T
15 LEAVE, JUST TAKE ME TO MY PARENT'S HOUSE." SO, THEY TOOK ME UP
16 TO MY PARENT'S HOUSE.

17 Q AND WHERE IS YOUR PARENT'S HOUSE IN RELATION TO YOUR HOUSE?

18 A IT'S ACROSS THE ROAD.

19 Q ABOUT HOW FAR? CAN YOU SEE IT FROM YOUR HOUSE?

20 A YEAH. IT IS ABOUT AN EIGHTH OF A MILE, MAYBE A LITTLE MORE, WITH
21 A LONG DRIVEWAY.

22 Q WHAT HAPPENED ONCE YOU GOT TO YOUR PARENTS HOUSE?

23 A MY DAD AND BROTHER AND MY GIRLFRIEND WAS OUTSIDE. WE PULLED
24 UP AND I WAS COVERED WITH BLOOD AND MY DAD ASKED WHAT
25 HAPPENED AND I SAID HE BEAT ME UP, ANTJUAN BEAT ME UP, AND HIS

DIRECT EXAMINATION OF THERESA SULLIVAN BY MS. BOLEN

92

1 BROTHER GOT OUT HOLDING MY SON SO --

2 Q SO, THAT WAS AFTER YOU HAD CALLED 9-1-1?

3 A RIGHT.

4 Q WAS 9-1-1 THERE?

5 A THEY WAS ON THEIR WAY. THEY PULLED IN BEHIND SHORTLY AFTER
6 WE HAD GOT THERE, THEY PULLED IN. BUT MY BROTHER GOT MY SON
7 AND WE ALL WENT INSIDE. HIS BROTHER STAYED OUTSIDE AND HIS
8 BROTHER'S GIRLFRIEND WAS OUTSIDE. THE COPS CAME IN BEHIND
9 THEM.

10 Q AND WERE YOU UPSET WHEN YOU WERE AT YOUR PARENT'S HOUSE?

11 A YES.

12 Q OKAY. AND WERE YOU STILL IN FEAR?

13 A YES. ANTJUAN WAS STILL AT MY HOUSE.

14 Q OKAY. AND DID AN AMBULANCE ARRIVE AT YOUR PARENT'S HOUSE?

15 A YES.

16 Q DID AN AMBULANCE TAKE YOU TO THE HOSPITAL?

17 A YES.

18 Q DO YOU RECALL WHICH HOSPITAL YOU WENT TO?

19 A ABBEVILLE.

20 Q AND WHAT HAPPENED ONCE YOU GOT TO THE HOSPITAL? DID YOU GO
21 TO THE EMERGENCY ROOM?

22 A YES.

23 Q DO YOU RECALL ABOUT HOW LONG YOU WERE AT THE HOSPITAL?

24 A MAYBE FOUR OR FIVE HOURS, I BELIEVE.

25 Q DID YOU RECEIVE ANY TREATMENT WHILE YOU WERE AT THE

DIRECT EXAMINATION OF THERESA SULLIVAN BY MS. BOLEN

93

1 HOSPITAL? DID YOU HAVE ANY X-RAYS?

2 A YES. AND SUTURES. A R-A-I. THAT WAS ABOUT IT.

3 Q OKAY. DID YOU -- AFTER BEING RELEASED FROM THE HOSPITAL, HOW
4 DID YOU FEEL PHYSICALLY?

5 A I WAS REAL SORE AND COULDN'T EVEN FACE MY KID, YOU KNOW,
6 BECAUSE MY EYES WERE SWOLLEN SHUT AND --

7 Q WERE YOU STILL IN ANY PAIN?

8 A OH YEAH. OH YEAH. IT HURT AND I WAS SORE ALL OVER, COULDN'T
9 SEE WITH MY EYES SWOLLEN SHUT.

10 Q DID YOU HAVE ANY HEADACHES?

11 A YES. YES, I STARTED GETTING DIZZY AND SOME HEADACHES, SO I
12 WENT BACK TO THE EMERGENCY ROOM TWO DAYS LATER AND THEY
13 DID MORE X-RAYS, CAT SCAN. THAT IS WHEN THEY FOUND OUT THAT
14 MY NOSE HAD BEEN FRACTURED. THEY DIDN'T SEE THAT PREVIOUSLY.

15 Q AND MS. SULLIVAN, DO YOU RECOGNIZE -- DO YOU SEE IN THE
16 COURTROOM THE PERSON WHO KICKED DOWN YOUR DOOR AND
17 KICKED AND PUNCHED AND STOMPED ON YOU IN YOUR HOUSE? DO
18 YOU SEE HIM HERE IN THE COURT?

19 A YES.

20 Q CAN YOU PLEASE POINT HIM OUT TO THE JURY?

21 A RIGHT THERE. (INDICATING)

22 Q MAY THE RECORD PLEASE REFLECT THE VICTIM POINTED TO THE
23 DEFENDANT.

24 THE COURT: THE RECORD WILL SO REFLECT.

25 MS. BOLEN: YOUR HONOR, MAY I HAVE A MOMENT. I BEG THE COURTS

CROSS EXAMINATION OF THERESA SULLIVAN BY MS. BELL

94

1 INDULGENCE, PLEASE.

2 THE COURT: YES, MA'AM.

3 MS. BOLEN: YOUR HONOR, I HAVE NO FURTHER QUESTIONS.

4 Q MS. SULLIVAN, WILL YOU PLEASE ANSWER ANY QUESTIONS MS. BELL
5 OR MISTER GROSE MAY HAVE FOR YOU?

6 **CROSS-EXAMINATION OF TERESA SULLIVAN BY MS. BELL**

7 Q MS. SULLIVAN, YOU TESTIFIED EARLIER THAT WHEN MISTER GREENE
8 WAS THERE, HE HAD ENTERED THE HOUSE AND ASKED YOU A
9 QUESTION BEFORE EVEN APPROACHING YOU. CORRECT?

10 A YES.

11 Q HE WAS ALREADY IN THE HOUSE WHEN HE ASKED YOU A QUESTION
12 AND IT WASN'T UNTIL AFTER THAT QUESTION WAS ASKED THAT YOU
13 WERE TOUCHED. CORRECT?

14 A RIGHT.

15 Q OKAY. ADDITIONALLY, YOU MENTIONED ALSO THAT HE WAS RECEIVING
16 WORKER'S COMPENSATION CHECKS THERE. CORRECT?

17 A YES.

18 Q AND YOU HAD SOME OF THOSE CHECKS IN YOUR CAR?

19 A YES.

20 Q AND YOU HAD ALSO MENTIONED – YOUR PAST RELATIONSHIP WITH HIM
21 HAD LASTED A GOOD NINE MONTHS ALMOST, YOU SAID, OR AT LEAST
22 ROUGHLY NINE MONTHS?

23 A WE WERE TOGETHER ELEVEN.

24 Q OKAY. ELEVEN. HE LIVED WITH YOU NINE MONTHS.

25 A YES.

CROSS EXAMINATION OF THERESA SULLIVAN BY MS. BELL

95

- 1 Q SO, DURING THE TIME HE LIVED WITH YOU, HE WOULD STAY AT HIS
2 MOM'S OR HIS SISTER'S HOUSE OCCASIONALLY?
- 3 A YES.
- 4 Q OKAY. SOMETIMES ANYWHERE FROM AN HOUR TO A COUPLE OF
5 DAYS?
- 6 A NEVER A COUPLE OF DAYS.
- 7 Q ONE TO TWO DAYS, MAYBE, AT TOPS?
- 8 A MAYBE A NIGHT.
- 9 Q OKAY. AND THEN HE WOULD COME HOME?
- 10 A RIGHT.
- 11 Q OKAY. YOU ALSO SAID IF YOU GOT INTO AN ARGUMENT HE WOULD DO
12 THE SAME THING.
- 13 A YES.
- 14 Q TO LET THINGS COOL OFF?
- 15 A UH-HUH.
- 16 Q THEN HE WOULD GET TO COME RIGHT BACK AND –
- 17 A IF WE HAD TALKED ABOUT IT. YEAH.
- 18 Q ONE MOMENT. THIS WAS A COUPLE OF NIGHTS AFTER YOU SAY THAT
19 Y'ALL BROKE UP?
- 20 A RIGHT.
- 21 Q YOU TOOK HIM HOME TO STAY THE NIGHT AT HIS HOUSE?
- 22 A HE BROKE UP WITH ME.
- 23 Q YOU HAD ALSO MENTIONED EARLIER IN TESTIMONY THAT YOU WENT
24 TO THE BEDROOM AND BACK OUT BEFORE HEADING OUT. CORRECT?
- 25 A YES.

RE-DIRECT EXAMINATION OF THERESA SULLIVAN BY MS. BOLEN

96

1 Q (MS. BELL CONFERS WITH MR. GROSE) JUST ONE FINAL QUESTION. THE
2 PICTURES THAT WERE SHOWN TO YOU EARLIER BY THE SOLICITOR,
3 THOSE WERE TAKEN, THOSE WERE TAKEN A FEW DAYS AFTER THIS
4 INCIDENT? THE POLICE OFFICER TOOK PHOTOS OF THE HOUSE.
5 CORRECT?

6 A YES.

7 Q AND THE PHOTOS THEY TOOK WERE -- WELL, I GUESS YOU WOULDN'T
8 KNOW FOR SURE, BUT THEY WERE PROBABLY SOONER THAN YOURS
9 THOUGH?

10 A YES.

11 Q AND THEN YOURS WERE, WHAT, THREE OR FOUR DAYS LATER? OR A
12 WEEK LATER?

13 A TWO OR THREE.

14 MS. BELL: THE COURT'S INDULGENCE. NO FURTHER QUESTIONS,
15 YOUR HONOR.

16 MS. BOLEN: JUST A BRIEF RE-DIRECT, YOUR HONOR.

17 THE COURT: YES, MA'AM.

18 **RE-DIRECT EXAMINATION OF THERESA SULLIVAN BY MS. BOLEN**

19 Q MS. SULLIVAN, MS. BELL ASKED YOU ABOUT THE CHECKS BEING IN THE
20 CAR. CAN YOU -- WHY WERE THEY IN YOUR CAR OUTSIDE OF YOUR
21 HOUSE?

22 A PREVIOUSLY, ANTIJUAN HAD LEFT A ENVELOPE WITH AN ADDRESS, YOU
23 KNOW, BEFORE ALL OF THIS HAPPENED BETWEEN US, FOR ME TO MAIL.
24 IT WAS TO BE MAILED TO THAT ADDRESS. SO, IT WAS THAT SATURDAY
25 THAT I HAD RECEIVED THE CHECKS. YOU KNOW, IT WAS LATE THAT

RE-CROSS EXAMINATION OF THERESA SULLIVAN BY MS. BELL

97

1 DAY WHEN I CHECKED MY MAIL, SO I WOULDN'T HAVE BEEN ABLE TO
2 PUT THEM BACK IN THE MAIL UNTIL THE FOLLOWING MONDAY.

3 Q SO YOU MOVED THEM FROM YOUR HOUSE INTO YOUR CAR?

4 A I PICKED THEM UP FROM THE MAILBOX AND JUST LEFT THEM IN MY
5 CAR.

6 Q AND REGARDING THE TIMING, YOU SAID, THAT MS. BELL WAS ASKING
7 YOU ABOUT -- THE NUMBER OF DAYS IN BETWEEN WHEN HE MOVED
8 OUT AND WHEN THIS HAPPENED -- WHAT WAS THE DATE HE MOVED
9 OUT?

10 A THE 19TH. FEBRUARY 19TH.

11 Q SHE ALSO ASKED YOU ABOUT HIM STATING SOMETHING TO YOU AS HE
12 ENTERED THE HOUSE. DO YOU RECALL WHAT HE SAID TO YOU?

13 A HOW WAS I NOT GOING TO LET HIM IN WITH HIS STUFF THERE.

14 Q DID HE HAVE ANY BELONGINGS IN THE HOUSE?

15 A NO.

16 Q NOTHING FURTHER, YOUR HONOR.

17 **RE-CROSS EXAMINATION OF THERESA SULLIVAN BY MS. BELL**

18 Q ONE BRIEF RE-CROSS. WITH THE ENVELOPE, YOU SAID THAT THAT
19 WAS ON A PREVIOUS OCCASION BY HIM? IT WASN'T ON THE 19TH?

20 A NO.

21 Q NO FURTHER QUESTIONS, YOUR HONOR.

22 THE COURT: OKAY. MA'AM YOU MAY STEP DOWN.

23 MS. BOLEN: YOUR HONOR, THE STATE CALLS LEANN COLLINS.

24 MS. BELL: YOUR HONOR, BEFORE WE CALL THE NEXT WITNESS MAY
25 WE HAVE A SHORT RECESS FOR A BATHROOM BREAK?

DIRECT EXAMINATION OF LEANN COLLINS BY MS. BOLEN

98

1 WE HAVE A SHORT RECESS FOR A BATHROOM BREAK?

2 **THE COURT:** SURE. WE ARE GOING TO HAVE A QUICK BREAK.

3 REMEMBER MY INSTRUCTIONS. DON'T BE DISCUSSING THE CASE OR

4 ANYTHING ABOUT IT UNTIL THE VERY END. RETIRE TO THE JURY ROOM FOR

5 A QUICK BREAK. GET SOMETHING TO DRINK, USE THE RESTROOM IF YOU'D

6 LIKE. WHEN Y'ALL ARE READY LET THE BAILIFF KNOW AND WE WILL CALL

7 YOU BACK OUT. WE'LL JUST TAKE A SHORT BREAK SO WHEN Y'ALL ARE

8 READY, LET ME KNOW. ALL RIGHT. Y'ALL RETIRE TO THE JURY ROOM.

9 (JURY OUT AT 3:20 P.M.)

10 (BRIEF BREAK)

11 (JURY IN AT 3:35 P.M.)

12 **THE COURT:** ALL RIGHT. LET'S KEEP GOING. ALL RIGHT, MS. BOLEN.

13 **MS. BOLEN:** THANK YOU, YOUR HONOR. THE STATE CALLS LEANN

14 COLLINS.

15 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, LEANN COLLINS

16 TESTIFIED AS FOLLOWS:)

17 **DIRECT EXAMINATION OF LEANN COLLINS BY MS. BOLEN**

18 Q GOOD AFTERNOON, MS. COLLINS.

19 A GOOD AFTERNOON.

20 Q WOULD YOU PLEASE STATE YOUR FULL NAME FOR THE RECORD?

21 A LEANN COLLINS.

22 Q OKAY. AND DO YOU KNOW MS. THERESA SULLIVAN?

23 A SHE'S MY DAUGHTER.

24 Q MS. COLLINS, WHERE DO YOU LIVE?

25 A IN DONALDS, AT DRIVE.

DIRECT EXAMINATION OF LEANN COLLINS BY MS. BOLEN

99

1 Q IS THAT NEAR WHERE YOUR DAUGHTER LIVES?

2 A YEAH. THERE IS PROBABLY ABOUT A TEN TO FIFTEEN ACRE PATCH
3 BETWEEN OUR HOUSES.

4 Q IS THAT IN ABBEVILLE COUNTY?

5 A YES, MA'AM.

6 Q DID YOU HAPPEN TO SEE YOUR DAUGHTER ON THE NIGHT OF
7 FEBRUARY 22, 2009?

8 A YES. I DID.

9 Q DO YOU RECALL THE CIRCUMSTANCES?

10 A SHE HAD BEEN BEAT UP.

11 Q DID SHE COME TO YOUR HOUSE?

12 A YES. SHE DID.

13 Q DO YOU RECALL ABOUT WHAT TIME?

14 A IT WAS AFTER MIDNIGHT, PROBABLY ABOUT TWELVE-THIRTY OR
15 ONE O'CLOCK.

16 Q WHAT DID YOUR DAUGHTER LOOK LIKE WHEN YOU FIRST SAW HER?

17 A SHE LOOKED HORRIBLE. HER HAIR WAS SATURATED WITH BLOOD,
18 HER FACE WAS JUST DRIPPING BLOOD, YOU COULDN'T HARDLY
19 RECOGNIZE HER SHE HAD GOT HIT SO MUCH. NOBODY WANTS TO SEE
20 THAT. NOBODY.

21 Q AND MS. COLLINS, I KNOW THIS IS DIFFICULT, BUT WHAT WAS HER
22 DEMEANOR WHEN YOU SAW HER AT YOUR HOUSE?

23 A SHE WAS IN SHOCK, BECAUSE ALL SHE KEPT SAYING WAS, " HE BEAT
24 ME UP. HE BEAT ME UP". AND SHE WAS SHAKING --

25 MS BELL: OBJECTION, YOUR HONOR. THAT IS HEARSAY ON THE

DIRECT EXAMINATION OF LEANN COLLINS BY MS. BOLEN

100

1 DAUGHTER'S COMMENTS AS WELL AS SPECULATION ON HOW HER
2 DAUGHTER FELT, YOUR HONOR.

3 THE COURT: ALL RIGHT.

4 MS. BOLEN: AND, YOUR HONOR, I CAN MOVE PAST IT. I WAS JUST
5 ASKING FOR DEMEANOR. I CAN RE-PHRASE.

6 THE COURT: ALL RIGHT. THE OBJECTION IS SUSTAINED, SO YOU
7 RE-PHRASE THE QUESTION. MA'AM, YOU ARE NOT ALLOWED TO TELL WHAT
8 ANYONE SAID. YOU CAN TELL WHAT YOU SAW, HEARD OR THOUGHT.

9 Q DID YOUR DAUGHTER SEEM UPSET WHEN YOU SAW HER?

10 A YES.

11 Q YOU SAID SOMETHING ABOUT SEEING HER HAIR SATURATED WITH
12 BLOOD. DID YOU SEE ANY OTHER BLOOD ON HER OR INJURIES TO
13 HER?

14 A HER -- HER COMPLETE HEAD WAS COMPLETELY COVERED IN BLOOD.
15 YOU COULDN'T EVEN HARDLY RECOGNIZE HER BECAUSE BOTH EYES
16 WERE ALREADY SWOLLEN SHUT AND THE WHOLE FRONT OF HER
17 PAJAMAS, ALL THE WAY TO THE KNEES, WAS COMPLETELY COVERED IN
18 BLOOD.

19 Q SO, SHE WAS WEARING PAJAMAS?

20 A YES. LONG PAJAMAS WITH THE SLEEVES DOWN.

21 Q DID YOU GO TO THE HOSPITAL WITH YOUR DAUGHTER?

22 A YEAH. I RODE WITH HER IN THE AMBULANCE.

23 Q AND WHEN YOU GOT TO THE HOSPITAL, WERE YOU WITH YOUR
24 DAUGHTER WHILE SHE WAS IN THE EMERGENCY ROOM?

25 A YES. I WAS.

DIRECT EXAMINATION OF LEANN COLLINS BY MS. BOLEN

101

1 MS. BOLEN: BEG THE COURT'S INDULGENCE, YOUR HONOR.

2 THE COURT: YES, MA'AM.

3 MS. BOLEN: (CONFERS WITH MS. BELL) YOUR HONOR, PERMISSION TO

4 APPROACH THE WITNESS.

5 THE COURT: YES, MA'AM.

6 Q MS. COLLINS, I AM HANDING YOU AN EXHIBIT THAT HAS BEEN
7 PREVIOUSLY MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT #4. DO
8 YOU RECOGNIZE THAT PICTURE?

9 A YES.

10 Q AND CAN YOU DESCRIBE WHAT THAT PICTURE IS OF?

11 A IT'S HER COVERED WITH BLOOD, EYES SWOLLEN SHUT, USING OXYGEN
12 TO HELP HER BREATHE.

13 Q IS THAT WHAT YOUR DAUGHTER LOOKED LIKE AT THE HOSPITAL WHEN
14 YOU WERE THERE WITH HER?

15 A YES.

16 Q AND IS THAT A FAIR AND ACCURATE DEPICTION OF WHAT YOUR
17 DAUGHTER LOOKED LIKE IN THE HOSPITAL?

18 A YES.

19 Q YOUR HONOR, AT THIS TIME THE STATE MOVES TO ADMIT STATE'S
20 EXHIBIT #4 AND ALSO ASKS PERMISSION TO PUBLISH TO THE JURY.

21 MS. BELL: JUST PREVIOUSLY MADE OBJECTIONS, YOUR HONOR.

22 THE COURT: OBJECTION SO NOTED. ADMITTED AND MAY BE
23 PUBLISHED.

24 (WHEREUPON, A PHOTOGRAPH IS ENTERED INTO EVIDENCE AS
25 STATE'S EXHIBIT #4, OVER DEFENSE OBJECTION.)

DIRECT EXAMINATION OF LEANN COLLINS BY MS. BOLEN

102

1 Q MS. COLLINS, JUST TO EXPLAIN WHAT'S IN THE PICTURE, BLOOD IS
2 COMING OUT OF YOUR DAUGHTER'S NOSE?

3 A YES.

4 Q AND HER EYES ARE SWOLLEN. IS THAT HOW SHE LOOKED IN THE
5 HOSPITAL?

6 A YEP.

7 Q MS. COLLINS I AM GOING TO HAND YOU WHAT HAS BEEN MARKED FOR
8 IDENTIFICATION AS STATE'S EXHIBIT #8. DO YOU RECOGNIZE THAT
9 PICTURE?

10 A YES.

11 Q AND CAN YOU DESCRIBE WHAT THAT IS OF?

12 A YES. THAT WAS TAKEN BACK WHERE SHE HAD STITCHES ON HER EYE
13 WHEN SHE WAS HIT AND SHE WAS STILL ON OXYGEN.

14 Q AND IS THAT –

15 A AND BLEEDING OUT HER NOSE.

16 Q IS THAT A FAIR AND ACCURATE DEPICTION OF WHAT YOUR DAUGHTER
17 LOOKED LIKE AT THE HOSPITAL?

18 A YES.

19 Q YOUR HONOR, AT THIS TIME THE STATE MOVES TO ADMIT AS WELL AS
20 PUBLISH TO THE JURY.

21 THE COURT: ADMITTED WITH THE SAME OBJECTION.

22 MS. BELL: SAME OBJECTIONS, YOUR HONOR.

23 (WHEREUPON, A PHOTOGRAPH IS ENTERED INTO EVIDENCE AS
24 STATE'S EXHIBIT # 8, OVER DEFENSE OBJECTION.)

25 Q MS. COLLINS, SO THIS IS OF THE OTHER SIDE OF YOUR DAUGHTER'S

DIRECT EXAMINATION OF LEANN COLLINS BY MS. BOLEN

103

- 1 FACE THAN IN THE PREVIOUS PICTURE? IS THAT CORRECT?
- 2 A UH-HUH.
- 3 Q OKAY. CAN YOU SEE ON THE PICTURE WHERE THE STITCHES ARE?
- 4 A YEAH. FROM THE CORNER OF THE EYE TO DOWN MAYBE A HALF-INCH
- 5 TO THREE-QUARTERS.
- 6 Q RIGHT THERE?
- 7 A YES, MA'AM. GOING DOWN TOWARD THE CHIN.
- 8 Q OKAY. I AM GOING TO HAND THIS BACK UP TO YOU AND HAVE YOU
- 9 POINT IT OUT FOR ME IF YOU WILL. (MS. BOLEN HANDS PHOTOGRAPH
- 10 TO THE WITNESS AND WITNESS INDICATES).
- 11 Q (MS. BOLEN DISPLAYS PHOTOGRAPH ON THE SCREEN) SO THE
- 12 STITCHES ARE UP IN THIS CORNER HERE? (INDICATING)
- 13 A YES, MA'AM.
- 14 Q AND, MS. COLLINS, LET ME HAND UP TO YOU WHAT HAS BEEN MARKED
- 15 AS STATE'S #7, STATE'S #2, AND STATE'S #6. TAKE A LOOK AT THESE
- 16 AND TELL ME IF YOU RECOGNIZE THOSE AND IF YOU COULD, GO
- 17 THROUGH EACH ONE AND DESCRIBE IT.
- 18 A THE FIRST ONE IS WHERE HER EYES ARE SWOLLEN SHUT AND HER
- 19 NOSE IS STILL BLEEDING, HER LIPS ARE SWOLLEN AND HER CHIN IS ALL
- 20 SCRAPED AND BLEEDING ALL UP UNDERNEATH AND THE BLOOD UP
- 21 HERE IS WHERE SHE HAD CUTS ON TOP OF HER HEAD. THIS ONE HERE
- 22 IS THE BRUISING AND SCRAPES UP UNDER THE CHIN AND DOWN INTO
- 23 THE NECK. AND THAT ONE IS THE SCRAPES ALONG HER ARMS, THIS
- 24 PART OF THE ARMS. (INDICATING)
- 25 Q AND ARE ALL THOSE A FAIR AND ACCURATE DEPICTION OF WHAT YOUR

DIRECT EXAMINATION OF LEANN COLLINS BY MS. BOLEN

104

1 DAUGHTER'S INJURIES LOOKED LIKE THAT NIGHT IN THE HOSPITAL?

2 A YES. THEY ARE.

3 MS. BOLEN: YOU HONOR, THE STATE MOVES TO ADMIT STATE'S 6,7,
4 AND 2 AND ALSO TO PUBLISH TO THE JURY.

5 MS. BELL: SAME OBJECTIONS, YOUR HONOR,

6 THE COURT: THEY ARE ADMITTED, SUBJECT TO THE PRIOR OBJECTION.

7 (WHEREUPON, THREE PHOTOGRAPHS ARE ENTERED INTO EVIDENCE
8 AS STATE'S EXHIBITS #6, #7, AND #2, OVER DEFENSE OBJECTION)

9 Q AND SO, MS. COLLINS, THESE ARE THE SCRAPES AND BRUISES AND
10 CUTS ON ARMS —

11 A ARMS AND UNDER THE CHIN.

12 Q SO THIS —

13 A AND THE NECK, TOO.

14 Q OKAY. AND THEN THIS IS SORT OF A MORE FRONTAL —

15 A YES.

16 Q FACIAL SHOT. MS. COLLINS, DID YOU SEE THE STITCHES BEING
17 ADMINISTERED TO YOUR DAUGHTER?

18 A YES. I DID.

19 Q AND DO YOU KNOW APPROXIMATELY HOW MANY THERE WERE? OR
20 DID YOU NOT NOTICE?

21 A IT WAS MAYBE FOUR OR FIVE. I'M NOT SURE.

22 Q OKAY. DID YOU STAY WITH YOUR DAUGHTER THE WHOLE TIME SHE
23 WAS IN THE HOSPITAL?

24 A YES. I DID. I HELPED HER GET OUT OF HER CLOTHES SO THEY COULD
25 CHECK HER OUT.

DIRECT EXAMINATION OF LEANN COLLINS BY MS. BOLEN

105

1 Q DO YOU RECALL WHAT CLOTHES SHE WAS WEARING?

2 A PAJAMAS. LONG PANT PAJAMAS.

3 Q AND THAT IS ALSO WHAT SHE WAS WEARING WHEN SHE CAME TO
4 YOUR HOUSE?

5 A YES.

6 Q MS. COLLINS, AFTER BEING WITH YOUR DAUGHTER IN THE HOSPITAL,
7 DID YOU HAVE AN OCCASION TO GO BACK TO HER HOUSE AT ALL?

8 A YES. I THINK IT WAS THE VERY NEXT DAY. I WENT BACK IN AND I WENT
9 IN THAT DAY AND I COULDN'T DO NOTHING THAT DAY. I JUST HAD TO
10 LEAVE THERE WAS SO MUCH BLOOD EVERYWHERE. I LEFT AND WHEN I
11 WENT BACK IN, I COULD SEE WHERE THE DOOR HAD BEEN KICKED IN
12 AND BLOOD WAS ON THE WALLS AND ON THE DOORS AND THE
13 REFRIGERATOR, ALL OVER HER BEDDING, HER CLOTHES, HER
14 DRESSER, EVERYWHERE THERE WAS BLOOD AND THINGS KNOCKED
15 OVER.

16 Q DID YOU NOTICE ANY DAMAGE TO THE DOOR OF HER HOUSE?

17 A YES. THE FRONT DOOR, ACTUALLY, IT WAS THE BACK DOOR OF THE
18 TRAILER, WAS BENT IN THE DIRECTION WHERE YOU COULD LOOK AT IT
19 FROM EITHER SIDE AND THE CREASE SHOWS IT CAME FROM THE
20 OUTSIDE BECAUSE THE INWARD BEND WAS ON THE INSIDE OF THE
21 TRAILER AND YOU COULD SEE WHERE THE HINGES WERE WARPED
22 AND WHERE THE LIGHT STILL COMES IN AROUND THE DOOR.

23 MS. BOLEN: YOUR HONOR, PERMISSION TO APPROACH.

24 THE COURT: YES, MA'AM.

25 Q MS. COLLINS, I AM HANDING UP TO YOU WHAT HAS PREVIOUSLY BEEN

DIRECT EXAMINATION OF LEANN COLLINS BY MS. BOLEN

106

1 ADMITTED INTO EVIDENCE AS STATE'S #25, #29, #26, AND #27. WILL YOU
2 DESCRIBE THE FIRST ONE PLEASE?

3 A THIS FIRST ONE IS THE UTILITY ROOM. THE WASHER SITS ALONG SIDE
4 IN A STRAIGHT ANGLE WITH THE DOOR AND THE DOOR HAS BEEN BENT
5 IN THE CENTER AND YOU CAN SEE IN THE PICTURE, IT'S OBVIOUS, THE
6 BEND IS INWARD.

7 Q IS THAT WHAT THE DOOR LOOKED LIKE WHEN --

8 A YES. WHEN I CAME BACK, SHOWING IT WAS PUSHED FROM THE
9 OUTSIDE.

10 Q HOW OFTEN DO YOU GO OVER TO YOUR DAUGHTER'S HOUSE?

11 A AT THIS TIME, I'D SAY MAYBE EVERY MONTH, EVERY MONTH-AND-A-
12 HALF. THEY WERE ALWAYS AT MY HOUSE.

13 Q HAD YOU SEEN THE DOOR PRIOR TO FEBRUARY 22ND?

14 A YES. BUT IT WASN'T DAMAGED LIKE THAT.

15 Q OKAY. AND WITH THE NEXT PICTURE.

16 A ONE IS THE CREASING OF THE DOOR AND THE BENDING OF THE DOOR
17 AND THE BLOOD'S ON THE WALL.

18 Q AND IS THAT, AGAIN, A FAIR AND ACCURATE DEPICTION OF WHAT --

19 A YES.

20 Q THE DOOR LOOKED LIKE WHEN YOU WENT BACK THE NEXT DAY?

21 A YES. AND THAT ONE I AM NOT SURE WHAT THAT ONE IS OF. THAT
22 MIGHT BE THE BEDROOM DOOR? IT'S HARD TO SAY. THIS ONE IS THE
23 BACK DOOR WHERE THE JAM, WHERE THE THING THAT GOES IN THE
24 DOOR WAS KNOCKED A LOOSE AND HAD COME LOOSE. AND THE
25 OTHER PICTURE IS COMING FROM THE OUTSIDE GOING LIKE INTO THE

DIRECT EXAMINATION OF LEANN COLLINS BY MS. BOLEN

107

1 TRAILER WHERE YOU CAN SEE THE DRYER SLID OUT AND THE BLOOD
2 ALL OVER EVERYTHING.

3 Q AND AGAIN, IS THAT A FAIR AND ACCURATE PICTURE OF WHAT THE
4 DOOR --

5 A YES.

6 Q AND THE DRYER LOOKED LIKE WHEN YOU WENT TO THE HOUSE THE
7 NEXT DAY?

8 A YES.

9 Q MS. COLLINS, YOU STATED THAT WHEN YOU WENT BACK INTO THE
10 HOUSE, YOU NOTICED BLOOD IN THE HOUSE. WAS IT IN ONE ROOM OR
11 MORE THAN ONE ROOM?

12 A MORE THAN ONE ROOM. THE HALLWAY, THE KITCHEN, AND THE
13 BEDROOM.

14 Q OKAY. WAS THERE ANYTHING OUT OF PLACE WHEN YOU WENT INTO
15 THE HOUSE?

16 A IN THE KITCHEN, THE TRASH HAD GOT KNOCKED OVER, THE DRYER
17 HAD BEEN SLID AND IN THE BEDROOM THE FOOTBOARD HAD GOT
18 BROKE OFF THE BED AND JUST SMALL THINGS GOT TURNED OVER
19 JUST A LITTLE BIT.

20 Q WAS THERE BLOOD ON THE FLOORS OR THE WALLS OR BOTH OR
21 NEITHER?

22 A THERE WAS BLOOD IN THE HALLWAY, IT WAS ON THE WALLS, ON THE
23 FLOOR, ON THE DOOR, THE DRYER. IN THE KITCHEN IT WAS ON THE
24 REFRIGERATOR AND THE FLOOR, THE WALLS. IN THE BEDROOM IT
25 WAS ON THE CARPETING, THE BED HAD BEEN SATURATED WITH

DIRECT EXAMINATION OF LEANN COLLINS BY MS. BOLEN

108

1 BLOOD, THE DRESSER. THERE WAS A BASKET OF CLOTHES NEAR THE
2 END OF THE DRESSER. IT WAS BLOOD ALL OVER THAT AND ONTO THAT
3 WALL.

4 Q MS. COLLINS, I AM GOING TO PASS UP TO YOU WHAT HAS BEEN
5 PREVIOUSLY MARKED FOR IDENTIFICATION PURPOSES AS STATE'S #18.
6 DO YOU RECOGNIZE THAT, WHAT'S IN THAT PICTURE?

7 A YES. THIS WAS TAKEN IN THE BEDROOM IN THE CORNER NEXT TO THE
8 DRESSER, THAT IS THE BASKET OF CLOTHES WITH BLOOD ALL OVER
9 THEM, THE BLOOD SPLATTERS ON THE WALL, AND THE BLOOD
10 SPLATTERS ON THE CARPETING.

11 Q YOUR HONOR, THE STATE MOVES TO ADMIT THAT AS WELL AS PUBLISH
12 TO THE JURY ON STATE'S #18.

13 MS. BELL: I'D LIKE TO SEE THAT.

14 MS. BOLEN: I'M SORRY. LET ME SHOW IT TO DEFENSE. (MS. BOLEN
15 HANDS PHOTOGRAPH TO MS. BELL.

16 MS. BELL: NO OBJECTIONS, YOUR HONOR.

17 THE COURT: STATE'S #18 ADMITTED, WITHOUT OBJECTION.

18 (WHEREUPON, A PHOTOGRAPH IS ENTERED INTO EVIDENCE AS
19 STATE'S EXHIBIT #18, WITHOUT OBJECTION.)

20 MS. BOLEN: THANK YOU, YOUR HONOR.

21 Q NOW MS. COLLINS, THE TOP PICTURE, DOES THAT SHOW THE LAUNDRY
22 BASKET AND THE WALL WITH BLOOD?

23 A YES.

24 Q AND THAT IS IN THE BEDROOM OF YOUR –

25 A YES.

DIRECT EXAMINATION OF LEANN COLLINS BY MS. BOLEN

109

- 1 Q AND THE BOTTOM PICTURE SHOWS THE BLOOD ON THE FLOOR --
- 2 A YES. AND THE CARPETING AND THE DRESSER.
- 3 Q OKAY. MS. COLLINS, I AM HANDING UP TO YOU WHAT IS MARKED AS
- 4 STATE'S #21. THERE ARE THREE PICTURES. I WOULD LIKE YOU TO
- 5 CONCENTRATE ON THE BOTTOM PICTURE. DO YOU RECOGNIZE THAT?
- 6 A YES. THAT IS THE CORNER OF THE DRYER HERE AT THE DOOR
- 7 COVERED IN BLOOD.
- 8 Q AND THE TOP TWO PICTURES?
- 9 A THE TOP ONE IS WHERE THE TRASH HAD GOT DUMPED IN THE FLOOR
- 10 AND BLOOD ON THE FLOOR AND THE BACK IS ANOTHER VIEW OF THE
- 11 DOOR, THE BACK DOOR. THERE IS BLOOD ON THE DRYER AND BLOOD
- 12 ON THE BACK DOOR.
- 13 **MS. BOLEN:** YOUR HONOR, AT THIS TIME THE STATE MOVES TO ADMIT
- 14 STATE'S #21 AND PUBLISH TO THE JURY.
- 15 **MS. BELL:** NO OBJECTIONS, YOUR HONOR.
- 16 **THE COURT:** STATE'S #21, ADMITTED WITHOUT OBJECTION.
- 17 (WHEREUPON, THREE PHOTOGRAPHS ARE ENTERED INTO EVIDENCE
- 18 AS STATE'S EXHIBIT #21, WITHOUT OBJECTION.)
- 19 **MS. BOLEN:** THANK YOU, YOUR HONOR.
- 20 Q THE TOP SHOWS THE DRYER AND THE DOOR WITH A LITTLE BIT OF
- 21 BLOOD ON THE DOOR? IS THAT RIGHT, MS. COLLINS? (DISPLAYING
- 22 PHOTOGRAPHS ON THE LARGE SCREEN)
- 23 A THAT'S RIGHT.
- 24 Q THIS IS -- IS THIS THE KITCHEN FLOOR HERE?
- 25 A THAT'S THE KITCHEN FLOOR.

DIRECT EXAMINATION OF LEANN COLLINS BY MS. BOLEN

110

- 1 Q OKAY. AND THEN THE BOTTOM SHOWS -- IS THAT THE DRYER?
- 2 A THAT'S THE CORNER OF THE DRYER.
- 3 Q OKAY, MS. COLLINS, THE LAST PICTURES I AM GOING TO HAND UP TO
- 4 YOU ARE STATE'S #15, #19, AND #20. I ASK IF YOU RECOGNIZE THOSE
- 5 PICTURES?
- 6 A THIS ONE LOOKS BLACK. I DON'T KNOW --
- 7 Q YOU DON'T RECOGNIZE THAT? OKAY.
- 8 A I DON'T KNOW.
- 9 Q ALL RIGHT.
- 10 A AND THIS IS PICTURES OF THE BEDDING WITH THE BLOOD ON THE
- 11 SHEETS AND ON THE BLANKETS.
- 12 Q IS THAT IN YOUR DAUGHTER'S BEDROOM?
- 13 A THAT'S THE BEDROOM.
- 14 Q OKAY.
- 15 A AND THEN THE OTHER PICTURE IS THE KITCHEN FLOOR COVERED WITH
- 16 BLOOD. THE ONE SHOWING THE LETTER THAT ANTJUAN HAD ---
- 17 Q OKAY, THAT'S FINE. YOU CAN IGNORE THAT ONE.
- 18 A OKAY. AND THEN THE OTHER ONE IS THE FOOTBOARD HAD GOT
- 19 BROKE OFF AND THE BLOOD AND A FEW THINGS GOT KNOCKED
- 20 AROUND.
- 21 Q AND ARE THESE, THE PICTURE OF THE KITCHEN FLOOR, THE BEDROOM
- 22 THERE AND THE BEDCLOTHES HERE, THOSE ARE A FAIR AND
- 23 ACCURATE DEPICTION OF WHAT THEY LOOKED LIKE WHEN YOU SAW
- 24 THEM AFTER THAT EVENING?
- 25 A YES.

DIRECT EXAMINATION OF LEANN COLLINS BY MS. BOLEN

111

1 **MS. BOLEN:** YOUR HONOR, AT THIS TIME THE STATE MOVES TO ADMIT
2 #19 AND #20 INTO EVIDENCE AND TO PUBLISH TO THE JURY.

3 **MS. BELL:** I HAVE NO OBJECTION ON THOSE PHOTOS, YOUR HONOR.

4 **THE COURT:** EXHIBITS #19 AND #20, ADMITTED WITHOUT OBJECTION.

5 (WHEREUPON, TWO PHOTOGRAPHS ARE ENTERED INTO EVIDENCE AS
6 STATE'S EXHIBITS #19 AND #20, WITHOUT OBJECTION.)

7 Q IT IS KIND OF HARD TO SEE ON THIS, BUT THIS IS THE BLOOD ON THE
8 KITCHEN FLOOR, MS. COLLINS? (DISPLAYS PHOTOGRAPHS ON LARGE
9 SCREEN)

10 A THAT'S RIGHT.

11 Q AND THERE IS BLOOD ON THE BEDROOM FLOOR?

12 A THAT'S RIGHT.

13 Q OKAY. AND THIS IS BLOOD ON THE BED SHEETS?

14 A YES. THE BED SHEETS AND THE BLANKETS.

15 **MS. BOLEN:** BEG A MOMENT OF THE COURTS INDULGENCE,
16 YOUR HONOR.

17 **THE COURT:** YES, MA'AM.

18 Q MS. COLLINS, YOU SAID YOU WENT BACK INTO THE HOUSE. DID YOU
19 GO BACK RIGHT AFTER YOUR DAUGHTER GOT HOME FROM THE
20 HOSPITAL?

21 A THAT -- THAT AFTERNOON. NOT RIGHT AFTER THAT. BY THE TIME WE
22 GOT HOME, IT WAS THE EARLY MORNING HOURS AND IT WAS THAT
23 AFTERNOON.

24 Q AND DID YOU HELP TO CLEAN THE BLOOD OFF THE WALLS?

25 A YES. ME AND MY HUSBAND CLEANED IT ALL UP FOR HER.

CROSS EXAMINATION OF LEANN COLLINS BY MS. BELL

112

1 Q NOTHING FURTHER. PLEASE ANSWER ANY QUESTIONS MS. BELL MAY
2 HAVE FOR YOU. THANK YOU.

3 **CROSS EXAMINATION OF LEANN COLLINS BY MS. BELL**

4 Q YOU ONLY SAW THERESA AFTER THE INCIDENT OCCURRED. CORRECT?

5 A CORRECT.

6 Q WHEN SHE WENT TO YOUR HOME. YOU WEREN'T THERE FOR ANY OF
7 THE TIME THAT STUFF WAS GOING ON INSIDE THE HOUSE?

8 A NO.

9 Q SO, YOU DIDN'T PERSONALLY SEE HOW THE DOOR WAS DAMAGED OR
10 PERSONALLY SEE HOW SHE WAS HURT. CORRECT?

11 A I DID NOT SEE HOW THE DOOR WAS DAMAGED. I DID SEE HOW SHE
12 WAS HURT BY THE VISUAL OF IT. I MEAN —

13 Q AT THE TIME.

14 A I DIDN'T SEE IT HAPPENING.

15 Q YOU DON'T LIVE THERE.

16 A NO.

17 Q AND SO YOU WEREN'T THERE DURING THAT TIME?

18 A NO.

19 **MS. BELL:** THE COURTS INDULGENCE JUST ONE MOMENT?

20 **THE COURT:** YES, MA'AM.

21 **MS. BELL:** NO FURTHER QUESTIONS FOR THIS WITNESS.

22 **THE COURT:** OKAY. YOU MAY STEP DOWN.

23 **MS. BOLEN:** YOUR HONOR, THE STATE CALLS LIEUTENANT MIKEY

24 RUCKER. YOUR HONOR, I BELIEVE HE IS IN THE BACK ROOM.

25 **THE COURT:** BRING LIEUTENANT RUCKER OUT, PLEASE.

DIRECT EXAMINATION OF LIEUTENANT MIKEY RUCKER BY MS. BOLEN 113

1 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, MIKEY RUCKER
2 TESTIFIED AS FOLLOWS:)

DIRECT EXAMINATION OF LIEUTENANT MIKEY RUCKER BY MS. BOLEN

4 Q GOOD AFTERNOON, LIEUTENANT RUCKER. CAN YOU PLEASE STATE
5 YOUR FULL NAME FOR THE RECORD?

6 A LIEUTENANT MICHAEL EUGENE RUCKER.

7 Q OKAY. AND LIEUTENANT RUCKER, WHAT IS YOUR OCCUPATION?

8 A A LIEUTENANT FOR ABBEVILLE COUNTY SHERIFF'S OFFICE.

9 Q HOW LONG HAVE YOU WORKED FOR THE ABBEVILLE COUNTY
10 SHERIFF'S OFFICE?

11 A EIGHTEEN YEARS.

12 Q HAVE YOU BEEN A LIEUTENANT THAT WHOLE TIME?

13 A ABOUT TWELVE YEARS.

14 Q AND WHAT ARE YOUR JOB DUTIES AS LIEUTENANT OF THE SHERIFF'S
15 OFFICE?

16 A JUST SUPERVISE PATROL. I DO THE TRAINING AND PATROL MYSELF.

17 Q WHEN YOU SAY PATROL THAT MEAN —

18 A ANSWER CALLS, SERVICE CALLS.

19 Q OKAY. WERE YOU WORKING IN YOUR CAPACITY AS LIEUTENANT WITH
20 THE ABBEVILLE COUNTY SHERIFF'S OFFICE ON THE NIGHT OF
21 FEBRUARY 22, 2009?

22 A YES. I WAS.

23 Q DID YOU RESPOND TO A CALL ON DRIVE?

24 A YES. I DID.

25 Q AND WHERE IS THAT? WHAT TOWN?

DIRECT EXAMINATION OF LIEUTENANT MIKEY RUCKER BY MS. BOLEN

114

- 1 A IT'S DONALDS. IT'S OUTSIDE OF DONALDS.
- 2 Q IS THAT IN ABBEVILLE COUNTY?
- 3 A YES. IT IS. ABBEVILLE COUNTY.
- 4 Q SO YOU RESPONDED TO THAT CALL?
- 5 A YES. WE DID.
- 6 Q THAT AREA OF DONALDS, IS IT RURAL OR IS IT URBAN?
- 7 A IT'S RURAL.
- 8 Q WHEN YOU ARRIVED TO THE LOCATION, WHAT DID YOU FIRST FIND
- 9 UPON ARRIVAL?
- 10 A WELL, WHEN WE FIRST GOT THE CALL, IT WAS A DOMESTIC WITH
- 11 INJURIES, SO E-M-S WAS STANDING BY. WE WERE TOLD TO GO TOP
- 12 THE MOTHER'S HOUSE WHO ALSO LIVES ON DRIVE. THAT IS
- 13 WHERE THE VICTIM WOULD BE. SO WE WENT TO THE MOTHER'S
- 14 HOUSE WHERE WE TALKED TO THE VICTIM AT FIRST.
- 15 Q OKAY. WITHOUT GOING INTO TO WHAT SHE SAID, CAN YOU DESCRIBE
- 16 THE VICTIM'S APPEARANCE?
- 17 A SHE WAS VERY BLOODY IN HER HAIR, ALL OVER HER HEAD, HER FACE.
- 18 SHE HAD ON WHAT LIKE APPEARED TO BE A NIGHT SHIRT AND IT WAS
- 19 COVERED IN BLOOD MOST PART OF IT.
- 20 Q AND WHAT, AGAIN WITHOUT GOING INTO ANYTHING SHE MAY HAVE
- 21 SAID, WHAT WAS HER Demeanor?
- 22 A MORE OF LESS, SHE WAS CRYING AND UPSET. WHAT SHE SHOULD BE
- 23 AT THAT TIME.
- 24 Q AFTER GOING TO THE MOTHER'S HOUSE, WHAT DID YOU DO NEXT?
- 25 A WELL, WHEN WE WENT TO THE MOTHER'S HOUSE I TRIED TO CALM HER

DIRECT EXAMINATION OF LIEUTENANT MIKEY RUCKER BY MS. BOLEN 115

- 1 DOWN SOME AND ASKED HER WHAT WENT ON AND WHAT HAPPENED
2 AND WHO DID THAT TO HER, OF COURSE.
- 3 Q OKAY. WAS E-M-S THERE WHEN YOU WENT TO THE MOTHER'S HOUSE?
4 A WELL, THEY WERE WAITING FOR US TO CLEAR THE SCENE. SHORTLY
5 AFTER WE GOT THERE, WE TOLD THEM TO COME ON.
- 6 Q E-M-S ARRIVED WHILE YOU WERE THERE?
7 A YEAH.
- 8 Q OKAY. AND DID YOU KNOW THE VICTIM PRIOR TO THIS?
9 A NO.
- 10 Q DID THE VICTIM GO WITH E-M-S BY AMBULANCE?
11 A YES, MA'AM.
- 12 Q OKAY. AFTER SHE LEFT IN THE AMBULANCE, WHAT DID YOU DO NEXT?
13 A WELL, WE LEFT WHILE THEY WERE GETTING HER READY TO GO IN THE
14 AMBULANCE. WE LEFT, MY OFFICERS, TWO OF THE OFFICERS AND
15 MYSELF. WE WENT DOWN -- SHE HAD SAID THAT THE SUSPECT WAS
16 AT, STILL AT HER HOUSE.
- 17 Q AND HOW FAR AWAY WAS HER HOUSE FROM HER PARENTS HOUSE?
18 CAN YOU JUST APPROXIMATE?
- 19 A ABOUT ONE HUNDRED YARDS, MAYBE A LITTLE MORE.
- 20 Q AND THIS IS A RURAL AREA?
21 A YEAH.
- 22 Q LIEUTENANT RUCKER, DO YOU RECALL ABOUT WHAT TIME OF DAY OR
23 NIGHT IT WAS WHEN YOU RESPONDED TO THIS CALL?
- 24 A I WAS AFTER MIDNIGHT. IT WAS AROUND ONE O'CLOCK, SOMETHING
25 LIKE THAT.

1 Q WHAT DID YOU FIND WHEN YOU GOT TO HER HOUSE?

2 A WHEN WE GOT TO HER HOUSE, WE KNOCKED ON THE DOOR AND TRIED
3 TO GET THE SUSPECT. WE CALLED HIS NAME SEVERAL, SEVERAL
4 TIMES AND HE DIDN'T RESPOND. I GUESS IT WAS ABOUT FIFTEEN TO
5 TWENTY MINUTES WE WERE OUTSIDE AND WE COULD HEAR SOMEONE
6 BUMPING AROUND IN THERE BUT THEY WOULDN'T, YOU KNOW, COME
7 TO THE DOOR. WE ATTEMPTED TO TURN THE DOOR KNOB WHICH WAS
8 LOCKED, OR WE COULDN'T GET IT OPEN, TO THE BACK DOOR. AND --

9 Q HOW WERE YOU ABLE TO GET INTO THE HOUSE?

10 A I SENT MY OFFICER UP THERE WHILE SHE WAS LEAVING WITH E-M-S,
11 TO GET A KEY AND GET PERMISSION TO ENTER THE HOUSE AND SHE
12 GAVE US THE KEY.

13 Q ONCE YOU ENTERED, DID YOU ENTER THE FRONT DOOR OR THE BACK
14 DOOR?

15 A THE BACK DOOR.

16 Q OKAY. DID YOU --WHAT, IF ANYTHING, DID YOU NOTICE UPON
17 ENTERING?

18 A WELL, WHEN WE ENTERED, THE DOOR WOULDN'T OPEN ALL THE WAY
19 BECAUSE THE DRYER WAS SORT OF IN THE WAY OF THE DOORWAY.
20 WE COULDN'T GET IT OPEN.

21 Q IF YOU CAN JUST --

22 MS. BOLEN: HOLD ON FOR A MINUTE. CAN I JUST ASK A MOMENT OF
23 THE COURT'S INDULGENCE PLEASE, YOUR HONOR?

24 THE COURT: YES, MA'AM.

25 Q (MS. BOLEN LOOKS THROUGH EXHIBITS) LIEUTENANT RUCKER, HOW

DIRECT EXAMINATION OF LIEUTENANT MIKEY RUCKER BY MS. BOLEN

117

1 WAS THE DRYER SITUATED IN RELATION TO THE DOOR?

2 A WELL, YOU COULDN'T OPEN THE DOOR ALL THE WAY BECAUSE THE
3 DRYER WAS KIND OF SLID OUT OF IT'S PLACE WHERE IT SHOULD BE IN
4 THE WALK-IN ENTRY, I GUESS YOU COULD CALL IT.

5 Q WERE YOU ABLE TO GET AROUND THE DRYER? DID YOU HAVE TO
6 MOVE IT?

7 A WE JUST HAD TO PUSH THE DOOR OPEN TO FURTHER MOVE IT.

8 Q DID YOU NOTICE ANYTHING ON THE DRYER?

9 A THERE WERE BLOOD SPLATTERS ON THE DRYER AND ON THE FLOOR.

10 Q OKAY. WAS THAT IMMEDIATELY AS YOU ENTERED?

11 A YES, MA'AM.

12 Q OKAY. AND WHEN YOU ENTERED WAS THAT IN THE KITCHEN OR IN THE
13 HALLWAY OR?

14 A WELL IT WAS KIND OF LIKE, YOU KNOW, THE BACK DOOR GOES INTO
15 THE WASHER ROOM AND LIKE THAT LEADS IN TO THE -- YOU GO TO THE
16 LEFT TO THE KITCHEN AND THE RIGHT TO THE BEDROOM.

17 Q SO, YOU NOTICED BLOOD ON THE DRYER AND THE FLOOR AS YOU
18 ENTERED?

19 A YES, MA'AM.

20 Q OKAY. I AM GOING TO HAND UP TO YOU WHAT HAS ALREADY BEEN
21 ADMITTED AS STATE'S #20 AND #21. I JUST WANTED TO -- THE BOTTOM
22 OF #20 AND ALL OF #21. DO YOU RECOGNIZE THOSE PHOTOGRAPHS?

23 A YES.

24 Q AND IS THAT A FAIR AND ACCURATE DESCRIPTION OF WHAT THE
25 DRYER AND THE FLOOR LOOKED LIKE WHEN YOU ENTERED THAT

1 EVENING?

2 A YES, MA'AM.

3 Q AFTER ENTERING, WHAT DID YOU DO ONCE YOU GOT INSIDE THE
4 HOUSE?

5 A WELL, WE WERE CLEARING THE HOUSE TRYING TO FIND HIM, MYSELF
6 AND OFFICER PAUL AND OFFICER PLESS, WE WERE IN THE FOYER AND
7 I KIND OF BEARED TO THE LEFT TOWARDS THE KITCHEN AND THE DEN
8 AREA AND THEY WENT TO THE RIGHT, BUT WE WERE ALL STILL SORT
9 OF GROUPED TOGETHER SORT OF BACK TO BACK AND THAT'S WHEN
10 WE FOUND THE SUSPECT IN THE BEDROOM.

11 Q DID YOU HAVE OCCASION TO GO INTO THE BEDROOM?

12 A YES, MA'AM.

13 Q DID YOU GO IN THE KITCHEN?

14 A YES, MA'AM.

15 Q DID YOU NOTICE ANYTHING IN THE KITCHEN OR THE BEDROOM THAT
16 WAS OUT OF THE ORDINARY?

17 A WELL, THE HOUSE WAS IN DISARRAY. THE PART I WAS LOOKING AT
18 AND ESPECIALLY THE BEDROOM AND THEN THE BED, THE SHEETS
19 WERE COVERED IN BLOOD.

20 Q DID YOU NOTICE -- THESE ARE THE BED SHEETS THAT WERE COVERED
21 IN BLOOD?

22 A UH-HUH.

23 Q DID YOU NOTICE BLOOD ANYWHERE ELSE IN THE HOUSE?

24 A THERE WAS SPLATTERS OF BLOOD THROUGH DIFFERENT PLACES IN
25 THE HOUSE AND IN THE BEDROOM, BUT FOR THE MOST PART IT WAS

DIRECT EXAMINATION OF LIEUTENANT MIKEY RUCKER BY MS. BOLEN

119

1 MORE ON THE BED.

2 Q SO, IT'S IN THE FOYER AS YOU FIRST CAME IN AND THEN AROUND AND
3 THROUGH TO THE BEDROOM?

4 A UH-HUH.

5 Q DID YOU FIND ANYONE INSIDE THE HOUSE?

6 A YES. WE DID. WE FOUND THE SUSPECT. HE WAS SITTING, I THINK, HE
7 WAS SITTING ON THE SIDE OF THE BATHTUB IN HIS SHORTS, HIS
8 UNDERWEAR, IT APPEARED TO BE. IT WAS SOME TYPE OF SHORTS.

9 Q DID YOU NOTICE ANY MARKS OR CUTS ON THIS PERSON WHO WAS
10 SITTING ON THE —

11 A AS I RECALL, HE HAD SOME BLOOD ON HIS HAND, BUT IT WASN'T A CUT
12 FROM WHAT HE HAD ON HIS HAND, IT WAS JUST BLOOD ON HIS HAND,
13 ON HIS LEFT HAND OR RIGHT, I CAN'T REMEMBER.

14 Q AND YOU SAY HE WAS WEARING SHORTS. DOES THAT MEAN HIS
15 TORSO WAS EXPOSED?

16 A HE WAS WEARING SHORTS AND I THINK IT WAS EXPOSED.

17 Q SO, YOU DIDN'T NOTICE —

18 A I DON'T RECALL.

19 Q SO, YOU DIDN'T NOTICE ANY CUTS OR INJURIES TO HIM?

20 A NO.

21 **MS. BOLEN:** BEG A MOMENT OF THE COURT'S INDULGENCE, YOUR
22 HONOR.

23 **THE COURT:** YES, MA'AM.

24 Q THE PERSON WHO WAS SITTING ON THE BATHTUB WHO WAS IN HIS
25 SHORTS, DID YOU NOTICE ANY CLOTHES NEARBY?

CROSS EXAMINATION OF LIEUTENANT MIKEY RUCKER BY MS. BELL

120

1 A OH, THERE WAS CLOTHES. THEY WERE BLOODY AND I THINK THEY
2 WERE BLUE JEANS THAT FELL DOWN IN THE BATHTUB.

3 Q DID THEY LOOK LIKE A MAN'S BLUE JEANS?

4 A THEY WERE A MAN'S BLUE JEANS. THEY WERE HIS PANTS.

5 Q THAT'S ALL THE QUESTIONS I HAVE LIEUTENANT RUCKER. PLEASE
6 ANSWER ANY QUESTIONS MS. BELL MAY HAVE FOR YOU. THANK YOU.

7 A THANK YOU.

8 **CROSS EXAMINATION OF LIEUTENANT RUCKER BY MS. BELL**

9 Q I AM GOING TO SHOW YOU SOME PHOTOS.

10 MS. BELL: BEG THE COURT'S INDULGENCE UNTIL I FIND THE CORRECT
11 PHOTOS. (MS. BELL LOOKS THROUGH EXHIBITS)

12 Q THIS WAS PREVIOUSLY MARKED STATE'S EXHIBIT #27. I BELIEVE THIS
13 IS THE CORRECT ONE YOU WERE SHOWN EARLIER. IS THIS THE ONE?

14 A THAT'S PART OF IT. SHE DIDN'T SHOW ME THIS ONE, BUT IT'S SORT OF
15 SHOWING THE SAME THING.

16 Q THIS PHOTO IS SIMILAR IN DESIGN TO THAT ONE. CORRECT?

17 A YES.

18 Q BUT THOSE AREN'T THE ONES YOUR DEPARTMENT TOOK. CORRECT?

19 A I DIDN'T TAKE THE PICTURES, SO I DON'T KNOW.

20 Q YOUR DEPARTMENT DID TAKE PHOTOGRAPHS THAT DAY?

21 A YES. THEY DID.

22 Q WHO DID TAKE THE PHOTOGRAPHS FROM YOUR DEPARTMENT?

23 A OFFICER HALL. I THINK OFFICER HALL TOOK THE PICTURES.

24 MS. BELL: AND JUST THE COURT'S INDULGENCE. I NEED TO HAVE
25 SOME PHOTOGRAPHS MARKED, YOUR HONOR. (HAS THE COURT REPORTER

CROSS EXAMINATION OF LIEUTENANT MIKEY RUCKER BY MS. BELL 121

1 MARK SOME PHOTOGRAPHS) MAY I APPROACH THE WITNESS?

2 THE COURT: YES, MA'AM.

3 Q LIEUTENANT, WOULD YOU PLEASE REVIEW THESE? DO YOU

4 RECOGNIZE THESE?

5 A (WITNESS LOOKS AT PHOTOGRAPHS) WELL, YOU KNOW, THEY ARE

6 SIMILAR, BUT...

7 Q HAVE YOU EVER SEEN THOSE BEFORE TODAY?

8 A MAYBE. IT'S JUST THAT, LIKE ON THE DRYER AND ON THIS WASHING

9 MACHINE, I DON'T REMEMBER STUFF BEING ON IT. LIKE WHEN I WENT

10 IN, YOU KNOW, I LOOKED AND NOTICED AND WE GOT THE SUSPECT

11 AND LEFT AND THE GUY THAT TOOK THE PICTURES WASN'T THERE YET,

12 SO...

13 MS. BELL: ONE MOMENT OF THE COURT'S INDULGENCE. (MS. BELL

14 CONFERS WITH MR. GROSE) JUST FOR THIS COURT'S RECORD. LATER ON, WE

15 WILL PROBABLY TRY TO PUT THESE IN AGAIN, BUT THEY ARE DEFENDANT'S

16 EXHIBITS #1 THROUGH #8.

17 Q THE PHOTOS THAT WERE SHOWN TO YOU EARLIER, THEY WEREN'T

18 TAKEN BY THE POLICE DEPARTMENT. CORRECT? THE PHOTOS YOU

19 SAW EARLIER?

20 A FROM THE --

21 Q FROM THE SOLICITOR'S OFFICE.

22 A THEY WERE TAKEN BY THE POLICE DEPARTMENT, THE SHERIFF'S

23 DEPARTMENT.

24 MS. BELL: MAY I APPROACH THE WITNESS?

25 THE COURT: YES, MA'AM.

RE-DIRECT EXAMINATION OF LIEUTENANT MIKEY RUCKER BY MS. BOLEN 122

1 Q THESE WERE TAKEN BY THE POLICE DEPARTMENT AND NOT BY
2 MS. COLLINS?

3 A MS. WHO?

4 Q MS. COLLINS, MS. SULLIVAN'S MOTHER.

5 A OKAY. I, YOU KNOW, WHAT I AM LOOKING AT IS WHAT I SAW. I MEAN,
6 I DON'T KNOW WHO TOOK THE PICTURES, BUT I DO KNOW THAT IS
7 WHAT THE DRYER LOOKED LIKE AND THE HOUSE LOOKED LIKE, BUT
8 YOU KNOW, I GUESS WHEN I SAY WHO TOOK THEM, YOU KNOW, OUR
9 GUYS TOOK SOME PICTURES.

10 Q WELL, LET'S NOT WORRY ABOUT THE PHOTOS RIGHT NOW. YOU HAD
11 MENTIONED WHILE TESTIFYING EARLIER THAT IN ORDER TO GET INTO
12 THE HOUSE YOU EVENTUALLY HAD TO GO GET THE HOUSE KEYS?

13 A YES, MA'AM.

14 Q BECAUSE IT WAS LOCKED AND CLOSED.

15 A YES. WE HAD TRIED TO TURN THE KNOB EARLIER IN THE EVENING AND
16 COULDN'T.

17 Q AND SO IT WAS SHUT ALL THE WAY AND ONCE YOU GOT THE KEY YOU
18 WERE ABLE TO OPEN THE DOOR AND OPEN IT ALL THE WAY? SO, BUT
19 WHEN YOU GOT THERE IT WASN'T BROKEN OPEN AND BUSTED IN. IT
20 WAS CLOSED?

21 A IT WAS CLOSED.

22 Q NO FURTHER QUESTIONS, YOUR HONOR.

23 THE COURT: ANY RE-DIRECT?

24 MS. BOLEN: VERY BRIEF RE-DIRECT, YOUR HONOR.

25 **RE-DIRECT EXAMINATION OF LIEUTENANT RUCKER BY MS. BOLEN**

RE-CROSS EXAMINATION OF LIEUTENANT MIKEY RUCKER BY MS. BELL 123

1 Q LIEUTENANT RUCKER, YOU STATED, WHEN MS. BELL WAS ASKING YOU
2 ABOUT THE PICTURES, THAT YOU GOT THE SUSPECT AND LEFT. IN
3 GOING INTO THE HOUSE, WAS YOUR PRIMARY OBJECTIVE TO GET THE
4 SUSPECT AND LEAVE AND SO ANY FURTHER INVESTIGATION WOULD BE
5 DONE BY SOMEONE ELSE IN YOUR OFFICE?

6 A YES. THAT'S WHY MY OTHER TWO GUYS STAYED. WE WANTED TO
7 SECURE THE SUSPECT. WE DIDN'T KNOW WHETHER HE HAD A
8 WEAPON OR NOT. SO, YEAH, BASICALLY WE HAD TO —

9 Q THAT'S FINE.

10 MS. BOLEN: NO FURTHER QUESTIONS, YOUR HONOR.

11 THE COURT: ANY RE-CROSS?

12 RE-CROSS OF LIEUTENANT RUCKER BY MS. BELL

13 Q YES, YOUR HONOR. HE DID NOT HAVE A WEAPON. CORRECT?

14 A NO. NOT —

15 Q NO FURTHER QUESTIONS.

16 THE COURT: YOU MAY STEP DOWN.

17 MS BOLEN: THE STATE CALLS MARK HALL. I BELIEVE HE IS OUT IN THE
18 HALLWAY.

19 THE COURT: CALL MR. HALL, PLEASE.

20 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, MARK HALL
21 TESTIFIED AS FOLLOWS:)

22 DIRECT EXAMINATION OF MARK HALL BY MS. BOLEN

23 Q GOOD AFTERNOON, OFFICER HALL. WILL YOU PLEASE STATE YOUR
24 FULL NAME FOR THE RECORD?

25 A MARK EUGENE HALL.

DIRECT EXAMINATION OF OFFICER MIKE HALL BY MS. BOLEN

124

1 Q AND WHAT IS YOUR OCCUPATION?

2 A IN LAW ENFORCEMENT CAPACITY, I AM A STATE CONSTABLE.

3 Q OKAY. WHAT IS THE AGENCY YOU WORK FOR?

4 A I'M REGULATED BY SLED, BUT I AM A SOUTH CAROLINA STATE
5 CONSTABLE.

6 Q OKAY. DOES THAT MEAN YOU WORK WITH LOCAL LAW ENFORCEMENT
7 AGENCIES?

8 A YES, MA'AM.

9 Q ARE YOU CURRENTLY WORKING FOR A LOCAL LAW ENFORCEMENT --

10 A YES, MA'AM. ABBEVILLE COUNTY SHERIFF'S DEPARTMENT.

11 Q HOW LONG HAVE YOU BEEN WORKING AS A STATE'S CONSTABLE WITH
12 THE ABBEVILLE COUNTY SHERIFF'S OFFICE?

13 A SINCE 2008. THAT WAS WHEN I WENT -- I WAS FULL TIME DEPUTY WITH
14 THE SHERIFF'S DEPARTMENT AND THEN WENT TO A SOUTH CAROLINA
15 STATE CONSTABLE IN 2008.

16 Q WHAT ARE YOUR DUTIES AS A STATE CONSTABLE WITH THE SHERIFF'S
17 OFFICE?

18 A TO ENFORCE THE LAWS OF THE STATE OF SOUTH CAROLINA WITHIN
19 THE JURISDICTION OF ABBEVILLE COUNTY WITH THE SHERIFF'S
20 DEPARTMENT.

21 Q DO YOU HAVE OCCASION IN YOUR JOB TO RESPOND TO ACE PATROL?
22 DO YOU RESPOND TO CALLS?

23 A YES, MA'AM.

24 Q WERE YOU WORKING IN YOUR CAPACITY AS A STATE CONSTABLE ON
25 THE EVENING OF FEBRUARY 22 OF '09?

DIRECT EXAMINATION OF OFFICER MIKE HALL BY MS. BOLEN

125

- 1 A YES, MA'AM.
- 2 Q OKAY. AND DID YOU HAVE AN OCCASION TO RESPOND TO A CALL ON
- 3 THAT EVENING?
- 4 A YES, MA'AM.
- 5 Q DO YOU RECALL APPROXIMATELY WHERE THAT LOCATION WAS?
- 6 A IT WAS IN ABBEVILLE COUNTY ON DRIVE.
- 7 Q DO YOU KNOW WHAT TOWN THAT IS IN OR IS IT IN THE COUNTY?
- 8 A IT IS OUT IN THE COUNTY. I AM NOT SURE IF IT IS IN A TOWN.
- 9 Q WHEN YOU ARRIVED AT THE LOCATION, AND WITHOUT GOING INTO ANY
- 10 OF WHAT ANYONE SAID, DID YOU SEE ANYONE WHEN YOU FIRST
- 11 ARRIVED?
- 12 A WHEN WE FIRST CAME UP WE WENT TO A HOUSE AND THERE WERE A
- 13 COUPLE OF MALE SUBJECTS OUT IN THE YARD AND THEY DIRECTED US
- 14 TOWARD THE INSIDE OF THE HOUSE, WHICH TURNED OUT TO BE THE
- 15 MOTHER'S HOUSE, I THINK. I AM NOT 100% SURE OF THAT BUT WE
- 16 WENT IN AND SPOKE WITH MS. SULLIVAN.
- 17 Q OKAY. AND WHAT WAS HER APPEARANCE WHEN YOU FIRST SPOKE
- 18 WITH HER?
- 19 A SHE WAS BLOODY AND CRYING AND HAD STATED THAT -
- 20 Q THAT'S FINE. LET ME STOP YOU RIGHT THERE. AFTER SPEAKING WITH
- 21 HER, DID YOU GO WITH HER TO THE HOSPITAL OR DID YOU GO BACK TO
- 22 HER HOUSE OR DID YOU DO SOMETHING DIFFERENT?
- 23 A MYSELF AND LIEUTENANT RUCKER WENT DOWN TO THE RESIDENCE
- 24 WHICH WAS HER HOUSE. SHE HAD STATED TO US THAT MISTER
- 25 GREENE WAS AT -

DIRECT EXAMINATION OF OFFICER MIKE HALL BY MS. BOLEN

126

1 Q I'M SORRY. SO YOU WENT TO HER HOUSE. DID YOU NOTICE ANYTHING
2 ON THE INSIDE WHEN YOU FIRST WENT IN?

3 A WHEN WE FIRST GOT THERE WE COULDN'T GET IN SO --

4 Q AND WHY WAS THAT?

5 A THE DOOR WAS LOCKED.

6 Q OKAY. WERE YOU ABLE TO GET THE DOORS OPEN?

7 A WE HAD SPOKEN WITH ANOTHER OFFICER THAT WAS AT THE

8 MOTHER'S HOUSE WITH MS. SULLIVAN AND HE ASKED HIM TO SEE IF

9 WE COULD GET A KEY OR PERMISSION TO GO INSIDE HER RESIDENCE.

10 Q SO WHEN YOU GOT INSIDE DID YOU NOTICE ANYTHING INSIDE THE
11 HOUSE?

12 A YES. THERE WAS A PARTIAL BLOCKAGE OF THE DOORWAY BY THE
13 WASHING MACHINE OR DRYER, I'M NOT SURE. THERE WAS A GOOD BIT
14 OF BLOOD ON THE FLOOR AND RIGHT AS WE FIRST CAME IN IT WAS A
15 BUNCH OF, IT LOOKED LIKE CLUTTER AND STUFF THAT HAS BEEN
16 KNOCKED OFF THE SHELVES.

17 Q WAS THERE ANYONE INSIDE THE HOUSE?

18 A THERE WAS.

19 Q WHERE DID YOU SEE SOMEONE INSIDE THE HOUSE?

20 A AFTER WE MADE ENTRANCE INTO THE HOUSE AND CAME INTO THE
21 HALLWAY, I LOOKED OFF TH MY RIGHT TO THE BACK BEDROOM AND I
22 COULD SEE MISTER GREENE SITTING ON THE SIDE OF THE BATHTUB IN
23 THE BATHROOM WHICH WAS ADJOINING THE BACK BEDROOM.

24 Q AND THE PERSON THAT YOU SAW SITTING ON THE BATHTUB, DO YOU
25 SEE THAT PERSON IN THE COURTROOM TODAY?

DIRECT EXAMINATION OF OFFICER MIKE HALL BY MS. BOLEN

127

1 A YES, MA'AM.

2 Q CAN YOU PLEASE POINT HIM OUT AND IDENTIFY HIM TO THE JURY.

3 A THAT GENTLEMAN RIGHT THERE.

4 MS. BOLEN: LET THE RECORD SHOW HE IS POINTING TO THE
5 DEFENDANT.

6 THE COURT: THE RECORD WILL SO REFLECT.

7 Q DO YOU RECALL WHAT MISTER GREENE WAS WEARING WHEN YOU
8 ARRIVED?

9 A HE DIDN'T HAVE ANYTHING ON.

10 Q DID YOU NOTICE IF HE HAD ANY BRUISES OR CUTS THAT YOU CAN
11 RECALL?

12 A NOT -- NO, MA'AM. NONE THAT I CAN REMEMBER.

13 Q DID YOU LATER HAVE OCCASION TO GO TO THE HOSPITAL OR DID YOU
14 NOT GO TO THE HOSPITAL?

15 A YES, MA'AM. AFTER THAT I DID GO TO THE HOSPITAL AND ASSISTED
16 WITH SOME PHOTOGRAPHS WITH -- I REALLY CAN'T REMEMBER WHO
17 WAS THERE WITH ME.

18 Q ALL RIGHT. DID YOU TAKE PICTURES OF THE VICTIM AT THE HOSPITAL?

19 A YES, MA'AM, I DID.

20 MS. BOLEN: BEG A MOMENT OF THE COURT'S INDULGENCE, YOUR
21 HONOR. PERMISSION TO APPROACH THE WITNESS, YOUR HONOR?

22 THE COURT: YES, MA'AM.

23 Q OFFICER HALL, I AM PASSING UP WHAT HAS ALREADY BEEN ADMITTED
24 INTO EVIDENCE AS STATE'S #2, STATE'S #4, STATE'S #6, STATE'S #7, AND
25 STATE'S #8. DO YOU RECOGNIZE ANY OF THESE PHOTOGRAPHS?

CROSS EXAMINATION OF OFFICER MIKE HALL BY MS. BELL

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1 A (LOOKS THROUGH THE PHOTOGRAPHS) YES, MA'AM. I DEFINITELY
2 RECOGNIZE THESE.

3 Q DID YOU TAKE THOSE PHOTOGRAPHS?

4 A YES, MA'AM.

5 Q AND CAN YOU DESCRIBE WHAT THOSE PHOTOGRAPHS ARE OF?

6 A THIS IS OF THE VICTIM OF THAT NIGHT AS SHE WAS AT THE HOSPITAL
7 ON THE HOSPITAL BED.

8 Q SO THAT IS A FAIR AND ACCURATE DEPICTION OF WHAT SHE LOOKED
9 LIKE WHEN YOU WERE AT THE HOSPITAL?

10 A YES, MA'AM.

11 Q AND JUST FOR THE RECORD, CAN I HAVE WHICH TWO OF THOSE YOU
12 ARE TALKING ABOUT?

13 A IT'S THREE, ACTUALLY. THESE THREE HERE.

14 Q THE STATE'S #4, #6, AND #8. OFFICER HALL, I DON'T HAVE ANY
15 FURTHER QUESTIONS FOR YOU. PLEASE ANSWER ANY QUESTIONS
16 THAT MS. BELL MAY HAVE.

17 A OKAY.

18 **CROSS EXAMINATION OF OFFICER HALL BY MS. BELL**

19 Q EARLIER YOU TESTIFIED THAT WHEN Y'ALL REACHED THE HOUSE THE
20 DOOR WAS LOCKED. CORRECT? AND Y'ALL HAD TO GET A KEY TO
21 ENTER?

22 A YES, MA'AM.

23 Q THE DOOR WAS COMPLETELY CLOSED. IT WASN'T BUSTED OPEN AT
24 THAT TIME?

25 A NOT AS I CAN REMEMBER. WE -- WE DID TRY TO OPEN THE DOOR AND

CROSS EXAMINATION OF OFFICER MIKE HALL BY MS. BELL

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1 IT WAS CLOSED AND LOCKED AT THE TIME.

2 Q BUT ONCE THE KEY ARRIVED YOU WERE ABLE TO GET IN?

3 A YES, MA'AM.

4 Q AND YOU MENTIONED TAKING PHOTOGRAPHS AT THE HOSPITAL. DID

5 YOU ALSO TAKE PHOTOGRAPHS IN THE HOUSE?

6 A I DID NOT. NO.

7 Q EARLIER THERE WAS TESTIMONY MENTIONED THAT YOU WERE THE

8 ONE THAT TOOK PHOTOS INSIDE THE HOUSE ARE YOU AWARE OF, IF

9 IT WASN'T YOU, WHO TOOK THE PHOTOS INSIDE THE HOUSE?

10 A NO. I TOOK THE PHOTOS AT THE HOSPITAL.

11 Q OKAY.

12 A I DID NOT TAKE THE ONES AT THE HOUSE.

13 Q YOU ARE NOT AWARE WHO TOOK THE PHOTOS INSIDE THE HOUSE?

14 A I THINK THAT WOULD BE DEPUTY PLESS.

15 Q OKAY. NO FURTHER QUESTIONS.

16 THE COURT: ANY RE-DIRECT?

17 MS. BOLEN: NO RE-DIRECT, YOUR HONOR.

18 THE COURT: THANK YOU, OFFICER HALL.

19 MS. BOLEN: YOUR HONOR, IF WE MAY APPROACH THE BENCH?

20 (BRIEF BENCH CONFERENCE OFF THE RECORD)

21 THE COURT: SURE. ALL RIGHT, LADIES AND GENTLEMEN, WE ARE AT A

22 BREAK AND IT'S TIME FOR A BREAK FOR THE DAY, IN FACT. THE ATTORNEYS

23 CAN DISCUSS WITH ME THE NUMBER OF WITNESSES THEY INTEND TO CALL

24 AND THE STATE HAS TWO MEDICAL WITNESSES THEY WISH TO CALL IN THE

25 MORNING. AS YOU KNOW, PHYSICIANS AND NURSES ARE VERY BUSY AND

1 THEY WERE TOLD IN A SUBPOENA TO BE HERE FIRST THING IN THE MORNING.
2 MS. BOLEN GOT THROUGH MORE OF HER CASE TODAY THAN SHE
3 ANTICIPATED AND SHE THOUGHT WE WOULD BE LATER IN THE DAY.
4 NEVERTHELESS, IT IS FOUR-THIRTY, WE ARE GOING TO SEND Y'ALL HOME
5 FOR THE EVENING AND REMEMBER YOU MAY NOT DISCUSS THE CASE WITH
6 EACH OTHER OR WITH ANYONE UNTIL ALL THE EVIDENCE IS TAKEN AND
7 INTRODUCED AND I HAVE GIVEN YOUR INSTRUCTIONS TO YOU. NOW, ENJOY
8 YOUR EVENING. PLEASE REMEMBER THIS, AS YOU ARE LEAVING THE
9 COURTHOUSE ALL PARTIES HAVE BEEN DIRECTED TO NOT SPEAK TO YOU
10 THEY ARE NOT BEING RUDE. IF ANYONE TRIES TO SPEAK TO YOU, WHETHER
11 THEY ARE INVOLVED IN THE CASE OR NOT, IF THEY ASK YOU ABOUT THE
12 CASE THAT IS WHEN I NEED TO KNOW ABOUT IT. SO IF THAT HAPPENS
13 PLEASE LET ANY OF MY BAILIFF'S KNOW WHAT HAPPENED, AND WHO IT WAS,
14 OR A DESCRIPTION OF THEM IF THEY HAPPEN TO ASK YOU ABOUT HOW THE
15 CASE IS GOING. ANYTHING LIKE THAT I WOULD LIKE TO KNOW ABOUT IT.
16 OTHER THAN THAT, DO NOT DO ANY RESEARCH. DON'T GO ON THE INTERNET
17 AND TRY TO FIND ANY OLD NEWS REPORTS OF THIS. WHAT Y'ALL DECIDE IS
18 WHAT YOU DERIVED HERE. SO WITH THAT IN MIND, REPORT TO THE JURY
19 ROOM – MS BOLEN, IS 9:30 EARLY ENOUGH?

20 MS. BOLEN: NINE-THIRTY WOULD BE FINE, YOUR HONOR.

21 THE COURT: MS. BELL?

22 MS. BELL: THAT'S FINE, YOUR HONOR.

23 THE COURT: NINE-THIRTY. WE WILL LET Y'ALL GET YOUR DAY

24 STARTED WITH YOUR CHILDREN IN SCHOOL AND YOUR HUSBAND TO

25 SCHOOL, WHATEVER. AND Y'ALL GET TO THE JURY ROOM AS CLOSE TO 9:30

1 AS YOU CAN. ALL RIGHT, WE WILL SEE YOU IN THE MORNING.

2 (JURY OUT AT 4:30 P.M.)

3 THE COURT: ALL RIGHT, MS. RICE, FOR THE RECORD. JUROR – WHAT IS
4 HIS NAME AGAIN? MISTER CHALMERS.

5 THE COURT: MISTER CHALMERS HAS ASKED ME IF HE COULD ASK ME A
6 QUESTION AND THE QUESTION WAS, COULD HE SPEAK WITH ONE OF Y'ALL –
7 HE DIDN'T SAY WHO, BUT IT WAS IN THIS DIRECTION AND HE REFERRED TO A
8 FEMALE AND IT WAS COULD I ASK HER A QUESTION. SO, IT WAS ONE OF THE
9 TWO PROSECUTORS OR DEFENSE ATTORNEY, A QUESTION WHEN IT WAS ALL
10 OVER. SO I TOLD HIM HE HAD TO LISTEN AND DEFINE HIS DECISION MAKING
11 IN THE JURY ROOM AND THE TESTIMONY. THAT IS WHAT HE ASKED ME WHEN
12 I WAS STANDING THERE. I WANT TO MAKE A RECORD OF THAT. I AM NOT
13 CERTAIN WHAT HE WAS CURIOUS ABOUT BUT THAT WAS THE NATURE OF MY
14 CONVERSATION FOR THE RECORD IN THIS CASE. AND I ASKED HIM HAD HE
15 BEEN ASKED BY ANYONE ABOUT THE CASE AND HE SAID, "OH, NO. NOTHING
16 ABOUT THE CASE BEFOREHAND." SO IT IS NOT SOMETHING ABOUT THE
17 PAST FOR HIM. IT IS SOMETHING THAT HAS BEEN BROUGHT BEFORE HIM
18 TODAY. SO THAT IS MY RECORD OF THAT CONVERSATION FOR THE TWO OF
19 Y'ALL.

20 MS. BOLEN: YOUR HONOR, I THINK THE DEFENSE HAS SOMETHING TO
21 PUT ON THE RECORD, BUT I DID WANT TO DIRECT YOU TO THE ISSUE OF
22 CUSTODY. MISTER GREENE IS REASONABLY OUT ON BOND BUT WE WOULD
23 ASK, BECAUSE OF THE PENDING CHARGES AND THE SERIOUSNESS OF THEM,
24 THAT HE BE HELD IN CUSTODY FOR TOMORROW'S, FOR THE TRIAL TO
25 PROCEED TOMORROW.

1 **THE COURT:** YES, MA'AM. MS. BELL?

2 **MS. BELL:** I WOULD JUST ASK THAT YOU ALLOW HIM TO GO HOME
3 TONIGHT. HE MADE IT HERE EVEN THOUGH HE WAS FACING THESE EXACT
4 SAME CHARGES. SOME MOTIONS WENT OUR WAY, SOME WENT THE STATE'S
5 WAY. I FULLY EXPECT HIM TO BE HERE AGAIN TOMORROW MORNING
6 WITHOUT REQUIRING THE COURT TO DETAIN HIM.

7 **THE COURT:** I TRY TO KEEP MY PRACTICE PRETTY STANDARD. ONCE
8 THE JURY IS SWORN, I GENERALLY TAKE THE DEFENDANT INTO CUSTODY.
9 MISTER GREENE, I'M SORRY, BUT IT IS JUST MY PRACTICE IN THIS AND THAT
10 IS WHAT I AM GOING TO ADHERE TO. SO, YOU WILL REMAIN IN THE CUSTODY
11 OF THE COUNTY TONIGHT.

12 **MS. BELL:** WOULD IT BE ALL RIGHT IF WE STAYED HERE A LITTLE
13 LONGER?

14 **THE COURT:** OH, YEAH. IF Y'ALL NEED SOME PREPARATION TIME. I
15 DON'T WANT TO KEEP THE DEPUTY'S HERE TOO LATE, BUT YOU MAY HAVE AN
16 HOUR IF YOU NEED THAT. ALL RIGHT. ANYTHING ELSE BEFORE WE GO?

17 **MR. GROSE:** WE NEVER HEARD BACK ONE WAY OR THE OTHER ABOUT
18 THE STATE'S ADDITIONAL REVIEW OF LAW ENFORCEMENT'S FILE. I AM
19 ASSUMING THAT BECAUSE OF THAT, THERE IS NOTHING, BUT I WHAT THE
20 RECORD TO REFLECT WHAT HAPPENED DURING THE LUNCH BREAK.

21 **MS. BOLEN:** I'M SORRY, YOUR HONOR, THAT WAS MY OVERSIGHT. I DID
22 SPEAK WITH DETECTIVE BELCHER ABOUT THAT DURING LUNCH AND HE
23 ASSURED ME THAT WE HAD EVERYTHING THAT WAS IN THEIR FILE, THAT HE
24 HAD CHECKED THE LAW ENFORCEMENT FILE AND WE HAVE EVERYTHING. I
25 AM SORRY FOR NOT COMMUNICATING THAT TO THE DEFENSE, BUT WE HAD A

1 LOT OF THINGS GOING ON AND I HAD MADE A MENTAL NOTE TO MENTION IT,
2 TO TELL THEM, AND FORGOT AND I DO APOLOGIZE FOR THAT.

3 THE COURT: I SHOULD HAVE ASKED THAT MYSELF BUT I DID NOT.

4 MR. GROSE: AND THE OTHER THING IS, YOU KNOW, WE HAD A SIDE
5 BAR ABOUT OFFICER PLESS BEING HERE TOMORROW. I WANT TO MAKE
6 SURE HE'S HERE A FEW MINUTES EARLY AND THAT HE HAS THE
7 PHOTOGRAPHS THAT HE TOOK AND THERE'S NOT REALLY ANY QUESTION
8 ABOUT THAT.

9 THE COURT: AND HE'S HERE, AS I UNDERSTAND IT, AND SO IF YOU
10 WANT TO SHOW HIM THE PICTURES AND FIND OUT TONIGHT THAT – NOT ON
11 THE RECORD, BUT—

12 MR. GROSE: NO. NO. WE CAN MEET WITH HIM TONIGHT AND THEN WE
13 JUST WANT TO MAKE SURE HE'S HERE.

14 MS. BELL: TO SEE IF THESE ARE ACTUALLY THE ONES HE TOOK
15 BECAUSE EVERYBODY ELSE SAYS SOMEONE ELSE TOOK THEM.

16 THE COURT: ALL RIGHT. Y'ALL SPEAK WITH HIM AND FIND OUT
17 BECAUSE – BUT HE WILL BE DIRECTED BY THE COURT TO BE HERE IN THE
18 MORNING AS A DEFENSE WITNESS.

19 THE COURT: MS. BELL WANTS SPEAK TO MISTER PLESS, NOT AS A
20 WITNESS BUT SHE WANTS TO TALK TO HIM AS A PERSPECTIVE WITNESS. IF
21 Y'ALL WANT TO GO ON AND LEAVE SHE WANTS TO SPEAK WITH HIM AND
22 THEN Y'ALL CAN GO ON.

23 MS. BELL: YOUR HONOR, I THINK I CAN SPEAK WITH HIM NOW SO HE
24 CAN LEAVE.

25 THE COURT: ALL RIGHT. WE WILL SEE Y'ALL IN THE MORNING. I WILL

DIRECT EXAMINATION OF DOCTOR ABERNATHY BY MS. BOLEN

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1 BE HERE ABOUT 9:15 IF THERE IS ANY PRE-TRIAL.

2 NOVEMBER 10, 2009 MORNING

3 THE COURT: MS. BOLEN AND MS. BELL, ARE Y'ALL BOTH READY?

4 MS. BOLEN: YES, SIR.

5 MS. BELL: YES, SIR.

6 THE COURT: ALL RIGHT. BRING THE JURY, PLEASE.

7 (JURY IN AT 9:44 A.M.)

8 THE COURT: GOOD MORNING EVERYONE. I AM GLAD WE ARE ALL IN A
9 DRY PLACE. WE HAVE A LITTLE RAIN SHOWER GOING ON OUTSIDE TODAY.
10 ALL RIGHT, ARE WE READY TO CONTINUE? MS. BOLEN.

11 MS. BOLEN: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT.
12 THE STATE CALLS DOCTOR ABERNATHY.

13 THE COURT: DOCTOR ABERNATHY, PLEASE COME FORWARD AND BE
14 SWORN.

15 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, DOCTOR
16 ABERNATHY TESTIFIED AS FOLLOWS:)

17 DIRECT EXAMINATION OF DOCTOR DON L. ABERNATHY, JR. BY MS. BOLEN:

18 Q GOOD MORNING, DOCTOR ABERNATHY. COULD YOU PLEASE STATE
19 YOUR FULL NAME FOR THE RECORD?

20 A DON LESLEY ABERNATHY, JR.

21 Q AND DOCTOR ABERNATHY, WHAT IS YOUR OCCUPATION?

22 A I AM THE EMERGENCY ROOM DIRECTOR AT THE ABBEVILLE HOSPITAL.

23 Q HOW LONG HAVE YOU BEEN THE EMERGENCY ROOM DIRECTOR AT THE
24 HOSPITAL?

25 A ALMOST TWO YEARS. I'VE WORKED THERE FOR OVER EIGHT YEARS.

DIRECT EXAMINATION OF DOCTOR ABERNATHY BY MS. BOLEN

135

- 1 Q PRIOR TO BECOMING DIRECTOR, WHAT WAS YOUR JOB AT THE
2 HOSPITAL?
- 3 A WELL, I STARTED OFF THERE WHEN I WAS A RESIDENT, BUT I HAD A
4 PRACTICE IN GEORGIA AND MOVED BACK TO THE AREA ABOUT EIGHT
5 YEARS AGO.
- 6 Q SO YOU WERE AN EMERGENCY ROOM PHYSICIAN?
- 7 A I HAVE ALWAYS BEEN PART-TIME E-R. I WENT FULL TIME ABOUT EIGHT
8 YEARS AGO.
- 9 Q DO YOU HAVE ANY DEGREES THAT ARE REQUIRED TO BE A PHYSICIAN?
- 10 A YES. I DO.
- 11 Q AND WHAT ARE THOSE?
- 12 A YOU HAVE TO HAVE FOUR YEARS OF COLLEGE, FOUR YEARS IN
13 MEDICAL SCHOOL AND A RESIDENCY AND I AM BOARD CERTIFIED IN
14 FAMILY PRACTICE.
- 15 Q AND WHERE IS YOUR MEDICAL DEGREE FROM?
- 16 A MERCER UNIVERSITY IN MACON, GEORGIA.
- 17 Q AND YOUR RESIDENCY, DID YOU DO THIS – IN WHAT AREA DID YOU DO
18 YOUR RESIDENCY?
- 19 A FAMILY PRACTICE IN ANDERSON, SOUTH CAROLINA.
- 20 Q AS AN EMERGENCY ROOM DOCTOR FOR THE PAST EIGHT OR SO
21 YEARS, DO YOU HAVE OCCASIONS TO SEE PERSONS WHO HAVE
22 SUFFERED PHYSICAL TRAUMA?
- 23 A YES, MA'AM.
- 24 Q AND ABOUT, IF IT'S POSSIBLE, CAN YOU ESTIMATE ABOUT HOW MANY
25 SUCH PERSONS YOU HAVE SEEN IN YOUR TIME AS AN EMERGENCY

DIRECT EXAMINATION OF DOCTOR ABERNATHY BY MS. BOLEN

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1 ROOM DOCTOR?

2 A OH, I WOULD SAY SEVERAL THOUSAND.

3 Q IS PART OF YOUR JOB AS AN EMERGENCY ROOM DOCTOR TREATING
4 AND DIAGNOSING PERSONS WITH PHYSICAL TRAUMA?

5 A YES, MA'AM.

6 MS. BOLEN: YOUR HONOR, AT THIS TIME THE STATE MOVES TO HAVE
7 DOCTOR ABERNATHY QUALIFIED AS AN EXPERT WITNESS IN THE FIELD
8 OF EMERGENCY MEDICINE AND TRAUMA.

9 THE COURT: ANY VOIR DIRE?

10 MS. BELL: NO, YOUR HONOR.

11 THE COURT: HE IS SO QUALIFIED.

12 MS. BOLEN: THANK YOU, YOUR HONOR.

13 Q DOCTOR ABERNATHY, YOU SAID THAT YOU HAD SEEN THOUSANDS OF
14 VICTIMS OF TRAUMA.

15 A YES, MA'AM.

16 Q OKAY. I WOULD LIKE TO DIRECT YOUR ATTENTION TO FEBRUARY 24,
17 2009. WERE YOU WORKING IN YOUR CAPACITY AS AN EMERGENCY
18 ROOM PHYSICIAN ON THAT DATE?

19 A YES, MA'AM.

20 Q AND THIS WAS AT THE ABBEVILLE HOSPITAL?

21 A YES, MA'AM.

22 Q DID YOU HAVE OCCASION TO TREAT A WOMAN NAMED THERESA
23 SULLIVAN?

24 A I DID.

25 Q OKAY. DO YOU REMEMBER WHAT SHE CAME IN FOR?

DIRECT EXAMINATION OF DOCTOR ABERNATHY BY MS. BOLEN

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- 1 A SHE HAD SOME DIZZINESS AND HAD AN ALLEGED ASSAULT THE DAY
2 BEFORE AND SHE WAS FEELING LIGHT-HEADED AND DIZZY AND HAD
3 SOME X-RAYS THE DAY BEFORE. SHE WAS STILL NOT FEELING WELL,
4 HER FACE WAS SWELLING.
- 5 Q OKAY. DO YOU REMEMBER MS. SULLIVAN'S APPEARANCE WHEN SHE
6 CAME INTO THE HOSPITAL?
- 7 A I DO.
- 8 Q AND WHAT WAS HER APPEARANCE?
- 9 A SHE HAD A PRETTY GOOD AMOUNT OF SWELLING TO HER NOSE AND
10 FACE AREA, AND SOME BRUISING AND A LACERATION THAT HAD BEEN
11 REPAIRED UP HERE ON THE RIGHT SIDE OF HER FOREHEAD.
- 12 Q AND SHE HAD MADE A COMPLAINT OF BEING DIZZY, YOU SAID?
- 13 A YES, MA'AM.
- 14 Q OKAY. DID YOU PERFORM ANY TREATMENT OR TESTS ON MS.
15 SULLIVAN?
- 16 A WE DID. WE DID A CAT SCAN OF HER HEAD AND HER FACIAL BONES.
- 17 Q AND DID YOU MAKE ANY DIAGNOSIS BASED ON THAT?
- 18 A THE CAT SCAN SHOWED A FRACTURE OF THE NASAL ALINASAL, WHICH
19 IS THE TWO BONES ON THE SIDE OF THE NOSE, AND THE MAIN PART OF
20 THE NASAL BONE.
- 21 Q SO, WAS THIS ONE FRACTURE OR SEVERAL?
- 22 A WELL, IT IS THREE SEPARATE FRACTURES OF THE NASAL, OF THE
23 WHOLE NOSE.
- 24 Q BUT THREE SEPARATE BREAKS?
- 25 A RIGHT.

DIRECT EXAMINATION OF DOCTOR ABERNATHY BY MS. BOLEN

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- 1 Q OKAY. DOCTOR ABERNATHY, IN YOUR YEARS OF TRAINING AND
2 EXPERIENCE CAN YOU TESTIFY WHETHER A BROKEN NOSE MIGHT
3 AFFECT SOMEONE'S ABILITY TO BREATHE?
- 4 A IT CAN.
- 5 Q WHAT DEGREE OF FORCE WOULD BE REQUIRED TO CAUSE THAT SORT
6 OF FRACTURE THAT YOU SAW IN MS. SULLIVAN?
- 7 A A PRETTY SIGNIFICANT FORCE TO THE NOSE AND FACE.
- 8 Q CAN A BROKEN BONE SUCH AS, BROKEN BONES SUCH AS THE ONES
9 MS. SULLIVAN HAD TO HER NOSE, CAN THEY BE THE RESULT OF A
10 TRAUMATIC INJURY?
- 11 A YES, MA'AM.
- 12 Q YOU STATED THAT MS. SULLIVAN ALSO HAD A LACERATION THAT HAD
13 BEEN REPAIRED?
- 14 A YES, MA'AM.
- 15 Q CAN A LACERATION SUCH AS THE ONE YOU SAW ON MS. SULLIVAN, CAN
16 THAT LEAD TO SCARRING?
- 17 A IT CERTAINLY COULD. YES, MA'AM.
- 18 Q DOCTOR ABERNATHY, WHAT IN YOUR TRAINING AND EXPERIENCE IN
19 SEEING THOUSANDS OF VICTIMS OF TRAUMA, WHAT SORT OF INJURY
20 COULD A PERSON SUSTAIN FROM BEING HIT OR STOMPED IN THE
21 HEAD?
- 22 A WHAT KIND OF INJURY?
- 23 Q YES.
- 24 A WELL, THEY COULD HAVE CONTUSIONS. THEY COULD HAVE
25 INTERCRANIAL BLEEDING. THEY COULD HAVE A WHOLE HOST OF

CROSS EXAMINATION OF DOCTOR ABERNATHY BY MS. BELL

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1 INJURIES DEPENDING ON WHERE THEY WERE KICKED, THE ASSAULT
2 WHERE THEY WERE INJURED. ONE OF THOSE COULD INCLUDE A
3 NASAL FRACTURE, I GUESS.

4 Q CAN BLOOD LOSS BE CONSIDERED AN INJURY TO A PERSON'S BODY?

5 A AS LONG AS A DOCTOR IS NOT DOING IT, IT CAN. BUT, YES, IT
6 CERTAINLY COULD.

7 Q OKAY.

8 MS. BOLEN: BEG A MOMENT OF THE COURT'S INDULGENCE, YOUR
9 HONOR.

10 THE COURT: YES, MA'AM..

11 Q DOCTOR ABERNATHY, I DON'T HAVE ANY FURTHER QUESTIONS FOR
12 YOU AT THIS TIME. PLEASE ANSWER ANY QUESTIONS MS. BELL MAY
13 HAVE FOR YOU.

14 MS. BELL: MAY IT PLEASE THE COURT.

15 **CROSS EXAMINATION OF DOCTOR ABERNATHY BY MS. BELL**

16 Q DOCTOR ABERNATHY, AS SOMEONE WHO HAS WORKED SO LONG IN
17 THE E-R DOING TRAUMA WORK, YOU HAVE SEEN MULTIPLE BROKEN
18 NOSES. CORRECT?

19 A YES, MA'AM.

20 Q AND BLACK EYES OFTEN OCCUR WHEN YOU HAVE A BROKEN NOSE.
21 CORRECT?

22 A EXCUSE ME?

23 Q BLACK EYES OFTEN OCCUR —

24 A YES, MA'AM.

25 Q — IF YOU HAVE A BROKEN NOSE. CORRECT? THE FACE, IF YOU HAVE

CROSS EXAMINATION OF DOCTOR ABERNATHY BY MS. BELL

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- 1 FACIAL INJURIES, YOU HAVE SEEN THOSE BEFORE. CORRECT? WITH
2 CUTS AND SCRAPES ON THE FACE AND ARMS? FACIAL INJURIES LIKE
3 THAT BLEED MORE THAN OTHER INJURIES. CORRECT?
4 A FACIAL INJURIES BLEED MORE THAN OTHER INJURIES?
5 Q THEY CAN BLEED MORE, BECAUSE OF THE BLOOD VESSELS IN YOUR
6 FACE?
7 A THE SCALP PARTICULARLY, MORE SO EVEN THAN THE FACE. YES,
8 MA'AM.
9 Q WITH BLACK EYES, THOSE CAN OCCUR BECAUSE THERE IS SO MUCH
10 AREA BEHIND, EMPTY AREA THAT CAN FILL WITH FLUID. CORRECT?
11 A WELL, THAT'S AN EVIDENCE OF TRAUMA. USUALLY YOU ARE HIT HERE
12 (INDICATING) AND THE SUBCUTANEOUS BLOOD WILL TRACK UNDER
13 THE SKIN AND GO WITH GRAVITY AND YOU WILL EVENTUALLY HAVE
14 BLACK EYES. I THINK THIS INJURY OCCURRED A COUPLE OF DAYS
15 BEFORE.
16 Q AND IT COULD OCCUR THOUGH, AT THE SAME TIME IF YOU GOT HIT IN
17 THE NOSE?
18 A COULD IT OCCUR?
19 Q YES.
20 A YES, MA'AM. IT COULD.
21 **MS. BELL:** A QUICK INDULGENCE FOR JUST ONE MOMENT.
22 **THE COURT:** YES, MA'AM.
23 Q AND JUST TO CLARIFY. YOU SAW MS. SULLIVAN ON THE 24TH.
24 CORRECT?
25 A SHE WAS SEEN TWO DAYS EARLIER – I DON'T HAVE THE CHART IN

RE-DIRECT EXAMINATION OF DOCTOR ABERNATHY BY MS. BOLEN

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1 FRONT OF ME, BUT I SAW HER TWO DAYS AFTER SHE HAD BEEN SEEN
2 INITIALLY BY DOCTOR JORDAN.

3 Q SO, YOU WEREN'T THE FIRST DOCTOR TO SEE HER?

4 A NO, MA'AM.

5 Q SO, YOU WEREN'T THERE ON THE 22ND WHEN SHE INITIALLY CAME IN?

6 A NO.

7 Q HAVE YOU -- DID YOU REVIEW THE PRIOR CHART IN TREATING MS.
8 SULLIVAN WHEN SHE CAME IN?

9 A YES, MA'AM.

10 Q WAS THERE ANY NOTATION OF A BROKEN NOSE AT THAT POINT?

11 A NO. THEY DID REGULAR PLAIN X-RAYS AND IT DID NOT SHOW UP ON
12 THE PLAIN X-RAYS.

13 Q OKAY. NO FURTHER QUESTIONS.

14 **MS. BOLEN:** BRIEF RE-DIRECT, YOUR HONOR.

15 **THE COURT:** YES, MA'AM.

16 **RE-DIRECT EXAMINATION OF DOCTOR ABERNATHY BY MS. BOLEN**

17 Q DOCTOR ABERNATHY, WHAT IS THE DIFFERENCE BETWEEN WHAT YOU
18 WOULD JUST CALL A PLAIN X-RAY AND THE C-T SCAN THAT YOU
19 PERFORMED?

20 A WELL, THE CAT SCAN IS MUCH MORE SENSITIVE. THE MAIN NASAL
21 FRACTURE HERE WAS NON-DISPLACED, SO IT DIDN'T SHOW UP. WE
22 SAW A LINE, BUT THEY WEREN'T REALLY SURE THAT WAS A FRACTURE.
23 YOU REALLY CAN'T SEE THE NASAL ALINASAL VERY WELL ON A PLAIN
24 X-RAY, BUT ON THE CAT SCAN IT SHOWED IT UP. IT WAS VERY
25 OBVIOUS.

DIRECT EXAMINATION OF CHARLENE EVANS BY MS. BOLEN

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1 Q OKAY. SO, THIS IS SOMETHING THAT, THE PRESENCE OF THE INJURY
2 ON THE C-T SCAN DOES NOT MEAN THAT WHEN IT DIDN'T SHOW UP ON
3 THE PLAIN X-RAY, THAT JUST THE PLAIN X-RAY WAS NOT EQUIPPED TO
4 SHOW THAT LEVEL --

5 A RIGHT. IF YOU GO BACK AND LOOK AT THE X-RAY, YOU CAN SEE THE
6 LINE WHERE THE FRACTURE WAS. IT'S JUST THAT IT WAS -- THE
7 RADIOLOGIST WAS THINKING THAT IT COULD HAVE BEEN A SHADOW.
8 IT'S HARD -- IT WASN'T OUT OF PLACE, AND THE MAIN NASAL BONE,
9 WHICH IS WHAT YOU SEE MAINLY WHEN YOU LOOK AT AN X-RAY, THE
10 PLAIN REGULAR OLD X-RAY.

11 Q SO WHEN YOU DID THE C-T SCAN, YOU WERE ABLE TO SEE ALL THREE
12 OF THE BONES AND ALL THREE THAT WERE FRACTURED?

13 A YES, MA'AM.

14 MS. BOLEN: NOTHING FURTHER, YOUR HONOR.

15 THE COURT: ANY RE-CROSS?

16 MS. BELL: NO FURTHER QUESTIONS, YOUR HONOR.

17 THE COURT: ALL RIGHT. THANK YOU, DOCTOR.

18 MS. BOLEN: YOUR HONOR, THE STATE CALLS CHARLENE EVANS

19 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, CHARLENE

20 EVANS TESTIFIED AS FOLLOWS:)

21 **DIRECT EXAMINATION OF CHARLENE EVANS BY MS. BOLEN**

22 Q GOOD MORNING, MS. EVANS. WILL YOU STATE YOUR FULL NAME FOR
23 THE RECORD, PLEASE.

24 A DAWN CHARLENE EVANS.

25 Q AND MS. EVANS, HOW ARE YOU EMPLOYED?

DIRECT EXAMINATION OF CHARLENE EVANS BY MS. BOLEN

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1 A I AM AN EMERGENCY ROOM NURSE IN THE EMERGENCY ROOM IN THE
2 ABBEVILLE AREA MEDICAL CENTER.

3 Q HOW LONG HAVE YOU BEEN AN EMERGENCY ROOM NURSE IN THE
4 ABBEVILLE MEDICAL CENTER?

5 A I HAVE WORKED FULL TIME SINCE JULY OF LAST YEAR AND I WORKED
6 FOR ABOUT A YEAR PART-TIME PRIOR TO THAT AT ABBEVILLE.

7 Q DID YOU WORK ANYWHERE PRIOR TO THAT AS AN EMERGENCY ROOM
8 NURSE?

9 A YES. I WAS EMPLOYED AT AN-MED IN ANDERSON SINCE 1984. I WAS A
10 SURGICAL TECHNICIAN FOR SIX YEARS, GRADUATED NURSING SCHOOL
11 IN 1989. I HAVE BEEN A REGISTERED NURSE IN ANDERSON SINCE THEN
12 AND WORK PART-TIME THERE STILL.

13 Q HOW OFTEN DO YOU WORK IN THE EMERGENCY ROOM AS AN RN?

14 A I AM IN ABBEVILLE FOR SEVEN DAYS STRAIGHT FOR THIRTY-SIX HOURS
15 ONE WEEK AND FORTY HOURS THE NEXT WEEK AND I PULL ANYWHERE
16 FROM SIXTEEN TO TWENTY-FOUR HOURS IN ANDERSON EVERY OTHER
17 WEEK.

18 Q YOU SEE A LOT OF PATIENTS WHEN YOU WORK?

19 A YES, MA'AM.

20 Q I WOULD LIKE TO DIRECT YOUR ATTENTION TO THE EVENING ON THE
21 NIGHT OF FEBRUARY 22, 2009. DO YOU RECALL IF YOU WERE WORKING
22 IN YOUR CAPACITY AS AN R-N AT THE ABBEVILLE AREA MEDICAL
23 CENTER?

24 A I DON'T RECALL, BUT IT IS A GOOD POSSIBILITY.

25 Q WOULD IT REFRESH YOUR MEMORY IF WOULD I HAND UP YOUR CHART?

DIRECT EXAMINATION OF CHARLENE EVANS BY MS. BOLEN

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1 A YES, MA'AM.

2 (MS. BOLEN HANDS A DOCUMENT TO THE WITNESS)

3 A YES, MA'AM, I WAS WORKING. THAT WOULD HAVE BEEN IN THE MIDDLE
4 OF THE NIGHT AND SO I WENT IN AT TWELVE O'CLOCK AND WORKED
5 UNTIL EIGHT.

6 Q OKAY. SO YOU WERE WORKING ON THE 22ND?

7 A YES, MA'AM.

8 Q DID YOU HAVE AN OCCASION ON THE 22ND TO TREAT THE VICTIM
9 NAMED THERESA SULLIVAN?

10 A YES, MA'AM. I DID.

11 Q DO YOU RECALL ABOUT WHAT TIME MS. SULLIVAN CAME IN?

12 A SHE CAME IN TO THE EMERGENCY ROOM AROUND TWO-FORTY IN THE
13 MORNING.

14 Q DO YOU RECALL MS. SULLIVAN'S APPEARANCE WHEN SHE ARRIVED IN
15 THE EMERGENCY ROOM?

16 A I DON'T RECALL IT, BUT THESE DOCUMENTS IF I CAN READ MY
17 DOCUMENTATION, I WROTE, "WE PLACED HER IN ROOM FOUR IN THE
18 EMERGENCY ROOM AND THE POLICE OFFICERS WERE WITH HER."

19 Q DID YOU NOTICE OR DOCUMENT ANY INJURIES TO MS. SULLIVAN?

20 A YES, MA'AM. SHE HAD BRUISING AND SWELLING TO BOTH EYES. HER
21 LEFT EYE WAS ALMOST SWOLLEN CLOSED. I NOTED HER HAVING
22 APPROXIMATELY A 1.5 CENTIMETER LACERATION TO HER RIGHT UPPER
23 CHEEK, SWELLING NOTED TO THE NOSE WITH QUESTIONABLE
24 DEFORMITY, BRUISING TO RIGHT EAR LOBE, BRUISE THE SIZE OF A
25 BASEBALL TO HER LEFT UPPER ARM RED AND BLUE. PATIENT DENIED

DIRECT EXAMINATION OF CHARLENE EVANS BY MS. BOLEN

145

1 LOSS OF CONSCIOUSNESS.

2 Q OKAY. LET ME DIRECT YOUR ATTENTION TO YOUR COMMENT ABOUT
3 QUESTIONABLE DEFORMITY. CAN YOU EXPLAIN WHAT THAT MEANS?

4 A AS A NURSE, I CAN'T DOCUMENT THINGS ARE FRACTURED OR BROKEN.
5 I CAN DOCUMENT WHAT I SEE. WHEN I LOOK AT SOMETHING, I CAN SEE
6 IF IT IS STRAIGHT AND HOW IT SHOULD NORMALLY BE AND WE CAN ASK
7 THE PATIENT WITH FACIAL INJURIES WE WOULD ASK THEM, "IS YOUR
8 NOSE IS NORMALLY STRAIGHT" AND USUALLY THE RESPONSE IS NO.
9 THEN I ASKED MS. SULLIVAN IF HER NOSE WAS NORMALLY STRAIGHT
10 AND SHE SAID YES SO FROM WHAT I COULD TELL IT LOOKED LIKE IT
11 WAS NOT, WHICH MAKES IT A QUESTIONABLE DEFORMITY.

12 Q SO THE NOSE DID NOT APPEAR STRAIGHT?

13 A CORRECT.

14 Q OKAY. TO THE BEST OF YOUR RECOLLECTION, CAN YOU DESCRIBE
15 WHAT, IF ANY, TREATMENTS YOU ADMINISTERED TO MS. SULLIVAN?

16 A I MENTIONED THE FACT THAT SHE -

17 MS. BELL: YOUR HONOR, MAY WE APPROACH REAL QUICK?

18 THE COURT: SURE.

19 (BRIEF BENCH CONFERENCE OFF THE RECORD)

20 Q MS. EVANS, I AM GOING TO SCRATCH THAT LAST QUESTION. NOW,
21 YOU MENTIONED THAT MS. SULLIVAN'S EYES WERE SWOLLEN SHUT.
22 CAN YOU DESCRIBE WHAT THAT LOOKED LIKE FOR THE JURY?

23 A PROFUSE SWELLING AND THE LEFT EYE WAS ALMOST SWOLLEN
24 COMPLETELY CLOSED SO THAT SHE COULD ALMOST NOT OPEN IT AT
25 ALL.

DIRECT EXAMINATION OF CHARLENE EVANS BY MS. BOLEN

146

1 Q AND THE BRUISING THAT YOU DESCRIBED, WHAT WAS IT -- WHAT MADE
2 YOU NOTICE THE BRUISING?

3 A IT WAS BRUISING. IT WAS BLUE, THERE WAS SWELLING.

4 Q WAS THERE BRUISING ON ANY OTHER PART OF HER BODY BESIDES
5 HER FACE THAT YOU NOTICED?

6 A SHE HAD A BRUISE APPROXIMATELY A QUARTER SIZE TO THE RIGHT
7 THIGH, BRUISES TO BOTH KNEES. NOTED TO HAVE A LARGE ABRASION
8 APPROXIMATELY ABOUT FOUR CENTIMETERS BY SIX CENTIMETERS
9 UNDER CHIN, ABRASION NOTED AT THE BASE OF THE NECK. ABRASION
10 TO THE LEFT CLAVICAL AREA TIMES TWO, ABRASION TO THE UPPER
11 RIGHT BREAST APPROXIMATELY TWO CENTIMETERS BY SIX
12 CENTIMETERS. UM...

13 Q I THINK THAT IS SUFFICIENT. YOU USED THE TERMS ABRASION AND
14 LACERATION. AND BRIEFLY, WHAT IS A ABRASION?

15 A IT IS LIKE YOU FALL DOWN AND SKIN YOUR KNEE. IT IS A SUPERFICIAL
16 SCRATCH WHERE YOU BREAK THROUGH THE SKIN AND IT OOZES.

17 Q AND WHAT IS A LACERATION?

18 A A LACERATION IS DEEP ENOUGH TO WHERE WE HAVE TO PUT IT BACK
19 TOGETHER EITHER WITH SOME FORM OF GLUE OR SUTURES TO HOLD
20 IT TOGETHER FOR IT TO HEAL PROPERLY.

21 MS. BOLEN: BEG A MOMENT OF THE COURT'S INDULGENCE, YOUR
22 HONOR.

23 THE COURT: YES, MA'AM.

24 Q MS. EVANS, I DON'T HAVE ANY FURTHER QUESTIONS FOR YOU AT THIS
25 TIME. PLEASE ANSWER ANY QUESTIONS MS. BELL MAY HAVE FOR YOU.

CROSS EXAMINATION OF CHARLENE EVANS BY MS. BELL

147

1 A YES, MA'AM.

2 MS. BELL: BEG THE COURT'S INDULGENCE ONE MOMENT.

3 THE COURT: YES, MA'AM.

4 MS. BELL: THANK YOU, YOUR HONOR.

5 **CROSS EXAMINATION OF CHARLENE EVANS BY MS. BELL**

6 Q JUST TO CONFIRM SOMETHING YOU TESTIFIED EARLIER, THERE IS A
7 DENIAL OF ANY LOSS OF CONSCIOUSNESS. CORRECT?

8 A JUST A SECOND. (WITNESS LOOKS AT DOCUMENT)

9 Q TAKE YOUR TIME.

10 A THAT IS CORRECT. PATIENT DENIES LOSS OF CONSCIOUSNESS.

11 Q YOU ALSO TESTIFIED THAT YOU ARE A NURSE, AND AS A NURSE YOUR
12 ROLE IS ONE THAT'S LIMITED IN THE E-R. CORRECT?

13 A IT DEPENDS ON WHAT YOU ARE ASKING ME. WHAT EXACTLY --

14 Q YOU DON'T MAKE DIAGNOSES. CORRECT?

15 A CORRECT.

16 Q OKAY. A DOCTOR WOULD HAVE COME IN TO MAKE ANY KIND OF
17 FORMAL DIAGNOSIS. CORRECT?

18 A CORRECT.

19 Q ALL RIGHT. NO FURTHER QUESTIONS.

20 MS. BOLEN: NO RE-DIRECT, YOUR HONOR.

21 THE COURT: THANK YOU, MS. EVANS. YOU MAY BE EXCUSED.

22 A THANK YOU.

23 MS. BOLEN: YOUR HONOR, AT THIS TIME THE STATE RESTS.

24 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THIS IS AN

25 APPROPRIATE TIME. THE STATE HAS PRESENTED THEIR EVIDENCE. IT IS AN

MOTIONS

148

1 APPROPRIATE TIME TO TAKE A SHORT BREAK. I WOULD LIKE YOU TO STEP
2 BACK INTO THE JURY ROOM FOR A FEW MOMENTS AND WE WILL HAVE YOU
3 BACK OUT HERE QUICK AS WE GET FINISHED.

4 (JURY OUT AT 10:05 A.M.)

5 THE COURT: ALL RIGHT. MS. BELL.

6 MS. BELL: THANK YOU. AT THIS TIME I DO HAVE TWO SHORT MOTIONS
7 TO MAKE BEFORE THE COURT.

8 THE COURT: OKAY.

9 MS. BELL: THEY ARE BOTH DIRECTED VERDICT MOTIONS. THE FIRST IS
10 REGARDING THE BURGLARY FIRST CHARGE. AT THIS TIME I WOULD ASK THE
11 COURT TO DIRECT A MOTION IN FAVOR OF THE DEFENSE REGARDING
12 BURGLARY FIRST. ONE OF THE COMPONENTS FOR BURGLARY FIRST IS THE
13 REQUIREMENT OF SHOWING THAT THE DEFENDANT ENTERED THE HOME
14 WITH THE INTENT TO COMMIT A CRIME AND THE TESTIMONY THAT HAS BEEN
15 PUT FORTH UP TO THIS POINT HAS SHOWN THAT HE ENTERED THE HOME
16 AND ASKED QUESTIONS CONCERNING HIS BELONGINGS. REQUESTING
17 BELONGINGS AND TO ENTER THE HOME REGARDING THAT IS NOT A CRIME,
18 YOUR HONOR. MERE ENTRY INTO A DWELLING IS NOT SUFFICIENT FOR
19 BURGLARY FIRST AND THERE MUST BE MORE SHOWN AT THIS POINT. THEY
20 HAVE SHOWN THAT LATER ON INJURIES OCCURRED, BUT HIS INITIAL ENTRY
21 INTO THE HOME, BY THE TESTIMONY PROVIDED, WAS REGARDING ASKING
22 THE QUESTION REGARDING HIS BELONGINGS, YOUR HONOR.

23 THE COURT: OKAY. I THINK THERE WAS A FACTUAL PRESENTATION
24 THAT IT WAS A BRIEF – AND I DON'T KNOW HOW BRIEF, THAT WOULD BE A
25 FACTUAL QUESTION – BUT UPON ENTRY, QUESTIONING, IMMEDIATELY

MOTIONS

149

1 BEGAN STRIKING HER, IS WHAT I RECOLLECT THE VICTIM TESTIFYING TO. IT
2 WAS NOT – IF THERE WAS ANY PASSAGE OF TIME IT WAS WITHIN THE FEW
3 STEPS AS HE IS COMING IN, AND THEN START COMMITTING THE ASSAULT. I
4 THINK THERE IS ENOUGH FACTS THAT IT CAN GO TO THE JURY ON THAT
5 ISSUE. SO I WILL RESPECTIVELY DENY YOUR MOTION.

6 **MS BELL:** THANK YOU, YOUR HONOR. THE SECOND MOTION WAS
7 REGARDING C-D-V-H-A-N. AT THIS TIME, THE DEFENSE ASKS THAT YOU
8 DIRECT A VERDICT REGARDING C-D-V-H-A-N IN CONNECTION TO THE SERIOUS
9 BODILY INJURY. I KNOW AT THIS POINT IT IS NOT BEEN DEFINED, BUT WE
10 JUST, AT THIS TIME, DON'T FEEL THAT SERIOUS BODILY INJURY FACTUALLY
11 HAS BEEN PROVIDED AND I THINK INFORMATION REGARDING THE FACTS OF
12 SERIOUS BODILY INJURY HASN'T BEEN PROVIDED, YOUR HONOR, AND WE
13 ASK FOR A DIRECTED VERDICT.

14 **THE COURT:** ALL RIGHT. AND AGAIN, I BELIEVE THAT THE DEFINITION
15 OF SERIOUS BODILY INJURY UNDER THE STATUTE AND THE OTHER
16 INFERENCE GLEANED THERE FROM, THERE IS A FACTUAL BASIS. THERE IS
17 TESTIMONY FROM THE VICTIM, THE MOTHER, THE TREATING PHYSICIAN, AND
18 THE NURSE THAT SHE HAD SIGNIFICANT INJURIES FOR THE JURY TO
19 CONSIDER AND WEIGH UPON THE ISSUES WHETHER IT IS SERIOUS OR GREAT
20 BODILY INJURY WHICH ARE SYNONYMOUS TERMS AS I UNDERSTAND IT FROM
21 THE CASE LAW. SO RESPECTFULLY, I WOULD DECLINE THAT MOTION.

22 **MS. BELL:** THANK YOU, SIR. THAT ENDS OUR DIRECTED VERDICT
23 MOTIONS, YOUR HONOR.

24 **THE COURT:** ALL RIGHT. Y'ALL WANT A MINUTE OR TWO OR ARE YOU
25 READY TO GO FORWARD?

1 **MS. BELL: YES, SIR. JUST A SHORT RECESS TO TALK TO HIM AND**

2 THERE IS ONE OTHER PERSON WE NEED TO TALK TO BRIEFLY.

3 THE COURT: VERY WELL.

4 MS. BELL: MAYBE ABOUT FIFTEEN MINUTES AT THE MOST, YOUR

5 HONOR.

6 THE COURT: OKAY. THAT WILL BE FINE.

7 (BRIEF BREAK)

8 THE COURT: OKAY. MS. BELL, ARE YOU READY?

9 MS. BELL: YES, SIR.

10 THE COURT: ALL RIGHT. BRING ME THE JURY. PLEASE.

11 (JURY IN AT 10:40 A.M.)

12 THE COURT: ALL RIGHT, MS. BELL.

13 MS. BELL: THE DEFENSE CALLS OFFICER WAYNE PLESS TO THE STAND.

14 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, DEPUTY

15 SHERIFF WAYNE PLESS TESTIFIED AS FOLLOWS:)

16 **DIRECT EXAMINATION OF OFFICER WAYNE PLESS BY MS. BELL**

17 Q WOULD YOU PLEASE STATE YOUR FULL NAME FOR THE RECORD?

18 A. WAYNE O'DELL PLESS.

19 Q WHERE DO YOU WORK, MISTER PLESS?

20 A ABBEVILLE COUNTY SHERIFF'S DEPARTMENT.

21 Q AND WHAT IS YOUR ROLE AT THE SHERIFF'S DEPARTMENT?

22 A I AM A DEPUTY SHERIFF.

23 Q DEPUTY PLESS, HOW LONG HAVE YOU BEEN WORKING AT THE

24 ABBEVILLE COUNTY SHERIFF'S DEPARTMENT?

25 A TWO YEARS.

DIRECT EXAMINATION OF OFFICER WAYNE PLESS BY MS. BELL

151

- 1 Q AND WHAT ACTIVITIES DO YOU DO AS A DEPUTY?
- 2 A I PATROL THE STREETS, DELIVER PAPERS AND ANSWER CALLS.
- 3 Q AND DID YOU RESPOND TO A CALL ON FEBRUARY 22, 2009?
- 4 A YES, MA'AM.
- 5 Q PLEASE TELL US A LITTLE BIT ABOUT YOUR RESPONSE TO THAT CALL.
- 6 A WE RECEIVED THE CALL TO GO TO, I BELIEVE IT WAS,
- 7 DRIVE, I THINK. DOMESTIC. WE GOT DOWN THERE AND THEN THERE
- 8 WASN'T NOBODY HOME SO WE WENT UP TO, I THINK IT WAS OR
- 9 TO THE MOTHER'S HOUSE WHERE THE VICTIM WAS.
- 10 Q AND DID YOU END UP RETURNING BACK TO ?
- 11 A YES, MA'AM.
- 12 Q WHAT HAPPENED WHEN YOU RETURNED TO ?
- 13 A I COME BACK TO AND THEY ADVISED US THAT THE SUSPECT WAS
- 14 STILL IN THE ROOM THERE AND SO COME BACK AND WAS KNOCKING
- 15 ON THE DOOR. THE DOOR WAS LOCKED. AND WE KNOCKED AND
- 16 KNOCKED AND DIDN'T NOBODY ANSWER.
- 17 Q AND THE DOOR WAS CLOSED AND LOCKED?
- 18 A YES.
- 19 Q DID YOU EVENTUALLY GET IN?
- 20 A YES, MA'AM.
- 21 Q HOW?
- 22 A ONE OF THE OFFICERS GOT PERMISSION FROM THE VICTIM AND GOT A
- 23 KEY FROM HER AND WE UNLOCKED THE DOOR AND WENT IN.
- 24 Q LATER ON DID YOU DO ANYTHING AFTER THE SUSPECT WAS TAKEN
- 25 AWAY?

DIRECT EXAMINATION OF OFFICER WAYNE PLESS BY MS. BELL

152

- 1 A TOOK SOME PICTURES OF THE SCENE.
- 2 Q WERE YOU THE ONLY OFFICER WHO TOOK PHOTOS AT THE SCENE?
- 3 A YES, MA'AM.
- 4 Q OKAY. WHICH AREAS DID YOU TAKE PHOTOS OF?
- 5 A I TOOK SOME COMING IN THE DOOR, A LITTLE BIT IN THE LIVINGROOM,
6 MAINLY IN THE BEDROOM, AND IN THE BATHROOM.
- 7 Q I AM GOING TO HAND YOU, DEPUTY PLESS, A COUPLE OF PHOTOS THAT
8 HAVE PREVIOUSLY BEEN MARKED DEFENSE EXHIBITS. THESE HAVE
9 BEEN MARKED DEFENSE EXHIBITS #2, #3, #4, #6, #7, AND #8. WOULD
10 YOU PLEASE LOOK AT THESE AND TELL US IF YOU RECOGNIZE THOSE?
- 11 A (LOOKS THROUGH PHOTOGRAPHS) I RECOGNIZE THEM BUT I DON'T
12 REMEMBER TAKING THAT MANY OF THE DOOR.
- 13 Q BUT DO THEY APPEAR TO BE THE PHOTOS YOU TOOK?
- 14 A YES, MA'AM.
- 15 Q COULD YOU PLEASE DESCRIBE WHAT YOU ARE LOOKING AT.
- 16 A RIGHT HERE IS A PICTURE OF THE DOOR, LIKE I SAID, WITH BLOOD
17 SPLATTER. THAT WAS BLOOD SPLATTERS. MOST OF THEM I TOOK
18 WERE TAKING THE PICTURES OF BLOOD AND ALL THAT AND THEN THAT
19 ONE I DON'T REMEMBER TAKING. THIS IS A PICTURE OF THE DRYER
20 WHERE, I GUESS, IT WAS SLID AGAINST THE DOOR.
- 21 Q ARE THESE A FAIR AND ACCURATE DEPICTION OF THE PHOTOS OF
22 WHAT THE SCENE LOOKED LIKE THAT DAY?
- 23 A YES, MA'AM.
- 24 Q AND YOU ARE THE ONES THAT TOOK THE PHOTOS FOR THE POLICE
25 DEPARTMENT, FOR THE SHERIFF'S DEPARTMENT?

DIRECT EXAMINATION OF OFFICER WAYNE PLESS BY MS. BELL

153

1 A YES, MA'AM.

2 MS. BELL: (MS. BELL SHOWS THE PHOTOS TO MS. BOLEN) THE
3 DEFENSE MOVES TO INTRODUCE AND PUBLISH TO THE JURY DEFENSE
4 EXHIBITS #2, #4, #3, #7, AND #8, YOUR HONOR.

5 MS. BOLEN: WITHOUT OBJECTION, YOUR HONOR.

6 THE COURT: LET'S SEE THAT WAS DEFENSE EXHIBITS #2, #3, #4, #7, AND
7 #8, ADMITTED WITHOUT OBJECTION.

8 MS. BELL: THANK YOU, YOUR HONOR.

9 (WHEREUPON, FIVE PHOTOGRAPHS ARE ADMITTED INTO EVIDENCE AS
10 DEFENSE EXHIBITS #2, #3, #4, #7, AND #8, WITHOUT OBJECTION)

11 Q ONE OF THE PHOTOS THAT WE HAD THAT YOU LOOKED AT JUST A
12 MOMENT AGO WAS DEFENSE EXHIBIT #3, AND YOU DESCRIBED THAT AS
13 A SHOT OF THE DOOR. CORRECT?

14 A YES, MA'AM.

15 Q AND YOU MENTIONED ONE SHOWED THE DRYER. YOU TOOK IT TO
16 SHOW THE DOOR AND THE DRYER. CORRECT?

17 A YES, MA'AM. AND THE BLOOD SPATTER ON THE DRYER.

18 Q AND DID YOUR DEPARTMENT RE-CLOSE THE DOOR AFTER MISTER
19 GREENE WAS TAKEN AWAY?

20 A YES, MA'AM. I THINK, TO THE BEST OF MY KNOWLEDGE.

21 Q AND IS THIS SHOWING THE DOOR CLOSED? (DISPLAYS PHOTOGRAPH
22 ON LARGE SCREEN)

23 A YES. OVER HERE I WAS TAKING PICTURES OF IT WHEN THE BLOOD
24 WAS ON IT AND ALL.

25 Q WE ALSO – I ALSO HAD YOU LOOK AT DEFENSE EXHIBIT #7. COULD YOU

DIRECT EXAMINATION OF OFFICER WAYNE PLESS BY MS. BELL

154

- 1 PLEASE – AND THIS SHOWS MORE BLOOD SPLATTER THAT YOU
2 MENTIONED. CORRECT?
- 3 A YES, MA'AM.
- 4 Q ARE THESE THE DOOR HINGES? (INDICATING)
- 5 A YES, MA'AM.
- 6 Q AND THEY ARE STILL ATTACHED TO THE DOOR?
- 7 A YES, MA'AM.
- 8 Q AND WE ALSO HAD YOU LOOK AT DEFENSE EXHIBIT #8. THIS IS
9 ANOTHER PHOTO, SAME AREA. CORRECT?
- 10 A YES, MA'AM.
- 11 Q THAT SHOWS THE DOOR HANDLE AND SOME BLOOD SPLATTER,
12 CORRECT?
- 13 A RIGHT.
- 14 Q AND THEN, THIS IS DEFENSE EXHIBIT #4. IT SHOWS BOTH THE
15 POSITION OF THE DRYER AND THE DOOR. CORRECT?
- 16 A YES, MA'AM.
- 17 Q AND THE DOOR IS COMPLETELY SHUT?
- 18 A YES, MA'AM.
- 19 MS. BELL: MAY I APPROACH THE WITNESS, ONE MOMENT?
- 20 THE COURT: YES, MA'AM.
- 21 Q I NEED YOU TO DOUBLE CHECK WHICH ONE OF THESE YOU DO NOT
22 REMEMBER BECAUSE THEY LOOK VERY SIMILAR AND THESE ARE
23 EXHIBITS #2 AND #6. AND YOU MENTIONED YOU DID NOT REMEMBER
24 ONE, BUT I DON'T REMEMBER WHICH ONE. (HANDS PHOTOGRAPHS TO
25 THE WITNESS)

DIRECT EXAMINATION OF OFFICER WAYNE PLESS BY MS. BELL

155

- 1 A WELL, LIKE I SAY, I MAY HAVE TAKEN THESE. I DON'T REMEMBER
2 TAKING THAT MANY OF THE DOOR. YOU KNOW WHAT I'M SAYING?
- 3 Q OKAY. I WANTED TO MAKE SURE I DIDN'T GET THEM MIXED UP. THERE
4 WAS ONE SPECIFIC ONE THAT YOU HAD MENTIONED.
- 5 A YES, MA'AM.
- 6 Q THIS ONE RIGHT HERE? (SHOWING WITNESS A PHOTOGRAPH)
- 7 A YEAH. LIKE I SAY, THAT ONE. I THINK I DON'T REMEMBER TAKING THAT
8 MANY OF JUST ONE DOOR.
- 9 Q OKAY.
- 10 MS. BELL: YOUR HONOR, I DON'T RECALL WHETHER IT WAS #2 OR #6
11 THAT I HAD LEFT OUT.
- 12 THE COURT: #6 AND #5.
- 13 Q OKAY. THANK YOU. THIS IS DEFENSE EXHIBIT #2. COULD YOU PLEASE
14 -- THIS IS A PHOTO OF THE DOOR AGAIN. CORRECT?
- 15 A YES, MA'AM.
- 16 Q AND YOU TOOK IT AND IT SHOWS THE DOOR CLOSED AND SOME BLOOD
17 SPLATTER. CORRECT?
- 18 A YES, MA'AM.
- 19 Q AND IT ALSO SHOWS THE HINGES ARE OFF TO THE SIDE?
- 20 A YES, MA'AM.
- 21 Q OKAY. AND JUST TO BRIEFLY RESTATE. YOU ARE THE ONLY ONE WHO
22 TOOK PHOTOS OF THE HOUSE FOR THE SHERIFF'S DEPARTMENT.
23 CORRECT?
- 24 A YES, MA'AM.
- 25 MS. BELL: BEG THE COURT'S INDULGENCE ONE MOMENT. NO

CROSS EXAMINATION OF OFFICER WAYNE PLESS BY MS. BOLEN

156

1 FURTHER QUESTIONS AT THIS TIME, YOUR HONOR.

2 THE COURT: ALL RIGHT. MS. BOLEN?

3 MS. BOLEN: THANK YOU, YOUR HONOR.

4 **CROSS EXAMINATION OF OFFICER PLESS BY MS. BOLEN**

5 Q GOOD MORNING, OFFICER PLESS. I AM GOING TO THROW THIS

6 PICTURE UP HERE AGAIN. (DISPLAYS PHOTOGRAPH ON LARGE SCREEN)

7 OFFICER PLESS, CAN YOU DESCRIBE THIS MARK IN THE DOOR HERE?

8 IS THAT AS YOU SAW IT?

9 A YES, MA'AM. TO THE BEST OF MY KNOWLEDGE.

10 Q AND WHAT IS THAT, EXACTLY?

11 A IT LOOKS LIKE A BREAK IN THE DOOR. TRAILER DOORS ARE WEAK-LIKE

12 AND IT LOOKS LIKE IT MAY HAVE BEEN KICKED AT THE BOTTOM, YOU

13 KNOW, AND BROKEN. I'M NOT SURE.

14 Q OKAY. YOU JUST SAID THAT TRAILER DOORS ARE WEAK. DO YOU HAVE

15 PERSONAL KNOWLEDGE OF TRAILER DOORS?

16 A I USED TO BUILD TRAILERS BACK IN THE 70s.

17 Q AND THIS -- THE HOUSE YOU WENT TO WAS A TRAILER. CORRECT?

18 A YES, MA'AM.

19 Q WHAT -- THE INSIDE OF THE TRAILER DOOR IS TYPICALLY MADE OUT OF

20 STYROFOAM. IS THAT RIGHT?

21 A MOSTLY STYROFOAM. THE OUTSIDE WITH TIN AND TWO TUBES ON THE

22 INSIDE.

23 Q SO IT IS SAFE TO SAY THAT A TRAILER DOOR IS WEAKER THAN WOULD

24 BE A WOODEN DOOR ON A HOUSE OR ON A GOVERNMENT BUILDING OR

25 SOMETHING LIKE THAT? IS THAT SAFE TO SAY?

CROSS EXAMINATION OF OFFICER WAYNE PLESS BY MS. BOLEN

157

- 1 A YES, MA'AM.
- 2 Q AND IT IS ALSO SAFE TO SAY THAT THE FORCE REQUIRED TO, FOR
3 EXAMPLE, TO KICK IN A TRAILER DOOR WOULD NOT BE A GREAT DEAL
4 OF FORCE. IS THAT CORRECT?
- 5 A YES. THAT'S RIGHT.
- 6 Q OKAY. AND THIS CREASE THAT YOU SEE HERE, YOU SAID IT LOOKED
7 TO YOU AND YOU ARE AN OFFICER AND YOU RESPOND TO THESE
8 CALLS, LIKE SOMEONE HAD KICKED THAT?
- 9 A YES, MA'AM. IT LOOKED LIKE A BREAK IN THE DOOR.
- 10 Q NOW, IT IS POSSIBLE, ISN'T IT OFFICER PLESS, THAT A TRAILER DOOR,
11 BEING STRUCTURALLY WEAK, COULD BE KICKED IN AND NOT – THE
12 TRIM AND THE HINGES COULD REMAIN ON. ISN'T THAT CORRECT?
- 13 A YES. IT'S POSSIBLE. YOU KNOW, IT COULD HAPPEN IF THEY JAMMED
14 THE DOOR OPEN, YOU KNOW, WHEN HE KICKED IT. YOU KNOW, IF YOU
15 HAVE PLAY IN THE HINGES AND STUFF.
- 16 Q AND IT'S POSSIBLE AS IN THIS PICTURE WHERE YOU HAVE THE CREASE
17 YOU WERE ABLE, DESPITE THIS CREASE HERE, TO SHUT THE DOOR.
18 WEREN'T YOU?
- 19 A YES, MA'AM.
- 20 Q SO, THAT SORT OF KICKING FORCE THAT CAUSES THAT CREASE,
21 WOULDN'T PREVENT YOU FROM SHUTTING AND LOCKING THAT DOOR?
- 22 A NO, MA'AM. IT DIDN'T. I DON'T RECALL LOCKING IT. I JUST RECALL
23 PUSHING IT TO, TO TAKE THE PICTURES.
- 24 Q OFFICER PLESS, YOU ALSO TESTIFIED THAT MOST OF THE PICTURES
25 YOU TOOK WERE OF BLOOD INSIDE THE RESIDENCE. IS THAT

CROSS EXAMINATION OF OFFICER WAYNE PLESS BY MS. BOLEN

158

1 CORRECT?

2 A YES, MA'AM.

3 Q SO YOU'RE -- IS IT SAFE TO SAY THAT YOUR MAIN OBJECTIVE WAS
4 DOCUMENTING THE BLOOD INSIDE THE HOUSE?

5 A YES, MA'AM. THAT WAS A CRIME SCENE.

6 Q OKAY. AND YOU ARE A DEPUTY SO YOUR MAIN OP DUTIES ARE
7 PATROL. CORRECT?

8 A YES, MA'AM.

9 Q NOT AN INVESTIGATOR OR DETECTIVE?

10 A NO, MA'AM.

11 Q YOU TESTIFIED THAT YOU FIRST WENT UP TO THE MOTHER'S HOUSE
12 AND SAW THE VICTIM. DO YOU RECALL HER APPEARANCE?

13 A SHE WAS UNRECOGNIZABLE WITH BLOOD ALL OVER HER FACE. HER
14 MOTHER, I THINK, HAD A TOWEL HOLDING IT ON HER HEAD.

15 Q AND THEN YOU TESTIFIED THAT YOU, ALONG, I BELIEVE, WITH SOME
16 OTHER OFFICERS, WENT DOWN TO THE HOUSE YOU SAID IN ORDER TO
17 SECURE THE SUSPECT. WHEN YOU FIRST WENT DOWN TO THE HOUSE
18 YOUR FIRST OBJECTIVE WAS TO SECURE THE SUSPECT. ISN'T THAT
19 RIGHT?

20 A YES, MA'AM.

21 Q OKAY. AND WERE YOU ABLE TO DO THAT?

22 A NOT AT FIRST. THERE WOULDN'T NOBODY COME TO THE DOOR. WE
23 BEAT AND KNOCKED APPROXIMATELY ABOUT FIVE MINUTES AND BEAT
24 ON IT TRYING TO GET SOMEBODY TO THE DOOR.

25 Q AND ONCE YOU GOT IN --

CROSS EXAMINATION OF OFFICER WAYNE PLESS BY MS. BOLEN

159

- 1 A ONCE WE GOT IN --
- 2 Q DID YOU FIND THE SUSPECT?
- 3 A ME AND MARK HALL, CONSTABLE HALL, WE WENT INTO THE BEDROOM
- 4 AND CONSTABLE HALL FOUND HIM SETTING ON THE SIDE OF THE TUB.
- 5 SO I WENT IN THERE AND WE GOT HIM HANDCUFFED.
- 6 Q AND YOU SAY HE WAS SITTING ON THE SIDE OF THE TUB. DO YOU
- 7 KNOW WHAT HE WAS DOING? WHAT WAS HE DOING WHEN YOU
- 8 WALKED IN?
- 9 A THERE WAS CLOTHES IN THE BATHTUB. HE WAS WASHING THEM OUT.
- 10 Q DID YOU SEE ANYTHING IN THE WATER?
- 11 A IT WAS BLOOD, LOOKED LIKE.
- 12 Q DO YOU RECALL ABOUT WHAT TIME THIS WAS THAT YOU RESPONDED?
- 13 A IT WAS APPROXIMATELY BETWEEN ONE AND ONE-THIRTY.
- 14 Q IN THE MORNING?
- 15 A IN THE MORNING.
- 16 Q SO IT IS SAFE TO SAY IT WAS DARK OUT AT THIS TIME?
- 17 A YES, MA'AM.
- 18 Q WERE THERE ANY STREET LIGHTS OR ANYTHING? DO YOU RECALL?
- 19 A I'M NOT SURE. I WANT TO SAY THERE WERE NOT LIGHTS, BUT I AM NOT
- 20 100% SURE.
- 21 Q AND YOU ALSO SAID SOMETHING ABOUT THE DRYER BEING AGAINST
- 22 THE DOOR. WHEN YOU CAME IN WHERE WAS THE DRYER?
- 23 A IT WAS -- LIKE WHEN WE COME IN IT WAS LIKE IT HAD BEEN PUSHED
- 24 BACK LIKE IT HAD BEEN AGAINST THE DOOR. BUT IT WASN'T SETTING
- 25 AGAINST IT. IT WAS LIKE IT WAS PUSHED BACK OUT IN FRONT.

DIRECT EXAMINATION OF LA'TOYA GREENE BY MS. BELL

161

1 Q BUT YOU WEREN'T THERE UNTIL AFTER THE INCIDENT BETWEEN
2 MISTER GREENE AND MS. SULLIVAN HAD ALREADY OCCURRED.
3 CORRECT?

4 A YES, MA'AM.

5 Q SO YOU DIDN'T SEE PERSONALLY WITNESS WHAT CAUSED ANY
6 DAMAGE TO THE HOUSE, WHAT CAUSED THE BLOOD SPLATTERS. YOU
7 JUST DOCUMENTED AFTERWARDS. CORRECT?

8 A YES, MA'AM. THAT'S CORRECT.

9 Q OKAY.

10 MS. BELL: THE COURT'S INDULGENCE. NO FURTHER QUESTIONS, YOUR
11 HONOR.

12 THE COURT: ANY RE-CROSS?

13 MS. BOLEN: NO RE-CROSS, YOUR HONOR.

14 THE COURT: YES, SIR. THANK YOU FOR COMING THIS MORNING.

15 OFFICER PLESS MAY BE EXCUSED. HE HAS OTHER DUTIES TO ATTEND TO.

16 MS. BELL: THE DEFENSE NOW CALLS LA'TOYA GREENE TO THE STAND.

17 THE COURT: MS. GREENE COME FORWARD AND BE SWORN PLEASE.

18 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, LA'TOYA
19 GREENE TESTIFIED AS FOLLOWS:)

20 **DIRECT EXAMINATION OF LA'TOYA GREENE BY MS. BELL**

21 Q WOULD YOU PLEASE STATE YOUR NAME FOR THE RECORD?

22 A MY NAME IS LA'TOYA YVETTE GREENE.

23 Q WHERE DO YOU LIVE, MS. GREENE?

24 A IN CLINTON, SOUTH CAROLINA.

25 Q HOW LONG HAVE YOU LIVED THERE?

DIRECT EXAMINATION OF LA'TOYA GREENE BY MS. BELL

162

- 1 A MAYBE, LIKE ELEVEN OR TWELVE YEARS.
- 2 Q AND DO YOU KNOW ANTJUAN GREENE?
- 3 A YES. THAT'S MY BROTHER.
- 4 Q SO YOU GREW UP WITH HIM AND YOU'VE KNOWN HIM YOUR WHOLE
- 5 LIFE?
- 6 A YEAH. PRETTY MUCH.
- 7 Q DOES ANTJUAN GREENE EVER STAY WITH YOU?
- 8 A YES.
- 9 Q AND COULD YOU PLEASE GIVE US SOME EXAMPLES?
- 10 A LIKE WHEN HIM AND THERESA GETS INTO IT, LIKE WHEN THEY FIGHT
- 11 SHE WOULD COME DROP HIM OFF AND THEN THEY WOULD TALK AND
- 12 SHE WOULD COME PICK HIM AND MAYBE A BAG UP FROM MY HOUSE.
- 13 THAT HAPPENED ALL THE TIME.
- 14 Q DEFINITELY MORE THAN ONE TIME?
- 15 A MORE THAN ONE TIME.
- 16 Q YOU MENTIONED A BAG. WHAT WAS THAT?
- 17 A LIKE CLOTHES. LIKE HIS CLOTHES. AND COME PICK IT UP, PROBABLY
- 18 THE SAME DAY.
- 19 Q SO HE WOULD GET DROPPED OFF AFTER FIGHTING?
- 20 A YEAH, I GUESS. YEAH.
- 21 Q AND CLOTHES WOULD GET BROUGHT.
- 22 A UH HUH.
- 23 Q OKAY. THEN SHE --
- 24 A AND SHE WAS RIGHT BACK DOWN THERE COME TO GET HIM AND HIS
- 25 CLOTHES.

DIRECT EXAMINATION OF LA'TOYA GREENE BY MS. BELL

163

1 Q OKAY. CAN YOU ESTIMATE ABOUT HOW MANY TIMES THIS MIGHT HAVE
2 HAPPENED WHILE THEY DATED?

3 A I MEAN, IT WAS SO MANY TIMES I REALLY CAN'T TELL, SO I WOULD BE
4 TELLING A LIE, SO I CAN'T GIVE YOU AN ESTIMATE.

5 MS. BELL: BEG THE COURT'S INDULGENCE FOR ONE MOMENT.

6 Q DID MISTER GREENE GET DROPPED OFF AT YOUR HOUSE ON
7 FEBRUARY 19TH?

8 A YES.

9 Q AND WERE SOME OF HIS BELONGINGS DROPPED OFF?

10 A YEAH, LIKE A BAG OF CLOTHES. JUST THE NORMAL.

11 Q WAS IT ALL OF HIS BELONGINGS?

12 A NO, MA'AM.

13 Q OKAY. DO YOU HAVE -- DO YOU KNOW WHAT WAS BROUGHT BACK?

14 A I THINK A BLACK BAG WITH CLOTHES, LIKE CLOTHES.

15 Q A BAG OF CLOTHES WAS BROUGHT?

16 A UH-HUH.

17 Q WHAT ITEMS WERE NOT BROUGHT?

18 A HIS SHOES WASN'T THERE. LIKE BOXES, HIS KEYS TO HIS CAR WASN'T
19 THERE, HIS CELL PHONE. WITH HIM STAYING WITH HER I AM GUESSING
20 LIKE THE REST OF HIS STUFF WAS AT HER HOUSE.

21 Q BUT YOU KNOW WHAT WAS BROUGHT THERE AND THAT WAS A BAG OF
22 CLOTHES?

23 A YES.

24 MS. BELL: THE COURT'S INDULGENCE?

25 DO YOU PERSONALLY KNOW YET IF HE HAS RECEIVED ALL OF HIS

RE-DIRECT EXAMINATION OF OFFICER WAYNE PLESS BY MS. BELL

160

1 Q AND WHAT WAS ON THE DRYER?

2 A MAYBE BLOOD AND I THINK SOME DISH DETERGENT OR SOMETHING
3 LIKE THAT.

4 Q AND WHEN YOU WERE IN THE HOUSE TRYING TO DOCUMENT THE
5 BLOOD, YOU SAW BLOOD ALL OVER THE HOUSE, ALL OVER THE FRONT
6 TWO ROOMS OF THE HOUSE. ISN'T THAT RIGHT?

7 A YES, MA'AM. AND IT MAINLY WAS IN THE BEDROOM AND THE BEDROOM
8 DOOR, IT WAS BROKE AND THE BED, IT WAS BROKE AND HAD BLOOD
9 ALL OVER, MAINLY IN THE BEDROOM BUT THE BLOOD WAS COMING OUT
10 TOWARDS THE DOOR AND I GOT PICTURES OF ALL THAT AND I THINK I
11 GOT A PICTURE OF ONE SPOT OF BLOOD OUTSIDE, WHERE SHE HAD
12 RUN OUTSIDE.

13 MS. BOLEN: YOUR HONOR, I BEG A MOMENT OF THE COURT'S
14 INDULGENCE.

15 THE COURT: YES, MA'AM.

16 MS. BOLEN: YOUR HONOR, I HAVE NO FURTHER QUESTIONS FOR
17 OFFICER PLESS AT THIS TIME.

18 MS. BELL: A BRIEF RE-DIRECT, YOUR HONOR.

19 THE COURT: YES, MA'AM.

20 **RE-DIRECT EXAMINATION OF OFFICER PLESS BY MS. BELL**

21 Q YOUR DUTY IS TO RESPOND AFTER SOMETHING OCCURS. CORRECT?

22 A MA'AM?

23 Q YOUR DUTY IS TO RESPOND TO SOMETHING AFTER IT OCCURS.
24 CORRECT?

25 A YES, MA'AM. I RESPOND WHEN I GET CALLED.

CROSS EXAMINATION OF LA'TOYA GREENE BY MS. BOLEN

164

1 PERSONAL BELONGINGS BACK?

2 A NO, MA'AM. HE HADN'T.

3 Q DO YOU KNOW WHAT HE HASN'T RECEIVED?

4 A HIS KEYS TO HIS CAR IS MISSING AND HIS PHONE AND HE DON'T HAVE

5 HIS I.D., HIS SOCIAL SECURITY NUMBER. HE DON'T HAVE NONE OF

6 THAT STUFF. SO NO, HE DOESN'T HAVE ALL OF IT.

7 Q OKAY. NO FURTHER QUESTIONS AT THIS TIME. PLEASE ANSWER ANY

8 QUESTIONS MS. BOLEN ASKS YOU.

9 MS. BOLEN: BRIEF RE-DIRECT, YOUR HONOR.

10 **CROSS EXAMINATION OF LA'TOYA GREENE BY MS. BOLEN**

11 Q GOOD MORNING, MS. GREENE.

12 A GOOD MORNING.

13 Q SO, YOU ARE THE SISTER OF THE DEFENDANT. IS THAT CORRECT?

14 A YES.

15 Q OKAY. YOU TESTIFIED THAT HIS BELONGINGS WERE DROPPED OFF, A

16 BAG OF HIS BELONGINGS WERE DROPPED OFF AT YOUR HOUSE ON

17 THE 19TH. IS THAT CORRECT?

18 A YES.

19 Q AND WHO DROPPED THEM OFF?

20 A THERESA.

21 Q OKAY. WAS YOUR BROTHER, THE DEFENDANT, AT YOUR HOUSE AT

22 THAT TIME?

23 A NO.

24 Q DO YOU KNOW WHERE HE WAS?

25 A NO.

CROSS EXAMINATION OF LA'TOYA GREENE BY MS. BOLEN

165

- 1 Q DID HE -- HE STAYED WITH YOU THOSE NIGHTS. DIDN'T HE? FROM THE
2 19TH ON?
- 3 A FROM THE 19TH? I CAN'T RECALL.
- 4 Q YOU CAN'T RECALL? OKAY. WERE YOU AT THERESA SULLIVAN'S
5 HOUSE THE EVENING OF THE 22ND?
- 6 A I CAN'T TELL YOU ANYTHING ABOUT IT BECAUSE I WASN'T THERE.
- 7 Q YOU WERE NOT THERE, YOU DIDN'T SEE ANYTHING, YOU CAN'T TELL
8 ME?
- 9 A NO. NO.
- 10 Q MS. GREENE YOU TESTIFIED THAT MS. SULLIVAN WOULD SOMETIMES
11 DROP MISTER GREENE OFF AT YOUR HOUSE SOMETIMES FOR AS
12 LITTLE AS AN HOUR AND SOMETIMES A LITTLE BIT LONGER. RIGHT?
- 13 A UH-HUH.
- 14 Q AND THEN SHE WOULD COME BACK AND PICK HIM UP. ISN'T THAT
15 CORRECT? ISN'T THAT THE WAY YOU TESTIFIED?
- 16 A YES, MA'AM.
- 17 Q SHE WOULD COME BACK AND PICK HIM UP AND PICK UP HIS
18 BELONGINGS. IS THAT RIGHT?
- 19 A YES.
- 20 **MS. BOLEN:** NOTHING FURTHER, YOUR HONOR.
- 21 **MS. BELL:** NO RE-DIRECT, YOUR HONOR.
- 22 **THE COURT:** OKAY, THANK YOU. YOU MAY STEP DOWN.
- 23 **MS. BELL:** AT THIS TIME THE DEFENSE CALLS RODNEY GREENE TO THE
24 STAND.
- 25 **THE COURT:** MISTER GREENE COME FORWARD AND BE SWORN.

DIRECT EXAMINATION OF RODNEY GREENE BY MS. BELL

166

1 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, RODNEY
2 GREENE TESTIFIED AS FOLLOWS:)

3 **DIRECT EXAMINATION OF RODNEY GREENE BY MS. BELL**

4 Q WOULD YOU PLEASE STATE YOUR NAME FOR THE RECORD?

5 A RODNEY GREENE.

6 Q WHERE ARE YOU FROM, MISTER GREENE?

7 A I AM FROM DENMARK, SOUTH CAROLINA.

8 Q WHERE ARE YOU CURRENTLY LIVING?

9 A FOUNTAIN INN, SOUTH CAROLINA.

10 Q HOW LONG HAVE YOU BEEN LIVING THERE?

11 A TWO YEARS.

12 Q OKAY. DO YOU HAVE ANY FAMILY?

13 A YES, I HAVE TWO BROTHERS AND FOUR SISTERS, ONE MOTHER AND
14 ONE FATHER.

15 Q OKAY. AND IS ANTJUAN GREENE YOUR BROTHER?

16 A YES. HE IS.

17 Q WERE YOU WITH MISTER GREENE ON FEBRUARY 22, 2009?

18 A WAS THAT THE DAY OF THE INCIDENT?

19 Q YES.

20 A YES.

21 Q CAN YOU TELL US A LITTLE BIT ABOUT THAT NIGHT?

22 A SUCH AS?

23 Q WHAT WERE YOU DOING THAT NIGHT WITH MISTER GREENE? WERE
24 Y'ALL GOING SOMEWHERE?

25 A I HAD CAME DOWN AND HE SAY HE IS READY TO GO BACK HOME.

DIRECT EXAMINATION OF RODNEY GREENE BY MS. BELL

167

- 1 Q WHAT HAPPENED AFTER HE SAID HE WAS READY TO GO BACK HOME?
- 2 A I SAID OKAY. I SAID, "WE HAVE TO GAS." AND HE WAS LIKE, "I DON'T
3 HAVE NO GAS MONEY." AND I WAS LIKE, "DON'T WORRY ABOUT IT. YOU
4 CAN PAY ME LATER."
- 5 Q AND SO, DID YOU TAKE HIM HOME?
- 6 A YES.
- 7 Q WHERE DID YOU TAKE HIM TO?
- 8 A TO THERESA'S PLACE.
- 9 Q YOU REACHED THERE THAT NIGHT?
- 10 A YES, I THINK IT IS AT DONALD'S. SOME LITTLE TOWN. I AM NOT REAL
11 SURE ABOUT THE TOWN.
- 12 Q THAT'S ALL RIGHT. YOU REACHED THERE.
- 13 A YES.
- 14 Q WHAT HAPPENED ONCE THE CAR PULLED UP?
- 15 A HE HAD LIKE -- HE HAD LIKE CLOTHES IN THE CAR SO, HIS CLOTHES,
16 LIKE HE HAD THEM LIKE IN AN OLD BAG AND THEY LIKE SCATTERED
17 GOING EVERY WHICH DIRECTION SO WHEN HE GOT OUT THE CAR I WAS
18 ABOUT TO GO HELP HIM WITH HIS CLOTHES AND WHATNOT. WHEN I
19 SAW THEY WAS KIND OF LIKE FADED KIND OF LIKE MESSY SORT OF
20 LIKE AND I SAID I AM NOT GOING TO LET YOU DO THAT RIGHT NOW,
21 THAT'S WHAT I'M THINKING. BUT HE WENT AND KNOCKED. HE
22 KNOCKED LIKE AROUND FIVE KNOCKS AND I HEARD A LITTLE MUFFLED
23 VOICE LIKE INSIDE OF THE TRAILER. AND I HEARD 'TWAN SAY, "YOU
24 KNOW WHO IT IS." SO THEN LIKE THE DOOR CAME OPEN. THE DOOR
25 CAME OPEN AND I SAW LIKE A WALL. KIND OF LIKE I REALLY DIDN'T, I

DIRECT EXAMINATION OF RODNEY GREENE BY MS. BELL

168

1 MEAN, WHEN THE DOOR CAME OPEN AND I HAD WENT BACK TO THE
2 CAR AND STARTED TO SMOKE A CIGARETTE AND I'M LIKE, I'M NOT
3 TOUCHING THIS, I DON'T KNOW WHETHER YOUR CLOTHES ARE CLEAN
4 OR NOT, SO I'M NOT TOUCHING YOUR CLOTHES, I'M NOT GOING TO PICK
5 HIS CLOTHES UP.

6 Q NOW, GO BACK A LITTLE BIT, YOU SAY YOU SAW THE DOOR WHEN IT
7 CAME OPEN.

8 A YES.

9 Q SO YOU WERE IN THE YARD AT THAT POINT?

10 A I WAS LIKE ABOUT FROM WHERE I'M AT TO THAT GENTLEMAN RIGHT
11 THERE.

12 Q AND YOU MENTIONED IT CAME OPEN. DOES THAT MEAN IT WAS
13 SLAMMED OPEN?

14 A NO. IT WAS LIKE, LIKE SOMEONE OPENED THE DOOR, BUT I MEAN, IT
15 WAS LIKE SOMEONE OPENED THE DOOR FROM THE INSIDE.

16 Q OKAY. SO YOU DIDN'T SEE MISTER GREENE OR – YOU SAW THE DOOR
17 OPEN FROM THE INSIDE?

18 A YES. AND I SAW 'TWAN GOT IN THERE WITH HER.

19 Q NOW, DID MISTER GREENE – WHEN THE DOOR OPENED WHAT
20 HAPPENED TO MISTER GREENE NEXT?

21 A HE SAID, "WHO YOU GOT IN THERE WITH YOU?" AND HE STEPPED IN
22 AND I WAS LIKE, "WELL".

23 Q HE STEPPED IN?

24 A YES.

25 Q AND THEN I WENT BACK TO THE CAR AND I WAS LIKE, I MIGHT TRY TO

DIRECT EXAMINATION OF RODNEY GREENE BY MS. BELL

169

1 LOAD HIS CLOTHES UP. I HAD SEEN SOME CLOTHES AND I SAID, "NO, I
2 AM NOT TOUCHING THEM DIRTY SOCKS." I DROPPED THE SOCKS AND I
3 SMOKED A CIGARETTE WHILE HE WAS GONE.

4 Q SO YOU WERE BY THE CAR SMOKING YOUR CIGARETTE. WHAT
5 HAPPENED NEXT?

6 A I WAS JUST ABOUT FINISHED. I WAS TAKING A LAST DRAG OF THE
7 CIGARETTE AND I HEARD A NOISE COMING FROM THE BACK. I WAS
8 RIGHT THERE AND I WAS LIKE HIS CLOTHES ARE IN THE TRUNK SO I
9 WILL JUST -- IT WAS JUST -- I WENT AROUND TO THE FRONT OF MY CAR.
10 LIKE FROM THE FRONT PART OF THE CAR YOU COULD SEE LIKE IN THE
11 BACK. THE BACK DOOR WAS -- BUT IF YOU WERE ON THE SIDE, I MEAN
12 THE BACK PART OF THE CAR, YOU CAN'T SEE ON THE, ON THE BACK
13 PART OF THE HOUSE.

14 Q OKAY. YOU WENT BACK TO WHERE YOU COULD SEE?

15 A IT WAS LIKE, I WAS PARKED LIKE THIS RIGHT HERE AND THE TRAILER
16 WAS LIKE THAT RIGHT THERE AND IF YOU ARE AT THE FRONT OF THE
17 CAR YOU CAN SEE IT BUT IF YOU ARE AT THE BACK, THE REAR OF THE
18 CAR, YOU CAN'T SEE THE BACK OF THE TRAILER.

19 Q AND AFTER YOU HEARD THE MUFFLED SCREAM -- AFTER YOU HAD
20 HEARD THE MUFFLED SOUND AND YOU GO CHECK ON THINGS, WHAT
21 HAPPENED?

22 A THERESA AND 'TWAN THEY WAS TALKING -- WELL, I THOUGHT THEY
23 WERE TALKING. AND I WAS LIKE, "WHAT'S GOING ON? ARE Y'ALL
24 ACTING CRAZY OR WHAT ARE Y'ALL DOING?" I THOUGHT SHE WAS
25 DRUNK OR SOMETHING LIKE THAT.

DIRECT EXAMINATION OF RODNEY GREENE BY MS. BELL

170

1 Q AND DID YOU DO ANYTHING ONCE YOU GOT CLOSER?

2 A AH, ALL I REMEMBER REALLY, I THREW DOWN MY CIGARETTE AND
3 WAS, "WHAT'S GOING ON MAN?" I KIND OF LIKE SEPARATED THEM.

4 Q OKAY. SO YOU SEPARATED THEM?

5 A YES.

6 Q DID YOU GO WITH THERESA OR DID YOU STAY WITH ANTJUAN?

7 A I WENT WITH -- AS A MATTER OF FACT I SEPARATED THEM AND I TOOK
8 THERESA WITH ME AND HER LITTLE BOY, HE WAS, HE WENT WITH
9 'TWAN.

10 Q DID YOU END UP TAKING THERESA AND THE LITTLE BOY SOME PLACE?

11 A I TOOK THERESA. I WAS TAKING THERESA AND THERESA WAS LIKE, "I
12 WANT MY BOY, TOO." SO I HAD CAME BACK FOR THE BOY.

13 Q AND WHERE DID YOU END UP TAKING THEM TO?

14 A SOME -- HER MOTHER'S, LIKE A TRAILER OR SOMETHING DOWN THAT
15 ROAD. I DON'T KNOW WHAT ROAD IT WAS, BUT IT WAS LIKE...

16 Q GOING BACK A LITTLE BIT. HAS YOUR BROTHER EVER STAYED THE
17 NIGHT WITH YOU?

18 A YES.

19 Q WHILE DATING THERESA AND LIVING WITH HER?

20 A YES.

21 Q HOW OFTEN DO YOU THINK HE STAYED THE NIGHT WITH YOU?

22 A I DON'T KNOW. I KNOW LIKE FIVE OR SIX TIMES. I KNOW LIKE WHEN HE
23 COMES, HIS CLOTHES COMES WITH HIM.

24 Q OKAY. HOW WOULD HE BRING HIS CLOTHES WITH HIM?

25 A THERESA.

CROSS EXAMINATION OF RODNEY GREENE BY MS. BOLEN

171

1 Q SO, THERESA WOULD BRING HIS CLOTHES?

2 A YES. WELL, OR HE WOULD CALL ME AND THERESA WOULD BE RIGHT
3 THERE. WHENEVER HE GOES, HIS CLOTHES GOES WITH HIM. BUT HE
4 JUST, HE MIGHT STAY LIKE TWO HOURS. HE MIGHT STAY PAST THE
5 NIGHT. HE NEVER KNEW. THE NEXT THING I KNOW IT'S, "WHERE ARE
6 YOU GOING?" AND HE SAY, "OH, THERESA IS OUT THERE WAITING FOR
7 ME" SO...

8 **MS. BELL:** THE COURT'S INDULGENCE JUST ONE MOMENT. NO
9 FURTHER QUESTIONS AT THIS TIME, YOUR HONOR.

10 **THE COURT:** MS. BOLEN?

11 **MS. BOLEN:** THANK YOU, YOUR HONOR.

12 **CROSS EXAMINATION OF RODNEY GREENE BY MS. BOLEN**

13 Q GOOD MORNING, MISTER GREENE. SO, YOU ARE THE DEFENDANT'S
14 BROTHER?

15 A YES.

16 Q AND YOU TESTIFIED JUST NOW THAT SOMETIMES HE WOULD STAY
17 WITH YOU FOR JUST A FEW HOURS. IS THAT CORRECT?

18 A SOMETIMES IT WOULD BE TWO HOURS, SOMETIMES TWO DAYS. YES.

19 Q OKAY, AND IN THIS CASE IT HAD BEEN A FEW DAYS, HADN'T IT? WASN'T
20 IT JUST A FEW HOURS?

21 A I MEAN, I STAY IN FOUNTAIN INN. I DON'T GO DOWN TO CLINTON. I
22 DON'T GO TO CLINTON TOO REGULAR DUE TO THE FACT WITH THE GAS
23 PRICES JUMPING UP AND I WAS UNEMPLOYED SO I CAN'T AFFORD TO
24 GO DOWN THERE LIKE EVERY WEEK OR EVERY DAY.

25 Q YOU SAID THAT WHEN YOU WERE DRIVING ANTIJUAN TO MS. SULLIVAN'S

CROSS EXAMINATION OF RODNEY GREENE BY MS. BOLEN

172

- 1 HOUSE HE HAD HIS BELONGINGS IN THE CAR. HIS CLOTHES. IS THAT
2 CORRECT?
- 3 A SOME OF HIS BELONGINGS.
- 4 Q BUT HE HAD SOME OF HIS BELONGINGS IN THE CAR WITH HIM? IS THAT
5 RIGHT?
- 6 A YES.
- 7 Q OKAY. LET'S TALK A LITTLE BIT ABOUT EXACTLY WHERE YOU WERE IN
8 RELATION TO THE TRAILER. YOU TESTIFIED THAT YOU DROVE UP. IS
9 THAT CORRECT?
- 10 A YES.
- 11 Q WAS THAT TO THE BACK DOOR OR THE FRONT DOOR TO THE TRAILER?
- 12 A IT WAS THE BACK DOOR.
- 13 Q OKAY. AND IS THIS A RURAL AREA? WERE THERE A LOT OF PEOPLE
14 AROUND?
- 15 A VERY FEW.
- 16 Q ARE THERE STREET LIGHTS?
- 17 A I BELIEVE THERE WAS ONE.
- 18 Q WHERE WAS IT?
- 19 A I CAN'T RECALL. I DO KNOW I SAW A LIGHT. A PIECE OF A LIGHT.
- 20 Q YOU SAW A PIECE OF A LIGHT?
- 21 A YES. IT WAS LIKE IF YOU BLINK YOUR EYES YOU MIGHT GET LOST.
- 22 Q OKAY. SO IT IS SAFE TO SAY IT IS NOT A LOT OF LIGHT OR ACTIVITY IN
23 THIS PARTICULAR LOCATION. RIGHT?
- 24 A NOT A LOT OF WHAT?
- 25 Q NOT A LOT OF LIGHTS OR ACTIVITY IN THIS PARTICULAR LOCATION?

CROSS EXAMINATION OF RODNEY GREENE BY MS. BOLEN

173

- 1 A IT WAS LIKE -- IT WAS LIKE Y'ALL LEAVE -- IT WAS LIKE IT WAS ENOUGH
2 TO SAY -- I MEAN IF YOU GOT BUSINESS THAT'S KIND OF DECENT YOU
3 CAN SEE WHERE YOU ARE GOING.
- 4 Q YOU COULD SEE THE HOUSE YOU WERE GOING TO?
- 5 A YES. IF IT HAD BEEN THAT DARK I WOULDN'T EVEN BE DRIVING IF IT
6 WAS THAT DARK.
- 7 Q SO, YOU PULL UP THE CAR TO THE BACK OF THE TRAILER. WHERE IS
8 YOUR CAR? IT IS NOT FLUSH AGAINST THE TRAILER. RIGHT? IT IS OUT
9 IN THE DRIVEWAY?
- 10 A NO. THE DRIVEWAY IS LIKE FIFTEEN OR TWENTY FEET AWAY FROM
11 THE HOUSE, FROM THE TRAILER.
- 12 Q AND THAT IS WHERE YOU WERE?
- 13 A NO. I WASN'T BECAUSE I MEAN I DIDN'T STAY THERE. I WOULDN'T
14 WANT NOBODY PARKING IN MY DRIVEWAY. JUST VISITING AND THEY
15 COME PARK I MY DRIVEWAY I MEAN --
- 16 Q WHERE DID YOU LEAVE YOUR CAR?
- 17 A AROUND ALONGSIDE THE TRAILER.
- 18 Q ON THE SIDE OF THE TRAILER?
- 19 A YES. IT WAS STILL ON THE SIDE. IT WAS LIKE THE TRAILER WAS RIGHT
20 HERE AND THE FRONT PART OF MY CAR WAS RIGHT THERE AND THE
21 REAR PART OF IT WAS RIGHT THERE.
- 22 Q AND HOW FAR FROM THE TRAILER WAS YOUR CAR?
- 23 A ABOUT FROM ME TO THE LADY SITTING RIGHT NEXT TO THE JUDGE.
- 24 Q AND YOU TESTIFIED THAT YOU DID NOT ACTUALLY GO UP TO THE
25 DOOR? ISN'T THAT RIGHT?

CROSS EXAMINATION OF RODNEY GREENE BY MS. BOLEN

174

- 1 A I HAD STEPPED -- I HAD STEPPED OUT AND WAS TRYING TO FIND A
2 CIGARETTE.
- 3 Q SO, YOU WERE OUTSIDE BY YOUR CAR SMOKING A CIGARETTE WHILE
4 THIS HAPPENED? ISN'T THAT CORRECT?
- 5 A I WAS -- I WAS AT THE REAR. I HAD WENT TO THE FRONT SO I COULD
6 SEE. I MEAN, CAUSE I WAS -- 'TWAN WAS --
- 7 Q WHERE -- YOU JUST SAID YOU WERE AT THE SIDE.
- 8 A AT THE FRONT OF THE CAR.
- 9 Q AT THE FRONT OF THE CAR?
- 10 A YES. I WAS AT THE FRONT OF THE CAR AND WHEN I SAW THE DOOR
11 CAME OPEN AND IT WAS LIKE TALKING, I WAS LIKE OKAY --
- 12 Q SO WHERE WERE YOU? YOU PARKED YOUR CAR AT THE SIDE OF THE
13 TRAILER. CORRECT?
- 14 A YES.
- 15 Q OKAY. AND THEN YOU GOT OUT OF YOUR CAR, AND THIS IS WHAT YOU
16 JUST TESTIFIED TO, THEN YOU WENT TO THE FRONT OF YOUR CAR. IS
17 THAT CORRECT?
- 18 A I DIDN'T THINK NOBODY WAS HOME SO THAT'S WHY I WAS LIKE IF SHE
19 AIN'T HOME --
- 20 Q YOU WENT TO THE FRONT OF YOUR CAR. THAT'S WHAT YOU JUST
21 TESTIFIED TO.
- 22 A YEAH, TO THE FRONT OF THE CAR. WHICH IS BACK OF THE TRAILER.
- 23 Q OKAY.
- 24 A THE REAR OF THE CAR WAS AT THE FRONT OF THE TRAILER.
- 25 Q UH-HUH.

CROSS EXAMINATION OF RODNEY GREENE BY MS. BOLEN

175

- 1 A YES.
- 2 Q OKAY. WHERE IS THE BACK DOOR OF THE TRAILER? IS IT IN THE
- 3 MIDDLE OF THE LONG PART? IT IS IN THE MIDDLE. ISN'T IT?
- 4 A I -- IF YOU WANT TO CALL IT THAT. I MEAN, I ASSUME THAT.
- 5 Q OKAY. SO, THE BACK DOOR IS IN THE MIDDLE OF THE TRAILER. YOU
- 6 ARE AT THE SIDE OF THE TRAILER. YOU JUST TESTIFIED IT WAS DARK.
- 7 HOW DID YOU SEE ANYONE OPEN THE DOOR?
- 8 Q BECAUSE IT WAS LIKE LIGHTS ON. LIGHTS CAME ON WHEN HE
- 9 STARTED KNOCKING. WHEN HE HAD KNOCKED -- WHEN HE HAD
- 10 KNOCKED --
- 11 Q SO HE WAS KNOCKING ON THE DOOR. HE DID NOT HAVE A KEY. HE DID
- 12 NOT LET HIMSELF IN. IS THAT RIGHT?
- 13 A SOMEBODY, WHOEVER WAS IN THAT TRAILER LET HIM IN, LIKE
- 14 BECAUSE THE DOOR CAME OPEN.
- 15 Q YOU WERE NOT IN THE FRONT. YOU WERE NOT --
- 16 A I WAS AT --
- 17 Q -- IN A CLEAR LINE OF VISION OF THE BACK DOOR. YOU JUST
- 18 TESTIFIED THAT YOU WERE ON THE SIDE OF THE TRAILER.
- 19 A YES, MA'AM I --
- 20 Q THE BACK DOOR IS IN THE MIDDLE OF THE TRAILER. ISN'T THAT
- 21 CORRECT?
- 22 THE COURT: ASK YOUR QUESTION. GIVE HIM AN OPPORTUNITY TO
- 23 ANSWER.
- 24 Q SO YOU WERE AT THE SIDE OF THE TRAILER. CORRECT?
- 25 A I WAS PARKED BESIDE THE TRAILER.

CROSS EXAMINATION OF RODNEY GREENE BY MS. BOLEN

176

1 Q YOU CAME AROUND TO THE FRONT OF YOUR CAR?

2 A AND THAT MEANS I AM AT THE REAR OF THE TRAILER IF I CAME
3 AROUND TO THE FRONT OF THE CAR. BECAUSE I DIDN'T THINK SHE
4 WAS HOME AND THAT'S WHY I WAS SAYING, WELL, IF SHE AIN'T HOME
5 THEN, I WILL BRING HIM BACK TOMORROW AND THEN THAT'S WHEN
6 THE DOOR CAME OPEN AND SHE, OR WHOEVER WAS IN THAT TRAILER
7 OPENED THE DOOR BECAUSE HE HAD HIS HANDS IN HIS POCKETS
8 BECAUSE IT WASN'T LIKE IT WAS THE WARMEST NIGHT OUT THERE, SO
9 UNLESS THEY'VE GOT ELECTRIC DOORS IN THAT TRAILER.

10 Q AND DO YOU KNOW ABOUT WHAT TIME THIS WAS THAT YOU DROPPED
11 THE DEFENDANT OFF AT THE TRAILER?

12 A I COULDN'T --

13 Q WAS IT DARK OUT?

14 A IT WAS NIGHT, BUT I COULDN'T TELL YOU. ALL I KNOW IS LIKE I HEARD
15 A LITTLE VOICE FROM THE TRAILER AND I HEARD 'TWAN SAY, "YOU
16 KNOW WHO IT IS." SO LIKE, AFTER HE SAID THAT, LIKE THE DOOR HAD
17 CAME OPEN.

18 Q AND YOU SAID JUST NOW THAT YOU THOUGHT SHE WASN'T HOME AND
19 SO YOU WERE GOING TO TAKE HIM BACK THE NEXT DAY. ISN'T THAT
20 RIGHT?

21 A YES. YOU REMEMBER THAT I TOLD YOU I DIDN'T SEE NO CAR. YOU
22 KNOW, LIKE THERE WAS NO CAR LIKE IN THE CARPORT AREA, SO SHE
23 HAD PARKED LIKE BEHIND THE HOUSE. I DIDN'T KNOW SHE HAD
24 PARKED BEHIND THE HOUSE. SO, HE --

25 Q SO YOUR PLAN WAS NOT TO LEAVE THE DEFENDANT THERE BUT TO

CROSS EXAMINATION OF RODNEY GREENE BY MS. BOLEN

177

- 1 COME BACK WITH HIM THE NEXT DAY. ISN'T THAT RIGHT? IF SHE
2 WASN'T HOME.
- 3 A YEAH. IF SHE WASN'T HOME.
- 4 MR. BOLEN: BEG THE COURT'S INDULGENCE, YOUR HONOR.
- 5 Q MR. GREENE, YOU TESTIFIED THAT YOU CHOSE TO TAKE THE VICTIM,
6 MS. SULLIVAN, IN YOUR CAR INSTEAD OF YOUR BROTHER. IS THAT
7 RIGHT? YOU TOOK HER IN YOUR CAR? ISN'T THAT WHAT YOU JUST
8 TESTIFIED TO, THAT YOU HAD THE VICTIM IN YOUR CAR?
- 9 A SHE SAID SHE WANTED TO LEAVE. NO, SHE SAID, "TAKE ME TO MY
10 MOTHER'S HOUSE. MY MAMA'S HOUSE. SO, I'M LIKE, "WHERE YOUR
11 MAMA STAYING?" SHE SAID LIKE, "SHE STAYS RIGHT UP THE ROAD."
- 12 Q DO YOU REMEMBER WHAT SHE LOOKED LIKE?
- 13 A WHAT SHE LOOKED LIKE?
- 14 Q YES.
- 15 A SHE HAD BLOOD ON HER FACE.
- 16 Q BLOOD ON HER FACE?
- 17 A YES.
- 18 Q DO YOU REMEMBER WHAT SHE WAS WEARING?
- 19 A I MEAN, ALL I KNOW IS SHE DON'T DRESS LIKE ME.
- 20 Q YOU ALSO TESTIFIED YOU PICKED UP HER SON. ISN'T THAT RIGHT?
- 21 A I WAS GETTING ON TO – I WAS TAKING HER AND SHE SAID SHE WANTED
22 "I WANT MY SON, TOO. GET MY BOY."
- 23 Q SO, YOU PICKED UP THE VICTIM AND HER SON AND YOU LEFT YOUR
24 BROTHER THERE. ISN'T THAT RIGHT?
- 25 A NO, LISTEN. I LEFT WITH THE ALLEGED VICTIM. AND THEN I –

CROSS EXAMINATION OF RODNEY GREENE BY MS. BOLEN

178

1 Q AND YOUR BROTHER WAS NOT IN THE CAR WITH YOU?

2 A NO. I WAS SEPARATING THEM. I TOLD YOU I WAS SEPARATING THEM.

3 IF I WAS SEPARATING THEM THAT MEAN LIKE...

4 Q THAT – YOU HAVE ANSWERED THE QUESTION. NOTHING FURTHER,
5 YOUR HONOR.

6 MS. BELL NO RE-DIRECT, YOUR HONOR.

7 THE COURT: ALL RIGHT. THANK YOU, MISTER GREENE. YOU MAY STEP
8 DOWN.

9 MS. BELL: NO FURTHER WITNESSES. THE DEFENSE RESTS, YOUR
10 HONOR.

11 THE COURT: I WANT TO SEE THE ATTORNEYS UP HERE.

12 (BRIEF BENCH CONFERENCE OFF THE RECORD)

13 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, AFTER CONFERRING
14 WITH THE ATTORNEYS, Y'ALL HAVE HEARD ALL THE TESTIMONY AND ALL THE
15 EVIDENCE HAS BEEN ACCEPTED THAT Y'ALL ARE GOING TO BE ABLE TO
16 CONSIDER. THE LAST THING TO DO IS THE PARTIES WILL BE ALLOWED TO
17 SUMMARIZE THEIR CLIENTS RESPECTIVE POSITIONS AND I AM GOING TO
18 INSTRUCT YOU ON THE LAW AND THE ATTORNEYS AND MY LAW CLERK AND I
19 NEED TO GO OVER AND MAKE CERTAIN WE HAVE THE INSTRUCTIONS WHICH I
20 INTEND TO SUBMIT TO Y'ALL AT THE CONCLUSION OF THEIR ARGUMENTS.
21 CORRECT? SO, WE ARE GOING TO BREAK AND I AM GOING TO SEND Y'ALL
22 HOME FOR AN EARLY LUNCH TODAY. YOU WILL COME BACK AND BE BACK IN
23 THE JURY ROOM AT ONE FIFTEEN. SO, YOU HAVE GOT TWO HOURS. ONE
24 FIFTEEN, COME BACK AND WE ARE GOING TO DO CLOSING ARGUMENTS,
25 SUBMIT THE INSTRUCTIONS, AND Y'ALL WILL THEN BE ALLOWED TO

CLOSING INSTRUCTIONS BY THE COURT

179

1 DELIBERATE. SO Y'ALL MAY BE EXCUSED UNTIL ONE FIFTEEN. PLEASE
2 REMEMBER MY INSTRUCTIONS. DON'T DISCUSS THE CASE WITH ANYONE,
3 EVEN AMONG EACH OTHER. NOTHING. YOU MUST KEEP THAT CONFINED
4 UNTIL AFTER I GIVE YOU THE INSTRUCTIONS AND YOU RECEIVE ALL THE
5 EVIDENCE. WITH THAT, WE WILL SEE YOU AFTER LUNCH.

6 (JURY OUT AT 11:20 A.M.)

7 THE COURT: YOU PEOPLE, Y'ALL HAVE UNTIL ONE FIFTEEN ALSO. (THAT
8 IS DIRECTED TO TWO JURORS NOT SERVING, BUT OBSERVING, DUE TO
9 RELIGIOUS CONVICTIONS.)

10 THE COURT: ALL RIGHT, DO Y'ALL WANT TO – WE DON'T NEED TO PUT
11 THE CHARGE CONFERENCE ON THE RECORD. IS THERE ANYTHING ANYONE
12 ELSE WANTS TO PUT ON THE RECORD AT THIS TIME?

13 MS. BELL: THE ONLY THING THE DEFENSE WANTS TO PUT ON THE
14 RECORD RIGHT NOW IS TO RENEW MY DIRECTED VERDICT MOTIONS
15 PREVIOUSLY MADE, ALONG WITH MY PRE-TRIAL MOTIONS.

16 THE COURT: ALL RIGHT. I BELIEVE THAT, CONSIDERING THE
17 ADDITIONAL EVIDENCE THAT HAS BEEN PRESENTED, IT IS A JURY ISSUE ON
18 BOTH, THE CRIMINAL DOMESTIC VIOLENCE AGGRAVATED AS WELL AS THE
19 BURGLARY FIRST, AND SO RESPECTIVELY, WILL DECLINE TO GRANT THOSE
20 MOTIONS. ALL RIGHT.

21 NOVEMBER 10 AFTERNOON

22 THE COURT: ALL RIGHT, ANYTHING FOR THE RECORD BEFORE WE
23 BRING THE JURY OUT REGARDING OUR CHARGE CONFERENCE?

24 MS. BOLEN: NO, SIR. THE STATE WOULD JUST ASK TO RECEIVE A
25 COPY OF THE CHARGES PRIOR TO BEING READ TO THE JURY. YOU AGREED

CLOSING INSTRUCTIONS BY THE COURT

180

1 TO DO THAT AND I THINK WE WILL BOTH, THE DEFENSE AND THE STATE, WILL
2 LOOK AT THE CHARGES AFTER CLOSING.

3 MS. BELL: WE ARE AGREEABLE TO LOOK AT THEM AFTER CLOSING.

4 THE COURT: I MEAN, LOOKING AT THEM, READING THEM AND TAKING
5 THIRTY MINUTES BETWEEN ARGUMENTS AND CLOSING, IS THAT WHAT Y'ALL
6 INTEND OR DO WE WANT TO GO RIGHT ON TO IT? I MEAN, EXPLAIN TO ME
7 WHAT Y'ALL MEAN BY RECEIVING A COPY. I'M MORE THAN HAPPY TO GIVE
8 YOU WHAT I'M GOING TO READ BUT ARE Y'ALL GOING TO COMMENT FURTHER
9 AND MAKE ME MAKE FURTHER ADJUSTMENTS?

10 MS. BOLEN: YOUR HONOR, ALL I WANTED TO DO WAS CHECK, I THINK
11 IT WAS #2, #4 AND #8 OF THE DEFENSES' REQUEST AS WELL AS THE #1,
12 WHICH WE HAD ALREADY TALKED ABOUT JUST TO MAKE SURE THOSE WERE
13 REFLECTED THE WAY WE HAD DISCUSSED. SO, I WOULD JUST CHECK THOSE
14 AND I DON'T THINK THAT WOULD TAKE VERY LONG.

15 THE COURT: ALL RIGHT. BRING ME THE JURY.

16 (JURY IN AT 1:40 P.M.)

17 THE COURT: LADIES AND GENTLEMEN, AS I TOLD YOU BEFORE LUNCH,
18 WE'VE HEARD ALL THE EVIDENCE AND TESTIMONY WHICH THE PARTIES
19 INTEND TO PRESENT TO YOU. IT IS NOW MY OPPORTUNITY TO GIVE YOU A
20 FEW, BRIEF INSTRUCTIONS. AS YOU KNOW, I TOLD YOU EARLY ON, IT'S YOUR
21 DUTY TO BE THE JUDGES, THE TWELVE OF YOU COLLECTIVELY OR THIRTEEN
22 RIGHT NOW, THE JUDGES OF THE FACTS. IT'S YOUR JOB NOW TO GO BACK
23 INTO THE JURY ROOM AFTER YOU'VE HEARD THE CLOSING ARGUMENTS AND
24 AFTER YOU'VE HEARD MY FURTHER INSTRUCTIONS TO EVALUATE WHAT
25 HAPPENED AND WHICH CRIME HAS BEEN PROVEN OR NOT PROVEN BY THE

CLOSING ARGUMENT BY MS. BOLEN

181

1 STATE. SO, WITH THAT IN MIND, I WANT YOU TO GIVE VERY CAREFUL
2 ATTENTION TO THE STATE AND THE DEFENSE WHEN THEY MAKE THEIR
3 CLOSING SUMMARIES AND THEN UNDERSTAND THAT AFTER THEY MAKE
4 THEIR CONCLUSIONARY REMARKS I WILL GIVE YOU AN EXPANDED
5 INSTRUCTION ON THE LAW OF THESE CRIMES AND HOW TO EVALUATE THE
6 TESTIMONY YOU'VE HEARD, HOW TO CONSIDER THE EVIDENCE AND HOW
7 Y'ALL WEIGH IT. AND SO, THAT WILL BE MY OPPORTUNITY TO TELL Y'ALL
8 HOW TO CONSIDER WHAT YOU'VE BEEN TOLD. SO, WITH THAT IN MIND, MS.
9 BOLEN.

10 MS. BOLEN: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT.

11 **CLOSING ARGUMENT BY MS. BOLEN**

12 LADIES AND GENTLEMEN OF THE JURY, AS THE JUDGE HAS SAID, HE
13 WILL INSTRUCT YOU AS TO THE LAW OF THIS CASE. I'M ALSO GOING TO VERY
14 BRIEFLY GO OVER WHAT THE LAW IS AND THEN AFTER THE DEFENSE
15 CLOSES I WILL COME BACK AND ARGUE ON THE FACTS.

16 THE DEFENDANT IS CHARGED WITH THREE THINGS, CRIMINAL
17 DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE, BURGLARY
18 FIRST DEGREE AND MALICIOUS INJURY TO REAL PROPERTY. THE FIRST
19 CRIME, CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATE NATURE
20 CONTAINS SEVERAL ELEMENTS THAT THE STATE MUST PROVE. FIRST, IS
21 THAT THE DEFENDANT AND THE VICTIM ARE HOUSEHOLD MEMBERS AND
22 THAT IS DEFINED SEVERAL WAYS IN THE LAW. YOU CAN BE MARRIED OR
23 FORMERLY MARRIED, LIVED TOGETHER OR FORMERLY LIVED TOGETHER, OR
24 YOU CAN HAVE A CHID IN COMMON. THE SECOND ELEMENT WE MUST PROVE
25 IS THERE MUST HAVE BEEN SERIOUS BODILY INJURY OR THE FEAR OF

CLOSING ARGUMENT BY MS. BELL

182

1 SERIOUS BODILY INJURY.

2 REGARDING BURGLARY FIRST DEGREE, THERE ARE FOUR ELEMENTS
3 THE STATE MUST PROVE. THE FIRST IS ENTRY INTO THE DWELLING OF
4 ANOTHER AND THE SECOND ELEMENT IS THAT THIS ENTRY WAS WITHOUT
5 CONSENT, THE THIRD ELEMENT IS THAT THIS ENTRY WAS COMMITTED WITH
6 THE INTENT TO COMMIT A CRIME THEREIN AND THE FOURTH ELEMENT OF
7 BURGLARY IN THE FIRST DEGREE IS THAT THERE WAS AN AGGRAVATING
8 CIRCUMSTANCE AND THE JUDGE WILL TELL YOU WHAT THE AGGRAVATING
9 CIRCUMSTANCES ARE. TWO OF THEM ARE THAT THIS BURGLARY
10 OCCURRED, THIS ENTRY OCCURRED IN THE NIGHT TIME AND WHILE INSIDE
11 THE DWELLING OF ANOTHER THAT THE DEFENDANT CAUSED BODILY INJURY
12 TO SOMEONE INSIDE.

13 REGARDING THE MALICIOUS INJURY CHARGE, THE STATE MUST PROVE
14 THAT THE DEFENDANT CAUSED DAMAGE TO REAL PROPERTY THAT WAS
15 PART OF THE HOUSE. THAT IS THE LAW OF THIS CASE.

16 **MS. BELL:** MAY IT PLEASE THE COURT?

17 **THE COURT:** YES, MA'AM.

18 **CLOSING ARGUMENT BY MS. BELL:**

19 LADIES AND GENTLEMEN OF THE JURY, MISTER ANTJUAN GREENE AND
20 MS. THERESA SULLIVAN DATED FOR ALMOST A YEAR AND FOR A GOOD
21 PORTION OF THAT TIME THEY LIVED TOGETHER. ANTJUAN'S BROTHER AND
22 SISTER TESTIFIED TO YOU THAT ON SEVERAL OCCASIONS, AND THE SISTER
23 STATED MORE THAN YOU COULD COUNT, WHEN THEY HAD AN ARGUMENT,
24 MISTER GREENE WOULD COME AND STAY ANYWHERE FROM AN HOUR TO A
25 DAY. HE WOULD HAVE BROUGHT HIS BAG OR A BAG WOULD BE BROUGHT OF

CLOSING ARGUMENT BY MS. BELL

183

1 HIS CLOTHING AND THEN HE WOULD HAVE A COOLING OFF PERIOD AND THEN
2 HE WOULD GO BACK HOME TO THERESA. IT HAPPENED MORE TIMES THAN
3 THEY COULD EVEN COUNT. IT WAS VERY COMMON WITH THIS RELATIONSHIP.
4 ON FEBRUARY 19, ONCE AGAIN THEY HAD AN ARGUMENT. ONCE AGAIN HE
5 WENT AND STAYED AT HIS SISTER'S HOUSE. SOME CLOTHES IN A BAG WERE
6 BROUGHT OVER JUST AS BEFORE, SIMILAR TO THE ONE BROUGHT THE TIMES
7 BEFORE AND HE STAYED FOR A LITTLE WHILE AND AFTER A FEW DAYS, HE
8 HAD HIS BROTHER TAKE HIM BACK. THIS WAS MORE THAN THE NORMAL TIME
9 THAT HE STAYED AND HE WAS READY TO GO BACK AND SO HE DID. HE
10 KNOCKED ON THE DOOR, HIS BROTHER PERSONALLY SAW HIM KNOCK ON
11 THE DOOR. HE KNOCKED A COUPLE OF TIMES AND FINALLY THE DOOR
12 OPENS, OPENED FROM THE INSIDE. HE STEPPED IN. YOU HEARD HIS
13 BROTHER TESTIFY THAT HE PERSONALLY SAW HIM STEP IN. HE DIDN'T BUST
14 IN, HE DIDN'T RUN IN, HE DIDN'T KICK DOWN THE DOOR. THE DOOR OPENED
15 AND HE WALKED IN. HE ALSO HEARD HIM SAY -- YOU KNOW, THEY
16 DESCRIBED IT AS BUSTING OR KICKING THE DOOR IN AND THAT HE SHOVED
17 HIS WAY IN AND HE PUSHED THIS DOOR SO HARD THAT IT PUSHED THE
18 DRYER OUT OF THE WAY AND YET IT WASN'T HARD ENOUGH TO MESS UP THE
19 HINGES. THE DOOR STILL CLOSED ALL THE WAY BACK AND WHEN THE
20 POLICE ARRIVED BACK THEY HAD TO UNLOCK THE DOOR. THEY HAD TO GO
21 GET THE KEYS BECAUSE THE DOOR WAS STILL IN A CONDITION WHERE IT
22 WAS ABLE TO BE CLOSED UP AND LOCKED UP, BUT YET IT BUSTED OPEN AND
23 WAS ABLE TO MOVE THIS DRYER. THERE WERE PICTURES SHOWN THAT ARE
24 IN EVIDENCE THAT YOU WILL GET TO TAKE BACK WITH YOU SHOWING THE
25 DOOR IS CLOSED (HOLDS UP PHOTOGRAPH). THEY ARE SHOWING THAT THE

CLOSING ARGUMENT BY MS. BELL

184

1 DOOR'S HINGES ARE STILL THERE YET HE PUSHED THE DOOR HARD ENOUGH
2 TO SHOVE THE DRYER AND MOVE IT. THE DOOR IS STILL COMPLETELY
3 CLOSED. (ANOTHER PHOTO) YOU CAN TAKE THESE PHOTOS AND ALL THE
4 PHOTOS PUT INTO EVIDENCE. YOU WILL GET TO LOOK AT THEM CLOSER.
5 HE ENTERED THE HOUSE, STEPPED IN. YOU'VE HEARD TESTIMONY
6 THAT HE DIDN'T IMMEDIATELY TOUCH HER, HE DIDN'T IMMEDIATELY HIT HER.
7 INSTEAD, HE ASKED A QUESTION AND THEY TALKED. IT WASN'T UNTIL
8 AFTER THAT, THAT ANYTHING HAPPENED. HE DID NOT IMMEDIATELY ENTER
9 THE HOUSE, HE DID NOT IMMEDIATELY DO ANY KIND OF CRIME. INSTEAD, HE
10 SIMPLY ASKED A QUESTION. HE'S NOT HERE TRYING TO DENY THAT HE
11 HURT HER. HE IS, IN FACT, GOING TO ADMIT THAT YES, HE DID DO THAT AND
12 HE WAS WRONG FOR THAT, BUT WHAT HE DID NOT DO IS ENTER THAT HOUSE
13 WITH THE INTENT TO COMMIT A CRIME. HE DID NOT BUST IN THERE. HE
14 ARRIVED, CAME TO TALK WITH HER, TO ASK HER A QUESTION AND THAT'S
15 WHEN THINGS WENT WRONG. HE ENTERED THE HOUSE WHERE HE HAD
16 BEEN LIVING, THAT HAD BEEN HIS HOME. MANY TIMES HE SPENT NIGHTS
17 AWAY WHEN THINGS WEREN'T GOING WELL WITH THEM, BUT AS ALWAYS, HE
18 CAME BACK AFTER A COOLING OFF PERIOD AND WENT INTO THE HOUSE,
19 AND WHEN HE CAME BACK HE DID NOT BUST INTO THE DOOR, HE ENTERED
20 THE HOUSE.

21 YOU'VE HEARD LOTS OF TESTIMONY ABOUT MS. SULLIVAN'S INJURIES
22 AND IN A LITTLE WHILE THE JUDGE WILL INSTRUCT YOU ABOUT WHAT IS
23 REQUIRED TO PROVE CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND
24 AGGRAVATED NATURE AND AFTER YOU'VE HEARD THAT, WE ARE GOING TO
25 ASK THAT INSTEAD OF FINDING CRIMINAL DOMESTIC VIOLENCE OF A HIGH

CLOSING ARGUMENT BY MS. BELL

185

1 AND AGGRAVATED NATURE THAT IT WAS A REGULAR CRIMINAL DOMESTIC
2 VIOLENCE. ONE OF THE THINGS THE JUDGE WILL TALK TO YOU ABOUT AND
3 THE SOLICITOR BRIEFLY MENTIONED, IS SERIOUS BODILY INJURY. WHAT THE
4 JUDGE IS MOST LIKELY GOING TO TELL YOU COMPRISES SEROUS BODILY
5 INJURY IS THAT IT MEANS A GRAVE, NOT TRIVIAL INJURY. SUCH AN INJURY
6 THAT GIVES RISE TO THE APPREHENSION OF DANGER TO LIFE, HEALTH OR
7 LIMB. THAT IT IS A PHYSICAL CONDITION THAT CREATES A SUBSTANTIAL RISK
8 OF DEATH, SERIOUS PERSONAL DISFIGUREMENT OR PROTRACTED LOSS OR
9 IMPAIRMENT OF THE FUNCTION OF A BODILY MEMBER OR ORGAN. WHAT
10 INJURIES DID MS. SULLIVAN HAVE? YOU'VE HEARD ABOUT HER FRACTURED
11 NOSE, BUT YOU'VE BEEN ABLE TO LOOK AT HER AND YOU CAN TELL, YOU CAN
12 DECIDE FOR YOURSELF WHETHER OR NOT THE FRACTURED NOSE CAUSED A
13 SERIOUS PERMANENT BODILY DISFIGUREMENT OR GRAVE INJURY, A CHANCE
14 OF GRAVE INJURY TO LIFE OR LIMB, OR ANY KIND OF PROTRACTED LOSS OF
15 A BODY MEMBER. YOU ALSO HEARD THAT SHE HAD SOME STITCHES. YOU
16 HEARD IT ROUGHLY MENTIONED, MAYBE FOUR OR MAYBE FIVE STITCHES.
17 YOU WILL ALSO GET TO DECIDE WHETHER THOSE STITCHES WERE ENOUGH
18 TO CAUSE SEROUS BODILY INJURY OR THE RISK OF OR THAT SHE BELIEVED
19 THAT SHE WAS GOING TO HAVE SEROUS BODILY INJURY OR INJURY THAT
20 WAS PERMANENT OR POSSIBLY PERMANENT DISFIGUREMENT. YOU WILL
21 GET TO LOOK AT THAT. PAY ATTENTION TO THE JUDGE'S INSTRUCTION AND
22 THINK BACK ABOUT THAT. ALSO THINK BACK TO THE BRUISES THAT WERE
23 ON HER BODY AND THINK ABOUT THAT SEROUS BODILY INJURY DEFINITION.
24 YOU ALSO HEARD THAT, YES, THERE WAS BLOOD. I THINK BLOOD WAS
25 MENTIONED A LOT. YOU ALSO HEARD TESTIMONY THAT WITH A CUT ON THE

CLOSING ARGUMENT BY MS. BELL

186

1 FACE, IT DOES BLEED A LOT AND SO TAKE THAT INTO CONSIDERATION. PAY
2 CLOSE ATTENTION TO EVERYTHING THE JUDGE TELLS YOU AND THEN THINK
3 BACK TO WHAT YOU'VE HEARD AND WHAT YOU SAW. THINK BACK ON THE
4 PICTURES AND DECIDE WHETHER OR NOT THAT REALLY RISES TO THE
5 LEVEL. WE ARE ASKING YOU TODAY TO SAY NO, IT DOES NOT. THAT YES, HE
6 WAS IN THE WRONG, BUT IT WAS ONLY TO THE LEVEL OF CRIMINAL
7 DOMESTIC VIOLENCE. IT DOES NOT REACH THAT NEXT LEVEL.

8 FINALLY, YOU'VE ALSO HEARD THAT HE'S CHARGED WITH MALICIOUS
9 INJURY TO REAL PROPERTY. THEY MENTIONED THE DOOR OPENING AND
10 PUSHING BACK THE DRYER. THINK ABOUT THE DAMAGE. THINK BACK ABOUT
11 WHAT YOU'VE HEARD AND DECIDE WHETHER OR NOT THEY'VE PROVEN
12 BEYOND A REASONABLE DOUBT THAT THAT OCCURRED. PAY CLOSE
13 ATTENTION TO THE CLOSING ARGUMENT BY THE SOLICITOR AND PAY
14 PARTICULARLY CLOSE ATTENTION TO EVERYTHING THE JUDGE TELLS YOU.
15 LISTEN TO IT CLOSELY. LISTEN TO EVERYTHING THAT I'VE SAID AND THE
16 SOLICITOR SAYS BUT THINK BACK ABOUT WHAT YOU HEARD ON THE STAND
17 WHAT YOU REMEMBER BEING TOLD ON THE STAND, THE PICTURES YOU SAW,
18 HOW IT COMES TOGETHER IN YOUR MIND OF THIS HAPPENING. YOU'RE THE
19 ONES WHO WILL GET TO DECIDE WHAT YOU BELIEVE AND WHAT YOU DON'T
20 BELIEVE. WHO YOU BELIEVE, ANOTHER PERSON, THEIR CREDIBILITY, THAT IS
21 YOUR CALL, BUT WE ARE GOING TO ASK THAT AFTER YOU STEP BACK, YOU
22 THINK ABOUT IT. HE IS NOT GUILTY OF BURGLARY IN THE FIRST DEGREE. HE
23 DID NOT ENTER ANOTHER'S DWELLING WITH THE INTENT TO COMMIT A
24 CRIME. IT WAS HIS OWN HOME AND HIS INTENT WAS TO COME BACK TO HIS
25 OWN HOME AND TALK. IT WAS NOT SUPPOSED TO BE VIOLENT. THEY HAVE

CLOSING ARGUMENT BY MS. BELL

187

1 NOT PROVED IT BEYOND A REASONABLE DOUBT THAT IT HAD REACHED THAT
2 LEVEL AND FINALLY WE ASK YOU FIND HIM NOT GUILTY TO THE MALICIOUS
3 INJURY TO REAL PROPERTY. THINK HARD AND PAY CLOSE ATTENTION AND
4 WE ASK THAT YOU FIND HIM NOT GUILTY OF THE THREE CHARGES AGAINST
5 HIM TODAY. THANK YOU.

6 **MS. BOLEN:** MAY IT PLEASE THE COURT, YOUR HONOR?

7 **THE COURT:** YES, MA'AM.

8 **CLOSING ARGUMENT BY MS. BOLEN:**

9 THE DEFENSE BROUGHT UP TWO ARGUMENTS THAT I WOULD LIKE TO
10 ADDRESS IN THE BEGINNING OF CLOSING ARGUMENT. THE FIRST IS THAT
11 THERE WASN'T SERIOUS BODILY INJURY TO THE VICTIM. THE DEFENSE
12 WANTS YOU TO BELIEVE THAT THIS (HOLDS UP PHOTOGRAPH) IS NOT
13 SERIOUS BODILY INJURY. THAT BRUISES THAT LASTS FOR WEEKS, THAT
14 PAIN THAT LASTS LONG AFTER THE ATTACK IS OVER, THAT A BONE BROKEN
15 IN THREE PLACES AND THAT STITCHES ARE NOT SERIOUS BODILY INJURY.
16 THE JUDGE WILL INSTRUCT YOU AS TO WHAT SERIOUS BODILY INJURY IS.
17 AND AS THE DEFENSE SAID, YOU SHOULD PAY CLOSE ATTENTION TO WHAT
18 THAT IS. SERIOUS BODILY INJURY IS A GRAVE, NON-TRIVIAL INJURY. I SUBMIT
19 TO YOU THAT THESE INJURIES THAT MS. SULLIVAN RECEIVED ARE NOT
20 TRIVIAL. THEY ARE NOT TRIVIAL INJURIES. THE DEFENSE STATED SHE DIDN'T
21 SUFFER ANY PERMANENT DISFIGUREMENT AND I STATE TO YOU THE LAW
22 AND WHAT THE JUDGE IS GOING TO INSTRUCT YOU ON DOES NOT REQUIRE
23 THE STATE TO PROVE PERMANENT INJURY. WE NEED TO SHOW SERIOUS
24 INJURY, BROKEN BONES, STITCHES. I'LL GET INTO THAT A LITTLE LATER.
25 THE DEFENSE ALSO BROUGHT UP THE RELATIONSHIP OF THE

CLOSING ARGUMENT BY MS. BOLEN

188

1 DEFENDANT AND THE VICTIM. THAT THEY WOULD BE TOGETHER AND THEN
2 GET IN AN ARGUMENT AND THEN HE WOULD LEAVE FOR, SHE SAID IN HER
3 ARGUMENT AN HOUR AND UP TO A DAY. THE DEFENSE'S WITNESSES AS
4 WELL AS THE ATTORNEY STATED THAT THERESA WOULD DROP HIM AND HIS
5 BELONGINGS OFF AT HIS SISTER'S HOUSE AND THEN GO BACK AND PICK HIM
6 UP AND PICK HIS BELONGINGS UP IN CLINTON AND TAKE HIM BACK TO HER
7 HOUSE. THAT DIDN'T HAPPEN IN THIS CASE. FIRST OF ALL, HE'S GONE FOR
8 THREE DAYS. THE 19TH IS WHEN HE VOLUNTARILY LEAVES, THE 22ND IS
9 WHEN HE BREAKS IN HER HOUSE. THIS IS NOT A SITUATION WHERE HE'S
10 GONE AND SHE PICKED HIM UP AND BROUGHT HIM BACK.

11 THERE ARE A LOT OF FACTS IN THIS CASE AND THE LAW DETERMINES
12 WHAT THE FACTS ARE SO IN TERMS OF THE BURGLARY CHARGE AND THE
13 DWELLING OF ANOTHER, THERESA IS THE ONLY ONE ON THAT LEASE. HE'S
14 NOT ON THE LEASE. HE DOESN'T HAVE A KEY. HE'S NEVER HAD A KEY. HE
15 KNOCKS. THE BROTHER EVEN SAYS HE KNOCKS ON THE DOOR. WHY
16 WOULD YOU KNOCK AT YOUR OWN HOUSE? IF THAT'S WHERE YOU LIVE, ARE
17 YOU GOING TO KNOCK THERE? THERESA TESTIFIED THAT THE DEFENDANT
18 VOLUNTARILY MOVED OUT. HE VOLUNTARILY LEFT HER HOUSE AND ASKED
19 HER TO BRING HIS BELONGINGS TO HIS SISTER'S HOUSE. HE VOLUNTARILY
20 LEFT ON THE 19TH. AS OF THAT DATE, HE DOESN'T LIVE THERE ANYMORE. IT
21 IS NOT HIS DWELLING. THERESA ALSO TESTIFIED HE DIDN'T HAVE ANY
22 BELONGINGS IN THE HOUSE WHICH AGAIN GOES TO SHOW HE WAS NOT
23 LIVING THERE AT THIS TIME. AND AGAIN HIS SISTER TESTIFIED THAT WHEN
24 THEY WOULD BREAK UP, THERESA WOULD COME BY AND PICK HIM UP AND
25 BRING HIM HOME. THAT DIDN'T HAPPEN IN THIS CASE. THERESA DID NOT GO

CLOSING ARGUMENT BY MS. BOLEN

189

1 BACK TO GET HIM. HE DECIDED HE WANTED TO TAKE CONTROL. HE DECIDED
2 HE WAS GOING TO GO BACK AND HAD HIS BROTHER DRIVE HIM BACK. THAT
3 DECISION AND THAT CONTROL WAS NOT SOMETHING THAT WAS LEFT UP TO
4 HIM. THAT DECISION AND THAT CONTROL WAS WITH THERESA. SHE WAS
5 NOT SAYING, "COME BACK TO MY HOUSE. I WANT YOU BACK." HIS BROTHER
6 ALSO TESTIFIED THAT WHEN ANTONIO DECIDED HE WAS GOING TO TAKE
7 CONTROL AND MAKE THE DECISION THAT HE WAS GOING TO GO BACK, THAT
8 THE BROTHER HAD ANTONIO'S BELONGINGS IN THE CAR AS HE DROVE TO
9 THERESA'S HOUSE AT ONE O'CLOCK IN THE MORNING. AGAIN, I SUBMIT TO
10 YOU, IF IT'S YOUR HOUSE, WHY ARE YOU MOVING THINGS IN AT THAT TIME?
11 IT'S BECAUSE HE DID NOT LIVE THERE AT THAT TIME. THE BROTHER
12 TESTIFIED ALSO THAT HE HEARD ANTONIO KNOCK. AGAIN, IF IT'S HIS HOUSE,
13 WHY IS HE KNOCKING? AND FURTHERMORE, THE BROTHER SAID THAT THEY
14 WERE PLANNING, IF SHE WASN'T HOME, THEY WERE PLANNING TO JUST
15 LEAVE AND COME BACK AND AGAIN WHY WOULD YOU DO THAT IF THAT'S
16 WHERE YOU LIVE? WHY WOULD YOU LEAVE AND THEN COME BACK IF THAT
17 IS WHERE YOU ACTUALLY RESIDED?

18 ANOTHER ISSUE IN THE BURGLARY IS WITHOUT CONSENT, THE ENTRY
19 MUST BE WITHOUT CONSENT AND I SUBMIT TO YOU THERE IS AMPLE
20 EVIDENCE TO PROVE BEYOND A REASONABLE DOUBT THAT THIS ENTRY WAS
21 WITHOUT CONSENT. BY THERESA'S OWN TESTIMONY IT'S ONE O'CLOCK IN
22 THE MORNING. THAT'S UNDISPUTED. PRETTY MUCH EVERY WITNESS
23 TESTIFIED THAT THIS HAPPENED VERY EARLY IN THE MORNING. SHE WAS
24 ASLEEP. SHE'D BEEN ASLEEP FOR A COUPLE OF HOURS. SHE WAS IN HER
25 NIGHTGOWN. SHE HEARD A KNOCK ON THE DOOR. ASKED WHO IT WAS.

CLOSING ARGUMENT BY MS. BOLEN

190

1 WHEN SHE RECOGNIZED HIS VOICE THE FIRST THING SHE DID WAS TRY TO
2 PREVENT HIS ENTRY BY MOVING THAT DRYER. THE FIRST THING SHE DID
3 WAS TRY TO KEEP HIM FROM COMING IN. YOU REMEMBER, SHE TESTIFIED
4 SHE HEARD HIM BANGING ON THE DOOR, KNOCKING ON THE DOOR, SHE
5 KNEW SOMETHING WASN'T RIGHT. SHE DIDN'T WANT HIM INSIDE. THE
6 OFFICER'S ALL TESTIFIED THAT THE DRYER LOOKED OUT OF KILTER, IT
7 LOOKED LIKE IT HAD BEEN DRAGGED AND PUT IN FRONT OF THE DOOR. AS I
8 SAID, IT'S ONE O'CLOCK IN THE MORNING. IF HE WANTS TO TALK, WHY COME
9 OVER AT ONE O'CLOCK IN THE MORNING? AND SHE'S BEEN CLEARLY ASLEEP
10 BECAUSE SHE'S IN HER PAJAMAS OR NIGHTGOWN WHEN SHE GOES TO THE
11 HOSPITAL. OFFICER PLESS, WHO TOOK THE PICTURES, TESTIFIED ABOUT
12 THE CREASE IN THE DOOR AND AGAIN, YOU'LL HAVE THESE ALL BACK WITH
13 YOU. THE CREASE IS RIGHT THERE AND RIGHT THERE. (DEMONSTRATING ON
14 PHOTOGRAPH) HE TESTIFIED IT LOOKED TO HIM LIKE IT HAD BEEN KICKED IN.
15 HE ALSO TESTIFIED THAT TRAILER DOORS TEND TO BE VERY WEAK
16 STRUCTURALLY. THEY ARE MOSTLY FILLED WITH STYROFOAM. IT DOESN'T
17 TAKE A LOT OF FORCE TO KICK ONE OPEN AND THAT AFTER KICKING ONE
18 OPEN, IF IT'S LEFT INTACT, YOU COULD EASILY SHUT IT. AGAIN, WE DON'T
19 NEED TO PROVE A FORCED ENTRY. WE NEED TO PROVE AN ENTRY WITHOUT
20 CONSENT AND THE EVIDENCE IN THIS CASE REALLY POINTS TO THIS WAS AN
21 ENTRY WITHOUT CONSENT. SHE'S DOING EVERYTHING SHE CAN TO STOP
22 HIM FROM COMING IN. HE KICKS DOWN THE DOOR, SHE'S MOVING THE
23 DRYER. NOW, THE BROTHER TESTIFIED THAT HE SAW THE VICTIM OR
24 SOMEONE OPEN THE DOOR. TESTIMONY IS VERY IMPORTANT. FIRST, YOU'VE
25 GOT TO LOOK AT ANY POTENTIAL BIAS, AS WITH ANY WITNESS, BUT ANY

CLOSING ARGUMENT BY MS. BOLEN

191

1 POTENTIAL BIASES OR MOTIVATION THE BROTHER MAY HAVE. THIS IS HIS
2 BROTHER. SECOND, BY HIS OWN TESTIMONY, IT'S DARK, HE'S IN A RURAL
3 AREA, HE'S PARKED AT THE SIDE OF THE HOUSE, THIS IS HAPPENING AT THE
4 BACK OF THE HOUSE. HE DOESN'T HAVE A GOOD VANTAGE POINT OF WHAT'S
5 HAPPENING AT THAT BACK DOOR. BY HIS OWN TESTIMONY, HE DOES NOT.
6 WE ALSO NEED TO PROVE AN INTENT TO COMMIT A CRIME. I SUBMIT
7 TO YOU THAT WHEN YOU GO BACK TO DELIBERATE ABOUT WHETHER THE
8 DEFENDANT HAD THE INTENT TO COMMIT A CRIME, YOU LOOK AT WHAT HE
9 DOES. WHAT HE ACTUALLY DOES. NOT WHAT THE DEFENSE ATTORNEY
10 TELLS YOU WHAT HE WAS GOING OVER THERE TO DO. HE SAID HE WAS
11 GOING OVER THERE TO TALK TO HER. LET'S LOOK AT WHAT HE ACTUALLY
12 DOES. FIRST OF ALL, IT'S ONE A.M. BY THERESA'S TESTIMONY, SHE'S HAD NO
13 COMMUNICATION WITH HIM FROM FEBRUARY 19TH UNTIL HE'S KNOCKING,
14 BANGING, AND KICKING DOWN HER DOOR. IS HE REALLY COMING OVER TO
15 TALK AT ONE O'CLOCK IN THE MORNING WITHOUT ANY SORT OF WARNING?
16 HE BANGS ON THE DOOR, HE KICKS DOWN THE DOOR, DEMANDS WHY SHE
17 DOESN'T ANSWER AND AS SOON AS HE GETS IN THE HOUSE, WHAT DOES HE
18 DO? HE PUNCHES HER IN THE EYE AND SHE FALLS AND HITS THE
19 REFRIGERATOR. NOW, HE'S GOT, BY HIS ACTIONS, HE'S GOT THE INTENT TO
20 COMMIT A CRIME. THE KICKING DOWN OF THE DOOR IS INTENT TO COMMIT A
21 CRIME. THAT'S MALICIOUS INJURY, HE'S DAMAGED THE DOOR. AND HE'S
22 DOING THAT AS HE ENTERS. HE'S GOT THE INTENT TO COMMIT A CRIME.
23 WHAT ELSE IS HE GOING OVER THERE TO DO? THIS IS SOMETHING YOU
24 NEED TO THINK ABOUT AND DECIDE, BUT I SUBMIT THAT HIS INTENT CAN BE
25 DETERMINED BY WHAT HE'S ACTUALLY DONE. WHAT DOES HE DO WHEN HE

CLOSING ARGUMENT BY MS. BOLEN

192

1 GETS INSIDE? HE PUNCHES HER RIGHT AWAY. OFFICERS AND MS. SULLIVAN
2 AND HER MOTHER ALL TESTIFIED THERE WAS BLOOD ALL OVER THAT ENTRY
3 WAY. ALL OVER IT. YOU COULD SEE IT AS SOON AS YOU GOT IN. THERE
4 SEEMS TO BE BLOOD ALL OVER THE DRYER. YOU'LL HAVE PICTURES OF
5 THAT DRYER TO SHOW AS HE IS TRYING TO MOVE IT, THERE'S BLOOD ON
6 THAT DRYER. SO, HIS ACTIONS SHOW HIS INTENT TO COMMIT A CRIME.

7 NOW, MOVING TO THE – OH, AND THE AGGRAVATING CIRCUMSTANCES.
8 WE NEED TO PROVE, AMONG OTHERS, THAT THERE WERE MANY POSSIBLE
9 AGGRAVATING CIRCUMSTANCES. ONE OF THEM IS THAT THE UNLAWFUL
10 ENTRY OCCURRED DURING THE NIGHT TIME, WHICH IT DID. IT HAPPENED AT
11 ONE O'CLOCK IN THE MORNING. AND THE OTHER IS THAT THE PERSON
12 MAKING THE UNLAWFUL ENTRY CAUSES BODILY INJURY TO ANOTHER
13 PERSON, WHICH THERE IS HERE. THERE IS BODILY INJURY.

14 REGARDING THE DOMESTIC VIOLENCE CHARGE. AGAIN, THE DEFENSE
15 WANTS YOU TO FIND THAT IT'S NOT AGGRAVATED, THERE'S NO SERIOUS
16 BODILY INJURY, THERE'S NO FEAR OF SERIOUS BODILY INJURY. I SUBMIT TO
17 YOU THAT THERE IS BOTH SERIOUS BODILY INJURY AND THE VICTIM HAD A
18 REASONABLE FEAR OF SERIOUS BODILY INJURY. I'LL GO OVER ALL THE
19 FACTS THAT LEAD ME TO THAT. FIRST, IN TERMS OF MEETING THE ELEMENT
20 OF HOUSEHOLD MEMBER, THEY COHABITATED, THEY USED TO LIVE
21 TOGETHER AND THAT FITS THE STATUTORY ELEMENT OF HOUSEHOLD
22 MEMBER. WE NEED TO PROVE THE SERIOUS BODILY INJURY OF FEAR OF.
23 THERESA TESTIFIED SHE WAS IN FEAR. ALSO, JUST USING YOUR COMMON
24 SENSE. SHE DESCRIBED THE ATTACK AND THE PICTURES AND THE
25 TESTIMONY OF THE OFFICERS CORROBORATE THIS. THE ATTACK THAT

CLOSING ARGUMENT BY MS. BOLEN

193

1 BEGINS IN THE ENTRY WAY AND GOES THROUGHOUT THE HOUSE. THERE'S
2 BLOOD AS YOU KNOW FROM THE PICTURES, THERE'S BLOOD IN THE
3 KITCHEN, IN THE HALLWAY, IN THE BEDROOM, ON THE WALLS, ON THE
4 CARPET, ON THE BEDCLOTHES, ON THE LAUNDRY BASKET. THIS IS A LONG
5 DRAWN OUT ATTACK. SHE SAID IT LASTED TEN TO FIFTEEN MINUTES. I
6 SUBMIT TO YOU THAT THAT WOULD PUT A PERSON INTO REASONABLE FEAR
7 OF SERIOUS BODILY INJURY JUST BEING ATTACKED THAT MANY TIMES OVER
8 THAT LENGTH OF TIME. AND THINK ABOUT WHAT HE ACTUALLY DID. THE
9 FIRST STRIKE WAS A PUNCH TO THE EYE. THEN HE TESTIFIES HE KICKS HER,
10 THROWS HER TO THE GROUND, STOMPS ON HER, GRABS HER BY HER HAIR,
11 DRAGS HER AROUND THE COUCH ALL THE WHILE KICKING AND HITTING HER.
12 AGAIN, THIS SORT OF ACTION TAKEN AGAINST A PERSON WOULD CAUSE
13 THAT PERSON TO BE IN REASONABLE FEAR OF SERIOUS BODILY INJURY.
14 SHE'S BEING DRAGGED AROUND THE HOUSE, KICKED, STOMPED AND AT ONE
15 POINT SHE SAYS HE ACTUALLY KICKED HER IN THE HEAD. THAT IS ENOUGH
16 TO GIVE SOMEONE FEAR OF SERIOUS BODILY INJURY.

17 LET'S LOOK AT THE INJURIES THAT THERESA ACTUALLY DID HAVE.
18 SORRY THIS IS A LITTLE SMALL, BUT I TRIED TO GET IT ALL ON ONE SCREEN.
19 (SHOWING PHOTOGRAPHS ON LARGE SCREEN) THE JUDGE WILL INSTRUCT
20 YOU THAT SERIOUS BODILY INJURY, ONE OF THE THINGS IT CAN BE IS
21 SERIOUS DISFIGUREMENT. I SUBMIT TO YOU THAT HOW THERESA LOOKED
22 THAT NIGHT SHOWS SERIOUS DISFIGUREMENT. THE OFFICER WHO DOES
23 NOT KNOW HER AND THE MOTHER BOTH TESTIFIED SHE WAS ALMOST
24 UNRECOGNIZABLE. THAT ALONE IS SERIOUS DISFIGUREMENT. YOU'VE ALSO
25 GOT THE TESTIMONY OF THE DOCTOR AND THE NURSE THAT TESTIFIED THAT

CLOSING ARGUMENT BY MS. BOLEN

194

1 HER FACE WAS SWOLLEN. THE NURSE THAT WAS THERE THAT NIGHT
2 TESTIFIED HER EYE WAS SWOLLEN SHUT. HER NOSE WAS COMPLETELY NOT
3 ALIGNED CORRECTLY. THAT'S ALL DISFIGUREMENT. SO ARE THE BRUISES
4 THAT LASTED, SHE SAYS, SEVERAL WEEKS AFTER THE ATTACK. THAT'S
5 SERIOUS DISFIGUREMENT TO ONE'S PERSON. THE INJURIES SHE HAD, THE
6 NURSE TESTIFIED SHE HAS MULTIPLE ABRASIONS OVER MUCH OF HER BODY.
7 SHE DESCRIBED ONE AS I BELIEVE SIX INCHES NEAR HER NECK. I BELIEVE
8 YOU WILL HAVE A PICTURE OF THAT TO TAKE BACK WITH YOU. SHE HAS A
9 LACERATION TO HER FOREHEAD THAT IS SO DEEP IT NEEDS TO BE STITCHED,
10 TO BE CLOSED. HER EYE WAS SWOLLEN SHUT. SHE'S GOT BLOOD
11 EVERYWHERE. SHE'S GOT MULTIPLE BRUISES ON HER LEGS, HER ARMS, HER
12 FACE. THIS SHOWS THE SERIOUSNESS OF THE ATTACK. THIS WASN'T JUST
13 ONE HIT OR ONE PUNCH. THIS IS ALL OVER HER BODY. SHE'S EVEN GOT BIG
14 BRUISES ON HER CHEST AND YOU HAVE A PICTURE OF THAT TO SHOW THE
15 EXTENT OF THIS ATTACK. LIKE I SAID, THE STITCHES, AS DOCTOR
16 ABERNATHY TESTIFIED, STITCHES CAN CAUSE SCARRING, WHICH IS
17 PERMANENT DISFIGUREMENT. WE DON'T NEED TO SHOW THAT IT DID, WE
18 JUST NEED TO SHOW THAT IT COULD. AND IT COULD. HAVING AN INJURY
19 THAT REQUIRES STITCHES CAN RESULT IN PERMANENT DISFIGUREMENT OR
20 SERIOUS DISFIGUREMENT. ALSO, SHE'S GOT A NOSE THAT IS BROKEN IN
21 THREE PLACES. DOCTOR ABERNATHY TESTIFIED THAT SHE HAD THREE
22 BREAKS, HERE, HERE AND HERE. (SHOWING ON SCREEN) THAT IS CERTAINLY
23 IMPAIRMENT OF HER NOSE. DOCTOR ABERNATHY TESTIFIED THAT IT COULD
24 EFFECT HER BREATHING. I THINK TO ANYONE THAT HAVING A BROKEN NOSE
25 IS AN IMPAIRMENT OF YOUR NOSE, BECAUSE IT'S BROKEN. WE'VE ALSO GOT

CLOSING ARGUMENT BY MS. BOLEN

195

1 THE SWOLLEN EYES. ONE NURSE TESTIFIED THAT THE ONE EYE WAS
2 SWOLLEN SHUT. THERESA TESTIFIED THAT HER EYES WERE SO SWOLLEN
3 THAT SHE REALLY HAD TROUBLE SEEING FOR A COUPLE OF DAYS. THAT'S A
4 LOSS OR IMPAIRMENT OF A BODILY FUNCTION. SHE CAN'T SEE IF HER EYES
5 ARE SO SWOLLEN SHUT. ALSO, BY TESTIMONY OF MS. SULLIVAN AS WELL AS
6 DOCTOR ABERNATHY, SHE RETURNS TO THE HOSPITAL A COUPLE DAYS
7 LATER BECAUSE SHE'S STILL IN PAIN, SHE'S DIZZY AND THAT'S WHEN THEY
8 RAN THE C-T SCAN AND FIND THAT SHE'S GOT THE BROKEN BONES AND
9 REMEMBER, WHEN DOCTOR ABERNATHY TESTIFIED WHEN I ASKED HIM WHAT
10 KIND OF INJURIES COULD RESULT FROM BEING KICKED IN THE HEAD, VERY
11 SERIOUS INJURIES COULD RESULT. BLEEDING ON THE BRAIN I BELIEVE IS
12 ONE THAT HE MENTIONED. DOCTOR ABERNATHY ALSO DESCRIBED THE
13 AMOUNT OF FORCE THAT WOULD BE REQUIRED TO RESULT IN AN INJURY OF
14 BROKEN BONES. HE SAID IT WOULD TAKE A GREAT DEAL OF FORCE TO
15 RESULT IN BROKEN BONES. AGAIN, I SUBMIT THOSE BROKEN BONES ARE
16 SERIOUS BODILY INJURY. HOWEVER, WE CAN ALSO SHOW THAT SHE WAS IN
17 FEAR OF SERIOUS BODILY INJURY AND TO SHOW THIS, I SUBMIT THAT YOU
18 LOOKED AT, FIRST OF ALL, THAT THE LAW IS THAT THERE IS AN ASSAULT
19 WITH AN ACCOMPANYING BATTERY WHICH WOULD CAUSE SOMEONE TO BE
20 REASONABLY IN FEAR OF SERIOUS BODILY INJURY. HERE, SHE'S BEEN HIT,
21 STOMPED, PUNCHED, PULLED BY THE HAIR, DRAGGED HER OUT OF THE
22 HOUSE, FOR TEN TO FIFTEEN MINUTES. ACCORDING TO THE TESTIMONY OF
23 THE OFFICERS THERE IS NO MARKS ON THE DEFENDANT AT ALL.

24 THE TIME LINE BECOMES PRETTY IMPORTANT IN THIS CASE
25 PARTICULARLY WITH RESPECT TO THE BURGLARY CHARGES. I JUST WANT

CLOSING ARGUMENT BY MS. BOLEN

196

1 TO LAY IT OUT FOR YOU. THERESA TESTIFIED THAT IN ABOUT MAY OF '08,
2 THE DEFENDANT MOVED INTO HER HOUSE. ON FEBRUARY 19, 2009, THE
3 DEFENDANT BREAKS UP WITH HER AND MOVES OUT AND HE ASKS HER TO
4 BRING HIS BELONGINGS TO HIS SISTER'S HOUSE WHICH SHE DOES AND THE
5 SISTER'S TESTIMONY CORROBORATED THAT, YES, THERESA BROUGHT HIS
6 STUFF BY AND THAT'S PER THE DEFENDANT'S REQUEST. THERESA
7 TESTIFIED THAT BETWEEN DROPPING HIS BELONGINGS OFF AT HER HOUSE,
8 THE SISTER'S HOUSE, AND WHEN HE BREAKS IN, THERE IS NO
9 COMMUNICATION BETWEEN THE TWO OF THEM AT ALL. I SUBMIT THAT WHEN
10 THE DEFENDANT VOLUNTARILY LEFT HER HOUSE HE NO LONGER LIVED
11 THERE, IT IS NO LONGER HIS DWELLING AND THAT'S WHERE THE BURGLARY
12 FIRST CHARGE COMES FROM.

13 YOU WILL HAVE ALL THE PICTURES THAT HAVE BEEN SUBMITTED INTO
14 EVIDENCE BACK WITH YOU WHEN YOU DELIBERATE. I ASK YOU AS THE
15 DEFENSE DID, THAT YOU THINK ABOUT EVERYTHING THAT WAS SAID ON THE
16 WITNESS STAND AND THINK ABOUT WHAT WAS SAID, WHO SAID IT AND HOW
17 THEY SAID IT, ANY BIAS OR MOTIVATION THEY MIGHT HAVE HAD, AND LOOK
18 CAREFULLY AT THE PICTURES, ISSUES OF WHETHER THE C-D-V WAS
19 AGGRAVATED, WHETHER THERE WAS SERIOUS BODILY INJURY. AS YOU
20 LOOK AT THE PICTURES OF WHAT SHE WAS LIKE THEN AND THEN SEVERAL
21 DAYS LATER WHEN SHE'S STILL GOT THE BRUISES TO HER AND THE BROKEN
22 BONES AND THE STITCHES AND SHE TESTIFIED THAT SHE WAS IN PAIN.

23 REGARDING THE ISSUE OF THE BURGLARY, I SUBMIT TO YOU THAT
24 THAT DWELLING WAS NO LONGER THE DEFENDANT'S HOUSE. AS OF
25 FEBRUARY 19TH, IT WAS NO LONGER HIS HOUSE. HE MOVED OUT. HIS

CLOSING ARGUMENT BY MS. BOLEN

197

1 ENTERED WITHOUT CONSENT. THAT'S OBVIOUS FROM THE EVIDENCE OF
2 HER PUSHING THE DRYER. THE OFFICER TESTIFYING THAT THE DOOR
3 LOOKED LIKE IT HAD BEEN KICKED IN. YOU ALSO HAVE IN EVIDENCE SOME
4 PICTURES OF THE DOOR LOCK ITSELF AND WHERE YOU CAN TELL WHERE
5 THE WOOD HAS BEEN FRESHLY SPLINTERED, AGAIN CORROBORATING HIS
6 KICKING IN THE DOOR AND ALSO LOOK AT THE OTHER FACTS OF THE CASE.
7 IT'S ONE O'CLOCK IN THE MORNING. SHE'S ASLEEP, IN HER NIGHTGOWN.
8 SHE'S ASLEEP. SHE DOESN'T WANT HIM IN THE HOUSE AND LOOK AT WHAT
9 HIS OWN WITNESSES HAVE SAID THAT EVERY OTHER TIME THEY HAD
10 GOTTEN BACK TOGETHER, SHE WENT AND PICKED HIM UP AND BROUGHT HIM
11 BACK. IT WAS NOT HIS DECISION TO MAKE ONCE HE HAD LEFT TO COME
12 BACK IN. THAT WAS HER DECISION. SHE DECIDED NOT TO LET HIM IN. HE
13 BROKE DOWN THAT DOOR. SO, WHEN YOU CONSIDER ALL OF THE
14 TESTIMONY YOU'VE HEARD AND YOU LOOK AT ALL THE EVIDENCE, THE STATE
15 BELIEVES WE'VE MET THE BURDEN OF PROVING BEYOND A REASONABLE
16 DOUBT THAT HE COMMITTED CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND
17 AGGRAVATED NATURE, THAT HE CAUSED SERIOUS BODILY INJURY TO THIS
18 VICTIM AND HE CREATED IN HER A FEAR OF SERIOUS BODILY INJURY.

19 WE ALSO BELIEVE WE'VE MET THE BURDEN OF PROOF THAT HE
20 COMMITTED BURGLARY FIRST DEGREE WHEN HE ENTERED HER HOUSE
21 WITHOUT CONSENT WITH THE INTENT TO COMMIT A CRIME THEREIN WITH
22 AGGRAVATED CIRCUMSTANCES AND THAT IS WHEN HE KICKED DOWN THE
23 DOOR AND AS SOON AS HE GETS IN, HE PUNCHES HER. AND AGAIN, WE
24 INTEND TO ASK YOU TO LOOK AT WHAT HE ACTUALLY DOES. HIS ATTORNEY
25 CAN TELL YOU WHAT HIS INTENT WAS BUT HIS ACTIONS ABOUT HIS INTENT

DISCUSSION OF THE CHARGE

198

1 SAY A LOT MORE.

2 SO, IN CONCLUSION, I ASK YOU TO REVIEW THE EVIDENCE AND REVIEW
3 THE TESTIMONY AND ASK YOU TO RETURN A VERDICT OF GUILTY ON ALL
4 THREE CHARGES. THANK YOU.

5 **THE COURT:** LADIES AND GENTLEMEN OF THE JURY, WE ARE GOING TO
6 TAKE A VERY BRIEF RECESS. I MADE SOME CHANGES TO MY INSTRUCTIONS
7 AND SENT THEM TO THE PRINTER. THEY SHOULD BE RIGHT BACK UP. AND
8 SO, IF YOU WOULD STEP TO THE JURY ROOM VERY BRIEFLY, I'LL CALL YOU
9 RIGHT BACK OUT. AND REMEMBER, YOU ARE NOT ALLOWED YET TO BEGIN
10 DISCUSSING AND DELIBERATING THE CASE. I'LL CALL YOU BACK HERE AS
11 QUICK AS I CAN.

12 (JURY OUT AT 2:14 P.M.)

13 **THE COURT:** GO AHEAD.

14 **MR. GROSE:** JUST GOING BACK TO THE DEFINITION OF SERIOUS
15 BODILY INJURY, WE NOTICE THAT THERE IS A SLIGHT DIFFERENCE IN YOUR
16 SECOND SENTENCE AND WHAT WE REQUESTED. YOUR SENTENCE SAYS,
17 "SERIOUS, PERSONAL DISFIGUREMENT" AND OURS SAYS, "SERIOUS OR
18 PERMANENT DISFIGUREMENT." I THINK THE MORE PERMANENT HELPS
19 EXPLAIN WHAT SERIOUS MIGHT MEAN. I MEAN, IT DOESN'T HAVE TO BE
20 PERMANENT BUT IT DOES GIVE SOME CONTEXT TO WHAT THAT IS. AND THE
21 SECOND THING IS —

22 **THE COURT:** DO YOU HAVE THE SAME PRINTOUT THAT WE HAD
23 BEFORE LUNCH?

24 **MS. BOLEN:** IT'S THE EXACT SAME, YES, SIR, THAT WE HAD BEFORE
25 LUNCH.

DISCUSSION OF THE CHARGE

199

1 **THE COURT:** I THOUGHT WE AGREED ON THAT THEN.

2 **MR. GROSE:** WELL, WE'VE NOTICED THAT AND SO I THINK WE DID
3 AGREE ON IT BEFORE LUNCH, BUT YOU KNOW, WHEN WE WERE TALKING
4 ABOUT IT, WE WERE ALSO TALKING ABOUT IT IN THE CONTEXT OF THE
5 SECOND SENTENCE BEING THE SAME THING AS THE ONE SENTENCE THAT
6 WE REQUESTED. SO, YOU KNOW.

7 THE OTHER THING, WHICH IS PROBABLY MAYBE A LITTLE BIT OF MORE
8 CONCERN IN THIS CASE, AND I DON'T HAVE PAGE NUMBERS, BUT UNDER
9 WHAT YOU HAVE CAPTIONED AS INTENT, THE GENERAL INTENT CHARGE, THE
10 LAST PARAGRAPH SAYS THAT CRIMINAL INTENT CAN ARISE FROM ACTION OR
11 A FAILURE TO ACT, IT MAY ARISE FROM NEGLIGENCE, RECKLESSNESS OR
12 INDIFFERENCE TO THE DUTY OR TO CONSEQUENCES, IS TO BE CONSIDERED
13 BY THE LAW TO BE THE EQUIVALENT OF CRIMINAL INTENT. WITH THE THREE
14 CHARGES INVOLVED IN THIS CASE, I DON'T THINK THAT STATEMENT IS
15 APPLICABLE. I THINK ---

16 **THE COURT:** I AGREE. I'LL TAKE THAT OUT.

17 **MS. BOLEN:** YOUR HONOR, GOING THROUGH THEM, PAGE FIFTEEN OF
18 TWENTY-FOUR, THIS IS JUST KIND OF A TECHNICALITY BUT WHEN YOU ARE
19 DEFINING HOUSEHOLD MEMBER IT LOOKS LIKE YOU ARE USING THE
20 DEFINITION UNDER THE 2005 LAW WHICH INCLUDES A PARENT, CHILD,
21 GRANDPARENT, BROTHER OR SISTER OR GRANDCHILD AND THAT'S NO
22 LONGER THE DEFINITION OF HOUSEHOLD MEMBER IN C-D-V.

23 **MR. GROSE:** SHE'S CORRECT ON THAT, YOUR HONOR.

24 **THE COURT:** ALL RIGHT. I SEE Y'ALL STIPULATED TO HOUSEHOLD
25 MEMBER, BECAUSE I THOUGHT YOU DID.

CHARGE OF THE COURT

200

1 **MR. GROSE:** YES. THAT'S NOT IN DISPUTE. THAT'S CORRECT.

2 **THE COURT:** I DON'T HAVE TO GIVE THAT DEFINITION.

3 **MR. GROSE:** THAT'S FAIR ENOUGH.

4 **MS. BOLEN:** YOUR HONOR, I DON'T SEE ANY OTHER AMENDMENTS OR
5 CORRECTIONS THAT I WOULD LIKE TO MAKE.

6 **THE COURT:** ALL RIGHT. DO NOT HOLD ME TO READING THIS VERBATIM
7 BECAUSE I WILL NOT. I WILL LOOK UP AND SKIP SOMETHING AND SO IF I DO
8 AND Y'ALL SAY IT IS AN EXCEPTION, YOU ARE WASTING YOUR BREATH. IF I
9 MISS AN IDEA OF LAW I WILL CONSIDER THAT BUT I CANNOT READ THIS. I'LL
10 READ MOST OF IT. ALL RIGHT. Y'ALL READY? BRING THE JURY IN.

11 (JURY IN AT 2:26 P.M.)

12 **CHARGE OF THE COURT**

13 **THE COURT:** MS. BALDRIDGE, LADIES AND GENTLEMEN OF THE JURY,
14 YOU'VE HEARD THE CLOSING SUMMATIONS OF EACH OF THE PARTIES, THE
15 ATTORNEYS, AND IT IS NOW TIME FOR ME TO INSTRUCT YOU ON THE LAW IN
16 THIS CASE. THIS CASE BEGAN WHEN INDICTMENTS WERE ISSUED. THE
17 DEFENDANT IS CHARGED WITH CRIMINAL DOMESTIC VIOLENCE OF A HIGH
18 AND AGGRAVATED NATURE. I HAVE THOSE TWO INDICTMENTS HERE,
19 BURGLARY IN THE FIRST DEGREE AND MALICIOUS INJURY TO REAL
20 PROPERTY. I WILL REMIND YOU OF THE FACT THAT THE DEFENDANT WAS
21 ARRESTED, CHARGED AND INDICTED IN THIS CASE BUT THAT IS NOT
22 EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE
23 OF THE GUILT OF HIM IN THIS CASE, NOR DOES THIS INDICTMENT CREATE
24 ANY PRESUMPTION OR INFERENCE OF GUILT. THESE DOCUMENTS ARE
25 SIMPLY THE FORMAL DOCUMENTS IN WHICH THE CASE IS BROUGHT TO THE

CHARGE OF THE COURT

201

1 COURT.

2 NOW, THE INDICTMENTS IN THE CASE ALLEGE SEVERAL DIFFERENT
3 OFFENSES AGAINST MISTER GREENE. INDICTMENT 2009-GS-01-210, IS AN
4 INDICTMENT FOR CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND
5 AGGRAVATED NATURE. INDICTMENT 2009 IS FOR BURGLARY IN THE FIRST
6 DEGREE AND INDICTMENT 2011, MALICIOUS INJURY TO REAL PROPERTY.
7 EACH OF THESE INDICTMENTS CHARGES A SEPARATE AND DISTINCT
8 OFFENSE. YOU MUST DECIDE ON EACH INDICTMENT SEPARATELY ON THE
9 EVIDENCE AND THE LAW APPLICABLE TO IT UNINFLUENCED BY YOUR
10 DECISION AS TO THE OTHER INDICTMENTS. THE DEFENDANT MAY BE
11 CONVICTED OR ACQUITTED ON ANY OR ALL THE OFFENSES CHARGED. YOU
12 WILL BE ASKED TO WRITE A SEPARATE VERDICT OF GUILTY OR NOT GUILTY
13 FOR EACH INDICTMENT.

14 NOW, THE DEFENDANT HAS PLED NOT GUILTY ON ALL THESE
15 INDICTMENTS AND THAT PLEA PUTS THE BURDEN UPON THE STATE TO
16 PROVE THE DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A
17 CRIMINAL OFFENSE IN THE STATE OF SOUTH CAROLINA IS NEVER REQUIRED
18 TO PROVE HIMSELF INNOCENT. I CHARGE YOU THAT IT IS AN IMPORTANT
19 RULE OF THE LAW THAT A DEFENDANT IN A CRIMINAL TRIAL NO MATTER THE
20 SERIOUSNESS OF THE CHARGE IS ALWAYS PRESUMED TO BE INNOCENT OF
21 THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED UNLESS GUILT HAS
22 BEEN PROVEN BY THE EVIDENCE SATISFYING ALL OF YOU OF GUILT BEYOND
23 A REASONABLE DOUBT. THE PRESUMPTION OF INNOCENCE DOES NOT END
24 WHEN YOU BEGIN YOUR DELIBERATIONS. IT ACCOMPANIES THIS DEFENDANT
25 THROUGHOUT THIS TRIAL UNTIL YOU REACH A VERDICT OF GUILT BASED

CHARGE OF THE COURT

202

1 UPON THE EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A
2 REASONABLE DOUBT.

3 THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE MUCH LIKE WHAT I'M
4 WEARING. IT'S A ROBE OF RIGHTEOUSNESS PLACED UPON THE SHOULDERS
5 OF THE DEFENDANT AND THAT ROBE REMAINS WITH THE DEFENDANT UNTIL
6 IT HAS BEEN STRIPPED FROM THE DEFENDANT BY THE EVIDENCE SATISFYING
7 YOU OF HIS GUILT BEYOND A REASONABLE DOUBT.

8 THE PRESUMPTION OF INNOCENCE IS NOT MERE LEGAL THEORY. IT IS
9 NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO WHICH EVERY
10 DEFENDANT IS ENTITLED TO UNLESS YOU, THE JURY, WERE SATISFIED FROM
11 THE EVIDENCE OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

12 NOW, I'VE USED THE TERM "REASONABLE DOUBT" SEVERAL TIMES IN
13 THESE INSTRUCTIONS. I WILL TELL YOU WHAT A REASONABLE DOUBT IS. A
14 REASONABLE DOUBT IS THE KIND OF DOUBT WHICH WOULD CAUSE A
15 REASONABLE PERSON TO HESITATE TO ACT. SOME OF YOU MAY HAVE
16 SERVED ON JURIES IN CIVIL CASES AND YOU MAY HAVE BEEN TOLD IT IS
17 ONLY NECESSARY TO PROVE A FACT WHICH IS MORE LIKELY TRUE THAN NOT
18 TRUE AND THAT SUCH A PROOF IS BY THE GREATER WEIGHT OR
19 PREPONDERANCE OF THE EVIDENCE. HOWEVER, THAT IS FOR CIVIL CASES.
20 IN CRIMINAL CASES, THE STATE'S PROOF MUST BE MORE POWERFUL THAN
21 THAT. IT MUST PROVE THE CASE BEYOND A REASONABLE DOUBT.

22 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU
23 FIRMLY CONVINCED OF A DEFENDANT'S GUILT. THERE ARE VERY FEW
24 THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY. IN
25 CRIMINAL CASES, THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES

CHARGE OF THE COURT

203

1 EVERY POSSIBLE DOUBT. IF, BASED UPON YOUR CONSIDERATION OF ALL
2 THE EVIDENCE WHICH HAS BEEN PRESENTED YOU ARE FIRMLY CONVINCED
3 THE DEFENDANT IS GUILTY OF THE CHARGE YOU MUST FIND THE DEFENDANT
4 GUILTY. IF, ON THE OTHER HAND, YOU FEEL THERE IS A REAL POSSIBILITY
5 THAT THE DEFENDANT IS NOT GUILTY, YOU MUST GIVE THE DEFENDANT THE
6 BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

7 AS I TOLD YOU IN MY INITIAL INSTRUCTIONS, YOU AND I HAVE
8 DIFFERENT DUTIES TO PERFORM IN THIS CASE. AS THE TRIAL JUDGE, IT IS
9 MY RESPONSIBILITY TO RESIDE OVER THIS TRIAL AND I AM TO RULE ON THE
10 ADMISSIBILITY OF THE EVIDENCE WHICH HAS BEEN OFFERED AND YOU ARE
11 TO CONSIDER ONLY THE EVIDENCE WHICH HAS BEEN RECEIVED INTO THIS
12 CASE. YOU MAY CONSIDER WHATEVER EVIDENCE HAS BEEN PRESENTED
13 FROM THE WITNESS STAND, ANY EVIDENCE WHICH HAS BEEN MADE A PART
14 OF THE RECORD, AND ANY STIPULATIONS MADE BETWEEN THE PARTIES. I
15 HAVE THE ADDITIONAL DUTIES TO CHARGE AND INSTRUCT YOU ON THE LAW
16 WHICH IS APPLICABLE TO THIS CASE. AS THE PRESIDING JUDGE, I AM THE
17 SOLE JUDGE OF THE LAW OF THIS CASE AND IT IS YOUR DUTY TO ACCEPT
18 AND APPLY THE LAW AS I STATE IT TO YOU NOW. IF YOU HAVE ANY IDEAS AS
19 TO WHAT THE LAW IS, WHAT YOU BELIEVE THE LAW OUGHT TO BE AND IT
20 DOES NOT AGREE WITH WHAT I TELL YOU, YOU MUST ABANDON YOUR IDEA
21 BECAUSE YOU HAVE ACCEPTED THE SWORN DUTY TO ACCEPT THE LAW AND
22 APPLY THE LAW AS I STATE IT TO YOU TODAY.

23 IN EVERY CASE TRIED BEFORE THIS COURT BEFORE A JURY, THE JURY
24 BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS. AS A TRIAL
25 JUDGE, I CANNOT SUGGEST, COMMENT ON OR MAKE ANY STATEMENT TO

CHARGE OF THE COURT

204

1 YOU AS THE TRIAL JURY ABOUT THE FACTS OF THIS CASE. YOU, THE JURY,
2 ARE THE SOLE JUDGES OF THE FACTS IN THIS CASE AND YOU ARE NOT TO
3 INFER FROM WHAT I HAVE SAID OR DONE DURING THE PROGRESS OF THIS
4 TRIAL IN RULING UPON THE ADMISSIBILITY OF SOME OF THE EVIDENCE OR
5 OTHERWISE. ANYTHING THAT I NOW SAY TO YOU DURING THE COURSE OF
6 MY INSTRUCTION TO YOU THAT I HAVE AN OPINION ABOUT THE FACTS OF THE
7 CASE IS NOT FOR YOUR CONSIDERATION. THE LAW DOES NOT ALLOW ME TO
8 HAVE AN OPINION ABOUT THE FACTS OF THIS CASE. THIS IS A MATTER
9 SOLELY LEFT UP TO YOU, THE JURY, TO DETERMINE. AS JURORS, IT IS YOUR
10 DUTY TO DETERMINE THE EFFECT, THE VALUE, THE WEIGHT AND THE TRUTH
11 OF THE EVIDENCE PRESENTED DURING THE TRIAL.

12 NOW, THERE ARE TWO TYPES OF EVIDENCE THAT HAVE BEEN
13 GENERALLY PRESENTED DURING THIS TRIAL. THERE IS DIRECT EVIDENCE
14 AND THERE IS CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS TESTIMONY
15 OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT SUCH
16 AS AN EYE WITNESS. IT IS EVIDENCE THAT IMMEDIATELY ESTABLISHES THE
17 MAIN FACT TO BE PROVEN. NOW, CIRCUMSTANTIAL EVIDENCE IS PROOF OF A
18 CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A
19 FACT. IT IS EVIDENCE THAT IMMEDIATELY ESTABLISHES COLLATERAL FACTS
20 FROM WHICH THE MAIN FACT MAY BE INFERRED. CIRCUMSTANTIAL
21 EVIDENCE IS BASED ON INFERENCE AND NOT ON PERSONAL KNOWLEDGE OR
22 OBSERVATION. NOW, THE LAW MAKES NO DISTINCTION BETWEEN THESE
23 TWO TYPES OF EVIDENCE. NOR CAN A WEIGHT OR VALUE BE GIVEN TO
24 EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. THERE IS NO GREATER
25 DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN

CHARGE OF THE COURT

205

1 THAT OF DIRECT EVIDENCE. YOU SHOULD WEIGH ALL THE EVIDENCE IN THIS
2 CASE AND AFTER WEIGHING ALL THE EVIDENCE IF YOU ARE NOT CONVINCED
3 OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, YOU
4 MUST FIND THE DEFENDANT NOT GUILTY.

5 NOW, IN DETERMINING AND WEIGHING THIS EVIDENCE, YOU MUST
6 WEIGH UPON THE CREDIBILITY OF THE WITNESSES WHO HAVE TESTIFIED.
7 NECESSARILY, YOU MUST DETERMINE THEIR CREDIBILITY AND CREDIBILITY
8 MEANS BELIEVABILITY. IT BECOMES YOUR DUTY AS A JURY TO ANALYZE AND
9 EVALUATE THE EVIDENCE AND DETERMINE WHICH EVIDENCE CONVINCES
10 YOU OF ITS TRUTH. IN DETERMINING THE BELIEVABILITY OF A WITNESS WHO
11 HAS TESTIFIED IN THIS CASE OR ANY WITNESS, YOU MAY BELIEVE ONE
12 WITNESS OVER SEVERAL WITNESSES OR SEVERAL WITNESSES OVER ONE.
13 YOU MAY BELIEVE A PART OF THE TESTIMONY OF ONE WITNESS AND REJECT
14 THE REMAINING PART OF THAT SAME WITNESS' TESTIMONY. YOU MAY
15 BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY OR YOU MAY
16 REJECT THE TESTIMONY OF A WITNESS IN ITS ENTIRETY. YOU MAY
17 CONSIDER WHETHER A WITNESS HAS EXHIBITED TO YOU ANY INTEREST, A
18 BIAS, A PREJUDICE OR ANY OTHER TYPE OF MOTIVE IN THIS CASE. YOU MAY
19 ALSO CONSIDER THE MANNER AND APPEARANCE A WITNESS HAD WHILE
20 SITTING IN THIS WITNESS CHAIR.

21 NOW, ADDITIONALLY, THE RULES OF EVIDENCE ORDINARILY DO NOT
22 PERMIT WITNESSES TO TESTIFY TO OPINIONS. HOWEVER, AN EXCEPTION
23 EXISTS TO THIS RULE FOR WITNESSES WE CALL EXPERT WITNESSES. A
24 WITNESS, BY EDUCATION AND EXPERIENCE, WHO HAS BECOME AN EXPERT
25 IN SOME ART, SCIENCE OR PROFESSION OR ANY OTHER TYPE OF CALLING,

CHARGE OF THE COURT

206

1 MAY STATE AN OPINION AS TO A RELEVANT OR MATERIAL MATTER IN WHICH
2 A WITNESS CLAIMS TO BE AN EXPERT. YOU SHOULD CONSIDER ANY EXPERT
3 OPINION RECEIVED AS EVIDENCE IN THIS CASE AND LIKE ANY OTHER
4 EVIDENCE, GIVE IT THE WEIGHT YOU THINK IT DESERVES. IF YOU DECIDE
5 THAT THE OPINION OF AN EXPERT WITNESS IS NOT BASED ON SUFFICIENT
6 EDUCATION AND EXPERIENCE OR IF YOU CONCLUDE THAT THE REASONS
7 GIVEN IN SUPPORT OF AN OPINION ARE NOT SOUND OR THAT THE OPINION IS
8 OUTWEIGHED BY OTHER EVIDENCE, YOU MAY DISREGARD THAT OPINION
9 ENTIRELY. AN EXPERT WITNESSES' TESTIMONY IS TO BE GIVEN NO GREATER
10 WEIGHT THAN THAT OF THE OTHER WITNESSES SIMPLY BECAUSE THE
11 WITNESS IS AN EXPERT. FURTHER, YOU ARE NOT REQUIRED TO ACCEPT THE
12 EXPERT'S OPINION EVEN IF IT IS NOT CONTRADICTED.

13 NOW, I INSTRUCT YOU AND EMPHASIZE TO YOU THAT THE FACT THAT
14 THE DEFENDANT DID NOT TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY
15 YOU IN ANY WAY IN YOUR DELIBERATIONS IN CONSIDERATION OF THE
16 QUESTION OF THE GUILT OR INNOCENCE OF THE DEFENDANT. IT MUST NOT
17 BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER. A DEFENDANT HAS
18 THE CONSTITUTIONAL RIGHT TO REMAIN SILENT AND THE ASSERTION OF
19 THIS RIGHT MUST NOT BE CONSIDERED BY YOU IN YOUR DELIBERATIONS.
20 UNDER YOUR OATH, YOU ARE TO DRAW NO CONCLUSION WHATSOEVER TO
21 THE FACT THAT THE DEFENDANT IN THIS CASE DID NOT TESTIFY. THE FACT
22 THE DEFENDANT DID NOT TESTIFY SHOULD NOT EVEN BE DISCUSSED IN THE
23 JURY ROOM. THE BURDEN OF PROOF, AS I STATED TO YOU PRIOR, IS UPON
24 THE STATE. THE DEFENDANT IS NOT REQUIRED TO PROVE HIS INNOCENCE.
25 THE BURDEN OF PROOF REMAINS ON THE STATE TO PROVE GUILT BEYOND A

CHARGE OF THE COURT

207

1 REASONABLE DOUBT.

2 NOW, IN ORDER TO ESTABLISH CRIMINAL LIABILITY, CRIMINAL INTENT
3 MUST BE PROVEN. THE MENTAL STATE TO BE PROVEN BY THE STATE FOR A
4 PARTICULAR CRIME MIGHT BE PURPOSE, INTENT, KNOWLEDGE, OR CRIMINAL
5 NEGLIGENCE. CRIMINAL INTENT MUST BE PROVEN BY THE STATE BEYOND A
6 REASONABLE DOUBT. CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE
7 DETERMINED BY THE JURY AND THE CIRCUMSTANCES SURROUNDING THE
8 SITUATION. THERE IS NO WAY TO PROVE INTENT BY MATHEMATICAL
9 CERTAINTY. THERE IS NO SCIENCE THAT CAN DISSECT A PERSON'S BRAIN TO
10 DETERMINE WHAT THE PERSON HAD IN MIND AND SO THE LAW SAYS THAT
11 CRIMINAL INTENT MAY BE INFERRED BY THE SURROUNDING CIRCUMSTANCES
12 SHOWN TO HAVE EXISTED. THIS IS HOW YOU MAKE THE DETERMINATION OF
13 WHETHER OR NOT THE ELEMENT REQUIRING INTENT WAS PRESENT. IT IS
14 NOT NECESSARY TO ESTABLISH INTENT BY DIRECT OR BY POSITIVE
15 EVIDENCE, BUT INTENT MAY BE ESTABLISHED BY INFERENCE IN THE SAME
16 WAY AS ANY OTHER FACT, TAKING INTO CONSIDERATION THE ACTS OF THE
17 PARTIES AND ALL THE FACTS AND CIRCUMSTANCES OF THIS CASE. CRIMINAL
18 INTENT IS A MENTAL STATE OF A CONSCIOUS WRONGDOING. IT IS UP TO YOU
19 TO DETERMINE WHAT THE DEFENDANT INTENDED TO DO BASED UPON THE
20 CIRCUMSTANCES SHOWN TO HAVE EXISTED.

21 NOW, INDICTMENT 210 CHARGES THE DEFENDANT WITH CRIMINAL
22 DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE. THE STATE
23 MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT CAUSED
24 PHYSICAL HARM OR INJURY TO A MEMBER OF THE DEFENDANT'S OWN
25 HOUSEHOLD. THE PARTIES STIPULATED, THE PARTIES IN THIS CASE, THE

CHARGE OF THE COURT

208

1 DEFENDANT AND THE VICTIM WERE HOUSEHOLD MEMBERS AT ONE TIME.
2 THE STATE MUST ALSO PROVE THAT THE DEFENDANT ALTERED OR
3 ATTEMPTED TO CAUSE PHYSICAL HARM OR INJURY TO A MEMBER OF THE
4 DEFENDANT'S OWN HOUSEHOLD WITH THE PRESENT OR APPARENT ABILITY
5 TO CAUSE HARM OR INJURY UNDER CIRCUMSTANCES REASONABLY
6 CREATING A FEAR OF IMMINENT DANGER AND THE DEFENDANT COMMITTED
7 AN ASSAULT AND BATTERY WHICH INVOLVED EITHER THE USE OF A DEADLY
8 WEAPON OR IT RESULTS IN SERIOUS BODILY INJURY TO THE VICTIM OR AN
9 ASSAULT WITH OR WITHOUT ANY ACCOMPANYING BATTERY WHICH WOULD
10 REASONABLY CAUSE A PERSON TO FEAR SERIOUS BODILY INJURY OR DEATH.

11 NOW, TO DEFINE SOME OF THE TERMS WITHIN THE STATUTE, I TELL
12 YOU AGAIN, THE PARTIES STIPULATED THAT THE DEFENDANT AND THE
13 VICTIM WERE HOUSEHOLD MEMBERS AND TO TELL YOU AN ASSAULT
14 OCCURS WHEN A PERSON UNLAWFULLY ATTEMPTS TO COMMIT AN ACT OF
15 VIOLENT INJURY UPON ANOTHER AND HAS THE PRESENT ABILITY TO
16 COMPLETE THE ATTEMPTED INJURY. AN ASSAULT IS THE INTENTIONAL
17 CREATION OF A REASONABLE FEAR OF IMMEDIATE BODILY HARM. IT IS NOT
18 NECESSARY THAT THE ATTEMPTED INJURY OR HARM ACTUALLY TAKE PLACE.
19 FOR EXAMPLE, IF I WALK UP TO YOU AND I'M WITHIN ARM'S REACH OF YOU
20 AND I DRAW BACK AS IF TO HIT YOU, THAT IS AN ASSAULT. A BATTERY,
21 HOWEVER, IS ALSO THE UNLAWFUL TOUCHING OF ANOTHER PERSON BY A
22 PERSON WHO HAS COMMITTED THE ASSAULT. AN UNLAWFUL TOUCHING CAN
23 BE CAUSED BY A PART OF THE ACCUSED BODY OR BY AN OBJECT THE
24 ACCUSED PUTS INTO MOTION. A BATTERY IS THE COMPLETION OF AN
25 ASSAULT BY USING OR APPLYING FORCE TO ANOTHER PERSON HOWEVER

CHARGE OF THE COURT

209

1 SLIGHT IN A RUDE, ANGRY OR RESENTFUL MANNER WITHOUT LEGAL
2 JUSTIFICATION FOR DOING SO. USING MY EARLIER EXAMPLE, IF I CARRY
3 THROUGH WITH MY THREAT TO SWING AT YOU, THEN THE SWING IS THE
4 BATTERY.

5 NOW, AN ATTEMPT. AN ATTEMPT IS AN EFFORT TO ACCOMPLISH A
6 CRIME WHICH DOES NOT SUCCEED. AN ATTEMPT INCLUDES A SPECIFIC
7 INTENT TO DO A PARTICULAR CRIMINAL ACT ALONG WITH AN ACT FALLING
8 SHORT OF THE ACT INTENDED. THE STATE MUST SHOW MORE THAN A MERE
9 PREPARATION AND INTENT. THERE MUST BE SOME OVERT ACT COMMITTED
10 IN THE EFFORT TO COMMIT THE CRIME. FURTHER, INTENT MEANS INTENDING
11 THE RESULT THAT ACTUALLY OCCURS, NOT ACCIDENTALLY OR
12 INVOLUNTARILY. INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE
13 DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU COULD
14 NATURALLY AND REASONABLY INFER INTENT.

15 SERIOUS BODILY HARM. A SERIOUS BODILY INJURY MEANS A GRAVE
16 AND NOT TRIVIAL INJURY, SUCH AN INJURY AS GIVES RISE TO AN
17 APPREHENSION OF DANGER TO LIFE, HEALTH OR LIMB. THAT IS A PHYSICAL
18 CONDITION WHICH CREATES A SUBSTANTIAL RISK OF DEATH, SERIOUS
19 PERMANENT DISFIGUREMENT OR PROTRACTED LOSS OR IMPAIRMENT OF
20 FUNCTION OF A BODILY MEMBER OR ORGAN.

21 NOW, IF YOU AS JURORS HAVE A REASONABLE DOUBT AS TO WHETHER
22 THE STATE HAS MET ITS BURDEN OR NOT AND PROVEN ALL THE ELEMENTS
23 OF THE CRIME OF CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND
24 AGGRAVATED NATURE, YOU COULD THEN CONSIDER THE LESSER INCLUDED
25 OFFENSE OF CRIMINAL DOMESTIC VIOLENCE. IN ORDER TO PROVE CRIMINAL

CHARGE OF THE COURT

210

1 DOMESTIC VIOLENCE, THE STATE MUST PROVE BEYOND A REASONABLE
2 DOUBT THAT THE DEFENDANT CAUSED PHYSICAL HARM OR INJURY TO A
3 MEMBER OF HIS OWN HOUSEHOLD AND THAT THE MEMBER CAUSED OR
4 ATTEMPTED TO CAUSE PHYSICAL HARM OR INJURY TO A MEMBER OF THE
5 DEFENDANT'S HOUSEHOLD WITH THE APPARENT PRESENT ABILITY TO CAUSE
6 THAT HARM OR INJURY UNDER CIRCUMSTANCES REASONABLY CREATING
7 FEAR OF IMMINENT DANGER.

8 NOW, IF YOU HAVE A REASONABLE DOUBT AS TO WHETHER THE STATE
9 HAS MET ITS BURDEN OF PROOF AND SHOWN ALL THE ELEMENTS OF
10 CRIMINAL DOMESTIC VIOLENCE, YOU WOULD THEN FIND THE DEFENDANT
11 NOT GUILTY. HOWEVER, PLEASE REMEMBER IN ALL THESE CHARGES, YOUR
12 VERDICT MUST BE UNANIMOUS.

13 INDICTMENT 2009-209 CHARGES THE DEFENDANT WITH FIRST DEGREE
14 BURGLARY. IN ORDER TO SUSTAIN A CONVICTION OF FIRST DEGREE
15 BURGLARY, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT
16 THE DEFENDANT ENTERED THE DWELLING OF ANOTHER WITHOUT CONSENT.
17 ONE CANNOT COMMIT BURGLARY OF HIS OWN DWELLING HOUSE. A
18 DWELLING IS A BUILDING OR A PORTION OF A BUILDING IN WHICH A PERSON
19 ORDINARY SLEEPS. A BUILDING CONSTRUCTED AS A DWELLING BUT HAS
20 NEVER BEEN OCCUPIED CANNOT BE CONSIDERED A DWELLING FOR
21 PURPOSES OF BURGLARY. BUT A BUILDING IS A DWELLING EVEN IF THE
22 RESIDENTS WERE TEMPORARILY ABSENT FROM THE BUILDING. IN ORDER TO
23 PROVE THE DEFENDANT ENTERED THE DWELLING, THE STATE DOES NOT
24 HAVE TO SHOW THE DEFENDANT'S ENTIRE BODY ENTERED THE DWELLING.
25 THE SMALLEST ENTRY IS SUFFICIENT. IT MAY BE ANY PART OF THE BODY

CHARGE OF THE COURT

211

1 SUCH AS A HAND OR FOOT OR EVEN AN INSTRUMENT SUCH AS A HOOK OR
2 OTHER INSTRUMENT.

3 IN ADDITION, THE STATE DOES NOT HAVE TO PROVE THAT FORCE WAS
4 USED TO GAIN ENTRY. IF A PERSON ENTERS A BUILDING BY USE OF
5 DECEPTION, TRICK OR MISREPRESENTATION TO GET CONSENT TO ENTER,
6 THIS IS AN ENTRY WITHOUT CONSENT.

7 NEXT, THE STATE MUST PROVE ALSO BEYOND A REASONABLE DOUBT
8 THAT THE DEFENDANT INTENDED TO COMMIT A CRIME EITHER A FELONY OR
9 A MISDEMEANOR AT THE TIME OF THE ENTRY. THE MERE ENTRY INTO A
10 DWELLING WITHOUT CONSENT IS NOT A BURGLARY. HOWEVER, IF THE
11 INTENT TO COMMIT A CRIME IS FORMED AT THE ENTRY, IT IS ALSO NOT A
12 BURGLARY. ON THE OTHER HAND, HOWEVER, IF THE DEFENDANT INTENDED
13 TO COMMIT A CRIME AT THE TIME OF THE ENTRY IT IS A BURGLARY EVEN IF
14 THE INTENT WAS ABANDONED AFTER THE ENTRY. IT DOES NOT MATTER
15 THAT THE INTENDED CRIME WAS NOT COMPLETED. AN INTENT MAY BE
16 SHOWN BY ACTS AND CONDUCT OF THE DEFENDANT AND OTHER
17 CIRCUMSTANCES BY WHICH YOU COULD NATURALLY AND REASONABLY
18 INFER INTENT.

19 FINALLY, THE STATE MUST ALSO PROVE BEYOND A REASONABLE
20 DOUBT THAT WHEN ENTERING THE DWELLING OR WHILE FLEEING, THE
21 DEFENDANT CAUSED PHYSICAL INJURY TO ANYONE NOT PARTICIPATING IN
22 THE CRIME OR THAT THE DEFENDANT ENTERED AND REMAINED IN THE
23 DWELLING IN THE NIGHT TIME. NIGHT TIME IS DEFINED AS THE PERIOD
24 BETWEEN SUNSET AND SUNRISE DURING WHICH THERE IS NOT ENOUGH
25 DAYLIGHT TO RECOGNIZE A PERSON'S FACE EXCEPT FOR ARTIFICIAL LIGHT

CHARGE OF THE COURT

212

1 OR MOONLIGHT.

2 INDICTMENT 2009-211 CHARGES THE DEFENDANT WITH MALICIOUS
3 INJURY TO REAL PROPERTY. THE STATE MUST PROVE BEYOND A
4 REASONABLE DOUBT THAT THE DEFENDANT WILLFULLY AND MALICIOUSLY
5 CUT OR MUTILATED, DEFACED OR OTHERWISE INJURED A HOUSE, OUTSIDE
6 FIXTURE OF ANOTHER PERSON OR COMMITTED ANY OTHER TRESPASS UPON
7 THE REAL PROPERTY OF ANOTHER PERSON. WILLFULLY MEANS
8 VOLUNTARILY OR INTENTIONALLY WITH THE SPECIFIC INTENT TO DO
9 SOMETHING THE LAW FORBIDS. MALICIOUSLY MEANS INVOLVING MALICE
10 AND MALICE IS ILL WILL AND HOSTILITY TOWARDS ANOTHER PERSON. IT IS
11 THE INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE OR
12 EXCUSE AND WITH THE INTENT TO INFLECT INJURY UNDER CIRCUMSTANCES
13 THE LAW WOULD INFER AN EVIL INTENT.

14 MALICE MAY BE EXPRESSED OR INFERRED. THE TERMS EXPRESSED
15 OR INFERRED DOES NOT MEAN DIFFERENT KINDS OF MALICE, BUT MERELY
16 THE MANNER IN WHICH MALICE MAY BE SHOWN TO EXIST. THAT IS, EITHER
17 BY DIRECT EVIDENCE OR THE INFERENCE FROM THE FACTS AND
18 CIRCUMSTANCES THAT HAVE BEEN PROVED. EXPRESS MALICE IS SHOWN
19 WHEN A PERSON SPEAKS WORDS WHICH EXPRESS HATRED OR ILL WILL FOR
20 ANOTHER OR WHEN THE PERSON PREPARED BEFOREHAND TO DO SUCH AN
21 ACT WHICH WAS LATER ACCOMPLISHED, FOR EXAMPLE, LYING IN WAIT FOR A
22 PERSON OR ANY OTHER TYPE OF BAD ACT FOR PREPARATION THAT WOULD
23 NORMALLY SHOW THE DEED IN THE DEFENDANT'S MIND WOULD BE AN
24 EXPRESSED MALICE. MALICE ALSO MAY BE INFERRED FROM THE CONDUCT
25 SHOWING A TOTAL DISREGARD TO HUMAN LIFE.

CHARGE OF THE COURT

213

1 AS I TOLD YOU EARLIER, ON EACH OF THESE INDICTMENTS THERE ARE
2 TWO POSSIBLE VERDICTS WHICH YOU MAY FIND AND THEY ARE GUILTY OR
3 NOT GUILTY. THERE IS NO SIGNIFICANCE WHATSOEVER IN THE ORDER IN
4 WHICH I HAVE STATED THE POSSIBLE VERDICTS. IT IS SIMPLY THAT ONE
5 MUST BE STATED FIRST AND ONE SECOND. NOW, LADIES AND GENTLEMEN
6 AS I TOLD YOU AND WILL TELL YOU AGAIN, YOUR VERDICT MUST BE
7 UNANIMOUS. MS. BALDRIDGE, WHEN THE JURY REACHES A VERDICT, YOU
8 WILL WRITE IT ON THE VERDICT FORM AND SIGN YOUR NAME AS THE
9 FOREPERSON. YOU WILL THEN KNOCK ON THE JURY DOOR AND INFORM THE
10 BAILIFF YOU HAVE REACHED A VERDICT. AT THAT TIME, WE WILL RECEIVE
11 YOU BACK IN THE COURTROOM. NOW, I INSTRUCT YOU FURTHER AND I WILL
12 GIVE YOU A – THIS IS A VERDICT FORM WHICH I HAVE PREPARED AND ON
13 TWO OF THE CHARGES THE RESULTS ARE GUILTY AND NOT GUILTY. THAT IS
14 BURGLARY, FIRST DEGREE AND MALICIOUS INJURY TO REAL PROPERTY. ON
15 THE CHARGE CRIMINAL DOMESTIC VIOLENCE HIGH AND AGGRAVATED, THERE
16 ARE TWO POSSIBILITIES THERE; EITHER GUILTY OR NOT GUILTY OF HIGH AND
17 AGGRAVATED DOMESTIC CRIMINAL VIOLENCE AND GUILTY OR NOT GUILTY OF
18 SIMPLE CRIMINAL DOMESTIC VIOLENCE. YOU WILL INDICATE BY MARKING
19 THE BOX BESIDE WHAT YOUR VERDICT IS AND SIGN AT THE VERY BOTTOM
20 AND DATE IT.

21 NOW, I HAVE GIVEN YOU VERY LENGTHY INSTRUCTIONS AND TOLD YOU
22 YOUR VERDICT MUST BE UNANIMOUS AFTER YOU GO BACK AND DELIBERATE.
23 I WILL ASK YOU TO STEP BACK IN THE JURY ROOM. WE WILL GATHER THE
24 EXHIBITS AND THE PHOTOGRAPHS AND EVERYTHING THAT WAS PRESENTED
25 IN THE TRIAL, AS WELL AS THE VERDICT FORM TO SEND BACK TO THE JURY

CHARGE OF THE COURT

214

1 ROOM. YOU WILL THEN BEGIN YOUR DELIBERATIONS. IF, DURING YOUR
2 DELIBERATIONS YOU WISH TO HEAR TESTIMONY AGAIN, WE CAN PLAY
3 TESTIMONY BACK FOR YOU. IF YOU WISH TO HAVE PART OF MY
4 INSTRUCTION RE-INSTRUCTED TO YOU, READ TO YOU, I'LL BE MORE THAN
5 HAPPY TO READ THAT BACK TO YOU. IF YOU HAVE ANY QUESTIONS
6 WHATSOEVER THAT YOU REACH BEFORE REACHING A VERDICT AND YOU
7 WOULD LIKE THAT ANSWERED, THEN YOU MUST SUBMIT IT IN THE FORM OF A
8 QUESTION IN WRITING, GIVE IT TO THE BAILIFF, HE WILL BRING IT TO ME, I
9 WILL DISCUSS IT WITH THE ATTORNEYS AND WE WILL DECIDE HOW TO
10 RESPOND. SOMETIMES THE RESPONSE IS A SIMPLE FILL IN THE ANSWER
11 AND SEND IT BACK TO YOU AND YOU RESUME DELIBERATIONS. OTHER TIMES
12 SUCH AS, "WE WOULD LIKE TO HEAR THE TESTIMONY OF ONE OF THE
13 PARTIES AND Y'ALL NAME THE PARTY, MY COURT REPORTER WILL THEN
14 PREPARE THE TAPE SO THAT WHEN Y'ALL COME OUT HERE IT WILL BE
15 QUEUED UP AND READY TO PLAY THE PART YOU ARE LOOKING FOR. SO,
16 THAT'S THE REASON TO REDUCE THE QUESTION TO WHATEVER IDEAS YOU
17 HAVE TO RESOLVE PLACED IN WRITING. NOW, I HAVE TO MAKE CERTAIN
18 THAT MY INSTRUCTIONS WERE COMPLETE AND I DIDN'T LEAVE ANYTHING
19 OUT BECAUSE THEY WERE QUITE LENGTHY FOR THESE THREE CHARGES
20 AND SO I WILL ASK Y'ALL TO RETIRE TO THE JURY ROOM AND WAIT FOR THE
21 EXHIBITS AND THE VERDICT FORM BEFORE YOU BEGIN YOUR DELIBERATIONS
22 BECAUSE I MAY BRING Y'ALL BACK IN HERE AND RE-INSTRUCT YOU ON A
23 PARTICULAR AREA THAT I MISREAD. SO, WITH THAT IN MIND, PLEASE
24 RETURN TO YOUR JURY ROOM. NOW, I AM GOING TO LET YOU RETURN TO
25 THE JURY ROOM. (SPEAKING TO THE ALTERNATE) IF THERE ARE NO

DISCUSSION OF THE CHARGE

215

1 CHANGES, I AM GOING TO PULL YOU OUT AND YOU'RE DONE. ALL RIGHT?

2 (JURY OUT AT 2:52 P.M.)

3 THE COURT: AS PROMISED, I DID NOT READ IT VERBATIM, HOWEVER,
4 BASED UPON WHAT I STATED TO THE JURY, ARE THERE ANY EXCEPTIONS OR
5 REQUESTS TO GIVE ADDITIONAL INSTRUCTION IN REGARDS TO WHAT WAS
6 PRESENTED TO THE JURY BY ME?

7 MS. BOLEN: YES, SIR, YOUR HONOR. THE ONLY COMMENT THE STATE
8 HAS, WHEN YOU WERE READING THE DEFINITION OF SERIOUS BODILY
9 INJURY, I BELIEVE YOU STATED, "CREATES A SUBSTANTIAL RISK OF DEATH,
10 SERIOUS PERMANENT DISFIGUREMENT" INSTEAD OF "SERIOUS OR
11 PERMANENT DISFIGUREMENT." I BELIEVE THE "SERIOUS OR PERMANENT"
12 WAS THE LANGUAGE WHICH THE DEFENDANT PASSED UP AND I FEEL THAT
13 BECAUSE IT WAS "SERIOUS PERMANENT", THAT MAY GIVE THE JURY THE
14 INFERENCE THAT IT HAS TO BE PERMANENT WHEREAS IT'S REALLY SERIOUS
15 OR PERMANENT. I WOULD JUST ASK TO HAVE THAT CLARIFIED.

16 THE COURT: ALL RIGHT. MS. BELL?

17 MS. BELL: WITH REGARDS TO THAT, WE DID HAVE OR IN THE
18 INSTRUCTION WE DID PASS UP CONCERNING SERIOUS BODILY INJURY, I
19 BELIEVE SHE'S CORRECT IN THE FACT THAT YOU DID SAY SERIOUS
20 PERMANENT. THE ONLY OTHER THING WE HAVE IS WHEN YOU WERE
21 TALKING ABOUT HOUSEHOLD MEMBER, I BELIEVE YOU SAID, "AT ONE TIME"
22 AND WE AGREED TO STIPULATE THAT THEY WERE HOUSEHOLD MEMBERS,
23 NOT NECESSARILY WHEN IT ENDED. I THINK IT JUST GOES TO THE FEEL THAT
24 MAYBE YOU ARE TELLING THEM THAT, YES IT HAD ALREADY ENDED AT THAT
25 POINT, WHEN IN FACT OUR ARGUMENT WAS THAT IT HADN'T, YOUR HONOR.

RE-CHARGE BY THE COURT

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1 AND THEN, IN THE STATUTE WAS ONCE A HOUSEHOLD MEMBER, ALWAYS A
2 HOUSEHOLD MEMBER.

3 MS. BOLEN: YOUR HONOR, JUST IN BRIEF RESPONSE, I THINK THAT IT
4 SOUNDED TO ME THE WAY YOU SAID IT, IT WAS CLEAR THAT THEY WERE
5 HOUSEHOLD MEMBERS.

6 THE COURT: I THINK I SAID IT ONE WAY ONE TIME AND ONE WAY THE
7 OTHER.

8 MS. BOLEN: YES. I THINK SO.

9 THE COURT: NOW, I'LL BE HAPPY TO BRING THEM BACK IN AND TELL
10 THEM THAT DURING MY INSTRUCTIONS I STATED THE PARTIES STIPULATED
11 AND I READ IT DIFFERENTLY AND THE CORRECT READING OF THE
12 STIPULATION IS THAT THE PARTIES, UNDER THE DEFINITION OF LAW, WERE
13 HOUSEHOLD MEMBERS.

14 MS. BELL: I'M GOOD WITH THAT, YOUR HONOR.

15 MS. BOLEN: THAT'S FINE. ARE YOU ALSO GOING TO READ THE
16 SERIOUS OR PERMANENT?

17 THE COURT: SURE. I'LL READ THAT.

18 MS. BOLEN: THANK YOU.

19 THE COURT: ALL RIGHT. BRING THE JURY BACK.

20 (JURY IN AT 2:55 P.M.)

21 THE COURT: ALL RIGHT. I TOLD YOU THESE INSTRUCTIONS WERE
22 QUITE LENGTHY AND I READ THE NOTES AND STRIKE-OUTS AND WHATNOT.
23 I'M GOING TO ATTEMPT TO CORRECT WHAT I POSSIBLY, WHEN I LOOKED UP,
24 MISREAD AND TO THAT END, I'M TELLING YOU THAT THE PARTIES, PRIOR TO
25 THE CASE BEGINNING, AGREED OR STIPULATED THAT THE DEFENDANT AND

RE-CHARGE BY THE COURT

217

1 THE VICTIM WERE HOUSEHOLD MEMBERS FOR PURPOSES OF THE STATUTE.

2 I MISREAD THE DEFINITION OF SERIOUS BODILY INJURY. THE CORRECT
3 READING IS: A SERIOUS BODILY INJURY MEANS A GRAVE, NOT TRIVIAL
4 INJURY, SUCH AN INJURY WHICH GIVES RISE TO THE APPREHENSION OF
5 DANGER TO LIFE, HEALTH OR LIMB AND THAT IS A PHYSICAL CONDITION
6 WHICH CREATES THE SUBSTANTIAL RISK OF DEATH, SERIOUS OR
7 PERMANENT DISFIGUREMENT OR PROTRACTED LOSS OR IMPAIRMENT OF
8 THE FUNCTION OF A BODILY MEMBER OR ORGAN.

9 THOSE BEING MY CORRECTED INSTRUCTIONS, Y'ALL RETIRE TO THE
10 JURY ROOM. UPON RECEIVING THEM, MS. BALDRIDGE, Y'ALL CAN BEGIN
11 YOUR DELIBERATIONS. (ADDRESSING THE ALTERNATE) YOU CAN STAY HERE
12 WITH US.

13 (JURY OUT AT 2:58 P.M.)

14 ANY EXCEPTIONS OR CORRECTIONS THAT WERE JUST MADE. DO THE
15 PARTIES HAVE ANY FURTHER EXCEPTIONS TO THE INSTRUCTION AS
16 PROVIDED?

17 MS. BOLEN: NO, SIR.

18 MS. BELL: NO, SIR.

19 THE COURT: ALL RIGHT. DO YOU HAVE THE EXHIBITS? HERE IS THE
20 VERDICT FORM. IS THIS ALL THE EXHIBITS?

21 MS. BELL: THOSE ARE THE ONES ADMITTED. THE OTHERS ARE OFF TO
22 THE SIDE.

23 THE COURT: MISTER BUSBY. (THE JUDGE GIVES EXHIBITS AND
24 VERDICT FORM TO THE BAILIFF.)

25 (THE JUDGE RELEASES THE ALTERNATE JURY OFF THE RECORD)

1 VERDICT

2 THE COURT: ALL RIGHT. ARE WE READY TO RECEIVE THE VERDICT?

3 MS. BOLEN: YES, SIR, YOUR HONOR.

4 MS. BELL: YES, SIR.

5 THE COURT: ALL RIGHT. AS A NORMAL, CAUTIONARY INSTRUCTION,
6 THIS CASE HAS TAKEN A DAY-AND-A-HALF OR LONGER AND INVOLVES SOME
7 PRIOR RELATIONSHIPS. I INSTRUCT EVERYONE TO BEHAVE LIKE LADIES AND
8 GENTLEMEN. I DON'T WANT ANY SHOWS OF ANGER, UPSET,
9 DISAPPOINTMENT OR JOY, ANY OF THAT.. I WANT NO EMOTION HERE. THIS IS
10 A COURTROOM AND THE JURY HAS HAD A TOUGH JOB TO DO. WE'RE NOT TO
11 CRITICIZE THEIR DECISION MAKING. WHAT THEY DID WAS EXACTLY AS I
12 INSTRUCTED THEM TO. WITH THAT IN MIND, BRING US THE JURY.

13 (JURY IN AT 3:22 P.M.)

14 THE COURT: MS. BALDRIDGE, HAVE Y'ALL REACHED A VERDICT?

15 MS. BALDRIDGE: YES, WE HAVE.

16 THE COURT: IS YOUR VERDICT UNANIMOUS?

17 MS. BALDRIDGE: YES, SIR. IT IS.

18 THE COURT: ALL RIGHT. PLEASE HAND IT TO MISTER MANNING.

19 (BAILIFF HANDS VERDICT TO THE JUDGE) MS. MCMAHAN, WOULD YOU
20 PLEASE PUBLISH THE VERDICT.

21 **CLERK OF COURT: THE STATE OF SOUTH CAROLINA VERSUS ANTONIO**
22 **GREENE, 2009-GS-01-209, 210, AND 211. AS TO THE CHARGE OF CRIMINAL**
23 **DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE, WE, THE JURY,**
24 **FIND THE DEFENDANT GUILTY. AS TO THE CHARGE OF BURGLARY FIRST**
25 **DEGREE, WE, THE JURY, FIND THE DEFENDANT GUILTY. AS TO THE CHARGE**

VERDICT

219

1 OF MALICIOUS INJURY TO REAL PROPERTY, WE, THE JURY, FIND THE
2 DEFENDANT GUILTY.

3 MADAM FORELADY AND LADIES AND GENTLEMEN OF THE JURY IS THIS
4 YOUR VERDICT SO SAY YOU ALL? PLEASE SIGNIFY BY RAISING YOUR RIGHT
5 HAND. (ALL JURORS RAISE THEIR HANDS)

6 THE COURT: MS. BELL, WOULD YOU LIKE THE JURY POLLED?

7 MS. BELL: YES, PLEASE.

8 THE COURT: ALL RIGHT. MS. MCMAHAN.

9 CLERK OF COURT: HARRY D. MCCLELLAN. IS THIS YOUR VERDICT AND
10 IS IT STILL YOUR VERDICT?

11 MR. MCCLELLAN: YES, MA'AM.

12 CLERK OF COURT: KAYLEN. NORRIS. IS THIS YOUR VERDICT AND IS IT
13 STILL YOUR VERDICT?

14 MS. NORRIS: YES.

15 CLERK OF COURT: SARAH D. BALDRIDGE. IS THIS YOUR VERDICT AND
16 IS IT STILL YOUR VERDICT?

17 MS. BALDRIDGE: YES, MA'AM.

18 CLERK OF COURT: BRANDY W. SELLERS. IS THIS YOUR VERDICT AND
19 IS IT STILL YOUR VERDICT?

20 MS. SELLERS: YES, MA'AM.

21 CLERK OF COURT: BENNY G. MCCURRY. IS THIS YOUR VERDICT AND IS
22 IT STILL YOUR VERDICT?

23 MR. MCCURRY: YES, MA'AM.

24 CLERK OF COURT: LEMOND F. PAUL. IS THIS YOUR VERDICT AND IS IT
25 STILL YOUR VERDICT?

VERDICT

220

- 1 **MR. CARLE:** YES, MA'AM.
- 2 **CLERK OF COURT:** MARTEZ D. SMITH.
- 3 **MR. SMITH:** YES, MA'AM.
- 4 **CLERK OF COURT:** JAMES L. CHALMERS. IS THIS YOUR VERDICT AND IS
- 5 IT STILL YOUR VERDICT?
- 6 **MR. CHALMERS:** YES, MA'AM. IT IS.
- 7 **CLERK OF COURT:** ANGELA D. LATIMER. IS THIS YOUR VERDICT AND IS
- 8 IT STILL YOUR VERDICT?
- 9 **MS. LATIMER:** YES, MA'AM.
- 10 **CLERK OF COURT:** SHEILA WEITKAMP. IS THIS YOUR VERDICT AND IS
- 11 IT STILL YOUR VERDICT?
- 12 **MS. WEITKAMP:** YES, MA'AM.
- 13 **CLERK OF COURT:** LATOYA M. WRIGHT. IS THIS YOUR VERDICT AND IS
- 14 IT STILL YOUR VERDICT?
- 15 **MS. WRIGHT:** YES, MA'AM.
- 16 **CLERK OF COURT:** JOHN B. GREER. IS THIS YOUR VERDICT AND IS IT
- 17 STILL YOUR VERDICT?
- 18 **MR. GREER:** YES, MA'AM.
- 19 **CLERK OF COURT:** YOUR HONOR, THE JURY HAS BEEN POLLED AND
- 20 THE VERDICT HAS BEEN AFFIRMED.
- 21 **THE COURT:** THANK YOU, MA'AM. ANY OTHER MATTERS BEFORE I
- 22 DISMISS THE JURY?
- 23 **MS. BOLEN:** NONE FROM THE STATE , YOUR HONOR.
- 24 **MS. BELL:** NONE FROM THE DEFENSE.
- 25 **THE COURT:** MADAM SOLICITOR, MS. WHITE AND MS. BOLEN, I'M GOING

VERDICT

221

1 TO GIVE FURTHER INSTRUCTIONS, BUT AS OF TODAY, THE SAME
2 INSTRUCTIONS TO CALL BACK AFTER SIX AND WHETHER OR NOT YOU WILL
3 CALL A CASE THURSDAY?

4 **MS. BOLEN:** YES, SIR.

5 **THE COURT:** ALL RIGHT. LADIES AND GENTLEMEN, AS I TOLD
6 EVERYONE EARLIER, THE JURORS THAT WEREN'T SELECTED, THEY WERE TO
7 CALL BACK AT NIGHT AFTER SIX. TOMORROW IS A HOLIDAY. THERE IS NO
8 JURY SERVICE REQUIRED. THE STATE MAY CALL ANOTHER CASE. IN THAT
9 CASE, THE JURY POOL WILL RECONVENE THURSDAY MORNING AND ANOTHER
10 CASE WILL BE POTENTIALLY CALLED AND SO YOU COULD BE CALLED AGAIN.
11 THE STATE MAY HAVE ENOUGH WORK THAT THEY HAVE OTHER MATTERS
12 THAT THEY CAN DO. SO, FOR PURPOSES OF COMING BACK, CALL TONIGHT
13 AFTER SIX AND LISTEN TO THEM AND FOLLOW THEM.

14 NOW, WITH REGARD TO THIS CASE, I HAVE -- MISTER CHALMERS ASKED
15 ME A QUESTION EARLIER IF HE COULD ASK ME A QUESTION AND I TOLD HIM
16 HE COULD NOT. AS I WAS TRAINED BY JUDGE BAXLEY, I OFFER JURORS AN
17 OPPORTUNITY TO ASK ME QUESTIONS ABOUT WHY CERTAIN THINGS WENT
18 CERTAIN WAYS AND WHY THE PROCEDURE WAS, I WILL BE MORE THAN
19 HAPPY TO ANSWER QUESTIONS WHEN YOU RETIRE TO THE JURY ROOM IN
20 JUST A MOMENT. IF ANYONE WOULD LIKE TO DO THAT, YOU MAY RETIRE TO
21 THE JURY ROOM AND I'LL COME BACK THERE IF YOU HAVE ANY QUESTIONS
22 THAT I COULD ANSWER. AFTER WE DO THAT, YOU ARE MORE THAN
23 WELCOME TO STAY HERE IF YOU WOULD LIKE TO WATCH THE SENTENCING.
24 YOU ARE NOT REQUIRED TO. IF YOU DON'T HAVE ANY QUESTIONS AND
25 YOU'RE READY TO GO HOME AND TEND TO YOUR CHILDREN OR SPOUSE YOU

VERDICT

222

1 MAY LEAVE. UNDERSTAND THIS, NOW YOU MAY GET A QUESTION FROM
2 MISTER GROSE. MS. BELL'S OFFICE MAY CALL AND SAY WE HAVE A
3 QUESTION. COULD WE HAVE DONE ANYTHING DIFFERENTLY? THINGS LIKE
4 THAT. IF SOMETHING LIKE THAT HAPPENS, YOU ARE FREE TO ANSWER
5 QUESTIONS BY EITHER PARTY. YOU DON'T HAVE TO ANSWER ANY
6 QUESTIONS. YOU DID YOUR JOB AS I INSTRUCTED YOU TO. YOU HAVE
7 ABSOLUTELY NOTHING TO APOLOGIZE FOR. BE PROUD OF IT. YOU DID YOUR
8 JOB AND THANK YOU SO MUCH FOR THAT. IF YOU WISH TO ANSWER
9 QUESTIONS YOU MAY. IF YOU DO NOT WISH TO ANSWER QUESTIONS, YOU
10 DO NOT HAVE TO. SOLELY YOUR CHOICE. NOW, THE SAME INSTRUCTION
11 GOES COME THURSDAY. THESE PARTIES WILL NOT SPEAK TO YOU TO
12 ANSWER QUESTIONS THIS WEEK. THEY WILL STAY AWAY FROM YOU
13 BECAUSE, SUPPOSE THERE IS ANOTHER TRIAL COMING UP THURSDAY
14 MORNING AND MS. BELL SPEAKS TO YOU. BUT DON'T WORRY ABOUT THAT.
15 YOU MAY GET A CALL OR LETTER TO FOLLOW UP. YOU MAY ANSWER OR
16 NOT, YOUR CHOICE. NOW, DOES ANYONE HAVE ANY QUESTIONS FOR ME? I
17 KNOW MISTER CHALMERS DOES.

18 **MR. CHALMERS:** IT WAS ANSWERED TODAY.

19 **THE COURT:** IT WAS ANSWERED. VERY WELL. ANYBODY HAVE ANY
20 QUESTIONS? IF NOT, YOU MAY BE EXCUSED.

21 **MR. GROSE:** YOUR HONOR, REAL QUICK, JUST SO THEY'LL KNOW. WE
22 NORMALLY DO NOT CALL AND ASK ANY QUESTIONS. I DIDN'T WANT THEM TO
23 EXPECT SOMETHING FROM US.

24 **THE COURT:** ALL RIGHT. SOME LAWYERS DO AND SOME LAWYERS
25 DON'T. THANK YOU FOR YOUR SERVICE.

MOTIONS

223

1 (JURY OUT AT 3:29 P.M.)

2 THE COURT: ARE YOU READY TO GO FORWARD WITH SENTENCING
3 RIGHT NOW OR WOULD YOU LIKE A MOMENT?

4 MR. GROSE: ACTUALLY, I THINK WE'VE GOT TWO LEGAL ISSUES AND
5 SHE'S GOT ONE AND I'VE GOT ONE.

6 THE COURT: VERY WELL.

7 MS. BELL: THANK YOU. THE FIRST THING I WANT TO DO IS TO RENEW
8 ALL MY PREVIOUS MOTIONS THROUGHOUT THE TRIAL, INCLUDING THE
9 DIRECTED VERDICT MOTIONS THAT I MADE PREVIOUSLY AND THEN I ALSO
10 REQUESTED DURING THE TRIAL THAT THEY DID NOT HAVE ENOUGH
11 SUBSTANTIAL EVIDENCE TO PROVE BEYOND A REASONABLE DOUBT TO
12 REACH THEIR VERDICT, YOUR HONOR.

13 THE COURT: ALL RIGHT. REGARDING THE TWO DIRECTED VERDICT
14 MOTIONS YOU MADE AT THE CLOSE OF THE STATE'S CASE AS WAS THE
15 CLOSE OF YOUR CASE REGARDING CRIMINAL DOMESTIC VIOLENCE CHARGE
16 AND THE BURGLARY CHARGE, I RESPECTFULLY DENY THEM BOTH. I BELIEVE
17 THERE WAS SUBSTANTIAL EVIDENCE FOR WHICH THE JURY COULD
18 CONSIDER IN WEIGHING ON THE DECISION WHETHER OR NOT THERE WAS
19 PROOF OF THE ELEMENTS OF EACH OF THOSE CRIMES AND RESPECTFULLY
20 DENY THAT MOTION.

21 RE-STATE YOUR SECOND MOTION AGAIN, BECAUSE THAT WAS YOUR
22 FIRST ONE, THE DIRECTED VERDICT.

23 MS. BELL: JUST BASED UPON MY PREVIOUS MOTIONS AND STILL
24 CONSIDERING I BELIEVE THERE STILL WASN'T SUBSTANTIAL EVIDENCE, WE
25 ALSO ASK FOR A NEW TRIAL, YOUR HONOR.

MOTIONS

224

1 **THE COURT:** REGARDING THAT, I BELIEVE THERE WAS EVIDENCE
2 PRESENTED, SOME CONFLICTING EVIDENCE PRESENTED FROM THE JURY
3 STAND, HOWEVER THE JURY IS WITHIN ITS PROVIDENCE TO WEIGH THE
4 EVIDENCE, CONSIDER IT AND MAKE DETERMINATIONS OF FACT WITH THE
5 INSTRUCTIONS PROVIDED TO THEM I FIND THAT HAVING CONSIDERED ALL
6 THE EVIDENCE PRESENTED TO THEM THAT THEY COULD IN FACT FIND THE
7 DEFENDANT GUILTY AS THEY DID AND THAT IS WITHIN THEIR PROVIDENCE
8 AND I WILL NOT DISTURB THEIR DECISION MAKING ON THE EVALUATION OF
9 THE FACTS AND RESPECTFULLY DENY THAT MOTION.

10 **MR. GROSE:** THE OTHER LEGAL ISSUE, YOUR HONOR, PERTAINS TO
11 SENTENCING. I THINK THAT -- AND I DON'T HAVE THE STATUTES IN FRONT OF
12 ME, BUT THE C-D-V-H-A-N HAS A MANDATORY MINIMUM OF ONE YEAR IN
13 WHICH THE STATUTE SAYS CANNOT BE SUSPENDED AND THE BURGLARY
14 FIRST HAS A MANDATORY MINIMUM OF FIFTEEN YEARS AND THAT STATUTE
15 DOES NOT SPEAK TO WHETHER IT CAN BE SUSPENDED OR NOT. AND I
16 WOULD REFER THE COURT TO STATE VERSUS THOMAS 372 S.C. 446 642 S.E.
17 2d 724 (2007). THAT DEALT WITH THE DISTRIBUTION OF CRACK COCAINE
18 WITHIN PROXIMITY OF A SCHOOL. THE STATUTE THERE REQUIRES A TEN-
19 YEAR MINIMUM BUT IS SILENT ON WHETHER IT CAN BE SUSPENDED OR NOT
20 AND THE COURTS SAY THAT ABSENT A SPECIFIC PROVISION IN THE STATUTE
21 THEN THAT MINIMUM CAN BE SUSPENDED. THERE IS A STATUTORY SECTION
22 THAT'S CITED IN THE THOMAS CASE REGARDING THE COURT'S GENERAL
23 AUTHORITY TO SUSPEND THE SENTENCE AND, YOU KNOW, IT SPEAKS IN
24 TERMS OF CRIMES PUNISHABLE BY LIFE OR DEATH BUT OUR
25 INTERPRETATION OF THAT IS THAT IT ONLY APPLIES IF THE DEATH

MOTIONS

225

1 SENTENCE OF LIFE SENTENCE IS IMPOSED THEN THE MANDATORY MINIMUM
2 OR NO DETERMINATE YEARS HAVE BEEN IMPOSED, THEN THE COURT HAS
3 THE DISCRETION TO SUSPEND THAT SENTENCE AND I COULDN'T GIVE YOU A
4 LIST OF JUDGES WHO ARE DOING IT BUT FROM OUR LIST SERVICES AND
5 VARIOUS THINGS IT'S MY UNDERSTANDING THAT IT IS REFERRED TO AS
6 BEING SUSPENDED IN OTHER PARTS OF THE STATE AND WE FEEL THAT THAT
7 WOULD BE AN APPROPRIATE CONSIDERATION IN THIS CASE AND WE'RE
8 GOING TO ASK FOR AN ACTIVE SENTENCE LESS THAN THE, YOU KNOW, THE
9 FIFTEEN YEARS AND WE WANTED TO CALL THAT TO YOUR ATTENTION FOR
10 YOUR CONSIDERATION BEFORE YOU GET INTO SENTENCING MATTERS.

11 THE COURT: I'VE GOT THE 372 AT 446, THE THOMAS.

12 MR. GROSE: I'M SORRY. I MAY HAVE MIS-SPOKE. IT'S 372 466.

13 THE COURT: 466. OKAY.

14 MR. GROSE: I'M SORRY. I COULD HAVE TRANSPOSED THOSE
15 NUMBERS. THAT'S THE SOUTH CAROLINA CITE.

16 THE COURT: ALL RIGHT. I'M GOING TO RETRIEVE THAT CITE. I WANT
17 TO GO OVER IT, BUT MS. BOLEN, I'LL BE GLAD TO HEAR YOU BEFORE I
18 DECIDE WHETHER OR NOT IT'S SUSPENDABLE OR NOT.

19 MS. BOLEN: THANK YOU, YOUR HONOR. THE STATE WOULD ASK IF
20 YOUR HONOR IS CONSIDERING SUSPENDING IT, WE HAVE A CHANCE TO PULL
21 UP THAT CITE AND READ IT SO WE CAN FORM ARGUMENTS OF OUR OWN
22 AGAINST IT, BUT JUST READING FROM THE PLAIN LANGUAGE OF THE
23 STATUTE, YOUR HONOR, UNDER 16-1-311, THE BURGLARY FIRST DEGREE,
24 SECTION "B" STATES: BURGLARY IN THE FIRST DEGREE IS A FELONY
25 PUNISHABLE BY LIFE IMPRISONMENT. FOR PURPOSES OF THIS SECTION, LIFE

MOTIONS

226

1 MEANS UNTIL DEATH. THE COURT, IN ITS DISCRETION MAY SENTENCE THE
2 DEFENDANT TO NOT LESS THAN FIFTEEN YEARS. I THINK THE STATUTORY
3 LANGUAGE IS CLEAR HERE THAT THE MINIMUM THAT CAN BE IMPOSED IS
4 FIFTEEN YEARS. IN OTHER STATUTES WHEREAS SENTENCE IS
5 SUSPENDABLE, THAT LANGUAGE IS CLEARLY SET OUT BY THE LEGISLATURE
6 THAT WILL SAY, "ALL OR A PORTION OF THIS MAY BE SUSPENDED" BUT I
7 THINK HERE, YOU HAVE CLEAR LANGUAGE STATING THAT THE DISCRETION
8 GIVEN TO THE COURT IS THAT YOU DON'T HAVE TO PUT THE DEFENDANT
9 INTO PRISON FOR LIFE. THE COURT HAS THE DISCRETION TO PUT HIM IN FOR
10 A PERIOD NOT LESS THAN FIFTEEN YEARS. I THINK THAT'S WHERE THE
11 DISCRETION COMES IN. BECAUSE THE FIRST SENTENCE , I THINK, IS
12 INDICATIVE OF THE LEGISLATURE'S INTENT WHICH IS BURGLARY IN THE
13 FIRST DEGREE IS A FELONY PUNISHABLE BY LIFE IN PRISON. THAT'S THE
14 PUNISHMENT AND THEN IT SAYS, "BUT THE COURT IN ITS DISCRETION MAY
15 SENTENCE THE DEFENDANT TO NOT LESS THAN FIFTEEN YEARS AND SO THE
16 STATE WOULD ASK THAT THE SENTENCE NOT BE SUSPENDED. HOWEVER, IF
17 YOUR HONOR IS INCLINED TO SUSPEND IT, WE WOULD ASK THE SENTENCING
18 BE DEFERRED SO WE WOULD HAVE A LITTLE BIT OF TIME TO CONDUCT OUR
19 OWN RESEARCH IN THIS MATTER. AND YOUR HONOR, JUST IN TERMS OF
20 WHAT'S GOING ON ACROSS THE STATE AND OTHER BURGLARY CASES, I
21 HAVE ONLY PROSECUTED IN THE EIGHTH CIRCUIT, BUT I'VE NOT SEEN NOR
22 CAN I RECALL ANY PROSECUTORS IN MY OFFICE WHO HAVE HANDLED ANY
23 BURGLARY IN THE FIRST CASES WHERE THE FIFTEEN YEARS HAS BEEN
24 SUSPENDED.

25 MR. GROSE: AND IN RESPONSE TO THAT, YOU KNOW, THE THOMAS

MOTIONS

227

1 CASE IS INTERPRETING 44-53-445 (b)(2) AND THE LANGUAGE IN THAT
2 INCLUDES NOT LESS THAN TEN YEARS NOR MORE THAN FIFTEEN YEARS AND
3 SO I THINK THE NOT LESS THAN TEN YEARS IN THE PROXIMITY STATUTE AND
4 THE NOT LESS THAN FIFTEEN YEARS IN THE BURGLARY STATUTE IS
5 COMPARABLE LANGUAGE AND THEREFORE THE THOMAS CASE WOULD
6 APPLY. AND THE OTHER THING IS, IF I COULD GET THE C-D-V-H-A-N STATUTE
7 ON THE SCREEN. IT WILL TAKE ME JUST A SECOND BECAUSE THERE IS A
8 DISTINCTION IN THAT WITH WHAT CAME UP IN THOMAS. IN THE C-D-V-H-A-N
9 STATUTE, 18-25-65(b), IT SETS THE MINIMUM ONE-YEAR PENALTY AND THEN IT
10 SAYS THE COURT MAY SUSPEND THE IMPOSITION EXECUTION OF ALL OR
11 PART OF THE SENTENCE EXCEPT THE ONE YEAR MANDATORY MINIMUM.
12 THAT LANGUAGE IS NOT IN THE BURGLARY STATUTE. NOW, LIKE I SAID
13 BEFORE, I AM AWARE IN THE THOMAS CASE'S CITE, THE SECTION THAT SAYS
14 YOU KNOW IF A CRIME IS PUNISHABLE BY LIFE THEN YOU KNOW IT CAN'T BE
15 SUSPENDED, BUT THE LEGISLATURE HAS GIVEN MULTIPLE PUNISHMENTS
16 FOR BURGLARY. BURGLARY IS ALSO PUNISHABLE BY FIFTEEN YEARS AND I
17 THINK THE INTENT OF THAT IS -- YOU KNOW, IT USED TO BE IN SOUTH
18 CAROLINA THAT CERTAIN THINGS LIKE MURDER AND KIDNAPING AND
19 BURGLARY CARRIED MANDATORY LIFE. BURGLARY, WE HAD A PROCEDURE
20 WHERE THERE COULD BE A RECOMMENDATION OF MERCY. ALL THAT WENT
21 OUT WHEN THE STATUTES CHANGE. AND, YOU KNOW, IF THE COURT
22 SENTENCES LESS THAN LIFE, I BELIEVE UNDER THIS STATUTE THE COURT
23 HAS THE POWER TO SUSPEND IT BECAUSE THE LEGISLATURE, WHEN THEY
24 CREATED THE FIFTEEN YEAR PENALTY DID NOT SAY THAT THAT COULD NOT
25 BE SUSPENDED. THEY DID NOT SAY THAT ANY TERM BETWEEN FIFTEEN AND

MOTIONS

228

1 LIFE COULD NOT BE SUSPENDED AND SO I THINK ANY AMBIGUITIES HAVE TO
2 BE CONSTRUED IN MISTER GREENE'S FAVOR. CERTAINLY, THE ONE YEAR
3 MINIMUM IS APPLICABLE UNDER THE C-D-V. I MEAN, THAT FITS RIGHT INTO
4 OUR ARGUMENT BECAUSE IT IS EXPRESSLY STATED IN THE STATUTE.

5 THE COURT: ALL RIGHT. THE THOMAS CASE, AS I UNDERSTAND IT, IS
6 WHEN JUDGE LLOYD WOULD NOT SUSPEND A PROXIMITY PLEA BECAUSE HE
7 SAID IT DID NOT SPECIFICALLY AUTHORIZE HIM THAT IT COULD BE
8 SUSPENDED AND THEY REVERSED SAYING, "IT IS SPECIFIC WHEN YOU
9 CANNOT SUSPEND." THAT BEING THE CASE, LET ME TAKE THAT UNDER
10 CONSIDERATION. IT APPEARS THAT PERHAPS I HAVE THE AUTHORITY.
11 WHETHER I EXERCISE IT OR NOT, IT DEPENDS ON ADDITIONAL COMMENTS
12 FROM BOTH PARTIES. SO, MS. BOLEN, WOULD YOU LIKE TO GO FORWARD?

13 MS. BOLEN: YES, YOUR HONOR. I JUST WANTED TO DIRECT YOUR
14 ATTENTION TO THE CODE SECTION MISTER GROSE JUST CITED, 24-21-410.
15 THAT STATES, "AFTER CONVICTION OR PLEA OF ANY OFFENSE EXCEPT FOR A
16 CRIME PUNISHABLE BY DEATH OR LIFE IMPRISONMENT, THE JUDGE OF THE
17 COURT OF RECORD MAY SUSPEND THE IMPOSITION OF THE SENTENCE." I
18 THINK THE LANGUAGE THERE IS NOT AMBIGUOUS AT ALL. IT STATES,
19 "EXCEPT FOR A CRIME PUNISHABLE BY LIFE OR DEATH AND LIFE
20 IMPRISONMENT." IT DOES NOT STATE THE DEFENDANT HAS TO RECEIVE LIFE
21 IMPRISONMENT, IT JUST SAYS THAT THAT IS SOMETHING THAT THEY COULD
22 RECEIVE AND IT IS CLEAR UNDER THE BURGLARY FIRST STATUTE, THAT IS A
23 POSSIBLE SENTENCE. I THINK IT'S SIMILAR TO, IN TERMS OF JURY
24 QUALIFICATIONS, YOU KNOW, SOMEONE WHO HAS BEEN FOUND GUILTY OR
25 PLED GUILTY TO AN OFFENSE CARRYING MORE THAN A YEAR, NO MATTER

MOTIONS

229

1 WHAT THEY SERVED. IF THEY SERVED LESS THAN ONE YEAR'S TIME SERVED
2 BUT IT CARRIED A YEAR OR MORE, THEY ARE CONSIDERED INELIGIBLE AND I
3 THINK IT'S A SIMILAR SITUATION HERE. I THINK THE CLEAR LANGUAGE OF
4 24-21-410 DOES NOT, COUPLED WITH THE CLEAR LANGUAGE OF THE
5 BURGLARY STATUTE PLACING IT THE DISCRETION OF THE COURT AND THE
6 DISCRETION IS TO NOT IMPOSE THE LIFE IMPRISONMENT SENTENCE, BUT
7 INSTEAD TO GIVE A TERM OF NOT LESS THAN FIFTEEN YEARS AND I DO NOT
8 BELIEVE THAT THAT CAN BE SUSPENDED.

9 **MR. GROSE:** WELL, AND THAT STATUTE HAS A LONG HISTORY AND IT'S
10 GONE BACK A LONG WAY, TIMES WHEN THERE WERE CRIMES THAT WERE
11 PUNISHABLE BY LIFE AND ONLY BY LIFE AND THE TIME WHEN THEY HAD A
12 PAROLE ELIGIBILITY OF TEN, TWENTY, THIRTY YEARS DEPENDING UPON
13 WHEN THEY OCCURRED AND THE CIRCUMSTANCES. WHEN THE
14 LEGISLATURE CREATED THE FIFTEEN YEAR PENALTY FOR BURGLARY, IF
15 THEY DID NOT WANT THAT SUSPENDED, THEY WOULD HAVE SAID IN THAT,
16 THAT THAT COULDN'T BE SUSPENDED. EVEN UNDER THE OLD DAYS, AND I'M
17 A LITTLE BIT HANDICAPPED BECAUSE I DIDN'T PRACTICE CRIMINAL LAW, BUT
18 WHEN YOU HAD TO ARGUE MERCY TO A JURY IN A BURGLARY CASE, BUT
19 EVEN IN THOSE DAYS WHEN THERE WAS LIFE MANDATORY, THE
20 RECOMMENDATION OF MERCY WAS SOMETHING THAT WOULD HAVE MADE A
21 LIGHT SENTENCE IN THOSE CASES AND I THINK HERE, THIS FITS INTO OUR
22 STATUTORY STRUCTURE WHERE THE LEGISLATURE WANTS THE TRIAL
23 COURTS TO HAVE THE AUTHORITY TO SUSPEND THEM, BUT IF THERE IS A
24 VIOLATION OF PROBATION THERE WOULD BE, YOU KNOW, THE MINIMUM OF
25 FIFTEEN YEARS HANGING OVER SOMEBODY'S HEAD WHERE THERE WOULD

MOTIONS

230

1 BE SUBSTANTIAL CONSEQUENCES THAT WOULD RESULT POTENTIALLY FROM
2 A PROBATION VIOLATION, DEPENDING ON THE JUDGE THAT HEARD IT AND
3 THE FACTS PRESENTED TO THAT JUDGE AT THAT TIME.

4 MS. BOLEN: AND YOUR HONOR, IF I COULD STATE JUST VERY, VERY
5 BRIEFLY. I DON'T WANT TO BELABOR THE POINT, BUT THE CASE THAT
6 MISTER GROSE IS CITING, THAT CHARGE ONLY CARRIES TEN TO FIFTEEN
7 YEARS AND SO IT WOULDN'T, 24-21-410 WOULDN'T APPLY TO THAT BECAUSE
8 THAT IS NOT SOMETHING THAT CARRIES THE POSSIBILITY OF LIFE
9 IMPRISONMENT AND MISTER GROSE STATED THAT IF THEY DIDN'T WANT IT
10 SUSPENDED, THEY COULD HAVE SAID THAT IN THE STATUTE, BY MY READING
11 OF THE STATUTE, THEY DO SAY THAT. THEY SAY THE COURT HAS THE
12 DISCRETION TO SENTENCE THE DEFENDANT TO NOT LESS THAN FIFTEEN
13 YEARS AND I BELIEVE THAT IS THE LEGISLATURE BEING CLEAR AND SAYING
14 THAT IS THE MINIMUM SENTENCE.

15 MR. GROSE: AND ACTUALLY, THE COURT RELIED ON THAT 24-11 ---
16 WHATEVER IT WAS, IN THE THOMAS CASE AND BECAUSE IT HAD A TERM LESS
17 THAN LIFE, IT COULD BE SUSPENDED. JUST LIKE BURGLARY HAS A TERM OF
18 LESS THAN LIFE. SO.

19 MS. BOLEN: YOUR HONOR.

20 THE COURT: YES, MA'AM.

21 MS. BOLEN: YOUR HONOR, AT THIS TIME THE STATE WOULD LIKE TO
22 ASK FOR A BRIEF RECESS. THERE MAY BE A STATUTE THAT APPLIES TO THIS
23 THAT THE SOLICITOR HAS BROUGHT TO MY NOTICE AND I'D LIKE A RECESS IN
24 ORDER TO CONTACT HIM AND ASK HIM.

25 THE COURT: ALL RIGHT. GO AHEAD AND PREPARE WHAT YOU ARE

SENTENCING

231

1 GOING TO PRESENT REGARDING YOUR REQUEST, PRIOR RECORD AND
2 WHATNOT YOU HAVE FOR MY CONSIDERATION AND MISTER GROSE YOU AND
3 MS. BELL LIKEWISE IN LITIGATION SO THAT PERHAPS WE CAN REVIEW THIS
4 AT ABOUT FOUR O'CLOCK. THAT WOULD BE ABOUT TWELVE MINUTES.

5 **MS. BOLEN:** YES, SIR.

6 **THE COURT:** WE'LL BE AT EASE FOR A FEW MINUTES.

7 (BRIEF BREAK)

8 **THE COURT:** WHEN WE TOOK OUR BRIEF RECESS, MS. BOLEN YOU
9 WERE LOOKING FOR SOME RULE THAT PERHAPS YOU COULDN'T FIND
10 INITIALLY?

11 **MS. BOLEN:** YES, YOUR HONOR. THE -- I HAD JUST RECEIVED A
12 MESSAGE FROM THE SOLICITOR THAT THERE WAS A STATUTE THAT
13 ADDRESSED THIS ISSUE SO I IN THE RECESS CONTACTED HIM. HE WAS, IN
14 FACT, REFERRING TO THE SAME STATUTE 24-21-410 AND WE DISCUSSED
15 WHAT I ALREADY HAVE ON THE RECORD THAT THE LANGUAGE OF THE
16 STATUTE IS CLEAR THAT IF A CRIME CARRIES POSSIBLE LIFE IMPRISONMENT
17 THAT THE SENTENCE CANNOT BE SUSPENDED AND THE STATE BELIEVES
18 THAT BECAUSE OF THE CLEAR LANGUAGE IN THAT STATUTE AND THE CLEAR
19 LANGUAGE IN THE BURGLARY FIRST STATUTE THAT THE MANDATORY
20 MINIMUM OF FIFTEEN CANNOT BE SUSPENDED, YOUR HONOR.

21 **THE COURT:** ALL RIGHT.

22 **MR. GROSE:** AND I THINK WE'VE ALREADY ADDRESSED THAT BUT IF
23 YOU HAVE ANY QUESTIONS I'LL BE HAPPY TO ANSWER THEM.

24 **THE COURT:** I HAVE NONE. LET'S MOVE ON. I WANT TO HEAR MORE
25 AND I THINK IT WILL MAKE MY DECISION EASIER. I'LL ALLOW YOU TO

SENTENCING

232

1 PRESENT WHATEVER YOU'D LIKE REGARDING OTHER ISSUES OTHER THAN
2 WHETHER THE SENTENCE IS SUSPENDABLE OR NOT.

3 MS. BOLEN: IN TERMS OF MITIGATION, YOUR HONOR, AND
4 SENTENCING?

5 THE COURT: YES.

6 MS. BOLEN: OKAY. YOUR HONOR, THE STATE HAS SEVERAL ITEMS IN
7 MITIGATION THAT THE STATE WOULD LIKE TO PRESENT FOR THE COURT'S
8 CONSIDERATION AND SENTENCING. FIRST IS THAT THE DEFENDANT HAS
9 ALREADY A SUBSTANTIAL CRIMINAL HISTORY.

10 THE COURT: IS HE ON PROBATION RIGHT NOW?

11 MS. BOLEN: I BELIEVE HE IS ON PROBATION. I BELIEVE IT IS FOR AN
12 A-B-H-A-N OR IF HE'S NOT CURRENTLY ON, HE WAS ON VERY, VERY
13 RECENTLY, YOUR HONOR.

14 MR. GROSE: HE IS. AND MISTER STRICKLAND (PROBATION OFFICER)
15 MENTIONED TO ME, HE MAY HAVE A FILE AND HE MAY BE PREPARED TO TAKE
16 THAT UP.

17 THE COURT: WELL, HE'S IN THE COURTROOM. I SEE HIM.

18 MS. BOLEN: YOUR HONOR, IN TERMS OF PRIOR CONVICTIONS, THE
19 DEFENDANT HAS AN UNLAWFUL CARRYING OF A WEAPON, 2005. ASSAULT
20 AND BATTERY OF A HIGH AND AGGRAVATED NATURE IN 2007, FOR WHICH HE
21 DID RECEIVE SOME PRISON TIME AS WELL AS SOME PROBATION. IT LOOKS
22 LIKE A MANUFACTURE AND POSSESSION OF A CONTROLLED SUBSTANCE AS
23 WELL AS A P-W-I-D, BOTH FROM 2007. THE DEFENDANT ALSO, WITH RESPECT
24 TO THIS PARTICULAR CASE, THERE ARE A FEW ITEMS THAT THE STATE
25 WOULD LIKE TO PRESENT AS LITIGATION. FIRST, THE DEFENDANT HAS

SENTENCING

233

1 ALREADY SERVED SIX MONTHS FOR VIOLATING THE ORDER OF PROTECTION
2 WHERE AFTER THESE CHARGES WERE BROUGHT AND HE WAS ARRESTED,
3 HE WAS FORBIDDEN FROM CONTACTING THE VICTIM. HE HAS CONTINUED TO
4 CONTACT HER AND, IN FACT, STILL CONTINUES TO CONTACT HER AND I THINK
5 THIS SHOWS A LACK OF RESPECT FOR THE COURT AND FOR THE COURT
6 SYSTEM AND I THINK THAT NEEDS TO BE TAKEN INTO CONSIDERATION. YOUR
7 HONOR, I WOULD ALSO LIKE TO HAND UP THE VICTIM IMPACT STATEMENT
8 FROM THE VICTIM.

9 MR. GROSE: MAY WE SEE THAT? (MS. BOLEN HANDS DOCUMENT TO
10 MISTER GROSE AND THEN TO THE JUDGE)

11 MS. BOLEN: YOUR HONOR, AS YOU HAVE HEARD FROM THE EVIDENCE
12 IN THIS CASE, THIS WAS A TRULY TERRIFYING ORDEAL FOR MS. SULLIVAN.
13 SHE WAS ASLEEP IN HER BED, DEFENDANT DID NOT LIVE WITH HER, HE
14 BREAKS DOWN THE DOOR AND THEN HE ASSAULTS HER FOR A GOOD TEN TO
15 FIFTEEN MINUTES REQUIRING HER TO GO TO THE HOSPITAL RESULTING IN A
16 GREAT DEAL OF INJURY TO HER. SOMETHING THAT WE WERE PROHIBITED
17 FROM BRINGING UP DURING THE TRIAL OF THE CASE BUT WHICH I FEEL IS
18 APPROPRIATE TO BRING UP IN SENTENCING, IS THAT THE VICTIM AT THE TIME
19 THAT THESE CRIMES WERE COMMITTED WAS SIX MONTHS PREGNANT AND
20 THAT THE DEFENDANT KNEW THAT SHE WAS SIX MONTHS PREGNANT. HE
21 STATED THAT IN NUMEROUS LETTERS. THEY HAD LIVED TOGETHER AND IT
22 WAS HIS CHILD AND HE DID THIS KNOWING SHE WAS SIX MONTHS PREGNANT
23 AND I THINK THAT'S A FACTOR THAT REALLY NEEDS TO BE TAKEN INTO
24 CONSIDERATION BY THE COURT IN TERMS OF SENTENCING. IT SHOWS A
25 GREAT DISREGARD AND DISRESPECT FOR HUMAN LIFE NOT ONLY FOR THE

SENTENCING

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1 VICTIM BUT THE UNBORN CHILD AND I THINK THAT IS A VERY PERTINENT
2 FACT THAT COMES INTO SENTENCING.

3 I THINK ALL THE CIRCUMSTANCES CONCERNING THIS CASE, YOUR
4 HONOR, WHEN YOU LOOK AT THE DEFENDANT'S PRIOR CRIMINAL HISTORY,
5 THE EXTENT OF THE INJURIES, THE TERROR THAT MS. SULLIVAN WAS UNDER
6 WHEN HE BROKE INTO THE HOUSE IN THE MIDDLE OF THE NIGHT, AND THE
7 FACT THAT SHE WAS SIX MONTHS PREGNANT AT THE TIME, I THINK ALL
8 THOSE TOGETHER REQUIRE A SUBSTANTIAL PRISON SENTENCE IN THIS
9 CASE. THIS IS THE SORT OF CASE WHERE, YOU KNOW, THE SENTENCE
10 HANDED DOWN BY THE COURT IS FOR PUNISHMENT AND DETERRENTS AND I
11 THINK PARTICULARLY WITH NOVEMBER BEING CRIMINAL DOMESTIC
12 VIOLENCE AWARENESS MONTH, PEOPLE NEED TO KNOW THEY CANNOT DO
13 THIS TO WOMEN, TO HOUSEHOLD MEMBERS AND I THINK HAVING A PRISON
14 SENTENCE WOULD BE APPROPRIATE. ADDITIONALLY, YOUR HONOR, THE
15 VICTIM'S MOTHER HAS WRITTEN A LETTER WHICH I BELIEVE SHE WISHES TO
16 PASS UP TO THE COURT TOO. I BELIEVE OUR VICTIM'S ADVOCATE IS OUT OF
17 THE ROOM RIGHT NOW. WE'LL PASS IT UP WITH THE COURT'S PERMISSION
18 FOR YOU TO READ.

19 THE COURT: ALL RIGHT.

20 (MS. BOLEN PASSES UP DOCUMENT. JUDGE LOOKS AT DOCUMENT)

21 THE COURT: ALL RIGHT. MS. BELL.

22 MS. BELL: THE FIRST THING I WANTED TO START OFF WITH WAS
23 WHERE MS. BOLEN STARTED, REGARDING HIS RECORD. HE DOES HAVE
24 SOME THINGS ON THERE BUT ONE OF THE THINGS I WANTED TO POINT OUT
25 WAS WITH REGARD TO WHEN SHE MENTIONED HIS CHARGE OF A-B-H-A-N

SENTENCING

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1 AND MANUFACTURING CHARGES, THOSE WERE ALL SENTENCED AND
2 OCCURRED AT THE SAME TIME PERIOD. IT MADE IT SOUND MORE LIKE HE
3 WENT AND GOT IN TROUBLE ONE TIME THEN WENT TO JAIL AND GOT BACK
4 OUT AND SO I JUST WANTED TO CLARIFY THAT. ADDITIONALLY, FOR THE
5 MOST PART, HIS RECORD CONSISTED OF SMALLER THINGS THAT WERE
6 THIRTY-DAY MINIMUMS OR FINES AND THEN I BELIEVE HE RECEIVED
7 STRICTLY A ONE-YEAR SENTENCE OR PROBATION ON THE UNLAWFUL
8 WEAPONS CHARGE, YOUR HONOR.

9 GOING BACK AND LOOKING MORE AT MISTER GREENE HIMSELF, HE'S
10 NEVER COME TO COURT SAYING, "I'M COMPLETELY INNOCENT." HE'S NEVER
11 ONCE SAID THAT. WE'VE TRIED SEVERAL TIMES TO WORK SOMETHING OUT
12 THAT WAS AGREEABLE TO EVERYBODY AND IT NEVER REALLY HAPPENED
13 BUT HE DIDN'T COME TO COURT TODAY SAYING, "I'M COMPLETELY
14 INNOCENT." YOU KNOW, WE HAVE THE - HE HAS NOT BEEN CONVICTED OF
15 THESE CHARGES, BUT WE HAVE THE FACT HE HAS NEVER BEEN CONVICTED
16 OF THESE CHARGES AND HE NEVER ONCE SAID, "I SHOULD NOT BE PUNISHED
17 AT ALL." HE JUST REFUTES THAT THE CHARGES AGAINST HIM ARE NOT THE
18 CORRECT CHARGES.

19 HE GREW UP IN SOUTH CAROLINA. HE DID NOT ORIGINALLY GROW UP
20 IN THE LAURENS AREA BUT THAT IS WHERE HE IS LIVING NOW. HE DOES
21 HAVE NOT ONLY THE CHILD THAT MS. SULLIVAN HAD BUT HE ALSO HAS
22 THREE CHILDREN FROM A PRIOR RELATIONSHIP. AT THE BEGINNING OF THIS
23 YEAR HE HAD BEEN WORKING STEADILY SUPPORTING EVERYBODY. HIS
24 GOAL WAS ONCE HE COMPLETES WHATEVER SENTENCE YOU GIVE TO HIM IS
25 TO GET BACK OUT WORKING AS SOON AS POSSIBLE TO HELP SUPPORT

SENTENCING

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1 EVERYBODY INVOLVED. HE HAS COMPLETED A G-E-D AND SO HE HAS THAT
2 LEVEL OF EDUCATION, YOUR HONOR. HE IS HERE WITH -- HIS THREE SISTERS
3 ARE HERE RIGHT NOW. I KNOW THAT THEY ARE EVENTUALLY GOING TO
4 WANT TO SAY SOMETHING ALONG WITH -- HIS OTHER CHILDREN'S MOTHER IS
5 ALSO HERE YOUR HONOR. WITH REGARDS TO THIS, YOU KNOW, I KNOW
6 MISTER GREENE IS GOING TO WANT TO SAY SOMETHING AND I WOULD LIKE
7 TO ONCE AGAIN RE-EDIFY, YOUR HONOR, THAT HE'S NEVER ONCE BEEN-
8 TRYING TO SAY HE WAS COMPLETELY IN THE RIGHT. IT WAS MORE OF IF YOU
9 DETERMINE THAT HIS SENTENCE COULD BE SUSPENDED, WE REQUEST THAT
10 YOU LOOK LOWER IN THE TEN-YEAR SPECTRUM FOR THE C-D-V-H-A-N
11 CHARGE FOR YOUR SENTENCE AND IF NOT IF YOU'D LOOK AT THE FIFTEEN
12 YEAR MARK INSTEAD OF ANYTHING HIGHER.

13 HE'S NOT EVER DONE A LOT OF PRISON TIME. I KNOW SHE READ HIS
14 SENTENCE RECORD, BUT HE HAD A THREE YEAR SENTENCE. I THINK MOST
15 OF THAT WAS SERVED AT THE LOCAL LEVEL AND NOT AT S-C-D-C. HE SPENT
16 LITTLE TIME AT S-C-D-C ON THAT PRIOR CHARGE AND SO THIS IS NOT
17 SOMEONE WHO'S BEEN IN PRISON FOR LOTS AND LOTS OF TIMES AND COME
18 OUT AND GONE BACK TO PRISON LOTS AND LOTS OF TIMES. HE HASN'T BEEN
19 IN AND OUT OF THE S-C-D-C SYSTEM AND I'D LIKE YOU TO KEEP THAT IN
20 MIND, TOO, WHEN DETERMINING HIS SENTENCE. I WOULD LIKE FOR HIS
21 FAMILY TO SAY WHAT THEY WERE WANTING TO SAY AND THEN MISTER
22 GREENE DID HAVE ONE SHORT STATEMENT HE WANTED TO MAKE.

23 THE COURT: ALL RIGHT.

24 MS. BELL: I BELIEVE HIS SISTER WANTS TO BE FIRST.

25 THE COURT: HAVE THEM COME FORWARD AND LETS IDENTIFY THEM

SENTENCING

237

1 FOR THE RECORD.

2 **MS. BOBBI GREENE:** MY NAME IS BOBBI GREENE. I'M SPEAKING ON
3 BEHALF OF MY BROTHER.

4 **COURT REPORTER:** WHAT IS YOUR NAME?

5 **MS. BOBBI GREENE:** MY NAME IS B-O-B-B-I GREENE, WITHOUT AN "E". I
6 GREW UP WITH HIM MY WHOLE LIFE BASICALLY, AND HOW THE COURT IS
7 TRYING TO PORTRAY HIM AS A CALLOUS HUMAN BEING, A HARDENED
8 CRIMINAL, HE REALLY IS NOT. I KNOW HE MADE SOME MISTAKES, BUT YOU
9 KNOW, HE HAS THREE CHILDREN SINCE HE GOT OUT OF TROUBLE HE BEEN
10 WORKING, HE BEEN STAYING OUT OF TROUBLE AND SO THIS INCIDENT AND I
11 JUST ASK YOU HAVE LENIENCY ON HIM AND WHATEVER YOU DECIDE TO GIVE
12 HIM IT'S NOT OVERLY HARSH BECAUSE HE HAVE THREE BABIES. ONE IS
13 FIVE, FOUR, AND EIGHT, I BELIEVE, AND I'M PRETTY SURE HE WOULD LIKE TO
14 SEE HIS CHILDREN, YOU KNOW, BEFORE THEY GET SCHOOL OVER AND I JUST
15 ASK YOU TAKE THAT INTO CONSIDERATION.

16 **THE COURT:** THANK YOU

17 **MS. BOBBI GREENE:** THANK YOU.

18 **MS. BELL:** THIS IS ONE OF HIS OTHER SISTERS, YOUR HONOR.

19 **MS. COLLETE GREENE:** HI. I'M COLLETE GREENE. I'M HIS OTHER
20 SISTER AND ANTIJUAN GREENE, THAT'S MY BROTHER AND HE REALLY IS A
21 NICE FELLOW. I MEAN, HE'S A SMART GUY, A LOVING AND CARING GUY AND
22 WHEN I GREW UP WITH HIM HE WASN'T VIOLENT AT ALL. YOU KNOW, PEOPLE
23 MAKE MISTAKES AND I ASK PLEASE, YOU KNOW, JUST HAVE MERCY ON HIM
24 BECAUSE HIS CHILDREN REALLY NEED HIM. I LOVE HIM AND THAT'S MY ONLY
25 OLDEST BROTHER THAT I HAVE AND I JUST PRAY AND HOPE EVERYBODY

SENTENCING

238

1 WOULD JUST -- I MEAN, HE PROBABLY DIDN'T MEAN TO DO IT. YOU KNOW,
2 PEOPLE MAKE BAD CHOICES EVERY DAY.

3 THE COURT: THANK YOU, MA'AM.

4 MR. GREENE: MY NAME IS ANTJUAN TOBIAS GREENE. I WOULD LIKE TO
5 SAY TO THE COURT AND I APOLOGIZE TO THERESA AND HER FAMILY. I
6 NEVER MEANT THEM HARM, BUT THERESA, FROM MY HEART, I'M SORRY. I
7 KNOW I MADE A MISTAKE. ALCOHOL PLAYED A ROLE INTO IT, EVERYTHING
8 THAT HAPPENED THAT NIGHT, YOU KNOW, AND WE ARGUED AND EVERYBODY
9 ARGUES AND I WISH, IF YOU'VE GOT IT IN YOUR HEART, TO PLEASE FORGIVE
10 ME. I DIDN'T GET TO MEET MY LITTLE DAUGHTER AND I WANT TO REAL HARD.
11 I THOUGHT YOU LOVED ME AND I LOVED YOU AND OUR RELATIONSHIP,
12 PEOPLE IN LOVE DO CRAZY THINGS AND I'M SO SORRY TO YOU. AND I HATE
13 HAVING TO MEET YOU AND MISTER AND MS. COLLINS AT THIS. I WISH I HAD
14 MET Y'ALL AND I SHOOK YOUR HAND AND STUFF LIKE THAT, BUT IT WAS NICE
15 MEETING YOU, RONNIE AND LEANN. I ALWAYS KNEW THAT ABOUT YOU BUT I
16 NEVER GOT TO TALK TO YOU ALL. I'M REALLY SORRY TO YOU.

17 THE COURT: MISTER GROSE?

18 MR. GROSE: VERY BRIEFLY. ONE OF THE THINGS -- YOU SAW ME
19 TALKING TO HIM. WE WERE TALKING ABOUT WHAT DIDN'T REALLY COME OUT
20 UNTIL NOW, THAT ALCOHOL PLAYED A ROLE IN THIS. HE TELLS ME THAT HE
21 DOESN'T NORMALLY DRINK OR DRINK LIKE HE DID THAT NIGHT AND THEY MAY
22 HAVE ENHANCED, YOU KNOW, SOME OF THE CONDUCT. I MEAN, ONE OF THE
23 THINGS I WANT TO POINT OUT, I'VE BEEN TO A NUMBER OF THE, YOU KNOW,
24 CURRENT SENTENCING REFORM COMMISSION MEETINGS, NOT AS MANY AS I
25 WOULD LIKE TO HAVE, BUT ONE OF THE THINGS THEY ARE LOOKING AT IS

SENTENCING

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1 MANDATORY MINIMUMS OR ALTERNATIVE TO INCARCERATION OR A
2 COMBINATION OF BOTH OF THOSE AND A LOT OF THINGS INCLUDING SOME
3 OF THE THINGS THE STATE BROUGHT OUT WITH THE ALCOHOL WITH THE
4 ANGER MANAGEMENT, WITH RESTRAINING ORDERS. THERE ARE A LOT OF
5 THINGS THE COURT CAN DO IF THERE'S A SUSPENDED SENTENCE, WHICH
6 YOU MAY NOT BE ABLE TO DO WITH INCARCERATION. YOU COULD ORDER
7 A-T-U UNTIL YOU'RE BLUE IN THE FACE BUT THE REALITY OF IT IS FOR A NON-
8 YOUTHFUL OFFENDER MALES THERE'S AN INADEQUACY FOR BED SPACE FOR
9 THAT AND SO THE TYPES OF THINGS THAT WE'VE ALL TALKED ABOUT THAT
10 NEED TO BE DONE FOR ANTIJUAN ARE BEST ACCOMPLISHED ON PROBATION.
11 I MEAN, EVEN IF HE GETS ALCOHOL TREATMENT IN PRISON, EVEN THAT IS
12 BEST ACCOMPLISHED WITH FOLLOW-UP AND THAT SORT OF THING AND
13 THAT'S ONE OF THE REASONS WE FEEL ITS SUSPENDABLE AND THAT'S ONE
14 OF THE REASONS WE THINK YOU OUGHT TO CONSIDER DOING THAT.

15 MS. BOLEN: YOUR HONOR, IF I MAY. THIS MAY NOT BE THE TIME. I MAY
16 HAVE MISSED MY CHANCE, BUT IT'S JUST COME TO MY ATTENTION THAT THE
17 VICTIM OR HER PARENTS WOULD LIKE TO ADDRESS THE COURT AND IF YOU
18 ARE WILLING TO HEAR THAT, I THINK THEY WOULD AND ALSO I JUST NEED TO
19 PASS UP THE SENTENCING SHEET.

20 THE COURT: I'LL BE GLAD TO HEAR FROM THE VICTIMS.

21 MS. ARLENE COLLINS: ARLENE COLLINS AND I JUST WANT Y'ALL TO
22 KNOW I'M SPEAKING ON BEHALF OF MY GRANDDAUGHTER AND MY
23 GRANDSON. THEM CHILDREN HAVE BEEN GIVEN NO CONSIDERATION DURING
24 THIS ATTACK. NONE. NONE. THEY ARE PLEADING, PLEADING, PLEADING.
25 WHY SHOULD WE LISTEN TO A MAN THAT DID WHAT HE DID AND HE'S

SENTENCING

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1 PLEADING. HE TURNED HIS BACK ON HIS OWN BABY AND THAT LITTLE BOY
2 THERE. HE HAS NO CONSIDERATION FOR CHILDREN. AND THE WHOLE
3 SITUATION. WE'VE GOT TO START STANDING UP FOR THESE KIDS. THIS
4 SHOULD NOT HAPPEN AFTER LICK, AFTER LICK, AFTER HIT, OVER THIRTEEN
5 TIMES. BY THE GRACE OF GOD THAT LITTLE BABY DIDN'T DIE. AND I JUST
6 WANT Y'ALL TO JUST REMEMBER THEM BABIES.

7 **THE COURT:** THANK YOU, MA'AM.

8 **MR. COLLINS:** MISTER GREENE, HE COME THERE WITH – MY NAME IS
9 RONNIE COLLINS. HE COME THERE WITH INTENT AT THE TIME. HE THINKS
10 HE'S BEYOND THE LAW. EVERYTHING HE'S DONE, HE THINKS HE CAN JUST
11 GET THROUGH IT. HE COME TO MY DAUGHTER'S HOUSE THAT NIGHT WITH
12 HER AND MY GRANDSON AND AFTER HE COME THERE AFTER MIDNIGHT OR
13 ONE O'CLOCK OR WHENEVER, WITH THE INTENT TO DO BODILY HARM TO
14 HER. HE KICKED – I'VE GOT A BEAUTIFUL GRANDDAUGHTER THAT HE DIDN'T
15 GIVE A RAT'S ASS ABOUT THAT NIGHT HE WAS KICKING HER ACROSS THE
16 FLOOR. I WENT INTO THAT HOUSE AND IT LOOKED LIKE A FUCKING
17 SLAUGHTER HOUSE.

18 **THE COURT:** HEY.

19 **MR. COLLINS:** I'M SORRY, BUT GOD DAMN IT, HE RUINED – COME HERE
20 YOU COWARDLY BASTARD.

21 **THE COURT:** NO, SIR. WE CAN'T HAVE THAT.

22 (LAW ENFORCEMENT ESCORTS MISTER COLLINS AWAY)

23 **THE COURT:** ANYTHING ELSE?

24 **MS. BOLEN:** NOTHING FROM THE STATE, YOUR HONOR.

25 **MS. BELL:** NOTHING FROM THE DEFENSE, YOUR HONOR.

SENTENCING

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1 **THE COURT:** MS. BELL, MISTER GROSE, YOU MAY STAY THERE OR YOU
2 MAY COME FORWARD AS I READ THE SENTENCE. IT'S YOUR CHOICE.

3 **MR. GROSE:** WE'LL JUST STAY HERE, YOUR HONOR.

4 **THE COURT:** VERY WELL. REGARDING INDICTMENT 09-GS-01-211,
5 WHICH IS THE INDICTMENT FOR MALICIOUS INJURY TO REAL PROPERTY, THE
6 SENTENCE OF THE COURT IS THAT THE DEFENDANT WILL BE COMMITTED TO
7 THE DEPARTMENT OF CORRECTIONS FOR A DETERMINATE TERM OF THIRTY
8 DAYS. THAT'S THE MAXIMUM SENTENCE I CAN IMPOSE. THE DEFENDANT IS
9 GIVEN CREDIT FOR ANY TIME HE'S ALREADY SERVED.

10 REGARDING CRIMINAL DOMESTIC VIOLENCE HIGH AND AGGRAVATED
11 NATURE, INDICTMENT 09-GS-01-210, THE DEFENDANT IS SENTENCED TO THE
12 DEPARTMENT OF CORRECTIONS FOR A DETERMINATE TERM OF TEN YEARS.
13 THE DEFENDANT IS GIVEN CREDIT FOR THE TIME HE HAS SERVED.

14 FOR INDICTMENT 09-GS-01-209, BURGLARY FIRST DEGREE. I'VE
15 CONSIDERED THE PARTIES ARGUMENTS REGARDING WHETHER THE
16 SENTENCE IS SUSPENDABLE. PERHAPS IT IS. HOWEVER, CONSIDERING THE
17 FACTS OF THIS CASE, I'M GOING TO DECLINE SUSPENDING ANY PORTION OF
18 IT. REGARDING THIS INDICTMENT, THE DEFENDANT IS COMMITTED TO THE
19 DEPARTMENT OF CORRECTIONS FOR A DETERMINATE TERM OF TWENTY
20 YEARS. THAT SENTENCE IS TO RUN CONCURRENT WITH THE SENTENCE HE
21 WILL BE SERVING ON CRIMINAL DOMESTIC VIOLENCE AND THAT'S THE
22 SENTENCE OF THE COURT.

23 **MS. BOLEN:** THANK YOU, YOUR HONOR.

24 **THE COURT:** GOOD LUCK TO YOU.

25 (THE COURT ADDRESSES MISTER COLLINS)

PROBATION VIOLATION

242

1 **THE COURT:** I GAVE INSTRUCTION PRIOR TO THE VERDICT COMING IN
2 ABOUT MISBEHAVIOR, ACTING LIKE LADIES AND GENTLEMEN. I DO NOT THINK
3 YOU FOLLOWED MY INSTRUCTION. I'M GOING TO DIRECT THAT YOU COME
4 BACK THURSDAY MORNING AT NINE-THIRTY. IF YOU WOULD LIKE TO HAVE AN
5 ATTORNEY, HAVE ONE WITH YOU. I DO NOT BELIEVE YOUR CONDUCT WAS
6 THE REQUIRED CONDUCT IN THIS COURTROOM. I THINK IT WAS
7 REPREHENSIBLE. I DO NOT LIKE THAT. I'M NOT GOING TO TOLERATE IT. I
8 UNDERSTAND YOUR FRUSTRATION, BUT I DO NOT LIKE THAT CONDUCT, SO I
9 WANT YOU BACK IN HERE AT NINE-THIRTY THIS THURSDAY COMING. ALL
10 RIGHT?

11 **MR. COLLINS:** YES, SIR.

12 **THE COURT:** I'LL SEE YOU THEN. I DID NOT ADDRESS THE PROBATION
13 MATTER. DO YOU WANT TO ADDRESS THAT NOW?

14 **MR. GROSE:** WE MIGHT AS WELL.

15 **THE COURT:** ALL RIGHT. JUST FROM WHAT Y'ALL SAID, I THINK --
16 MISTER STRICKLAND, ARE YOU READY?

17 **MR. STRICKLAND:** YES, SIR.

18 **THE COURT:** ALL RIGHT. COME FORWARD, PLEASE. ALL RIGHT,
19 MISTER STRICKLAND, I'LL BE GLAD TO HEAR FROM YOU.

20 **MR. STRICKLAND:** JUDGE, I'M PRESENTING THIS CASE FOR LAURENS
21 COUNTY. HE WAS ON PROBATION IN LAURENS COUNTY. THEY SENT ME A
22 PACKET AND SO I'M GOING TO BRIEFLY SUMMARIZE THIS REAL QUICK. HE
23 WAS SENTENCED BY JUDGE ADDY BACK IN 08-29-2007. THE INDICTMENTS
24 WERE 06-GS-30-01644, 05-GS-30, 4605. HE WAS ON FOR ASSAULT AND
25 BATTERY OF A HIGH AND AGGRAVATED NATURE, ABHAN, DISTRIBUTION,

PROBATION VIOLATION

243

1 ATTEMPT TO DISTRIBUTE MARIJUANA, AND PROXIMITY. ON EACH ONE OF
2 THOSE HE RECEIVED FIVE YEARS PROVIDED UPON THE SERVICE OF TWO
3 YEARS AND THEN WITH PROBATION TO FOLLOW. JUDGE, LOOKING BACK
4 THROUGH IT ON PRIOR VIOLATIONS, ON 2-18-2009 —

5 THE COURT: THAT'S ALL RIGHT. WE DON'T NEED TO GET INTO THAT.

6 MR. STRICKLAND: OKAY.

7 THE COURT: THIS CONVICTION IS A VIOLATION OF THE PROVISION?

8 MR. STRICKLAND: IT IS.

9 THE COURT: MS. BELL, IS THERE ANY OBJECTION TO ME REVOKING
10 THREE YEARS AND RUNNING THAT CONCURRENTLY? THAT'S WHAT HE HAD
11 LEFT TO DO ON THIS.

12 MS. BELL: NO, YOUR HONOR.

13 THE COURT: ALL RIGHT. PREPARE ME AN ORDER REVOKING THREE
14 YEARS FOR THESE CASES. ANY JUDGMENT WILL REVERT TO CIVIL
15 JUDGMENT.

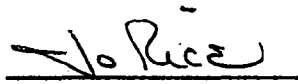
16 MR. STRICKLAND: ALL RIGHT. THANK YOU.

CERTIFICATE

I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TWO HUNDRED FORTY-THREE PAGE TRANSCRIPT IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF THE TRIAL IN THE CAPTIONED CASE, IN THE COURT OF GENERAL SESSIONS FOR ABBEVILLE COUNTY, SOUTH CAROLINA ON NOVEMBER 9-10, 2009, AT THE ABBEVILLE COUNTY COURTHOUSE, TO THE BEST OF MY SKILL AND ABILITIES.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

FEBRUARY 3, 2009

A handwritten signature in cursive script, appearing to read "Jo Rice", is written over a horizontal line.

JO RICE

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Antjuan T. Greene, Appellant.

Appeal From Abbeville County
Eugene C. Griffith, Jr., Circuit Court Judge

Unpublished Opinion No. 2012-UP-001
Submitted December 1, 2011 – Filed January 4, 2012

AFFIRMED

Appellate Defender M. Celia Robinson, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Senior Deputy Attorney General Harold M.
Coombs, Jr., all of Columbia; and Solicitor Jerry
W. Peace, of Greenwood, for Respondent.

PER CURIAM: Antjuan T. Greene appeals his convictions for first-degree burglary, criminal domestic violence of a high and aggravated nature (CDVHAN), and malicious injury to real property. Greene argues the trial court erred (1) in denying his directed verdict motions on his CDVHAN and first-degree burglary charges and (2) in admitting unduly prejudicial photographs into evidence. We affirm.^[1]

1. We find the record contains sufficient evidence upon which the trial court could have relied in denying both of Greene's directed verdict motions. "When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the [appellate] [c]ourt must find the case was properly submitted to the jury." Id. at 292-93, 625 S.E.2d at 648.

If a person commits a criminal domestic violence offense and the elements of assault and battery of a high and aggravated nature (ABHAN) are present, that person is guilty of CDVHAN. State v. Sullivan, 362 S.C. 373, 375, 608 S.E.2d 422, 424 (2005). "ABHAN is 'an unlawful act of violent injury' accompanied by a circumstance of aggravation." Id. at 375-76, 608 S.E.2d at 424 (quoting State v. Primus, 349 S.C. 576, 580, 564 S.E.2d 103, 105 (2002)). Among the potential circumstances of aggravation is serious bodily injury. Id. at 376, 608 S.E.2d at 424. As to the CDVHAN charge, the State presented testimony and photographs showing the victim suffered three separate nose fractures, a cut requiring four stitches, swelling of the eyes to the point the victim could no longer see, and multiple other scrapes and bruises as a result of Greene's attack. Based on this testimony and photographs submitted at trial, the State presented evidence that reasonably tended to prove the victim suffered serious bodily injury. Accordingly, the record contains sufficient evidence the trial court could rely on in denying Greene's motion for a directed verdict.

As to the burglary charge, we initially note Greene's argument concerning the victim consenting to Greene's entry into the home was never raised to or ruled upon by the trial court; therefore, it is not preserved for review. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party may not argue one ground at trial and an alternate ground on appeal."). Concerning the portion of Greene's argument that is preserved, "[a] person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and . . . while in the dwelling or in immediate flight, he . . . causes physical injury to a person who is not a participant in the crime." S.C. Code Ann. § 16-11-311(A)(1)(b) (2003). Because intent is generally not susceptible to proof by direct evidence, it ordinarily must be inferred from circumstantial evidence. State v. Tuckness, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971). Here, the State presented testimony stating Greene repeatedly beat and kicked the victim's door and pushed aside a clothes dryer just to gain entry to the home. Moreover, the victim testified, upon entering her home, Greene immediately came towards her and began his assault. Based on this testimony, the State presented evidence reasonably tending to prove Greene intended to commit a crime upon entering the victim's home. Accordingly, the trial court did not err in denying Greene's directed verdict motion on the first-degree burglary charge.

2. We find the trial court did not abuse its discretion in admitting into evidence photographs showing the victim's injuries. "The relevance, materiality and admissibility of photographs are matters within the sound discretion of the trial court and a ruling will be disturbed only upon a showing of an abuse of discretion." State v. Rosemond, 335 S.C. 593, 596, 518 S.E.2d 588, 589-90 (1999). Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Rule 403, SCRE. Photographs entered into evidence will be considered unfairly prejudicial when they create an undue tendency to suggest an improper basis for a decision, usually based on emotion. State v. Jackson, 364 S.C. 329, 334, 613 S.E.2d 374, 376 (2005). Such photographs which are "calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions." Id. "If [a] photograph serves to corroborate testimony, it is not an abuse of discretion to admit it." Rosemond, 355 S.C. at 597, 518 S.E.2d at 590. One of the aggravating circumstances that can lead to a conviction for CDVHAN is serious bodily injury. See Sullivan, 362 S.C. at 375-76, 608 S.E.2d at 424. Although the photographs in question depict blood due to the victim's injuries following her assault, the nature of these injuries is very probative as to whether the serious bodily injury

circumstance has been fulfilled such that Greene could be convicted of CDVHAN. Additionally, the photographs serve to corroborate the testimony of several witnesses as to the nature and severity of the victim's injuries. Accordingly, the trial court did not err in admitting photographs of the victim's injuries.

AFFIRMED.

SHORT, WILLIAMS, and GEATHERS, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF AbbevilleAntjuan To' Bias Greene #311128
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2012-CP-01-043EMILY O. MCMAHAN
CLERK OF COURT

2012 MAR 7 AM 9 36

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLEINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institution → on back
2. Name and location of Court which imposed sentence General Sessions of the 8th Judicial →
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-01-209 Burglary 1st
 - (b) 2009-GS-01-210 Criminal Domestic Violence of a High and
 - (c) 2009-GS-01-211 Malicious injury to real property
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) November 10, 2009
 - (b) November 10, 2009

Revised 3/2003

- (c) November 10, 2009
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty Jury trial on all the above charges
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. January 4, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. State v. Antjuan To'Bias Greene Unpublished Opinion No. 2012-UP-001
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective assistance of trial counsel
 (b) Ineffective assistance of appellate counsel
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Look on back of page
 (b) _____
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. N/A
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. N/A
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. N/A
 ii. _____
 iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you: on back.
 - i. Alexis Bell & Charles Grose 600 Monument St. →
 - ii. M. Celia Robinson Division of Appellate Defense →
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. At my Trial proceedings
 - ii. ON Direct Appeal
 - iii. _____

19. State clearly the relief you seek in filing this application:

Sentence vacated, set aside, reversal, corrected and/or granted a →

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Antwan Greene

SWORN to and subscribed before me this 1st
day of March, 2014.

Steven G. Mulcahy (S.)
Notary Public

My Commission Expires: January 7 2016

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Antwan Greene
Applicant

SWORN or affirmed to and subscribed before me this
1st day of March, 2012.

Steven F. Maderley
Notary Public

My Commission Expires: January 7, 2016

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

Antjuan Tobias Greene, #311128,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

2012-CP-01-093

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed March 7, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Abbeville County Clerk of Court. The Applicant was indicted at the May 2009 term of the Abbeville County Grand Jury for one count of Malicious Injury to Real Property (2009-GS-01-0211), one count of Criminal/Domestic Violence of a High and Aggravated Nature (2009-GS-01-0210), and one count of Burglary 1st Degree (2009-GS-01-0209).

The Applicant was represented by Alexis Bell and Charles Grose, Esquire. On May 22, 2009 the Applicant was tried by jury and convicted of one count of Malicious Injury to Real Property, one count of Criminal/Domestic of a High and Aggravated Nature, and one count of Burglary 1st Degree. The Honorable Eugene C. Griffith, Jr. sentenced the Applicant to thirty (30) days, concurrent, for Malicious Injury to Real Property, ten (10) years, concurrent, for

Criminal/Domestic of a High and Aggravated Nature, and twenty (20) years for Burglary 1st Degree.

A Notice of Appeal was timely filed on behalf of the Applicant and an appeal was perfected. The Applicant was represented by M. Celia Robinson, Esquire. The South Carolina Court of Appeals by written Order affirmed the Applicant's conviction and sentence. State v. Greene, 2011-UP-001 (S.C. filed on January 4, 2012). The Remittitur was sent on January 25, 2012.

Attached herewith and incorporated herein are the records of the Abbeville County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the Post-Conviction Relief Application, and the record on appeal. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"
2. "Ineffective Assistance of Appellate Counsel"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

For purposes of this Return, Respondent interprets Applicant's allegations to be allegations of ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that,

but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test in regards to his trial or appellate counsel. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant alleges ineffective assistance of Appellate counsel. The Respondent submits that this allegation is without merit.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective

assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on Applicant's allegations.

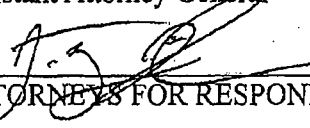
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

June 18, 2012.

STATE OF SOUTH CAROLINA)

COUNTY OF ABBEVILLE)

IN THE COURT OF COMMON PLEAS

2012-CP-01-0093

ANTJUAN T. GREENE,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

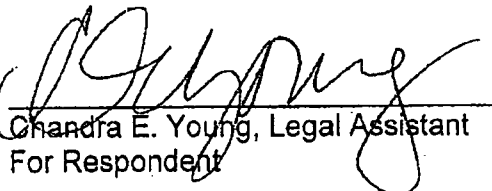
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Thomas E. Hite, III
100 E. Pickens St.
Abbeville, SC 29620

DATED this 18th day of June, 2012.


Chandra E. Young, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENWOOD	)	
Antjuan Tobias Greene,	)	
	)	Case No.
Applicant,	)	2012-CP-01-00093
	)	
v.	)	ORIGINAL
	)	
State of South Carolina,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on March 11, 2013, before The Honorable Clifton B. Newman at the Greenwood County Courthouse, 1528 Monument St., Greenwood, South Carolina 29646; attended by counsel as follows.

APPEARANCES:

Thomas E. Hite, III, Esq.
Appearing for the Applicant

J. Rutledge Johnson, Esq.
Appearing for Defendant

Vivian H Cross
Circuit Court Reporter – 10th Judicial Circuit
P O Box 704
Belton, South Carolina 29627
vcross@sccourts.org

Antjuan Tobias Greene v. State of South Carolina
Case No. 2012-CP-01-00093
Hearing of March 11, 2013
Before The Honorable Clifton B. Newman

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I-N-D-E-X

MARCH 11, 2012

(ANTJUAN TOBIAS GREENE v. STATE OF SOUTH CAROLINA)

(PCR HEARING)

(2012-CP-01-00093)

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COLLOQUY

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IDENTIFICATION ENTERED

APPLICANT'S:

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Case No. 2012-CP-01-00093

Hearing of March 11, 2013

Before The Honorable Clifton B. Newman

P R O C E E D I N G S

(11:59 a.m.)

1 **THE COURT:** Yes Sir, Mr. Johnson.

2 **MR. JOHNSON:** May it please The Court, Your
3 Honor. This is the case of Antjuan Greene versus
4 *The State of South Carolina*. It's case number
5 2012-CP-01-0093.
6

7 Mr. Greene was indicted at the May, 2009 term
8 of the Abbe- -- Abbeville County Grand Jury for
9 one count of Malicious Injury to Real Property;
10 and one count of Criminal Domestic Violence of a
11 High and Aggravated Nature; one count of Burglary
12 in the First Degree.
13

14 Uh -- he was tried by a jury on May the 22nd
15 2009, and convicted of all charges as indicted.

16 The Honorable Eugene C. Griffith, Junior
17 sentenced him to thirty days for the Malicious
18 Injury of Real Property; ten years concurrent for
19 the CDVHAN, and twenty years for the Burglary
20 First Degree.

21 Notice of Appeal was filed on his behalf and
22 the appeal was perfected. Uh -- The Court of
23 Appeals affirmed his conviction and sentences and
24 the remittitur was thereafter issued on January
25 the 25th of 2012.

Antjuan Tobias Greene v. State of South Carolina
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1 He thereafter filed a timely PCR Application
2 on May -- on March the 7th 2012. The State filed
3 its return on June 18th 2012, and he is represented
4 here today by Mr. Tombo Hite.

5 **THE COURT:** All right. (After pause) Yes,
6 sir, counselor.

7 **MR. HITE:** May it please The Court---

8 **THE COURT:** Mr. Hite---

9 **MR. HITE:** ---Your Honor?

10 **THE COURT:** ---yes, sir.

11 **MR. HITE:** Uh -- Your Honor, Thomas Hite the
12 third, here on behalf of the Applicant.

13 Uh -- just as a matter of housekeeping
14 issues, my client, uh, filed his Application for
15 PCR -- which was very well done I might add --
16 and, uh, I have, uh, made, Mr., uh, Johnson aware
17 of one addition to the Ineffective Assistance of
18 Counsel, uh -- uh, Petition, and that being that
19 the failure of my -- the, uh -- my client believes
20 and can prove that the defense counsel failed to
21 fully inform him of and communicate the plea offer
22 and for, uh, informing him of the potential time
23 he had hanging over his head. Uh -- that will be
24 in addition to others as well.

25 But we do have and will remove, uh, our

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Before The Honorable Clifton B. Newman

1 Petition for the Ineffectance (sic) -- Ineffective
2 Assistance of Appellant Counsel, as well as, uh,
3 under our Application 11-E, failing to object to
4 the detective testimony claiming to have expert
5 knowledge of the durability of a mobile home door.

6 So today, Your Honor, we are moving forward
7 on the, uh, grounds of Ineffective Assistance of
8 Counsel based on failure to investigate and
9 adequately prepare the case for trial or to
10 request a continuance; failing to raise, uh, the
11 issue of the victim consenting to the entry into
12 the home on a First Degree -- Degree Burglary
13 charge; uh, as well as failing to advise, uh --
14 whether to testify or not to testify; and, failing
15 to inform my client of the plea offer and fully
16 informing him of the potential sentences that
17 were, uh, hanging over his head in terms of
18 punishment for the crimes that he had been
19 indicted on.

20 **THE COURT:** Okay.

21 **MR. HITE:** And as -- if I may, just briefly
22 as an opening, discuss some of the facts that we
23 plan to present to The Court?

24 **THE COURT:** Yes, sir.

25 **MR. HITE:** Your Honor, uh, my client was

Antjuan Tobias Greene v. State of South Carolina

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Case No. 2012-CP-01-00093

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Before The Honorable Clifton B. Newman

1 indicted on these charges and then was
2 subsequently offered, uh, by the Solicitor's
3 Office a -- a, uh, five years' sentence, suspended
4 to two-and-a-half years, uh, in jail with three
5 years' probation on top of that. A -- a -- an
6 offer that he's gonna testify he would have
7 accepted had it been fully communicated to him, as
8 well as all of the evidence that was subsequently
9 finally turned over -- or, all the evidence that
10 was finally showed to him of, um, the victim's
11 appearance, of other evidence that they had that
12 they were planning to present at trial and that
13 they did present at trial. If he had been aware
14 of these things, he most certainly would have
15 accepted that deal.

16 Your Honor, he -- he -- this was a life in
17 prison potential sentence, uh, over these charges
18 and he had that kind of an offer and he was not
19 fully informed of, uh, the evidence that they had
20 as well as how long this offer was -- would stay
21 in place.

22 Uh -- as well as, if we read the transcript
23 of the trial of this case, that the victim -- and
24 I might add, it is a very important issue in the
25 case whether you had the consent to enter into the

1 home. And the victim was never even asked on
2 cross if she consented. It was a major issue for
3 the case.

4 The -- my client's counsel at the trial only
5 asked eighteen questions -- I believe nineteen
6 questions for the victim. Uh -- and the
7 prosecution's case was not even really attacked.
8 In -- in our law we are allowed or afforded an
9 attorney, uh, that will actually press the issues
10 of our -- of -- of The State's case. And in this
11 situation it was not pressed.

12 And, Your Honor, uh, as a young lawyer, uh,
13 for The Court's record, um, I have great affection
14 for young lawyers and I appreciate all of the --
15 the hard work that we've put into -- to, uh,
16 service and the representation of our clients, but
17 in this case, Your Honor, uh, we had a scenario,
18 in my opinion, that, uh, this attorney was not
19 prepared to try a case of this stature. Uh -- and
20 she did not inform my client of -- of everything
21 that he had potentially, uh, hanging over his head
22 in terms of a -- a conviction.

23 He was later sentenced and convicted, uh, and
24 at that time, at the -- at the sentencing hearing,
25 the victim's father caused a major ruckus in the,

Antjuan Tobias Greene v. State of South Carolina

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Before The Honorable Clifton B. Newman

1 uh, in the courtroom and there was no Motion for a
2 Continuance, there was no, uh, recess taken or a
3 Petition by my client's attorney to -- to have the
4 courtroom, um, cleared or to have the sentencing
5 hearing postponed. Instead, the sentence came
6 down and my client was sentenced to twenty years
7 in the State Penitentiary.

8 Uh -- Your Honor, as well, uh, there were
9 eyewitnesses to this, uh, alleged burglary and to
10 the alleged act in this case and those witnesses
11 were not even dis- -- talked to, were not even
12 addressed, were not even identified by the -- by
13 the Defense as a witness for the trial, uh, and
14 one eyewitness that did testify is my client's
15 brother. He was only talked to briefly before his
16 testimony was put on the record.

17 Um -- and, Your Honor, that -- with those
18 things being shown to you, uh, it will be clear
19 that my client was, uh, prejudiced and was not
20 allowed the, uh, normal, uh, duties that are
21 applied under *Strickland* as an attorney, uh, for
22 him to be equally and, uh, totally represented and
23 we plan to prove that this morning, Your Honor.

24 **THE COURT:** All right; Mr. Johnson?

25 **MR. JOHNSON:** Your Honor, I'll just be

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1 brief. I think the, uh, transcript and the
2 testimony of Ms. Bell will speak for itself.
3 Thank you.

4 **THE COURT:** All right; your first witness,
5 please.

6 **MR. HITE:** Your Honor, the Applicant calls
7 Patricia Bolen.

8 (WITNESS FORWARD.)

9 (Whereupon, **Patricia Bolen** was duly sworn and
10 testified as follows:)

11 **MR. HITE:** Thank you, Judge.

12 **PATRICIA BOLEN, DIRECT EXAMINATION BY MR. HITE:**

13 Q. Please state your name for the record.

14 A. Patricia Bolen; and my last name is
15 B-O-L-E-N.

16 Q. And where are you employed, ma'am?

17 A. I'm currently with the Eighth Circuit Public
18 Defenders' Office.

19 Q. And who were you employed with, uh, in
20 November of 2009?

21 A. At that time I was with the Eighth Circuit
22 Solicitor's Office.

23 Q. And did you have, uh -- were you the
24 prosecutor on Mr. Greene's case?

25 A. Yes, I was.

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1 Q. And can you state for The, uh, Court's
2 record, what was any plea offers in this case?

3 A. Um -- I -- I don't have access to my notes
4 from when I worked at the Solicitor's Office, but
5 to the best of my memory, um, I know I offered
6 straight up to the CDVHAN, with the Burglary First
7 and the Malicious Injury being dismissed. Um --
8 that was the offer for quite some time.

9 I remember making a -- a more concrete offer
10 of somewhere in the two-and-a-half to three-year
11 range. Um -- I remember that because I -- I
12 discussed it with the victim and she was --
13 although she was okay with it, she was wanting a
14 little bit more time. Uh -- but it -- I -- I
15 can't say exactly what the number was, but it was
16 somewhere in the two-and-a-half to three range.

17 Q. And what -- did you, uh, extend this offer to
18 Mrs. Bell in writing?

19 A. Um -- I don't know that I did it in writing.
20 Um -- we -- I remember we met, um, sort of
21 conferenced this -- this case with at least one
22 Judge. And my offer, I think, was consistent with
23 what the Judge said he would do on a straight up
24 plea.

25 It -- at that time, since I'd already shared

Antjuan Tobias Greene v. State of South Carolina

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1 discovery, I think at that time I probably would
2 have made the offer verbally, um, rather than in
3 writing. I think probably the original offer of
4 straight up to the CDVHAN with everything else
5 being dismissed was probably in writing, but
6 probably -- unless it was by e-mail.

7 Um -- I don't know that the more concrete
8 offer was -- would have been anything but
9 verbally.

10 Q. Is that a negotia- -- negotiated sentence
11 offer or is it a recommendation?

12 A. I usually did negotiations. If it was -- if
13 it was a number of years it was usually
14 negotiations.

15 Q. Okay. And what, uh -- my client was arrested
16 in February of 2009.

17 A. Okay.

18 Q. Do you remember when you sent discovery or
19 made this first offer?

20 A. Well, I had my first child in January of 2009
21 so I would have been out on maternity leave for a
22 couple of months. Um -- I -- I know it took me a
23 while to catch up from maternity leave, so I would
24 think probably May of '09 is when I would have
25 sent discovery out.

Antjuan Tobias Greene v. State of South Carolina

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Case No. 2012-CP-01-00093

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1 Q. Okay. And---

2 A. If I -- if I got back in April, I probably
3 was caught up by May.

4 Q. At -- at any time between May 2009 and
5 November 9th, the day of the trial of this case,
6 did you ever revoke that offer?

7 A. (After pause.) Not that I recall. Um -- at --
8 at the time, I was working under Solicitor Jerry
9 Peace and he generally had a policy that, you
10 know, the day of trial offers were off the table.
11 So probably, you know, the day we picked a jury
12 the offer of straight up...

13 I mean, I think I -- my personal policy was
14 if -- if I made an offer, it was good. When it
15 was made it was good any time. So I think -- I
16 don't think I ever officially revoked the straight
17 up to the CDVHAN.

18 Q. Okay. But is it your testimony that up until
19 the day of trial on November 9th 2000 and -- 2009
20 that there was a standing offer for three years?

21 A. (No response.)

22 Q. I believe that's what I heard---

23 A. I -- I -- I---

24 Q. ---I just want to make sure that's right.

25 A. ---I mean -- yeah, without being able to see

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1 my notes I can't say for sure, but I know that my
2 offer of somewhere in the two-and-a-half to three-
3 year range was out there sometime after my initial
4 offer and closer to trial.

5 Um -- whether it was officially open until
6 trial I -- I can't say. I -- I mean, I think I
7 would have at least kept the straight up to the
8 CDVHAN offer open until the day of trial.

9 Q. Okay.

10 A. I don't remember ever officially revoking---

11 Q. Okay.

12 A. ---a two-and-a-half or three-year offer.

13 MR. HITE: I -- I have no further questions,
14 Your Honor.

15 MR. JOHNSON: None from The State, Your
16 Honor.

17 THE COURT: All right; thank you.

18 MS. BOLEN: Thank you.

19 (WHEREUPON, WITNESS LEFT THE STAND.)

20 MR. HITE: Your Honor, the Applicant calls,
21 uh, Antjuan Greene to the stand.

22 (WITNESS FORWARD.)

23 (Whereupon, **Antjuan Tobias Greene** was duly
24 sworn and testified as follows:)

25 MR. HITE: (After pause.) Your Honor, I beg

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1 The Court's indulgence for just a second.

2 **THE COURT:** Certainly.

3 **MR. HITE:** Can I mark an exhibit, Your Honor?

4 **THE COURT:** Yes.

5 **MR. JOHNSON:** And I have no objection. This
6 is a Court of Appeals Opinion in Mr. Greene's
7 case. Uh -- it should have been included in
8 your packet and I apologize if it was not. Um --
9 but it's -- it's -- it's public record so, no
10 objection.

11 **MR. HITE:** I'm sorry, Judge; I should have
12 had this marked before.

13 (Whereupon Applicant's Exhibit Number 1 was
14 marked for identification.)

15 **MR. HITE:** Thank you, Your Honor.

16 **ANTJUAN TOBIAS GREENE, DIRECT EXAMINATION BY**

17 **MR. HITE:**

18 Q. Mr. Greene, please state your name for the
19 record.

20 A. My name is Antjuan Tobias Greene.

21 **THE COURT:** Is that something you want me to
22 see or you just want the Court Reporter to have
23 it?

24 **MR. HITE:** No -- no, sir; I just wanted to
25 have it marked. I'm gonna bring it into evidence

1 in just a minute. If -- if -- if you'd like me to
2 pass it on up, I can do so.

3 **THE COURT:** That's---

4 **MR. HITE:** I -- I don't want The Court---

5 **THE COURT:** ---the purpose of introducing it,
6 isn't it?

7 **MR. HITE:** Yes, sir; but I was -- I'm not
8 ready to question him on it. But -- but I'm --
9 I'm -- I'm welcome to give it to you.

10 **THE COURT:** All right; all right.

11 (Exhibit handed to The Court.)

12 **THE COURT:** Yes, sir.

13 **MR. HITE:** Thank you.

14 Q. Antjuan, make sure you speak up so the Court
15 Reporter can take, uh, your testimony. Okay?

16 A. Yes, sir.

17 Q. Uh -- when were you notified that Mrs. Bell
18 would be your attorney in this case?

19 A. Um -- May of 2009. I'm not sure of the exact
20 date, but I know it was May.

21 Q. Okay; and in between May of 2009 and your
22 trial in November of 2009, how many times did you
23 meet with Ms. Bell during that time?

24 A. That's a difficult question because like
25 there was so much going on. It was like a bond

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1 hearing 'cause of my Burglary First didn't have a
2 bond, so...

3 I'm -- I'm -- I'm gonna do it like this. Far
4 as like for any information on what -- on what we
5 ended up going to trial for, I say probably six or
6 seven times. 'Cause I met her on bond hearings,
7 another issue about a bond reduction, and like,
8 um, our authority to get some kind of proof of a
9 address or something like that. So, I really
10 didn't count those times as meetings for, per se,
11 like with information passing through the case
12 besides what it was for.

13 Q. Okay. And any -- any of those meetings before
14 your trial, did she ever portray to you or give to
15 you a plea offer from The State?

16 A. She -- I say it's a yes and a no question,
17 because no, she didn't show me nothing in writing
18 that, hey, this plea is the only thing; and yes,
19 she did tell me something. But, it was like a
20 maybe; maybe I could get you in front of the Judge
21 and the -- the Solicitor will go with this or go
22 with that. So it wasn't nothing definite.

23 Q. So she never showed in writing -- you never
24 saw anything---

25 A. No.

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1 Q ---saying that you're rejected a plea?

2 A. No.

3 Q. In fact, uh, had that offer of, uh, three
4 years, uh, would have been on the table, would you
5 have accepted that offer?

6 A. Um -- yes.

7 Q. And no question about it?

8 A. Uh -- not after I seen the -- the stuff that
9 I eventually see. Yeah, I'd-a took the -- the
10 offer; no -- no question about it.

11 Q. When did -- tell the Judge when you actually
12 saw the evidence in your case.

13 A. Like, um -- when she became my attorney I
14 seen like, uh -- I think I seen a medical report
15 from the Emergency Room. But then Teresa ended up
16 going to a doctor. Then I seen like some pictures
17 a couple days after the incident, all right?

18 But then, like, I had it set up -- I had made
19 bond like, um, October the 21st and I had called
20 her and set up a meeting to go to her office
21 before my trial. And she showed me all these
22 pictures I'd never seen while I was incarcerated.
23 So, once I seen that I was saying to my -- I -- I
24 thought to myself, like man, if she offer me
25 anything I'm -- I'm -- I'm gonna -- I'm gonna take

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1 it because the pictures that she showed me that I
2 never seen when I was incarcerated were so
3 gruesome I -- I just knew I -- I felt my chances
4 at going to trial and -- and -- and winning it --
5 winning the charge would be almost impossible.

6 Q. And did she ever -- and how many days before
7 the trial was that?

8 A. It was either the 5th or the 6th of November
9 when I went to her office.

10 Q. On a Friday before the Monday trial?

11 A. I -- I wasn't sure if it was a Thursday or a
12 Friday, but I know -- my trial was on the 9th, so
13 that's why I say the 5th or 6th.

14 Q. Okay. When you -- when you saw all this
15 evidence that was against you, did -- did she tell
16 you you're looking at life in prison?

17 A. Um -- it's hard -- like a lot of stuff came
18 up like before the weekend in trial but like when
19 I was sitting in -- in the County and we discussed
20 whatever we discussed, I didn't -- I -- I don't
21 know -- like I listened to her but I didn't take
22 the -- the actual charge of, uh, burglary serious
23 because I actually lived at that residence, right?

24 And I'm talking about I had proof that I
25 lived at the residence. But far as the CDVHAN,

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1 I -- I couldn't distinguish between a CDVHAN and a
2 CDV charge 'cause I've never had the charge.

3 Q. Did she explain the difference between a
4 CDVHAN and CDV?

5 A. Kinda sorta, but it was like I was still up
6 in the air with it 'cause no matter how she
7 explain it to me I -- my mind just couldn't wrap
8 around it. That -- that's what I say, because
9 she---

10 Q. Well did she put -- did she put it in writing
11 the difference between CDVHAN and CDV?

12 A. Uh -- I can't answer that question for
13 definite because I seen so many papers like during
14 the trial and stuff that it -- it -- it ended up
15 explaining to me how the charges different. So, I
16 can't say -- I seen nothing in writing of the
17 CDVHAN charge before trial.

18 Q. Did you ever get anything in writing from her
19 office that said that you have thirty years, you
20 have life, you have this hanging over your head as
21 a potential sentence if you are convicted of this
22 trial -- of this, uh, charge?

23 A. No, I -- I never did. But I -- I went
24 through the little record or the packet of
25 information you get and I seen a paper that was

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1 mailed to the County but I never received it.

2 Q. Okay. And that's the information that I
3 received from the Public Defender's Office?

4 A. Yeah, but I never received it. Yeah, the
5 first time I seen it was when you showed me the
6 packet of information.

7 Q. Okay. And you never received a letter from
8 her?

9 A. No, not -- not with---

10 Q. Pertaining to the sentences?

11 A. No.

12 Q. Okay. And it's your testimony that she
13 didn't tell you the sentences that were associated
14 with First Degree Burglary?

15 A. She did eventually tell me, but it was like
16 a -- a last minute thing because I -- I don't know
17 how that the -- the discovery go or stuff like
18 that, but I guess eventually, like hey, this
19 cha- -- this charge carry like, um, one to ten. I
20 think it might have been just before the trial;
21 one to ten, a minimum of one, the most you can get
22 ten. Then she was like, right, this charge right
23 here carry fifteen to life.

24 But I -- I been -- I look -- I was hoping for
25 the best with these 'cause the burglary I -- I

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1 didn't understand how you could get a -- a actual
2 burglary charge where you actually lived at.

3 Q. Okay. Let's talk a few minutes just about
4 discovery. You -- you mentioned the discovery.
5 Do you remember in this case that before the trial
6 began there were Pre-trial Motions concerning
7 discovery? Do you remember that?

8 A. Yeah.

9 Q. And that---

10 A. Yeah.

11 Q. ---your -- your -- your defense team,
12 Mr. Grose and Mrs. Bell, they didn't have
13 possession of all the documents that were sent
14 from The State; is that the truth?

15 A. No, 'cause some kind of way they did -- they
16 had a statement that came in like at the first
17 part, like during Motions or something like that,
18 and I -- I never see the statement. So they was
19 like well, sometime -- we'll give you a little
20 time to research this or whatever, blah, blah,
21 through recess. And I -- that was the first time
22 I ever seen it.

23 Q. And do you think this newly discovered
24 evidence or this new evidence that your defense
25 team had, uh, should have warranted them to move

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1 for a continuance?

2 A. Yeah, yeah. But a lot of stuff -- if she
3 didn't go for a continuance, if they would-a
4 showed it to me before or any like -- 'cause I
5 heard Ms. Bolen say she offered -- she had a
6 standing plea, which all I heard was, hey, I tried
7 to negotiate something where my probation get ran
8 into and take some time. But they never -- it was
9 like we never was meeting in the -- we was bumping
10 heads about it, right?

11 But if they would-a showed me all the stuff
12 that I seen just before the trial, I'd-a -- man,
13 she could-a said ten years I probably would-a took
14 it.

15 Q. Okay. And, when you had meetings with her at
16 the jail, did they feel, um, rushed?

17 A. They was times a little bit because she had
18 other obligations and clients besides me.

19 Q. How many people do you say, you know, were in
20 line or were meeting with her that day when -- or,
21 the times that you met with her at the County?

22 A. Uh -- it's hard to say 'cause I could -- I
23 can't keep up with everybody. But I know it -- I
24 get my little time, I go back, somebody else go.
25 And some days she met with me by herself, some

1 days she came, let -- let me fill you in on this,
2 that and a third.

3 Q. And you nev- -- do you feel like you had an
4 adequate opportunity to inform her of -- of the
5 defenses of your trial -- of your case?

6 A. Yeah, I -- that's -- that's the thing about
7 it that -- that surprised me, 'cause a lot of
8 stuff that I told her before the trial, when she
9 got Teresa on Cross or her Mom on Cross she never
10 asked the questions.

11 I'm talking about -- it's like -- there was
12 specific stuff that I talked to her about never
13 came up.

14 Q. Like what?

15 A. Like, um -- uh, it's this thing about this
16 dryer. When I told her, I was like hey, Teresa
17 put this dryer in front of the door because her
18 son can unlock the door and being that -- where
19 Teresa live and her brother and Mom live -- they
20 all stay in the same community -- the little boy
21 will walk out the house -- unlock the door and
22 walk out of the house and go to the one of their
23 houses. So it scared her so she keep the dryer.
24 And that was a big thing that came up, like --
25 like -- they made it like I -- Teresa put the

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1 dryer in front of the door for me not to come in
2 the house when in actuality she opened the door
3 and then after the little incident happened I put
4 the dryer back because I know where I was at and
5 what happened. I'm thinking at least I can hear
6 somebody come in this house because they -- I know
7 I had messed up because of the whole fight
8 situation.

9 Q. Okay. So, to make sure that the record is
10 clear, you told Mrs. Bell about the purpose for
11 the dryer being beside the door?

12 A. Yeah, I think I wrote something down to her.
13 I -- I -- I gave her a lot of information.

14 I -- another thing was like Sophie, she ended
15 up giving Teresa the phone to call 911. Sophie
16 could have been a -- a -- a perfect candidate as a
17 witness. She was never called up. My brother was
18 called, but then she was like visit her. My
19 brother came to the office with me the day
20 before -- well, the week before trial but she
21 didn't question him then. But when he came up to
22 the trial for The State, then she put him on the
23 stand.

24 So it like when he got on the stand it was
25 like he was unprepared for anything; he didn't

1 know what was going on. He was in the dark just
2 like I was most of the time.

3 Q. So is it your testimony that Mrs. Bell never
4 met with Sophie?

5 A. No.

6 Q. An eyewitness?

7 A. Yeah.

8 Q. And met with Rodney for how -- how long
9 before the trial?

10 A. Probably -- phew; I'd say about twenty
11 minutes.

12 Q. And Rodney's an eyewitness to the case?

13 A. Yeah; he -- he was the one that end up, um,
14 separating me and Teresa.

15 Q. And---

16 A. And then taking her to her Mom house that
17 night.

18 Q. ---and isn't it true that it wasn't even
19 Mrs. Bell's intention to call Rodney or Sophie at
20 the trial of the case?

21 **MR. JOHNSON:** Objection. A, it's leading,
22 and B, it's speculation as to what Mrs. Bell's
23 intentions were.

24 **THE COURT:** All right, don't -- don't lead
25 the witness.

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1 MR. HITE: Okay.

2 THE COURT: Let me hear the question again.

3 MR. HITE: Okay.

4 THE COURT: Or a -- or a different question.

5 MR. HITE: I can -- I'll phrase it this way.

6 Q. In reviewing the Public Defender's file, did
7 we find a witness list that she provided to The
8 Court?

9 A. Yeah; but it just had my sister's -- my
10 sister Latoya name on it.

11 Q. It did not have Sophie's name on it?

12 A. No; it didn't had my brother's name on it
13 neither.

14 Q. Okay. Do you believe, if she would have
15 talked to these witnesses, you would have been
16 better represented?

17 A. Yes, because it---

18 Q. You would have give -- been given an adequate
19 defense?

20 A. Yeah; she would-a been more informed of what
21 actually happened.

22 Q. And The State's case would have actually
23 been, uh, tested?

24 A. Yeah, because Sophie and them, they could-a
25 told -- they could-a testified that there wasn't

1 nothing 'cause they said this burglary charge is
2 an intent.

3 I didn't have a -- uh, I didn't have nothing
4 on my mind going to the house. Like I even
5 contacted Teresa's brother, Matthew, via text
6 message on the phone and tell him to get her to
7 contact me. But the way they made it seem, like
8 I -- I just went there with the intent to just
9 kick her door in and beat her up or something like
10 that.

11 They even -- she even testified that I
12 knocked on the door and she answered the knock.
13 So I -- I didn't -- I don't understand how this
14 burglary -- I don't understand how this burglary
15 even stood up in Court.

16 Q. Okay. Do you not feel like the -- the
17 evidence wasn't tested -- do you not feel like---

18 A. No -- no, it wasn't questioned, it wasn't
19 tested, it wasn't nothing.

20 Q. Was Teresa, the victim of the case, was she
21 asked by your Counsel, did you let him in?

22 A. No.

23 Q. The question was never posed to her?

24 A. No.

25 Q. And did Mrs. Bell ever object to, uh -- or --

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1 or make a Motion on a Directed Verdict as to the
2 issue of entering into the home?

3 A. No; only thing she direct to is the actual
4 charge, but she didn't direct -- she didn't make a
5 Direct Verdict or nothing about entering into the
6 home or -- I -- I didn't see her object to nothing
7 but, like, through Teresa whole testimony I never
8 seen her object. But when Teresa Mom got there
9 and -- and started testifying to what happened
10 afterwards -- to which I -- I wasn't there so I
11 couldn't say what happened from at her house --
12 she objected then.

13 Q. Isn't it true that you made a note to the
14 Public Defender -- to Alexis, that you wanted her
15 to ask a question about the dryer?

16 A. Yeah, to either Teresa or -- or Ms., um,
17 Collins, her mother.

18 Q. And we looked at that note in -- in the
19 Public Defender's file?

20 A. Yes.

21 Q. And -- but that question was never asked?

22 A. Never asked.

23 Q. Okay. So, it's your opinion that the -- the
24 portrayal to the jury was, uh, that the dryer was
25 used to try to hold you out?

1 A. Yes.

2 Q. But, in fact, that wasn't the case?

3 A. No.

4 Q. And you believe that if you would have had
5 more time and if Mrs. Bell would of investigated
6 the case more, uh, that issue could have come out
7 at trial?

8 A. Yeah, but that---

9 Q. And the outcome would have been different?

10 A. Yeah, but then it's another issue that kind-a
11 bothered me. It was like a -- you know how me and
12 Teresa, we had been living together for probably
13 ten months. We had been dating almost a year.

14 And I have -- one day, I -- we had a little
15 disagreement. I wrote my name and ad- -- old
16 address on this envelope, right? And they
17 introduced it in evidence, which the -- the
18 envelope with the address ain't had nothing to do
19 with nothing. But it never got objected to or
20 nothing.

21 I -- I don't know what happened, man, I
22 just -- I don't know all the legal ramifications
23 to everything, but man, I felt like I got
24 railroaded.

25 Q. And -- and your point for The Court is that

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1 the entry of that envelope---

2 A. That made---

3 Q. ---with the address different than

4 Drive in Donalds portrayed that to the
5 jury that you were not living there?

6 A. Yeah, it made it look like I -- I gave her
7 the envelope just before we left or whatever. But
8 the thing about it though, I didn't even take
9 clothes with me that -- when I left.

10 Teresa, she went to work, she dropped me off.
11 The next morning she went to sleep, she came --
12 she didn't know -- I texted a call to her, right,
13 to come and get me or bring me some clothes to put
14 on as in change clothes.

15 Next thing I know, my sister is calling me
16 like, what's going on with Teresa putting clothes
17 in front of my house? And that's -- hey, and I
18 didn't understand. I really didn't understand
19 none of this stuff. I didn't know -- I knew we
20 was kind-a upset, but I didn't say move my stuff
21 or nothing. I wouldn't-a never left it if I was
22 just gonna leave, but she made it like 'cause we
23 got in a argument we broke up from one day to the
24 next day.

25 Q. Did Mrs. Bell ever advise you whether you

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1 should testify or not in the case?

2 A. At first when we was talking, like she was
3 gathering the information in -- for like in just
4 seeing what happened, like the incident that
5 happened, she was like yeah, this -- this is gonna
6 be your word against Teresa word.

7 But then once the trial started, and then
8 I -- I guess how badly it was going, she was like
9 I don't see the point of you testifying.

10 But I think Mr. -- Mr. Grose had -- was the
11 one that -- that verbally told me, hey, I don't
12 think you should testify because they're gonna
13 bring up your past discretions, blah, blah, blah.

14 Q. Okay. Did you want to testify?

15 A. Yeah, I did. I -- I seen like how it was
16 going and Teresa saying, hey, I did this and did
17 that. I wanted to at least get my say so about
18 it.

19 Q. And you didn't---

20 A. I -- I felt like it would change the outcome
21 because they -- my brother was actually there and
22 seen her open the door. So, two people against
23 one, they got to believe or something -- or
24 something -- something got-a give.

25 Q. Do you feel like Mrs. Bell was prepared to

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1 try your case on November 9th 2009?

2 A. No. It was rushed; it was like I had got
3 indicted in May, she had really just got my case,
4 and then a couple months afterwards with just the
5 stuff we talk about -- I mean, I didn't see like,
6 um, subpoena, no witnesses or nothing. None of
7 that stuff happened. So no, I don't think she was
8 prepared for it -- to go to trial.

9 Q. And do you think that prejudiced you?

10 A. Yes.

11 Q. And do you think you'd be doing twenty years
12 to life if she'd-a -- or, twenty years if, uh, she
13 was -- would have been prepared?

14 A. If she would-a been more prepared and had me
15 more informed I wouldn't be -- I'd probably
16 would-a been out now 'cause I'd-a took the plea
17 bargain.

18 Q. Okay. And she could of asked questions to
19 Mrs. Sullivan such as, why was the dryer in place?

20 A. Yes.

21 Q. As well as, uh, did you allow the Defendant
22 to come in the home?

23 A. Yes.

24 Q. Okay. And she could have objected to the
25 sentencing?

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1 A. Yes.

2 Q. Okay, tell -- tell the Judge a little bit
3 about what happening at -- what happened at
4 sentencing.

5 A. It was like, uh, the Judge informed
6 everybody, it was like, hey -- 'cause my family
7 was with me. And then everybody was upset because
8 they know I don't live around them, so -- and then
9 they -- they done -- they'd been around me and
10 Teresa to know that we live together. So they
11 felt like I got done the raw deal with this
12 burglary charge, so they upset.

13 So the Judge advise us, hey -- I tell them,
14 don't show no emotions, don't get -- don't --
15 don't act out at all, right?

16 And then the one -- I -- I apologized because
17 I felt bad about the whole fight thing because,
18 hey, I -- I can't even dispute me and her actually
19 got into the phys- -- alt- -- altercation. Her --
20 her father just -- he flew off the handle at me.
21 You know, all they did was like, hey, get him out
22 of the Courtroom, blah, blah, blah.

23 But I -- I feel like if that would-a been one
24 of my people that did that they would have locked
25 them up instantly.

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1 Q. But he was -- the -- the victim's father was
2 yelling at you?

3 A. Yeah; he called me a coward or something --
4 something he said that was just -- it was
5 derogatory.

6 Q. Okay; and, uh, do you believe that your
7 attorney should have asked for a continuance at
8 that point?

9 A. Yeah; she---

10 **MR. JOHNSON:** Objection, Your Honor. That's
11 not in his, uh, Application. We'd move to strike
12 that, uh, testimony.

13 **THE COURT:** Counselor?

14 **MR. HITE:** Your Honor, I believe it would go
15 under still -- under the heading of Ineffective
16 Assistance of Counsel, and it -- you know, ex- --
17 extra facts come out to a- -- address the
18 Ineffective Assistance of Counsel, we are ob- --
19 we are allowed to, uh, bring those issues up.

20 **MR. JOHNSON:** The State should have notice of
21 these claims before the, uh -- you know, before
22 this -- this hearing, and we would object to any
23 testimony on a failure to object to, uh,
24 sentencing or a sentencing hearing.

25 **MR. HITE:** Your Honor, if I may? I -- I

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1 would just say that it's similar to a -- a -- a
2 Petition or a Plea or a Complaint in a Civil
3 tri- -- trial where we make causes of action and
4 then if there are other elements or facts that are
5 presented at trial that allow us to recover under
6 that element, as in this case Ineffective
7 Assistance of Counsel, we are allowed to proceed
8 on those grounds. Uh -- it -- it doesn't---

9 **THE COURT:** I think he's answered the
10 question, hasn't he?

11 **MR. HITE:** I'm sorry?

12 **THE COURT:** Hasn't he answered the question
13 that you just asked?

14 **MR. HITE:** I believe he did.

15 **THE COURT:** All right. The answer stands.

16 **MR. HITE:** Okay; thank you, Judge. (After
17 pause.) The Court's indulgence for one second,
18 Your Honor.

19 Q. Antjuan, did you commit a burglary?

20 A. No.

21 Q. Did Teresa let you in the house?

22 A. Yes.

23 Q. Okay. And did you tell that to Mrs. Bell?

24 A. Yes.

25 Q. And she didn't ask Mrs. (sic) Sullivan, is

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1 that right?

2 A. No.

3 Q. Okay.

4 MR. HITE: (After pause) I have no further
5 questions, Your Honor.

6 MR. JOHNSON: Thank you, Your Honor.

7 ANTJUAN TOBIAS GREENE, CROSS-EXAMINATION BY

8 MR. JOHNSON:

9 Q. Mr. Greene, your testimony here today is
10 that, uh, Ms. Sullivan let you in that house; is
11 that correct?

12 A. Yes.

13 Q. You were -- there was testimony that you did
14 not have a key to this house?

15 A. Yes.

16 Q. And that -- that she put the dryer in front
17 of the door to keep you from getting in? That's
18 what she testified to at trial?

19 A. Yes.

20 Q. Okay. And that, uh, you took her phone call
21 or -- or that you woke her up by knocking on the
22 door and she recognized your voice? Isn't that
23 the testimony at trial?

24 A. Yes.

25 Q. And that because of that she knew who you

1 were, and did not want you in the house?

2 A. She never told me -- she -- she -- there is
3 no way she could-a say she didn't want me in the
4 house when she opened the door.

5 Q. But that's the testimony at trial was it not?

6 A. I -- I---

7 **MR. JOHNSON:** Your Honor, it's page seventy-
8 five to seventy-six.

9 A. ---yes.

10 Q. You don't deny that you physically beat
11 Ms. Sullivan, do you?

12 A. No. Yeah, we had got in an altercation; I
13 was inebriated and -- and we went from having a
14 conversation to fighting.

15 Q. And, as a matter of fact, the, uh, evidence
16 shows that you broke her nose in three places; is
17 that correct?

18 A. Right; I -- I got this -- a medical report
19 until the day I sit, um, doing my trial.

20 Q. And, she had two black eyes?

21 A. Right.

22 **MR. HITE:** Objection, Your Honor; that's
23 irrelevant.

24 **MR. JOHNSON:** This is the testimony at trial,
25 Your Honor. It's in the record.

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1 **THE COURT:** (After pause.) Proceed.

2 **MR. JOHNSON:** Okay.

3 Q. And that there was massive bleeding from
4 Ms. Sullivan; correct?

5 A. Yes.

6 Q. Now you allege that Counsel failed to make a
7 Directed Verdict Motion concerning the burglary.
8 Are you aware that she actually did make a
9 Directed Verdict?

10 A. She made a Directive Verdict of -- she made
11 the Directed Verdict for the -- the burglary
12 charge. She just didn't bring up issues like the
13 elements to the burglary because she never
14 questioned her saying, hey, did you let this guy
15 in? Nothing to the effect.

16 Q. But she argued that you had no intent to
17 commit a crime because you lived there; isn't that
18 her argument?

19 A. (After pause.) Could you repeat the question?

20 Q. Yes, sir. Uh -- Counsel Bell's argument,
21 uh -- would you agree with me that Counsel Bell's
22 argument was that you had no intent to commit a
23 crime and therefore it's not a burglary, uh,
24 because you actually lived there; you had
25 belongings there and you lived there?

1 A. Um -- I can say that she -- her argument was
2 that -- I don't think she never questioned the --
3 the intent. It was just the fact that she was
4 like, hey, he didn't -- he knocked on the door,
5 that -- how did she do it?

6 I can't -- I can't re- -- re- -- recall her
7 argument word for word. But, if -- if it say that
8 in the trial transcript, then I guess so.

9 MR. JOHNSON: Your Honor, that is on page
10 one-forty-eight.

11 Q. (After pause.) You also testified that, uh,
12 she didn't advise you about testifying at trial,
13 uh, and that you wanted to testify; isn't that
14 correct?

15 A. No; she advised me that the case, if it was
16 to go to trial, it'd be my word against Teresa
17 word. But then, during the trial, she advi- --
18 she didn't advise me, she got Mr. Ch- -- Mr. Grose
19 to advise me not to testify 'cause he didn't see
20 the point and -- and it -- and it bringing up old
21 past discretions.

22 Q. But you were advised whether or not you could
23 or could not testify at trial?

24 A. Yeah, during -- during trial.

25 Q. Did you say yes? I'm sorry, I didn't hear

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1 you.

2 A. Yeah, during trial.

3 Q. Thank you, sir. Uh -- as a matter of fact,
4 you've been in the -- in the -- you've had
5 criminal justice proceedings against you haven't
6 you?

7 A. I done -- yeah, I done been in the Court
8 before.

9 Q. You've been convicted of Assault and Battery
10 of a High and Aggravated Nature, have you not?

11 A. I've plead guilty to it; yes, sir.

12 Q. You've been convicted of that, correct?

13 A. Yes.

14 Q. (After pause.) As a matter of fact, you've
15 also, uh, been found, uh, in violation of a
16 Restraining Order that Ms. Sullivan got against
17 you; is that correct?

18 A. The Restraining Order -- no. She had got a
19 Restraining Order against me after these charges.
20 And I felt so bad about the whole altercation,
21 I -- I wrote her a letter. So, if that would put
22 me in a violation, yes.

23 Q. Let's go through a little bit of evidence in
24 this case. Uh -- Ms., uh, Sullivan testified
25 not only that she did not want you in there, that

1 you -- that you moved the dryer when you came in,
2 uh, against her will; is that correct? That's
3 what she testified to?

4 A. Yeah, she testified to that, but that
5 should-a been objected 'cause there ain't no way
6 humanly possible you can move a person and a dryer
7 and get through a door without breaking the door.
8 And it---

9 Q. But that isn't---

10 A. ---it didn't make sense.

11 Q. ---but that's the testimony at trial, wasn't
12 it?

13 A. Yeah.

14 Q. Okay. And then you punched her in the eye
15 with a closed fist; that you kicked and stomped
16 her; and that she was pouring blood. Is that
17 correct?

18 A. Yeah.

19 Q. Uh -- and also there are other, uh, witnesses
20 that testified that when they come (sic) to arrest
21 you, that you are inside the -- the house and they
22 find you in the bathroom washing blood off your
23 jeans?

24 A. They testified to that?

25 Q. Yes, sir. Is that -- would you agree with

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1 me?

2 A. I mean, did -- if they testified to it I got
3 to agree with you.

4 MR. JOHNSON: (After pause.) The Court's
5 indulgence, Your Honor.

6 Q. (After pause.) You said your attorney showed
7 you pictures before trial and that had she shown
8 you these pictures and evidence, uh, that you
9 would have plead guilty. Is that correct?

10 A. Yeah, the week before trial.

11 Q. And the pictures are of Ms. Sullivan's face
12 and -- and blood and all that sort of---

13 A. Yeah, her -- of her at the hospital. But the
14 pictures I seen while I was in County and they
15 taking me back and forth to Court was like maybe
16 two to, uh, three days. She had on a pink shirt.
17 It showed that she had swelling and stuff like
18 that, but it -- it wasn't like the bloody pictures
19 that they at the -- at -- at the hospital or
20 something like that.

21 Q. But there was swelling in the face and that's
22 because of your actions, correct?

23 A. Um -- yes.

24 Q. (After pause.) And you also realize, uh, that
25 your Counsel put up witnesses on your behalf that

1 stated that you actually lived at the home; is
2 that correct?

3 A. Um -- yes.

4 Q. I think your brother said that you lived
5 there and a -- and a -- there's another witness
6 that also said you live there?

7 A. Yes.

8 Q. So she made the argument that it couldn't
9 have been Burglary First Degree because you lived
10 there, didn't she?

11 A. Yes.

12 Q. Okay. And she cross-examined Ms. Sullivan
13 about her story?

14 A. To a certain extent.

15 MR. JOHNSON: (After pause.) That's all I
16 have at this time, Your Honor. Thank you,
17 Mr. Greene.

18 THE COURT: Yes, sir?

19 MR. HITE: Very briefly, Your Honor.

20 ANTJUAN TOBIAS GREENE, REDIRECT EXAMINATION BY

21 MR. HITE:

22 Q. Antjuan, are you sorry for what you did to
23 Teresa Sullivan?

24 A. Yeah, that's why I ended up breaking the No
25 Contact Order because I wrote her a letter and

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1 apologized.

2 Q. And---

3 A. Because before the -- before the -- the
4 incident, we never had no kind-a physical
5 altercation at all. We didn't fight, we didn't --
6 we argued, but that's all in a relationship. But
7 we never on no violent stuff or nothing like that.

8 Q. And you're not here asking this Court to
9 completely exonerate you from the actions that --
10 or, to completely find you not guilty of the
11 actions that you did do are you?

12 A. No.

13 Q. But you're asking this Judge to give you a
14 new trial---

15 A. On the basis---

16 Q. ---or reset the sentence on the First Degree
17 Burglary?

18 A. Yeah, because I didn't commit it.

19 Q. And you didn't -- you did not commit a
20 burglary?

21 A. No.

22 Q. You were allowed to be, uh -- you were
23 allowed access, you were allowed into the home?

24 A. Yes.

25 Q. Okay.

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1 **MR. HITE:** No further questions, Your Honor.

2 **ANTJUAN TOBIAS GREENE, RECROSS-EXAMINATION BY**

3 **MR. JOHNSON:**

4 Q. There's testimony that you were not allowed
5 into that home, isn't that correct?

6 A. Yeah, but that---

7 Q. That's what Ms. Sullivan testified to, am I
8 right?

9 A. But then you got to look at the ordeal that
10 happened. Who---

11 Q. Sir, that's a yes or no question.

12 A. Yes.

13 Q. Okay. And you do realize that if Mr. --
14 if -- if Judge Newman, uh, grants you this and
15 you -- they do retry you on that Burglary First
16 Degree, you face up to a life in prison?

17 A. Yes, sir; I understand that.

18 Q. Thank you.

19 **MR. JOHNSON:** No further questions, Your
20 Honor.

21 **THE COURT:** You can step down.

22 **MR. HITE:** You can step down.

23 (WHEREUPON, WITNESS LEFT THE STAND.)

24 **THE COURT:** Yes, sir?

25 **MR. HITE:** Your Honor, the, uh, Applicant

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1 calls Alexis Bell to the stand as an adverse
2 witness.

3 (WITNESS FORWARD.)

4 (WHEREUPON, **ALEXIS BELL** WAS DULY SWORN AND
5 TESTIFIED AS FOLLOWS:)

6 **MR. JOHNSON:** And, Your Honor, just, I guess,
7 uh, for the record, she has not been deemed
8 an adverse witness and we would ask that, uh,
9 Mr. Hite not be allowed to ask her any questions
10 until the time you so deem her an adverse witness.

11 **THE COURT:** You know, procedurally I do not,
12 um, know where any rules require any witness to be
13 declared an adverse witness in order to, um, to be
14 a witness.

15 Uh -- you ask questions; if they're
16 objectionable questions and objections are raised,
17 I'll rule on any objections made. There's no
18 necessity to have the witness declared a hostile
19 witness in order for a witness to, uh, testify.

20 Your witness.

21 **MR. HITE:** Thank you, Your Honor.

22 **ALEXIS BELL, DIRECT EXAMINATION BY MR. HITE:**

23 Q. Uh -- Alexis, please state for you name for
24 the record.

25 A. My name's Alexis Bell, and that's B-E-L-L.

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1 Q. And, Mrs. Bell, what -- where -- where do you
2 work?

3 A. I currently work for, um, The South Carolina
4 Department of, um, Social Services.

5 Q. And, uh, did you represent my client, Antjuan
6 Greene?

7 A. I did.

8 Q. And during that time, uh, where you working
9 for the Abbeville County Public Defender's Office?

10 A. I was with the Eighth Circuit Public
11 Defender's Office, which covers Abbeville.

12 Q. Okay, and when did you graduate from Law
13 School?

14 A. Two thousand and seven.

15 Q. Okay. And, uh, when did you become -- or,
16 when did you work with the Public Defender -- come
17 to work?

18 A. From, um, that August of 2007. Um -- I
19 technically was a Law Clerk until they got up our
20 results in that year and then, um, from November
21 2007 to -- I want to say it was August 2010 I
22 worked as an attorney for the Public Defender's
23 Office.

24 Q. Before Mr. Greene's trial, how many trials
25 that were, uh, with the potential sentence of a

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1 life sentence had you tried?

2 A. I know I had one other Burglary First trial
3 prior to his. I'm trying to think. I think there
4 was only -- only one other, like, life sentence
5 case that was also a Burglary First prior to his.

6 Um -- I know I had other trials, but I'd have
7 to go access the Public Defender's notes to
8 remember, it's been so long since---

9 Q. Okay.

10 A. ---I was here, to know for sure---

11 Q. Sure.

12 A. ---that none of the other ones were life
13 sentences. But I do remember specifically one
14 other Burglary First case.

15 Q. So, to the best of your recollection,
16 Mr. Greene was your second Burglary First trial?

17 A. I -- I believe so. Um -- I don't want to say
18 one hundred percent, because I had another guy who
19 had a couple of burglary things, but I want to say
20 they were only Burglary Seconds and not First and
21 that went to trial. And so, I want to say just
22 one other beforehand by me, but I have to double
23 check my notes for sure.

24 Q. And, how many times did you meet with
25 Mr. Greene before the trial of the case?

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1 A. Um -- every time I went to the jail I met
2 with Mr. Greene. And I can't remember for certain
3 if I was going every other week to the jail or
4 once a week, um, and I would meet with him as long
5 as he wanted to talk or until the jailers would
6 come in and ask him to wrap it up so that I could
7 meet with my other clients.

8 I think the smallest meeting we had was
9 thirty minutes. Usually it was between thirty and
10 an hou- -- thirty minutes to an hour that we met.
11 Um -- just for him to want to -- he'd want to talk
12 and tell me information, and I would go over some
13 things.

14 Q. Okay, and how many, uh---

15 A. I want to say that the first meeting was
16 sometime in May, so -- it might have been a little
17 bit before May. And if we're going by just that
18 every two weeks just to be safe, then that would
19 be twice a month that I was meeting with him and
20 so... The case was in November, so that'd be
21 fourteen times maybe, if -- you know, just because
22 that we were -- every time I'd go to the jail I
23 met with him.

24 And then he got out -- oh, he got out in
25 October, so maybe ten times just to -- that is a

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1 safe estimate.

2 Q. Okay. And -- and in your notes, have you --
3 did you review your notes from the Public
4 Defender's Office?

5 A. I did review those notes.

6 Q. Okay. Did---

7 A. But they -- they sent me, um, stuff that was
8 into the computer so if there's handwritten notes
9 I didn't review those. But, I have seen the,
10 like, stuff that I entered manually into our
11 Defender Data System that maintains some
12 information.

13 Q. At -- at -- at your time in -- in, uh --
14 between May and November of 2009, how many cases
15 did you have? What was your case load?

16 A. I have no idea; I'd have -- I want to say it
17 was, like, open wise in Abbeville it's always at
18 least -- I want to say at least fifty to a hundred
19 cases open. And -- but I also had cases for
20 juvenile that I -- I have no idea. I couldn't
21 give you a -- a specific head count on it just
22 because---

23 Q. But about fifty to a hundred or more?

24 A. Uh -- for Abbeville, yeah.

25 Q. Okay. And -- but you were responsible for

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1 other counties?

2 A. Um -- I had juvenile cases which -- I want to
3 say I'd already started juvenile work beginning in
4 that timeframe, and so, um, those cases just
5 varied from one month -- every month had
6 difference case numbers just because you'd get a
7 bunch of kids arrested and you'd have to go deal
8 with that Court that Tuesday so---

9 Q. Did you ever feel overwhelmed with your case
10 load?

11 A. Um -- no.

12 Q. Did you ever feel like you could not
13 adequately prepare for -- a case for trial?

14 A. No.

15 Q. Did -- did you ade- -- adequately prepare
16 Antjuan Greene's case for trial?

17 A. I feel like I did, but I am more than willing
18 if the Judge says otherwise. But, you know, if
19 you-all prove that, then that's fine too.

20 Q. Okay. Did you talk to the eyewitnesses in
21 this case?

22 A. With the female eyewitness -- who I don't
23 have the file in front of me so I can't remember
24 her name off the top of my head -- um, I was never
25 able to find her.

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1 With, um, her -- his brother, we tried
2 getting telephone numbers to -- to reach him prior
3 to it. I didn't realize that was his brother who
4 had come into the Courthou- -- our office that one
5 day before Court. And so, when I realized that
6 that was his brother there for Court, I talked to
7 him then.

8 And -- but prior to the week of trial, I'd
9 been trying to get ahold of his family members to
10 talk to them because I wanted to make sure they
11 knew what was going on and if they had any other
12 information to give to me. And the telephone
13 numbers I was provided -- most of them were for
14 his Mother -- and I called her probably once a
15 week and she would never return my call. And the
16 one number I had in my file for, um -- I want to
17 say it was Stedstone (phonetic) Greene, but I
18 think it was his brother, I'm not positive, and
19 that I tried calling, it never worked. And so I
20 don't know if my assistant just inputted it
21 incorrectly or what had happened, but I tried
22 calling and reaching these people and we didn't
23 have any addresses at the time to find them.

24 And so, it wasn't until that week of trial
25 that I finally actually saw his brother and once I

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1 talked to the brother I wanted to put him on the
2 stand. Um -- and it wasn't until the actual trial
3 that any of his family members, you know, that I
4 had met any of them.

5 Q. Okay. And I -- I mean, I've -- I've reviewed
6 your file and I -- I could not find anywhere in
7 there where you made attempts to contact any of
8 the family members---

9 A. Then---

10 Q. ---until after the trial of the case.

11 A. ---their Mother -- and maybe it's not in the
12 notes you have, but I was consistently -- we had
13 called -- I had my investigator call the Mother
14 'cause we had her telephone number and we would
15 leave messages and her voicemail was set up to say
16 specifically, if you're calling, uh, regarding --
17 and she'd name off a couple of kids, and Ri- --
18 and Mr. Greene -- Antjuan, Mr. Greene -- was one
19 of the kids mentioned. She said, you know, they
20 don't live here and I'm not gonna -- I probably
21 won't call you back or something like that. I
22 just -- I'm trying to remember exactly how it was
23 phrased, but---

24 Q. Do you feel like---

25 A. ---we just never heard a call back from her.

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1 Q. ---I'm sorry.

2 A. So...

3 Q. Do you feel like you should have moved for a
4 continuance on the day of trial based on the fact
5 that you hadn't even talked to all of the
6 eyewitnesses that were involved in the case?

7 A. And I thought that we had, and I couldn't
8 find it in the record. And I don't know if we had
9 a -- talked to the Judge on a different day pre --
10 like when we realized Mr. Gre- -- um, the brother
11 was there. Because, I tried looking and thinking
12 that we had made a Motion and maybe I was thinking
13 of a different Court term.

14 Um -- but because it's not there, then I must
15 not have. But, I felt like it's something I
16 would have done. Um -- in- -- I must have been
17 incorrect about that in retrospect. So, I think
18 that's something if I did not do -- which I
19 couldn't find where I had -- that would have been
20 a good thing to do -- asking for a Continuance
21 Motion to have more time to talk. Um -- and I --
22 I didn't see notes of that particular thing, and I
23 didn't see it in the trial transcript we have
24 either.

25 Q. And it -- in fact, in the trial transcript

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1 there -- there were Motions made.

2 A. I knew we made lots of Motions, I just---

3 Q. Right.

4 A. ---I thought for some reason we had made that
5 one and I didn't see it. So, I must have
6 misremembered and it's not in the notes. But, I
7 feel like that's a Motion that I would have made
8 and I must not have, so that is a good Motion to
9 have in that particular situation---

10 Q. And do you think---

11 A. ---where you finally find somebody you're
12 looking for, so you have more time. And, if we
13 did not make that Motion, then that's something
14 that -- it may help him, it may not. I don't---

15 Q. Yeah. Do you believe a -- a -- allowing
16 yourself an opportunity to have met with
17 Mr. Greene -- Rodney Greene---

18 A. Yes, Sir.

19 Q. ---the brother -- would have prepared him
20 better for testifying in -- in trial?

21 A. He probably would have come across as calmer
22 and the informa- -- I remem- -- but I remember
23 from talking to him in the back room he was very
24 calm and he gave me all the information and it
25 was, uh, worth, uh, the jury hearing to show that,

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1 you know, maybe what testifoot (sic) -- test- --
2 was testified is not quite a hundred percent
3 accurate. Um -- and then, I think if there -- if
4 he had more time to get his self together there
5 probably would have been a calmer Rodney Stone --
6 I'm sorry, Rodney Greene on the stand. That might
7 have helped the jury, but I would be speculating
8 to say for sure. It's hard to tell 'cause they
9 could have also, if your speculating, said well
10 that's his brother, of course his brother's gonna
11 say that. And so, I can't see in the mindset of
12 the jury at the time. So it may have, but it
13 might not have.

14 Q. Okay. But there's a probability---

15 A. Yeah---

16 Q. ---a good likelihood that---

17 A. ---whether or not the probability is high
18 enough for the jury, I -- that would be pure
19 speculation. But, it would not have hurt him to
20 of have had (sic) a little bit more time to think
21 clearly over what he was gonna say.

22 Q. Okay. And also, Rodney was the girl -- was
23 the boyfriend of this Sophie -- this other---

24 A. Yes, sir.

25 Q. ---eyewitness?

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1 A. Um -- I don't know if they were dating still
2 at the time of the trial or not, but you'd have to
3 ask Mr. Gre- -- Rodney Greene if they were still
4 together at that time. I just know up until that
5 point I wasn't finding anybody.

6 Q. But that could have allowed you, now being---

7 A. Potentially.

8 Q. Right.

9 A. Yeah, I don't know how much she saw. Just
10 like, like he said, I never was able to find her
11 before trial and so -- and she wasn't at that
12 trial, I believe, watching like some of his family
13 members so I couldn't talk to her then either.

14 Q. And you believe that had you asked for a
15 Motion for -- asked for a continuance that you
16 would have been allowed adequate time to -- to
17 potentially find her?

18 A. Maybe, if she was still with Mr. Stone and --
19 I'm sorry, I keep calling him Stone 'cause that
20 was the name listed on one of my notes from my
21 investigator. Mr. Rodney Greene, if she was still
22 together with him and willing to talk to me,
23 maybe. But, she might not have seen anything.

24 I believe she -- I want to say, from the
25 incident report that they took from, um,

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1 Mr. Rodney Greene, that he said she had stayed in
2 the car, so she might not have seen anything other
3 than, um, Teresa Sullivan.

4 Q. Why didn't you ask Teresa if she let him in
5 the house?

6 A. And I don't remember -- I haven't had a
7 chance to look over the transcript since November,
8 the last time I thought we were having it. And I
9 might not have asked her that.

10 Um -- I also know that during the trial, any
11 time I would finish up my line of questions -- and
12 that trial had the Chief Public Defender at the
13 time, Charles Grose, was also sitting next to me.
14 So, we might of just both decided not to ask that
15 question or might have both mislooked (sic) that
16 one question.

17 Um -- I know we brought up with both the
18 other witnesses whether or not he still lived
19 there to try and show that that was his home of
20 residence.

21 Um -- but if it's not there, it's not there.
22 So...

23 Q. And that that -- that question, had she
24 answered in the affirmative, would have changed
25 it?

1 A. Yes, sir.

2 Q. It would have actually met for a Directed
3 Verdict on the---

4 A. Yes, Sir.

5 Q. ---issue of burglary; is that true?

6 A. Yes.

7 Q. Okay. And---

8 A. If she had admitted that he lived there at
9 that particular time, not previously, then that
10 would have been grounds for, I believe, a
11 dismissal on that charge.

12 Q. As well as the authorization to him coming
13 into the home?

14 A. Yes.

15 Q. Okay. When did you first show the entire
16 file or all of the discovery that had been
17 disclosed---

18 A. Okay---

19 Q. ---to you to Mr. Greene?

20 A. ---part of the discovery we'd had from the
21 get go; the initial pictures he said he saw --
22 excuse me, he saw. Those we had relatively early
23 with the initial discovery packet. The other more
24 graphic photos we didn't get until, uh, between
25 the October term and the November term. And that

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1 was just -- it was photos that the Solicitor's
2 Office had been working hard on trying to get
3 from, uh -- and they just were having to struggle
4 and we initially just didn't think they were ever
5 going to exist; neither did the Solicitor's
6 Office.

7 And as soon as I got them, he had a meeting.
8 And that was the first time I saw him because he
9 was out on bond. And as soon as I had the photos
10 I showed them to him. But, it was after, uh, the
11 previous Court terms where he actually had lesser
12 offers. And as soon as those photos came into the
13 Solicitor's hands, she no longer had the smaller
14 offer on it -- the straight-up CDVHAN. I, um, I
15 was led to believe it no longer existed either
16 just because of the graphic nature of those
17 photos.

18 Q. Okay. Did -- now that we've gotten into
19 that, let's go ahead and talk---

20 A. Okay; yeah.

21 Q. ---about the pleas and the -- or -- or the
22 offers that were---

23 A. Yeah.

24 Q. ---extended to you. Do you remember the
25 first offer---

1 A. The very first offer---

2 Q. ---that was extended by the Solicitor?

3 A. ---that was provided to him, and I informed
4 him, was that everything except for the CVD charge
5 would be dropped if he plead straight up to the
6 CDV.

7 Um -- I want to say it was the June, but it
8 might have been the July term that Judge Maddox
9 was there. Um -- she wouldn't give anything
10 specific other than we'll drop these other two
11 charges, and I let Mr. Greene know that. And I
12 told him, but what I could do is I can talk to
13 Judge Maddox and see what Judge Maddox will offer.
14 Or not offer, but what he says he will do. And
15 usually if the Judges say that, unless there's
16 something brand new that nobody knows of that is
17 presented, they're -- they're -- usually at that
18 time, anyway, it's worth sticking with what they
19 said.

20 We had a, um -- the Solicitor and my -- and
21 myself met with the Judge in his chambers and he
22 looked at the evidence we had at that time, which
23 is just those photos from a couple of days after
24 the incident and then the Incident Report and then
25 some medical records. And, uh, he said, well

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1 based upon this evidence, if he was to plead just
2 to this one charge I would probably sentence him
3 to three years.

4 I let Mr. Greene know that and at the time he
5 did not want to plead to that. He would have pled
6 to CDV -- just regular CDV, but he wasn't wanting
7 to plead to a CDVHAN or to anything that lengthy.

8 Um -- and so, hum, we -- he -- instead we
9 tried to do -- and once we tried to do a Bond
10 Motion, but I could be wrong about the timing of
11 the Motions for the Bond.

12 Uh -- but he did not want to take his chance
13 in front of the Judge when it wasn't a hundred
14 percent negotiated with the Solicitor, it was what
15 the Judge said he would do. And so, he did not
16 take that.

17 The straight up -- or, the dropping of the
18 other two charges and the CDVHAN ten years still
19 was there. Uh -- but at that time he was still
20 not wanting to take anything. He would -- the
21 only thing he was willing -- willing at that month
22 to do would have been a straight CDV charge
23 instead of a CDVHAN; he would have pled to that.

24 Q. Do -- do you feel like you adequately
25 explained the charges that were hanging over his

1 head?

2 A. Yes.

3 Q. Okay. And---

4 A. And throughout the process, any time we had
5 any slight change of -- well, this Judge will do
6 this offer, I let him know that, you know, this
7 charge carries up to ten years, the burglary
8 carries up to life in prison. And the problem I
9 kept running into with the burglary is he didn't
10 really want to talk about the burglary because he
11 just kept reiterating that he lived there so it
12 shouldn't be a burglary. And so it was very hard
13 to discuss anything about the burglary with him
14 other than that he was living there at the time.

15 Um -- and so, even though I would inform him
16 of the sentence that was hanging over his head, he
17 was focusing more on the CDV charges than the rest
18 of it.

19 Q. And is it your statement that you informed
20 him of those sentences verbally?

21 A. Yes, verbally.

22 Q. Okay.

23 A. The, um -- the offers were all verbally.

24 Um -- everything I received offer wise from the
25 Solicitor's Office at that time -- we rarely had

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1 written offers during -- in Abbeville during that
2 time. They might do written offers now, but
3 during that timeframe, most of our offers were
4 verbal offers.

5 Um -- occasionally they'd have with their
6 discovery an offer from some of the attorneys, but
7 most of the work I do -- Ms. Bolen -- her offers
8 were verbal and if they are, like -- the ten year
9 was just, you know, it'd hard; until it's no
10 longer there, that one's open. Um -- but some of
11 the other offers, like -- their off- -- last offer
12 she talked about from the September Court term, it
13 was another one where initially we were talking to
14 the Judge about what he'd do because she still
15 just had the ten year offer -- or, the straight up
16 to the ten-year charge, um, for CDVHAN. And we
17 went and talked to -- I want to say it was Judge
18 Griffith, but it might have been a different
19 Judge -- and asked what he would do. Or, with
20 these facts, and it was before we had received any
21 of those new photos. Um -- and he said that he
22 would do four years just straight with no
23 sentences and then we went back and we're talk- --
24 you know, I mentioned that to Antjuan and I said
25 let me see if I can talk to the Solicitor and if

1 she's willing to, since we've had two Judges give
2 similar offers over this past few months, maybe
3 she's willing to make a concrete offer now.

4 And then I went and talked with Patricia and
5 she said, well I can't negotiate a four-year
6 sentence, but what I could do is let the Judge
7 decide how much time is hanging over his head,
8 give him a two-and-a-half-year sentence and then
9 have probation follow.

10 I went back in and, uh, discussed with
11 Mr. Greene -- and Charles Grose was in there
12 too -- and explained to him that this is what
13 she's willing to do. A some sort of sentence
14 hanging over your head, two-and-a-half-years
15 sentence followed by probation.

16 And at that time, he was, like, well why --
17 why is there probation? Last time she gave me an
18 offer it was for three years. And I had to
19 explain to him that the -- there was never a three
20 year offer, that was what Judge Maddox had told
21 that he would do.

22 And so, he looked at that and he said, I
23 don't think I need to have probation follow and
24 two-and-a-half years is still too long. And, um,
25 I don't want all of this time hanging over my

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1 head. And, I will do eighteen months; this is
2 actually the -- the highest time I will do. And
3 we mentioned eighteen months to the Solicitor, but
4 she would not go down that low.

5 And then the Solicitor made it clear that
6 that offer of the two-and-a-half was only good for
7 this term. And---

8 Q. And when was the -- what term was that?

9 A. That was the September term. Um -- I can't
10 remember the exact dates, but it was whichever
11 week in September that that was.

12 Q. So that was prior to the, uh, new photos
13 being---

14 A. Exactly. That was -- I -- she would not have
15 offered anything that low, I don't think, once
16 she, uh---

17 Q. But did -- did she send you anything saying
18 that it had been revoked?

19 A. That was all verbal. The information, the
20 offer itself was that day. She goes, if he pleas
21 at this term, this is the offer. It was all
22 verbal and I conveyed it to him.

23 Like I had mentioned earlier, in Abbeville at
24 that timeframe, rarely were we doing handwritten
25 offers. Everything was conveyed by the Solicitor

1 verbally; maybe by email. Um -- but, they were
2 always consistent with our office to what they
3 said and if they said that they would keep it open
4 for an extended period they would.

5 And so, we at that time, weren't having to
6 worry about them suddenly changing their mind
7 about what they were gonna do, they stuck to what
8 they told us.

9 Q. You've got, uh, somebody with life plus
10 thir- -- plus ten hanging over; is that correct?

11 A. Yes.

12 Q. And, uh, he -- it's -- it's your testimony
13 that he's re- -- he's, uh, not accepting an offer.
14 Did you believe the offer was fair? Do you
15 think---

16 A. Yes---

17 Q. ---he should have taken the offer?

18 A. ---I think he should have taken that offer.
19 And I thought he should have plead to the three-
20 year sentence also; and that the Judge said he
21 would have done. And -- but at the time,
22 Mr. Greene did not want to take tho- -- either of
23 those, he thought that those sentences were still
24 too high. And it's probably because he -- it was
25 before either of us had seen the newer photos.

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1 Those didn't come in 'til later on.

2 I don't know if the Judges would have said
3 that they would have done three years if they had
4 seen those photos. I don't know because we didn't
5 have them at the time. I don't know for sure what
6 the Solicitor, uh -- definitely wasn't giving us
7 an offer of two-and-a-half years after those
8 photos came in.

9 Uh -- but at that time, based upon the
10 evidence we had, those where good offers from the
11 Sol- -- you know, that two-and-a-half years was a
12 good offer from the Solicitor with what he was
13 covering. But, Mr. Greene wanted to only plea to
14 either, um, he would take eight -- do eighteen
15 months if it was CDVHAN, but he still thought he
16 needed to get the CDV charge instead.

17 Q. What took so long to get the discovery?

18 A. Those particular photos, uh, ended up -- they
19 were ones that her Mom took inside the hospital
20 itself. Um -- and I'm not sure why it took so
21 long to get them developed and over to the
22 Solicitor's Office and all that stuff.

23 Um -- I know that Pa- -- Ms. Bolen had said
24 she kept asking for them, um, 'cause there's
25 indications in either an Incident Report or

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1 something from the police that more photos
2 existed. And so, um, like, I know she kept asking
3 for them and we kept asking for them and I don't
4 know why it took so long to get them. But, once
5 we did finally get them, I -- as soon as I met
6 with Mr. Greene after that, I showed him the
7 photos.

8 Q. And -- and did you go -- after you met with
9 him, did he say let's work out a deal, go to the
10 Solicitor and get whatever you can?

11 A. Uh -- he asked if there were still any offers
12 at the time, and when I received the packet -- and
13 I -- maybe I misunderstood Mrs. Bolin, but I was
14 under the impression that they had to try the case
15 now. And I know she said something different, and
16 if that's the case maybe she's right. But, that
17 was the impression I had and so...

18 I know it was a stronger case that the Law
19 Enforcement was pushing down on a little bit, and
20 so, I don't know, maybe I just misunderstood her
21 or not.

22 Q. Uh -- isn't it true at the outset of the
23 trial, Mr. Grose moved, or -- or the Defense team
24 moved for -- or, really didn't move, but asked for
25 the record to reflect that all of the discovery

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1 had not been disclosed to you-all?

2 A. Yeah, there was something new that came in
3 and I think there was mentioned some sort of
4 letter. Uh -- and the -- that was brand new that
5 day of trial that Ms. Bolen saw in one of the
6 police officer's files, um, and was trying to put
7 it in. I know he made a Motion about that. Um --
8 we made lots of Motions about all the photos that
9 were in and trying to keep some of them out, which
10 we kept a good bunch of those photos out. Um --
11 we made Motions about the pregnancy and kept the
12 pregnancy out. And so, there was a ton of Motions
13 that were made and a good portion of them went to
14 our favor. I don't think that that one Motion
15 regarding the letter did though.

16 Q. Uh-huh.

17 A. But I could be wrong; I'd have to re-read the
18 transcript to know for sure.

19 Q. And the issue of the letter or discovery, as
20 well as the issue of the now meeting or now
21 finding eyewitnesses in the case---

22 A. Yeah.

23 Q. ---those things would have added extra, uh---

24 A. I don't know how much the letter -- like it
25 would have added Appellate informa- -- or,

1 Appellate bases definitely. I'm not sure how much
2 that letter would have swayed or not swayed the
3 jury, because it was the same testimony that
4 Ms. Sullivan presented herself and it was just her
5 handwritten version of it.

6 Um -- they -- having more time to keep -- you
7 know, get Mr. Rodney Gr- -- Rodney Greene
8 comfortable with testifying may possibly have
9 helped the jury some, but the great---

10 Q. But there were issues of discovery?

11 A. There were.

12 Q. Yeah. And -- and then -- and a Motion to
13 Continue could have allowed you to iron those
14 issues out. If there had been anything else you
15 could have discovered it?

16 A. I know that -- maybe.

17 Q. Okay.

18 A. Um -- I don't know if there was anything else
19 out of the -- like nothing ever arose other than
20 that one letter which we did make a Motion about.

21 Q. Okay.

22 **MR. HITE:** Your Honor, if I may approach?

23 **THE COURT:** Yes, sir.

24 **MR. HITE:** Uh -- uh, I -- I'd just like to
25 show Mrs. Bell a copy of the transcript -- oh,

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1 the, uh, Order from the Appellant Court.

2 A. (After review.) Okay.

3 Q. Mrs. Bell, if you could, this is, uh,
4 Plaintiff's Exhibit One -- it's been marked as
5 Plaintiff's Exhibit One.

6 A. Uh-huh.

7 Q. Could you read the second full paragraph?
8 Just that first couple sentences there for The
9 Court.

10 A. Like, starting here?

11 Q. Yes, ma'am.

12 A. As to the Burglary charge we initially note
13 Greene's argument concerning the victim consenting
14 to Greene's entry into the home was never raised
15 to or ruled upon by the trial Court. Therefore,
16 it is not per- -- preserved for review. That was
17 *The State v. Dunbar*. Did you want me to keep---

18 Q. You -- you can---

19 **MR. HITE:** Uh -- Your Honor, I believe I
20 would like to enter that as, uh, Plaintiff's
21 Exhibit One to the trial of the case.

22 **MR. JOHNSON:** No objection, Your Honor.

23 **THE COURT:** Haven't you already entered it?

24 **MR. HITE:** I -- I wasn't sure if it was
25 entered into evidence. I wanted to make sure that

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1 she could testify about it. Um---

2 **THE COURT:** Let's see, you had it marked
3 and -- and put into evidence without objection.

4 **MR. HITE:** Okay. I -- I -- I thought I only
5 had it marked and it hadn't been entered. I -- I
6 now wanted to make sure that it was entered into
7 the record.

8 **THE COURT:** It's been entered twice.

9 **MR. HITE:** Okay; thank you, Judge.

10 (WHEREUPON, APPLICANT'S EXHIBIT 1 WAS ENTERED
11 INTO EVIDENCE.)

12 **THE COURT:** And it's in the annals of South
13 Carolina Law.

14 **MR. HITE:** Yes, sir.

15 **THE COURT:** Yes, sir.

16 Q. Mrs. Bell, do you believe that that Opinion
17 showed that you should have made the argument that
18 Antjuan was allowed entry to the home?

19 A. They -- I mean, they won't -- they wouldn't
20 look at it because that was not made, so, um, that
21 might of -- like if we had raised it, maybe they
22 would have looked at it. There might have been
23 something else, that might have just been
24 speculation, you know, whether or not they would
25 have definitely looked at it. But, it would not

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1 have hurt to have it.

2 Q. Permissible entry into the home, uh -- or --
3 or entry into the home is a---

4 A. Yes, sir.

5 Q. ---parameter or factor---

6 A. Yeah.

7 Q. ---of burglary? Okay? Correct?

8 A. Yes.

9 Q. And, uh, you never asked that question?

10 A. If you -- it's not in the transcript, then I
11 must not have.

12 Q. Okay.

13 MR. HITE: The Court's indulgence for one
14 second.

15 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR
16 A CONFERENCE, OFF THE RECORD.)

17 (WHEREUPON, PROCEEDINGS CONTINUED.)

18 MR. HITE: No further questions, Your Honor.

19 THE COURT: Mr. -- Mr. Johnson?

20 MR. JOHNSON: Thank you, Your Honor. Excuse
21 me.

22 ALEXIS BELL, CROSS-EXAMINATION BY MR. JOHNSON:

23 Q. Mrs. Bell, will you agree with me that, uh,
24 Ms. Sullivan testified that she did not let Mr.---

25 A. That's correct, sir.

1 Q. ---Greene in the house?

2 A. That's correct.

3 Q. And that he did not have a key to the house?

4 A. Yes, sir.

5 Q. And that he did not live at the house?

6 A. That was her testimony.

7 Q. Okay. So, in your professional experience,
8 do you believe she would have answered in the
9 affirmative that he lived there?

10 A. Most likely not. She might have surprised us
11 (chuckle), but most likely not.

12 Q. But you did make a Directed Verdict Motion
13 that there was no burglary because he lived there?

14 A. Yes, sir.

15 Q. Because he had belongings there?

16 A. Yes.

17 Q. And -- and that he would, you know, fight
18 with, uh, Ms. Sullivan then go stay with a sister
19 or brother and then come back?

20 A. Yes, sir.

21 Q. And that -- but he claimed that was his
22 permanent residence?

23 A. Yes.

24 Q. Okay. (After pause.) In your experience,
25 uh -- I know there's a allegation about you should

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1 have made a Motion for Continuance in this case,
2 uh, would that Motion have been successful?

3 A With that -- maybe with, um, like if we'd
4 received all the photos that day of trial, yes, we
5 would have been able to get a continuance. Or,
6 all that evidence would have stayed out.

7 Um -- with the brother, most -- and sister,
8 most -- or, not sister, excuse me -- the brother
9 and his girlfriend, most likely not.

10 Um -- it really, I think, just depend upon
11 the Judge and the reasons why they weren't located
12 before this. Um -- it -- a couple of different
13 things, and with this particular case, I -- I
14 mean, that Judge may have, but I'm not thinking he
15 would have.

16 Q. And have you had experience with that Judge
17 before?

18 A. Judge Griffith? Yes. And -- and he's
19 usually a relatively reasonable Judge when it
20 comes to things like that. That's why I said he
21 may have, but I don't think he would have.

22 Q. Another issue is that, uh, Mr. Rodney Greene
23 and his testimony. Uh -- do you have any issues
24 with his testimony? As -- as far as---

25 A. Can you rephrase?

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1 Q. ---his nervousness to testify? Whether or
2 not if you had more time to calm him down?

3 A. I -- I think one of the things that I -- I
4 just -- I noticed, because he seemed more nervous
5 in Court, was some of the ways he had phrased, uh,
6 the events in the office made more sense and more
7 clear as to what he was seeing or what he, um, was
8 testifying as to seeing versus like his location
9 near the trailer and stuff like that that he
10 testified to, um, on the stand.

11 Um -- I think he had a hard time because of
12 his nerves. It -- and I could be wrong, but just
13 describing his location and stuff like that, and
14 so maybe if he had been a little calmer and had
15 more time he might have been able to say it in the
16 exact same way he said it in the office that
17 seemed just clearer.

18 And I, you know -- but, I could be wrong. He
19 might of just, you know, said it the exact same
20 way. But, you know...

21 Q. As to the plea offers, uh, I know obviously
22 there was a lot of back and forth with the
23 Solicitor and Mr. Greene, but whose decision was
24 it to reject the two-and-a-half and the three-year
25 offers?

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1 A. There was never a three-year offer. That was
2 what the Judge said he would do. There was a
3 two-and-a-half with probation offer, and that was
4 Mr. Greene's decision to reject that.

5 Um -- the other two -- anything other than
6 the pleading straight up to the CDVHAN charge
7 offer, those weren't offers, they were just what
8 the Judge said. If he pled straight up to this,
9 this is the sentence I would probably give him
10 based on these facts. And there was a three and a
11 four for that with no probation following.

12 Q. But you did relay those offers to him?

13 A. I did.

14 Q. And it was his rejection of those?

15 A. Yes.

16 Q. (After pause.) You also talked about these
17 new photos. Uh -- and obviously, as I think
18 Mr. Greene also testified, they were a lot more
19 gruesome than the original photos?

20 A. They were. Uh -- the original photos, there
21 was just three of them and they were a couple of
22 days after she was released from the hospital.
23 Um -- and so there was swelling, but there was no
24 blood on them.

25 Um -- I think she still has her stitches in,

1 um, but she was cleaned up and, um, in regular
2 clothing not the -- not in a hospital gown or
3 anything like that.

4 Um -- whereas, the ones that came in October
5 still had all of her blood -- all of the blood on
6 her. Um -- like she was very swollen; like some
7 of the swelling had already reduced, um, by the
8 time they took the photos at the Vic- -- Victim's
9 Advocates Center, which I think was -- who took
10 the -- the Victim's Advocate took the other three,
11 um, that was later on that we had for the whole
12 time. Uh -- there's just -- one was a couple days
13 later, so she had started healing versus the ones
14 that were at the hospital that just -- right
15 afterwards.

16 Q. And would you agree with me that you objected
17 to those being entered into evidence, and you
18 had---

19 A. We---

20 Q. ---a continuing objection every time---

21 A. ---we -- we did.

22 Q. ---that they would be---

23 A. And -- and we also did keep out a good
24 portion of the photos. Um -- and, um, there were
25 just -- there were some that were far bloodier

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1 than others and we were able to keep -- the Judge
2 agreed to keep out a good portion of them from the
3 get-go after seeing them.

4 Q. And after you received these photos, what was
5 your belief on the Solicitor's offer?

6 A. I -- and I could have been wrong, but I was
7 under the impression that she had to go to trial
8 on this. And without her having the ability to
9 confirm her notes at the Solicitor's Office, uh,
10 I'm not sure how to find out positively that
11 answer.

12 MR. JOHNSON: (After pause.) I think that's
13 all the questions I have, Your Honor.

14 MR. HITE: Very briefly.

15 THE COURT: Um -- before you come, very
16 briefly may I ask you a few questions?

17 MS. BELL: Yes.

18 ALEXIS BELL, EXAMINATION BY THE COURT:

19 Q. Um -- reading from the -- the transcript,
20 the, um -- it appears Ms. Sullivan said that the
21 two of them had broken up. She had taken his
22 things, uh -- his belongings to his family's home
23 in some town -- Duncan or someplace.

24 A. And I -- I don't remember right of the top of
25 my head where he lives (chuckle) -- lived, excuse

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1 me.

2 Q. Clinton?

3 A. Clinton; that sounds---

4 Q. Clinton because she lived in Duncan?

5 A. Yeah.

6 Q. And she had, uh -- and that they, um -- that
7 he was no longer living there?

8 A. That was her testimony.

9 Q. Is that your understanding?

10 A. Yes, sir.

11 Q. And -- and that he reappears this night. Do
12 you know what time it was?

13 A. I know it was after dark. Um -- I don't
14 remember off my -- top of my head whether it was
15 before or after midnight. Um---

16 Q. And she had -- and he was bamming and kicking
17 on the door?

18 A. That's correct, sir.

19 Q. And she asked who is it, and she -- but she
20 recalled his voice? She knew who it was?

21 A. Yes, sir.

22 Q. And she -- the question was asked, uh, did
23 you let the Defendant into your house? And her
24 response is, no, I didn't want to.

25 Um -- what did you interpret that response to

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1 mean?

2 A. To me, that she did not want him to come in
3 the house and had not -- did not open the door for
4 him to come in.

5 Q. Then he said that -- she then -- she then
6 said that she, um, asked, what did you do and --
7 and so she was scared because of the way he
8 sounded and beating and kicking on the door. And
9 so she tried to slide the dryer in front of the
10 door and she got it about an inch or two in front
11 of the door and she had the washing machine beside
12 the dryer and then he kicked the door and it came
13 open and he pushed his way past that---

14 A. Yes.

15 Q. ---and then confronted her. Um -- so on the
16 question of whether or not he was living there as
17 he testified to, um, did -- did you ever get any
18 information to the contrary that he was, in fact,
19 living there?

20 A. Um -- the only testimony that we had that we
21 were able to present and where his family members
22 confirmed saying that he still lived with her and
23 that he was just crashing and that -- when any
24 time they fought -- fought, he would go and stay
25 with them for a couple of days and then go back

1 home.

2 Um -- there was -- I want to say that we
3 looked into some checks at one point trying to
4 figure out if they were still going there but
5 that -- I'd have to look in the notes. But once
6 he -- maybe the dates weren't lining up or
7 something wasn't happening. Um -- but -- so we
8 put up -- forth his, um, siblings who said that he
9 was -- he was still living there and that any time
10 they fought he would come and crash for a night or
11 two and then go back.

12 Q. It was her -- her position was that he was---

13 A. It was her position that he was---

14 Q. ---out?

15 A. Yes.

16 Q. Didn't have a key?

17 A. And that's what she---

18 Q. Didn't have consent?

19 A. ---testified to.

20 Q. Broke in and beat her up?

21 A. That was his -- that was what she testified
22 to.

23 Q. Now when it came to your opportunity to, uh,
24 question her, you didn't ask her any more
25 questions on that issue about---

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1 A. No.

2 Q. ---whether or not he had consent to come in?

3 A. If it's not in there, then I did not, sir.

4 Q. And with regard to the -- your Motion for
5 Directed Verdict, I notice that it's directed on
6 the issue of intent to commit a crime therein,
7 and -- and you didn't address with The Court the
8 question of whether or not, um, he broke in. Is
9 there any particular reason why you elected to
10 make the Motion based on his intent to commit a
11 crime after gaining entry as opposed to on the
12 issue of whether or not, um, he entered without
13 consent?

14 A. And I'm not sure. Like, I don't remember
15 seeing in my notes about -- I know that my boss
16 and I conferred before I did any of -- that we did
17 any of the, uh, post-trial Motions.

18 Q. Now---

19 A. And I -- and I'm just -- I'm not positive as
20 to what we---

21 Q. ---you may have heard the, uh -- Mr. Hite's
22 opening statement that you were young and
23 inexperienced and were -- weren't up to the task
24 of, uh, trying this case.

25 A. Yes, sir.

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1 Q. You heard that?

2 A. I did, sir.

3 Q. Do you agree with that or disagree?

4 A. I -- I still disagree. I just...

5 Q. And the basis for your disagreement?

6 A. Um -- I know that we worked hard and prepared
7 a bunch of stuff. We got a lot of Motions though
8 that were big Motions, including keeping out the
9 pregnancy. Um -- and there were certain things
10 in- -- including a lot of the photos and stuff
11 like that that we were able to keep out. Um---

12 Q. So you had excluded that she was---

13 A. Pregnant at the time.

14 Q. ---pregnant at the time she was beaten?

15 A. That's true.

16 Q. All right. And, um, you were assisted in the
17 case by Charles Grose?

18 A. That's true.

19 Q. Now, is he the, uh---

20 A. He used to be the Chief Public Defender for
21 this---

22 Q. The Chief Public Defender.

23 A. ---this Circuit, yeah.

24 Q. And how many years of experience?

25 A. I want to say, at that time, he had thirteen?

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1 But, I could be wrong about that number.

2 Q. All right. And he's -- he's -- was a very
3 experienced lawyer?

4 A. Yes; he's tried death penalty cases and a
5 bunch of other cases.

6 Q. And what was he doing in assisting you in --
7 with this case?

8 A. Uh -- some of the stuff he worked on, like
9 beforehand we talked about trial strategy. Um --
10 he did meet on a couple of occasions with -- when
11 I was going over the sentencing offers with, uh --
12 like the two-and-a-half-year sentence offer that
13 we received, he was in the room talking to
14 Mr. Greene there.

15 Um -- at the trial he helped me with, um,
16 the -- we came up with the strategy to try to keep
17 out the pregnancy and he helped do that Motion.

18 Um -- and he helped with, um, making sure
19 that I kept, um -- had asked all the questions we
20 thought we needed to ask.

21 Q. Okay. Do you have that exhibit with you
22 still?

23 A. Oh; yes, sir.

24 Q. And the---

25 A. Oops; sorry.

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1 Q. ---the Appellant Court, when they addressed
2 the issue of this, um -- uh, where The Court says
3 that, as to the Burglary charge, we initially note
4 Greene's argument concerning the victim consenting
5 to Greene's entry into the home was never raised
6 to or ruled upon by the Trial Court, therefore
7 it's not preserved for review.

8 Um -- then later in that paragraph they --
9 they state that, here The State presented
10 testimony stating Greene repeatedly beat and
11 kicked the victim's door and pushed aside a
12 clothes dryer just to gain entry to the home.
13 Moreover, the victim testified upon entering the
14 home he immediately came toward her and began
15 assaulted her and based on this testimony The
16 State presented evidence reasonably tending to
17 prove Greene intended to commit a crime upon
18 entering the victim's home. Accordingly, the
19 Trial Court did not err in denying the Motion for
20 the Directed Verdict on the First Degree Burglary
21 charge.

22 So, in this Opinion by The Court of Appeals,
23 which is an unpublic (sic) -- unpublished -- is it
24 unpublished? Uh---

25 A. It might be.

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1 Q. ---it has no precedential value.

2 A. Yeah.

3 Q. An unpublished Opinion. Though The Court
4 stated that, um -- that it was never rai- --
5 raised or ruse (sic) -- ruled upon regarding the
6 consent to ent- -- entry and not preserved for
7 reviewed, uh, based on The Court stating in the
8 Opinion that he beat and kicked the door open and
9 pushed aside the clothes dryer just to gain entry,
10 uh, do you get the -- do you have -- are you of
11 the belief that The Court nevertheless addressed
12 that issue?

13 A. It sounds sort of like they did. They took
14 The State's information unless that -- they took
15 Ms. Sullivan's testimony.

16 Q. (After pause.) And -- and that would be that
17 though there -- though there may not have been a
18 specific testimony on the issue, that based on the
19 circumstances of banging on the door, her efforts
20 to prevent him from entering, and him kicking the
21 door to gain entry, that -- that the entrance
22 was -- was there. That he did not have consent to
23 enter?

24 A. Yes, that's what -- the ways it's written
25 sounds. (sic)

1 Q. Now his opinion, however, is to the contrary.
2 That he had -- that he is living there and that
3 he, um -- that she let him in, or what -- what's
4 his position?

5 A. Yes, sir; that she had let him in.

6 Q. All right. And you discussed with him that
7 he had a right to testify or not to testify?

8 A. Um -- yeah. After the close of The State's
9 case, uh, we -- as is required, we discuss with
10 him the pros and cons of taking the stand, um, on
11 his own behalf. Um -- we discussed why we
12 personally didn't think it was the best choice,
13 but that it was up to him and if he wanted to get
14 up (sic) the stand, um, that we were more than
15 willing to present him as a witness.

16 Q. Now there are legions of cases on this issue
17 and, um, The Court has addressed in many cases the
18 need for, uh -- and the -- the question regarding
19 the need for -- of an on the record waiver of a,
20 uh, Defendant's right to testify. Um -- was there
21 any discussion?

22 A. I felt like -- and I don't remember if it's
23 in the transcripts, but I thought that Judge
24 Griffith had specifically asked if, uh, we had had
25 a chance to talk to him about testifying and

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1 whether or not he was going to testify. Um---

2 Q. Now, I was looking through the transcript to
3 see if I -- if the -- if it existed. Um---

4 A. And it doesn't, and---

5 Q. ---is -- is it in the transcript, uh, as far
6 as Counsel knows?

7 MR. JOHNSON: I don't think the Judge asked
8 him on the record.

9 MR. HITE: No, Your Honor.

10 A. And it---

11 Q. Yeah.

12 A. ---and normally it is, and so I'm surprised
13 that it wasn't on this particular case.

14 Q. Well, I'm surprised as well, but the, um --
15 since it's typically done---

16 A. Yes.

17 Q. ---it's a script that the Judges typically
18 have---

19 A. Yeah.

20 Q. ---and typically go through. Um -- do you
21 have no recollection as to why that was not done
22 in this instance?

23 A. No; and if I'm sitting in a room, I can
24 almost picture Judge Griffith doing it. Maybe I'm
25 just remembering him do it from other cases

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1 (chuckle) since it's not in the transcript.

2 Q. Well, one case in which The Court discussed
3 this issue, um, *State v. White*, in which the
4 Defendant sought a new trial based on there being
5 no on the record waiver of his, um, right to not
6 testify or to testify, um, The Court indicated
7 that -- that rather than having a hard and fast
8 rule on that issue it was preferred for there to
9 be an on the record review. They leave it up --
10 they're leaving it up to the PCR Judge to
11 determine whether or not there was a, um -- uh,
12 adequate appraisal of rights---

13 A. Yeah.

14 Q. ---to testify or not testify and whether or
15 not this waiver is a, um -- is based on, uh, free
16 and voluntary decision of the Defendant.

17 So, sitting in this position, and in an
18 effort to reconstruct what occurred that day with
19 regard to this Defendant testifying or not
20 testifying, what's your recollection about it?

21 A. Um -- that we went into our little Counsel's
22 office that we have at the Abbeville Courthouse
23 and talked with, um, Mr. Greene prior to starting
24 our line of witnesses. Um -- and informed him,
25 you know, you are by rights allowed to test- --

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1 take your -- stand on your own to testify. Um --
2 we presented reasons why we didn't think that was
3 the best idea, but left it up to him to make the
4 choice. And he decided not to testify.

5 Q. Were there strategic reasons why, um -- for
6 him not to testify?

7 A. Um -- I'm trying to remember. I want to say
8 part of it was, um, just looking -- oh, I wish I'd
9 brought my little notes up here. Um -- but in it
10 there is some -- something in specific---

11 Q. Where are your little notes that you wish
12 you---

13 A. They're just some stuff that---

14 Q. I mean where?

15 A. Oh, they're right behind---

16 Q. Oh; you can---

17 A. ---the Solicitor in that---

18 Q. ---you can go toward---

19 A. ---uh---

20 Q. ---you -- you're not, uh, locked in that
21 seat.

22 A. (Chuckle.)

23 Q. Move if you want to.

24 **MR. JOHNSON:** May I approach, Your Honor?

25 A. I want to say that I put notes in there as to

1 what my boss had described, and I could be wrong.
2 Um -- they're just notes from -- we have the Case
3 Management System that we can put notes into.

4 Q. Yes.

5 A. Um -- and let me see. (After review of
6 notes.) Okay; maybe I did not make notes on
7 that. I apologize, Your Honor, I thought I'd
8 remembered reading something about that.

9 Um -- oh, I have a note to remind me -- for
10 me to remind Charles to put his notes about his
11 conversation with the client regarding not
12 testifying because I was, uh -- he had made
13 additional notes and those were never added
14 into our files system here.

15 Q. And what do you make from the notes that you
16 just looked at?

17 A. That he did the primary discussion with him
18 about, um, why not to take the stand. Um -- but
19 he was gonna add more notes about the specifics of
20 his conversation. And I can't remember exactly
21 why, but I know that---

22 Q. And did he have issues regarding the prior
23 record that he---

24 A. Um -- he---

25 Q. ---might have been impeached based on?

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1 A. ---I don't know if they could have---

2 Q. Was he on probation at the time?

3 A. He was on probation, um, for his ABHAN charge
4 out of Laurens County.

5 Um -- and then -- I don't think there was
6 anything else on his record other than that prior
7 ABHAN.

8 Q. Um -- well -- well -- well what could
9 possibly have been gained by him testifying, um,
10 had he chosen to direct -- testify?

11 A. Yeah; the only stuff that would have been
12 added onto the record would have been his version
13 of -- that he -- I think he mentioned earlier
14 about that dryer getting put in front of the, uh,
15 door regularly to keep her child inside the house.
16 Um -- and his talk -- testify -- testimony that he
17 lived there still. You know, he would have had
18 his version of him still living there versus her
19 word.

20 Q. I mean, um, was that testimony given by other
21 witnesses, including his brother?

22 A. The -- him living there was given by other
23 witnesses; yes, sir.

24 Q. Well, if you had to do this trial over again,
25 what would you have done differently?

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1 A. I would have---

2 Q. If anything?

3 A. Um -- I definitely would -- would of liked to
4 have had more time with, um, Mr., um, Rodney
5 Greene. To talk to him and see if there was any
6 way, like, him having more than the day of trial
7 to calm himself and testify better. That would
8 have been nice. I mean, the -- I---

9 Q. I mean, was there any assurance that he would
10 have been any calmer when---

11 A. There is no assurance.

12 Q. ---when faced with the---

13 A. He might have.

14 Q. ---a withering cross-examination?

15 A. He might have testified exactly the same;
16 it's hard to say for sure. Um -- I would have
17 liked that to have been different.

18 And then, um, you know, there's, I guess,
19 that Consent Motion would have been nice to have
20 added on to the record just to give them one more
21 thing, even though they sort of round-about
22 addressed it in the, um---

23 Q. To consent to enter?

24 A. Yes. I mean, um, it would have been nice to
25 have done the Motion for that.

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1 And maybe, uh, just the Continuance Motion
2 regarding the brother to try and get more time.

3 And -- but -- but like you said, there's no
4 guarantee -- or, you had asked -- there is no
5 guarantee that the testimony would have been any
6 better, but it might have. And it might have been
7 enough -- like improved enough that he influenced
8 the Jury.

9 THE COURT: Mr. Hite?

10 MR. HITE: Thank you, Your Honor.

11 ALEXIS BELL, REDIRECT EXAMINATION BY MR. HITE:

12 Q. Uh -- Alexis, just for the record, I've --
13 I've -- I've meant absolutely nothing
14 disrespectful in -- in making a comment as to your
15 youthfulness. As a matter of fact, I'm youthful
16 myself.

17 A. I -- I was going to say, I think we're the
18 same age (chuckle).

19 Q. Yes; and I -- I -- I hope you---

20 A. Yeah; no.

21 Q. ---know -- you know, absolutely no disrespect
22 towards that matter.

23 A. No, sir.

24 Q. Okay? And, um, meeting with Rodney -- having
25 more time to meet with Mr. Rodney Greene, would

1 have allowed you to potentially find Sophie
2 Greene?

3 A. Potentially, yes.

4 Q. Okay. And also, during the testimony of the
5 trial, Rodney testified that the door was open;
6 isn't that correct?

7 A. Uh -- he did, but I think the part that made
8 it a little harder for the -- on the jury, and I
9 tried -- I want to say I tried to, uh, was like
10 the way he was describing his location on Cross.
11 Or, not Cross, um -- yeah, Cross-Exam by the
12 Solicitor's Office. It made it sound like he
13 couldn't actually see the door. Like he testified
14 and then they made it -- like when they asked him
15 again where he was standing, it made it sound like
16 he couldn't really see the door because of his
17 location.

18 Um -- and I think if we'd had more time,
19 there might have been the chance that would've
20 been clarified.

21 Um -- at the same time, he might've, under
22 Cross, said the exact same thing. Uh -- well, I
23 was standing over here, and when asked where the
24 door was, it made it sound like he really couldn't
25 see the door clearly.

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1 Q. And it's -- it's safe to say that Rodney's
2 testimony was -- was not good in this case?

3 A. Yeah. I mean, it -- it wasn't -- it was
4 helpful in that, like, he did get some things out
5 about, uh, the -- him saying the door was opened
6 by her and then, um, that the brother live -- that
7 Mr. Greene lived with -- still lived there. But,
8 it could have been in more detailed, um -- given
9 more time potentially. Or, it could have been
10 just as bad.

11 Q. Okay; okay. Mrs. Sullivan's testimony was
12 that, uh, no, I did not want him to come in.

13 You testified a moment ago; did -- did you
14 interpret that to mean no, I did not let him in?
15 Or, no, I didn't want him to come in?

16 A. Well, that and her -- her combined testimony
17 of pushing the washing machine in front of the
18 door shows I -- in my interpretation -- that she
19 was trying to keep him from coming in.

20 Q. Okay.

21 A. But -- but no, I did -- other than her
22 comment, like -- or, what she said with --
23 combined with her testimony of pushing, um,
24 displays her not wanting him to come in in my
25 interpretation.

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1 Q. You -- you didn't feel it necessary to ask
2 her, were you moving the -- the dryer away or were
3 you allowing him to come in? That -- that never
4 came up?

5 A. Not from the way she was to, uh -- testifying
6 in Court, no. It was clear in the Courtroom what
7 she was implying. It wasn't -- it was not
8 implied, by any stretch of the imagination in her
9 testimony, that she was moving the washer away.
10 She was very clear, at least in the Courtroom when
11 you're listening to her, that she was saying she
12 was pushing the wa- -- um, washing machine or
13 dryer, whichever one it was, um, in front of the
14 door not the opposite.

15 Q. But you -- you never asked any questions
16 about the dryer or the -- the defense's position
17 as to the dryer?

18 A. Uh -- if it's not -- I don't think so,
19 and I---

20 Q. Okay.

21 A. ---don't think there's anything in there.

22 Q. All right. And there's no -- there's no
23 notes of you just, uh, advising or not advising my
24 client to testify?

25 A. Uh -- there's just that one. Like, I know

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1 that it was talked to him about, but there's just
2 a note that Charles needs to be reminded to add
3 his notes about it.

4 Q. Okay.

5 A. Um---

6 **THE COURT:** Yeah -- yeah, let me ask one
7 question before you con- -- continue with this.

8 Uh, from the Defendant's testimony, it
9 appears that he, um -- uh -- the Petitioner's
10 testimony in this instance -- he -- he's, uh,
11 testified as if he really wanted to testify in
12 this case---

13 **MS. BELL:** And that was the---

14 **THE COURT:** ---that he was anxious to---

15 **MS. BELL:** ---yeah, and that wasn't of the
16 (sic)---

17 **THE COURT:** ---testify and---

18 **MS. BELL:** ---impression that I got---

19 **THE COURT:** ---desired to testify.

20 **MS. BELL:** ---at the time. So, that wasn't
21 the impression I got at the time. Uh -- he was --
22 seemed nervous about this situation with the case.
23 But, at that day I was not given the impression he
24 wanted to testify. Um -- and maybe that was just
25 me misinterpreting, but he never specifically

1 said, I want to get on the stand and testify.

2 **THE COURT:** All right. You may proceed,
3 Mr. Hite.

4 **MR. HITE:** Okay.

5 **ALEXIS BELL, REDIRECT EXAMINATION RESUMED BY**

6 **MR. HITE:**

7 Q. One -- one more question. During the trial
8 of the case, Mr. Greene made notes to you about
9 the dryer, is that correct?

10 A. They -- if they were in our file, then he
11 must have. And---

12 Q. Okay, I -- I'll submit to you there was a
13 note in the file.

14 A. Okay; then -- then yes.

15 Q. Okay. But again, there were -- there were no
16 questions about---

17 A. No.

18 Q. ---your theory or -- or Mr. Greene's theory
19 about the positioning of the dryer?

20 A. If they're not in the transcript, then no.
21 And---

22 Q. Okay.

23 **MR. HITE:** No further questions, Your Honor.

24 **THE COURT:** All right; Mr. Johnson?

25 **MR. JOHNSON:** None from The State, Your

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1 Honor.

2 THE COURT: All right. Thank you; you may
3 step down.

4 (WHEREUPON, WITNESS LEFT THE STAND.)

5 THE COURT: Argument?

6 MR. HITE: Yes, sir, Your Honor. Very --
7 very briefly.

8 THE COURT: Yes, sir.

9 MR. HITE: Uh -- my client is---

10 MR. JOHNSON: What was that? I mean, is that
11 the end of his case?

12 THE COURT: Oh yeah, I'm sorry -- yeah.

13 MR. HITE: That's the end of our case.

14 THE COURT: Uh -- do you have any additional
15 witnesses?

16 MR. HITE: No, sir.

17 THE COURT: Thank you; and do you have any?

18 MR. JOHNSON: No -- no -- no; no further
19 witnesses.

20 THE COURT: Okay; thank you very much.

21 MR. HITE: All right, uh, Your Honor, uh, my
22 client, Antjuan Greene and I, since I was
23 appointed on his case, have, uh, had several
24 meetings. I've worked a lot of time working with
25 him, and, uh, of -- of -- I hope that he's

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1 portrayed from this witness stand today that he
2 did not, and, uh, he did not intend to commit a
3 burglary. And, uh, he -- he feels like he was
4 inadequately represented and the opportunity of --
5 of him being able to present his case and be
6 prepared to present his case was not met here.

7 Uh -- Your Honor, he's here along with his
8 family. We would ask you to take this matter
9 under advisement, uh, so that you can -- and if I
10 may, provide a memo of law, uh, as to the issues
11 that are pertaining.

12 Here we found, uh, that The State submitted
13 to and gave to the, uh, Defense, uh, within about
14 a month of the trial, the very, uh, damaging
15 photos that were highly contested during the
16 trial, Your Honor. If you read the trial
17 transcript, there's a -- a -- a lot of pre-trial
18 Motions during the trial, uh, in an effort to keep
19 these photos out.

20 My client testified that he saw those photos
21 for the first time the Thursday or Friday before
22 the Monday trial. Uh -- and that in itself did
23 not allow him enough time to prepare the case or
24 accept an offer that Ms. Bolen testified was good
25 until the day of trial.

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1 Uh -- we believe that, and he testified that
2 he would have accepted, uh, any kind of plea
3 offer, uh, whether it be three, four or -- or how
4 many ever years, uh, based on the new evidence
5 that was presented to him -- shown to him a couple
6 of days before the trial.

7 Also, Your Honor, there were questions and
8 pre-trial Motions as to discovery being turned
9 over, uh, at the day of trial.

10 And all of those things, as well as not
11 meeting with eyewitnesses on a life sentence
12 trial, uh, before the trial of the case would have
13 caused a -- an adequate representative to Petition
14 The Court for a continuance.

15 And her ability to speculate on whether the
16 Judge would have granted that or not, uh, is
17 essen- -- essentially irrelevant because she never
18 made the Motion. And, had she made the Motion,
19 she could have prepared and discussed with
20 Mr. Rodney Greene a better -- better testimony as
21 well as attempted to or tried to better track down
22 the other most important eyewitness of the case.

23 Um -- there is also---

24 **THE COURT:** And who was that? Who was that?

25 **MR. HITE:** Uh -- Rodney Greene's girlfriend.

1 Her name is Sophie.

2 **THE COURT:** All right; and where is she?

3 **MR. HITE:** Where is she?

4 **THE COURT:** Yes.

5 **MR. HITE:** Uh -- I don't know of her
6 whereabouts today, Your Honor.

7 **THE COURT:** Well, how do we know what she
8 would say?

9 **MR. HITE:** Well, we -- what -- what we can
10 estimate on is that she had valuable information
11 to give as an eyewitness. Um -- that being
12 said---

13 **THE COURT:** Valuable to which side?

14 **MR. HITE:** Well, there's a potential that
15 could be, uh, helpful to our client.

16 **THE COURT:** There's potential it could be
17 devastating to your client as well. I---

18 **MR. HITE:** That's true, but---

19 **THE COURT:** ---unless I know what -- unless I
20 know what it is that she said -- would have said
21 that she didn't have an opportunity to say, how
22 could I assume that that's so critical?

23 **MR. HITE:** Well, just like the Defendant is
24 allowed the Constitutional Right to have all the
25 evidence, in a scenario like this he should be

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1 allowed the opportunity to have even discussed
2 or have the attorney Petition The Court for a
3 Continuance to talk to a witness that could
4 potentially help him. And -- and in this
5 scenario, that -- that wasn't even afforded to
6 him.

7 Uh -- and for the -- for those reasons, Your
8 Honor, uh -- uh, she was ineffective counsel. And
9 pursuant to *Strickland*, uh, he -- he should be
10 allowed, uh, another trial based on, uh, these
11 inefficiencies. And these inefficiencies led, uh,
12 him to be convicted wrongfully.

13 Um -- as well as the issue of not addressing
14 the entry into the home as a grounds for the
15 Directed Verdict.

16 Um -- I believe there was evidence on both
17 sides as to entry or -- or -- or -- permissible
18 entry or not. But, if it wasn't even addressed,
19 uh, then it couldn't be ruled upon by the Judge.

20 Um -- my client also testified that he was
21 not informed fully of whether he should testify or
22 not, as well as not informed fully as to the plea
23 offer and to all the evidence so that he could
24 make a knowing plea, uh, or -- or a knowing, uh,
25 guilty plea.

1 And there's, uh -- he -- he is entitled to
2 have made and make a decision as to a Plea
3 Agreement or a Plea Offer knowing, and he was not
4 presented this Plea with, uh -- by Mrs. Bell that
5 was offered by Mrs. Bolen. And in that she was
6 ineffective as Counsel.

7 Uh -- and his testimony today was that he
8 definitely would have accepted that Plea. Uh---

9 **THE COURT:** Well, and hindsight is always
10 twenty-twenty.

11 **MR. HITE:** Yes, sir. But, rejecting that
12 Plea and then being upset about it now would be
13 different. But not even having it, not even being
14 told what it was, not even being offer that is --
15 is justifiable for him to have an opportunity to
16 hear -- have his case heard again.

17 **THE COURT:** All right.

18 **MR. HITE:** All right.

19 **THE COURT:** Thank you.

20 **MR. HITE:** Thank you, Your Honor.

21 **THE COURT:** Thank you. Mr. Johnson?

22 **MR. JOHNSON:** Just briefly, Your Honor. As
23 to Petitioner's allegations, uh, testified that he
24 would have accepted this offer, yet he had
25 multiple times where, uh, Counsel has testified

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1 that he actually rejected that offer because he
2 didn't want probation.

3 Uh -- Mr. Greene has admitted that he did
4 physically assault Miss Sullivan. He knew what he
5 did; he knew that he'd caused her, uh, you know,
6 bodily injury. Broke her nose in three places,
7 had swelling of the eyes. Uh -- and the offer was
8 to -- straight up to CD- -- CDVHAN and to drop the
9 Burglary charges.

10 You know, so he rejected what he wanted but
11 now he wants to come back and say she never told me
12 I got -- you know, she never told me I had an
13 offer on the table.

14 Uh -- he also claims that, uh, attorney --
15 or, Counsel was ineffective for failure to
16 test- -- you know, to interview these witnesses.
17 However, as Your Honor pointed out, he brought --
18 he did not bring his list of witnesses. He has
19 not presented any testimony as to what they would
20 say. And under -- under *Wood v. State* and also
21 *Bannister v. State*, uh, no prejudice can be
22 established where they do not testify at the PCR
23 hearing.

24 Um -- talking about, uh, him -- or, the entry
25 into the home, whether or not, uh, there was

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1 consent, the victim clearly testified that she
2 didn't want him in the house, he didn't have a
3 key, and he didn't live there. Uh -- clearly
4 there's evidence that, uh -- to find that he was
5 guilty of Burglary in the First Degree.

6 Uh -- second of all, uh -- or, lastly, about
7 whether or not to testify, that he was not
8 advised. Uh -- first, Mr. Greene has had prior
9 experience with the Criminal Justice System. Even
10 in a guilty plea, as Your Honor knows, they will
11 say, at a trial you have the right to testify or
12 you don't have the right -- you know, you can
13 remain silent.

14 Further, uh, attorney said that she would
15 have advised, or Mr. Grose would have advised, uh,
16 Mr. Greene on whether or not to testify.

17 Uh -- fourth, we have a case which is
18 *Brown v. State*, uh, which states that, uh, in a
19 non-death-penalty case, on record, uh, waiver of
20 Constitutional Right is just one way of knowing
21 that he knowingly and voluntarily waived that
22 right.

23 Uh -- The State's position is that with his
24 prior experience along with that, uh -- Counsel's
25 testimony, he knew whether or not he could

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1 testify.

2 Uh -- we ask that you find that Counsel was
3 effective in her representation and that, uh, the
4 Applicant has failed to show any resulting
5 prejudice.

6 **THE COURT:** All right; anything further?

7 **MR. HITE:** No, nothing further, Your Honor.

8 **THE COURT:** All right. Well, I'll take the
9 matter under advisement and be happy to receive,
10 uh, anything else that you might wish to, uh,
11 submit, Mr. Hite. As well as you, Mr. Johnson.

12 **MR. JOHNSON:** Thank you, Your Honor.

13 **MR. HITE:** Thank you, Judge.

14 **THE COURT:** Thank you all.

15 (WHEREUPON, HEARING ENDED AT 1:45 P.M.)

16 *****END OF REQUESTED TRANSCRIPT*****
17
18
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25

Antjuan Tobias Greene v. State of South Carolina

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Case No. 2012-CP-01-00093

Hearing of March 11, 2013

Before The Honorable Clifton B. Newman

1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE OF REPORTER

3 COUNTY OF GREENWOOD)

4

5 I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL
6 COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF
7 THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT
8 THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE
9 TRANSCRIPT OF THOSE PROCEEDINGS REQUESTED AND
10 EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED
11 CASE, RELATIVE TO APPEAL, IN THE COURT OF COMMON
12 PLEAS FOR GREENWOOD COUNTY, SOUTH CAROLINA, ON THE
13 11th DAY OF MARCH 2013.

14 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
15 COUNSEL NOR INTEREST TO ANY PARTY HERETO.

16

17

18

19

20

21

22



23

VIVIAN H. CROSS, COURT REPORTER

24

TENTH CIRCUIT AT LARGE

25

NOVEMBER 26, 2013

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Antjuan Tobias Greene, #311128,

2012-CP-01-0093

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

TRUE COPY

BY *Emily Y McMahen*
ABBEVILLE COUNTY CLERK OF COURT

EMILY Y MCMAHAN
CLERK OF COURT

2013 JUN 28 AM 8:47

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 7, 2012. Respondent made its Return on June 18, 2012. An evidentiary hearing into the matter was convened on March 11, 2012, at the Greenwood County Courthouse. Thomas E. Hite, III, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Patricia Bolen, Esquire, and Alexis Bell, Esquire, also testified. This Court had before it a copy of the records of the Abbeville County Clerk of Court, records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Abbeville County Clerk of Court. Applicant was indicted at the May 2009 term of the Abbeville County Grand Jury for one count of Malicious Injury to Real Property (2009-GS-01-0211), one count of Criminal/Domestic Violence of a High and

Aggravated Nature (2009-GS-01-0210), and one count of Burglary 1st Degree (2009-GS-01-0209).

Applicant was represented by Alexis Bell and Charles Grose, Esquire. On May 22, 2009 Applicant was tried by jury and convicted of one count of Malicious-Injury to Real Property, one count of Criminal/Domestic of a High and Aggravated Nature (CDVHAN), and one count of Burglary 1st Degree. The Honorable Eugene C. Griffith, Jr. sentenced Applicant to thirty (30) days, concurrent, for Malicious Injury to Real Property, ten (10) years, concurrent, for CDVHAN, and twenty (20) years for Burglary 1st Degree.

A Notice of Appeal was timely filed on Applicant's behalf and an appeal was perfected. Applicant was represented by M. Celia Robinson, Esquire. The South Carolina Court of Appeals by written Order affirmed Applicant's conviction and sentence. State v. Greene, 2011-UP-001 (Ct. App. filed on January 4, 2012). The Remittitur was sent on January 25, 2012.

In his current Application, Applicant alleged he is being held unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"
2. "Ineffective Assistance of Appellate Counsel"

At the hearing, Applicant proceeded on his claims of ineffective assistance of trial counsel. Although he raised ineffective assistance of appellate counsel, Applicant, through counsel, affirmatively waived this allegation at the PCR hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their

testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 442, 334 S.E.2d at 814, citing Strickland. Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

This Court finds Applicant's testimony regarding Counsel's ineffectiveness is not

credible while also finding Counsel's testimony credible.

Failure to call witnesses

Applicant alleges Counsel failed to call certain witnesses at trial. Applicant testified had Counsel interviewed witnesses, he would have had a better case. Counsel testified she spoke with Applicant's brother, although she did not realize it was Applicant's brother at the time. Counsel also stated she called Applicant's mother multiple times, but Applicant's mother did not return Counsel's phone calls.

Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). Applicant's mere speculation as to what a witness's testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness's failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

Applicant claims Counsel failed to call witnesses at trial that would have testified on his behalf. However, Applicant failed to present these witnesses at the PCR hearing, and therefore, no prejudice can be shown pursuant to Underwood. Furthermore, Counsel attempted to contact witnesses on Applicant's behalf, but at least one witness would not return Counsel's phone calls. This Court finds Applicant has failed to carry his burden of proving Counsel was ineffective for failing to call witnesses on Applicant's behalf at trial or any resulting prejudice. Thus, this allegation is denied.

Burglary, 1st degree and Victim's consent

Applicant alleges Counsel was ineffective for questioning Victim as to her consent to Applicant's entrance into the residence as a defense to the Burglary, 1st degree charge.

Applicant testified he did not consider the Burglary, 1st degree charge serious because he lived at Victim's residence. On cross-examination, Applicant admitted there was evidence presented at trial that he did not live at the residence or that Victim consented to his entrance that night.

Counsel testified she did not ask Victim directly whether Victim allowed Applicant in the residence. She could not remember whether she chose not to ask the question or whether she mistakenly did not ask Victim. She testified if Victim would have answered in the affirmative, there would be grounds for dismissal of the case. However, Counsel also testified there was evidence that Applicant did not possess a key to the residence.

Upon the Court's questioning, Counsel agreed that, according to Victim's testimony, Applicant came to the residence around midnight and was kicking on the door. She also agreed Victim stated Victim did not let Applicant into the house and attempted to slide a dryer in front of the door to prevent Applicant's entrance.

This Court finds Counsel was effective in her representation of Applicant in relation to her cross-examination of Victim. While an affirmative answer from Victim as to consent would have been grounds for dismissal of the Burglary charge, the opposite is also true. Had Counsel asked Victim whether she consented to Applicant's entrance and the answer was "no," there would have been more confirmatory evidence that Applicant did not have consent to be in Victim's residence. Further, the evidence at trial firmly establishes that Applicant did not have Victim's consent that night as he did not possess a key, approached the residence around

midnight, and kicked the door while Victim was attempting to place a dryer in front of the door to prevent Applicant's entrance. Moreover, Applicant failed to present Victim's testimony at the PCR hearing that she consented to Applicant's entrance of the residence that night. Therefore, Applicant can prove no resulting prejudice in Counsel's failure to question Victim directly about her consent pursuant to Bannister, *supra*. Thus, this allegation is denied.

Failure to advise to testify

Applicant also alleges Counsel was ineffective for failing to advise him about whether or not to testify at trial.

Applicant testified he was not advised concerning his right to testify at trial. He also asserted he wanted to testify, and his testimony would have changed the outcome of the trial.

Counsel testified she adequately conferred with Applicant and that she discussed Applicant's testimony with him after the close of the State's case. Counsel also stated Counsel Grose would have discussed the pros and cons of Applicant testifying with Applicant.

This Court finds Applicant's testimony not credible while finding Counsel's testimony credible. First, "[a]n on-the-record waiver of a constitutional or statutory right is but one method of determining whether the defendant knowingly and intelligently waived that right." Brown v. State, 317 S.C. 270, 272, 453 S.E.2d 251, 252 (1994). Second, this Court finds Counsel made Applicant fully aware of his right to testify or remain silent after the close of the State's case. Based on the aforementioned reasons, this Court finds Applicant knowingly and voluntarily waived his right to testify at his trial. Furthermore, Applicant, while alleging his testimony would have changed the outcome of the case, failed to state specific reasons why and how the trial would have been different had he testified. To say the trial's outcome would have been different without meeting his burden of proof is completely speculative. Accordingly, this

allegation is denied.

Failure to inform of plea offers

Applicant also claims Counsel was ineffective for not relaying plea offers from the State to him.

Solicitor Patricia Bolen testified the first offer from the State would have been for Applicant to plead straight up to CDVHAN with the Burglary and Malicious injury charges being dropped. She would have asked for a sentencing range of two and a half to three years. She also stated Victim wanted Applicant to serve more than three years. Solicitor Bolen testified while she did not officially revoke the offer, her office has a policy that on the day of trial, all offers are off of the table.

Applicant testified he met with Counsel six or seven times, and there was an offer from the State, but nothing in writing. He stated he thought Counsel could have gotten a more favorable offer. Applicant also testified he would have accepted the offer after he saw the evidence in the case: the medical report and pictures of Victim.

Counsel testified the offer from the State was the one about which Solicitor Bolen testified. She also stated she met with Solicitor Bolen and Judge Maddox, who said he would probably sentence Applicant to three years. However, Counsel testified Applicant would not plead to CDVHAN, but wanted to plead to just CDV, and in doing so, rejected the State offer. Counsel confirmed that all offers were verbal offers.

Next, Counsel testified she spoke with another judge about a plea to CDVHAN and wanted to speak with Solicitor Bolen about a plea for four years. She stated Solicitor Bolen said let the judge decide a sentence around two and a half years, plus probation. Counsel then testified Applicant did not want probation. Counsel stated Applicant rejected this offer and said

the most he was willing to serve was eighteen months.

Counsel testified she urged Applicant to accept the plea offers, but Applicant rejected the offers. Counsel also stated it was the Applicant's decision to reject the offers from the State.

This Court finds Applicant's testimony regarding Counsel's failure to relay plea offers from the State is not credible while also finding Counsel's testimony credible.

"Plea bargains rest on contractual principles." United States v. Ringling, 988 F.2d 504, 506 (4th Cir. 1993). "A plea agreement is only an "offer" until the defendant enters a court-approved guilty plea. A defendant accepts the "offer" by pleading guilty." Reed v. Becka, 333 S.C. 676, 688, 511 S.E.2d 396, 402 (Ct. App. 1999).

In this case, Solicitor Bolen offered Applicant a deal where Applicant would plead straight up to CDVHAN in exchange for dropping the Burglary and Malicious injury charges, however, Applicant rejected this offer. As plea offers are subject to contract principles, once Applicant rejected the offer, the offer is no longer available, and Solicitor Bolen was under no obligation to offer another plea bargain. However, as all parties indicate, the State offered Applicant another plea bargain for two and half years with probation following. As Counsel testified, Applicant decided to reject this offer as he did not want to serve a probationary period.

Based on the testimony presented at the PCR hearing, this Court finds Counsel was effective in relaying plea offers from the State to Applicant. It was Applicant's decision to reject these offers and take his chances at trial. This claim is one of buyer's remorse. Counsel rendered effective assistance of counsel, and Applicant can prove no resulting prejudice on this claim. Accordingly, this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not

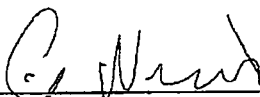
established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.



Clifton B. Newman
Presiding Circuit Court Judge
Eighth Judicial Circuit

June 14, 2013
Columbia, South Carolina

WITNESSES

Richard Madden
Abbeville County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

WARRANT NUMBER

J281889

May Term, 2009

Indictment # 09CS01- 269

THE STATE

vs.

Anghuan Tobias Greene

Foreman of the Grand Jury

Date:

VERDICT

INDICTMENT FOR

BURGLARY
16-11-0311

Foreman

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

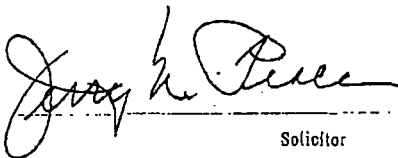
COUNTY OF ABBEVILLE

BURGLARY
16-11-0311

At a Court of General Sessions, convened on the 22nd day of May, 2009 the Grand Jurors of Abbeville County present upon their oath:

That Antjuan Tobias Greene, did in Abbeville County, state aforesaid, on or about the 22nd day of February, 2009 willfully and unlawfully enter a dwelling without consent and with intent to commit a crime therein, when in effecting entry or while in immediate flight there from, he or another participant in the crime; was armed with a deadly weapon or explosive; or caused physical injury to a person who was not a participant in the crime; or used or threatened the use of a dangerous instrument; or displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm, or the entering or remaining occurred in the nighttime, the said dwelling being owned and/or occupied by Theresa Marie Sullivan, in violation of Section 16-11-311 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 cases made and provided.



Solicitor

WITNESSES

Richard Madden
Abbeville County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

May Term, 2009
Indictment # 09CS01- 211

WARRANT NUMBER

J281890

THE STATE

vs.
Auriphan Tobias Greene

Foreman of the Grand Jury

Date: _____

VERDICT

INDICTMENT FOR

MALICIOUS INJURY TO REAL PROPERTY
16-11-0520

Foreman

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

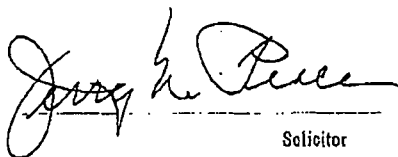
COUNTY OF ABBEVILLE

MALICIOUS INJURY TO REAL PROPERTY
16-11-0520

At a Court of General Sessions, convened on the 22nd day of May, 2009 the Grand Jurors of Abbeville County present upon their oath:

That Antuan Tobias Greene, did in Abbeville County, state aforesaid, on or about the 22nd day of February, 2009 willfully, unlawfully and maliciously damage, destroy and otherwise injure the real property, to wit: the interior of the dwelling of one Theresa Marie Sullivan, the damage to such real property being in the amount of one thousand dollars or less, in violation of Section 16-11-520 of the Code of Laws of South Carolina, 1976, as amended.

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

A handwritten signature in cursive script, appearing to read "Joseph H. Preece", written over a horizontal line.

Solicitor

WITNESSES

Richard Madden
Abbeville County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

WARRANT NUMBER

1281888

COURT OF GENERAL SESSIONS

May Term, 2009

Indictment # 09CS81-210

THE STATE

vs.

Anglian Tobias Greene

Foreman of the Grand Jury

Date: _____

VERDICT

INDICTMENT FOR

VIOLATION SECTION
16-25-0065

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

INDICTMENT FOR

VIOLATION SECTION
16-25-0065

At a Court of General Sessions, convened on the 22nd day of May, 2009 the Grand Jurors of Abbeville County present upon their oath:

That Antjuan Tobias Greene, did in Abbeville County, state aforesaid, on or about the 22nd day of February, 2009 willfully and unlawfully cause or attempt to cause harm or physical injury to his household member, Theresa Marie Sullivan, with apparent present ability under circumstances reasonably creating fear of imminent peril, accompanied by circumstances of aggravation, to wit: that the said defendant did intentionally commit an assault and battery which involved the use of a deadly weapon, or resulted in serious bodily injury to the said victim; and/or did intentionally commit an assault, with or without an accompanying battery, which would reasonably cause a person to fear imminent serious bodily injury or death, in violation of Section 16-25-65 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 cases made and provided.


Solicitor