

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Georgetown County

Larry B. Hyman, Jr., Circuit Court Judge

RECEIVED

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S.C. Supreme Court

STACY W. HOWARD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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Appellate Defender

South Carolina Commission on Indigent
Defense
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF GEORGETOWN	)	
	)	
THE STATE,	)	2007-GS-22-0128
PLAINTIFF,	)	
VERSUS	)	
	)	FEBRUARY 28, 2007
STACEY WALTER HOWARD,	)	FEBRUARY 29, 2007
DEFENDANT.	)	
_____	)	

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

APPEARANCES

MATTHEW J. MODICA, ESQUIRE
DORIE C. BIAGIANTI, ESQUIRE
ATTORNEYS FOR THE STATE

WILLIAM I. RUNYON, JR., ESQUIRE
ATTORNEY FOR THE DEFENDANT

PAMELA OZMENT-CARTEE,
CIRCUIT COURT REPORTER

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1 (WHEREUPON, THE TRIAL OF THIS CASE WAS CALLED AT
2 11:30 A.M. ON FEBRUARY 27, 2007.)

3 THE COURT: ALL RIGHT, THE JURY PANEL IS OUT OF THE
4 ROOM, AND MS. BIOGIONI, PLEASE CALL YOUR CASE.

5 MS. BIAGIANTI: THAT WE HAVE A MOTION OR AN ISSUE
6 WITH REGARDS TO HIS TRIAL. MR. RUNYAN.

7 MR. RUNYAN: YES, SIR, YOUR HONOR.

8 THE COURT: ALL RIGHT, IT APPEARS THAT EVERYONE IS
9 NOW PRESENT, AND I AM TOLD THAT THERE IS --- FIRST OF ALL,
10 MR. MODICA WILL YOU CALL THE CASE PLEASE, AND TELL THE
11 COURT WHAT THE MATTER IS?

12 MR. MODICA: YES, YOUR HONOR THIS IS THE STATE OF
13 SOUTH CAROLINA VERSUS STACEY HOWARD UNDER INDICTMENT 2007-
14 GS-22-129, CHARGING THE DEFENDANT WITH ASSAULT AND BATTERY
15 OF A HIGH AND AGGRAVATED NATURE.

16 THE COURT: ALL RIGHT, AND I AM TOLD THAT THERE IS A
17 MOTION FROM DEFENSE, MR. RUNYAN.

18 MR. RUNYAN: YES, YOUR HONOR. THE DEFENDANT HAS
19 ANNOUNCED HIS INTENTION TO GO TO TRIAL. AND WE WOULD MAKE
20 THIS MOTION WITH ALL DUE RESPECT TO THE BENCH, JUDGE. THE
21 DEFENDANT AND THE BENCH HAVE HAD PRIOR ENCOUNTERS IN THE
22 PAST. MR. HOWARD WOULD FEEL THAT IT MAKES IT INCUMBENT
23 UPON US TO MOVE FOR THE BENCH TO RECUSE ITSELF. THE BENCH
24 HAS PREVIOUSLY FOUND MR. HOWARD IN CONTEMPT OF COURT IN A
25 PRIOR CASE. YOU SENTENCED HIM FOR CONTEMPT, AND MR.

1 HOWARD FEELS THAT THE COURT WOULD NOT BE ABLE TO, BECAUSE
2 OF THAT PRIOR ENCOUNTER, NOT BE ABLE TO GIVE HIM A FAIR
3 AND IMPARTIAL TRIAL ON THE MATTER THAT IS CURRENTLY BEING
4 CALLED BY THE STATE. THEREFORE, WE WOULD RESPECTFULLY ASK
5 THE COURT TO RECUSE ITSELF.

6 AND, YOUR HONOR THIS DEFENDANT, MR. HOWARD HAS JUST
7 INDICATED THAT HE WOULD LIKE IT ON THE RECORD THAT HE HAS
8 PREVIOUSLY FILED A COMPLAINT AGAINST THE BENCH, AND THAT
9 COMPLAINT WAS NOT FILED WITH THE JUDICIAL STANDARD IT WAS
10 FILED AND WAS MADE A MATTER OF RECORD WITH THE CLERK OF
11 COURT'S OFFICE. THEREFORE, IT IS FOR THOSE REASONS THAT
12 MR. HOWARD FEELS THAT THE BENCH SHOULD RECUSE ITSELF; AND
13 WE WOULD RESPECTFULLY SO MOVE ON BEHALF OF THE DEFENDANT.

14 THE COURT: ALL RIGHT. IS THERE A RESPONSE FORM THE
15 STATE?

16 MR. MODICA: NO, YOUR HONOR.

17 THE COURT: DOES THE STATE HAVE A POSITION?

18 MR. MODICA: YOUR HONOR, I HAVE KNOWN YOU SINCE YOU
19 FIRST CAME ON THE BENCH. YOU HAVE A REPUTATION UNHERALDED
20 BY ANY OTHER JUDGE THAT I HAVE EVER APPEARED BEFORE. SO,
21 I FAIL TO SEE ANY REASON WHY I WOULD REQUEST FOR YOU TO
22 RECUSE YOURSELF.

23 THE COURT: THANK YOU FOR THOSE KIND WORDS. MR.
24 MODICA PLEASE REFRESH MY MEMORY. WHAT WAS MR. HOWARD
25 CHARGED WITH THAT THIS COURT TRIED HIS CASE?

1 **MR. MODICA:** IF MY MEMORY SERVES ME CORRECTLY YOUR
2 HONOR, IT WAS POINTING AND PRESENTING A FIREARM. IT WAS
3 AN INCIDENT THAT HAPPENED IN THE PARKING LOT OF A BAR UP
4 IN ANDREWS. IT MAY HAVE ALSO BEEN AN ASSOCIATED ABHAN,
5 BUT THE CHIEF CHARGE WAS THAT HE POINTED A GUN AT A GIRL,
6 AND THAT TWO FEMALES WERE PRESENT.

7 **THE COURT:** ALL RIGHT, AND MY RECOLLECTION ALTHOUGH I
8 DO HAVE AN INDEPENDENT RECOLLECTION IS SKETCHY. WHAT WAS
9 THE NEWSPAPER ARTICLE ABOUT THAT MR. HOWARD --- IT HAD
10 SOMETHING TO DO WITH MR. HOWARD BEING IN THE DETENTION
11 CENTER, AND NOT WISHING TO BEING THERE, HAD SOME COMPLAINT
12 ABOUT HIS DETENTION, I BELIEVE. DO YOU RECALL WHAT THE
13 DETAILS OF THAT WERE?

14 **MR. MODICA:** YES, THE NEWSPAPER, I THINK IT WAS THE
15 GEORGETOWN TIMES, AND THE NEWSPAPER HEADLINE, I DON'T
16 REMEMBER THE EXACTS WORDS. BUT IT HAD A BOLD HEADLINE
17 ABOUT THE JAIL AND/OR SHERIFF BEING SUED REGARDING ITS
18 TREATMENT OF PRISONERS AT THE JAIL.

19 **THE COURT:** NOW, MR. MODICA HAS PREVIOUSLY MR.
20 HOWARD. THE COURT IS AWARE OF THAT BASED ON WHAT MR.
21 MODICA HAS JUST SAID, AND A RECOLLECTION THAT MR. MODICA
22 WAS INVOLVED IN THE PRIOR TRIAL WHICH YOU REFER, IS THERE
23 ANY MOTION IN AN EFFORT TO DISQUALIFY OR RECUSE MR.
24 MODICA?

25 **MR. RUNYAN:** YOUR HONOR, I HAVE BEEN PRACTICING LAW

1 FOR FORTY-YEARS. I THINK THAT THE ISSUE HERE IS NOT ---
2 TO ANSWER YOUR QUESTION DIRECTLY IS NO, AND THEN I WILL
3 PUT ON THE RECORD, MY EXPLANATION. I DON'T THINK I HAVE A
4 BASIS FOR CHALLENGING THE PROSECUTION BY A PARTICULAR
5 SOLICITOR, EVEN THOUGH HE MAY HAVE BEEN INVOLVED IN PRIOR
6 PROSECUTIONS, AND I WILL POINT OUT UNDISCUSSED
7 PROSECUTIONS. I THINK THERE IS A DIFFERENT STANDARD WHEN
8 YOU ARE TALKING ABOUT THE BENCH, WHO HAS TO RULE ON ISSUES
9 OF EVIDENCE. AND, I LIKE MR. MODICA, I HAVE APPEARED
10 BEFORE YOUR HONOR, ON NUMEROUS OCCASIONS. I DON'T TAKE
11 MAKING THIS MOTION ON BEHALF OF A DEFENDANT IN A CAVALIER
12 MANNER. I AM NOT MAKING IT IN A CAVALIER MANNER. I DO
13 NOT HAVE A MOTION TO DISQUALIFY MR. MODICA, BECAUSE I
14 DON'T THINK THAT THE PRIOR CONDUCT, THE PRIOR ASSOCIATION,
15 OR CONNECTION RISES TO A LEVEL THAT GIVES US A RIGHT TO
16 MAKE THAT MOTION.

17 THE COURT: ALL RIGHT, THANK YOU. LET ME STATE FOR
18 THE RECORD WHAT THE COURT'S RECOLLECTION OF THIS INCIDENT
19 TO WHICH COUNSEL IS REFERRING IS. APPROXIMATELY THREE
20 YEARS AGO, AND THAT IS AN ESTIMATE, MR. HOWARD WAS A
21 DEFENDANT IN MY COURT. THE TRIAL WAS IN PROGRESS. THERE
22 HAD BEEN SOME ISSUE THAT MR. HOWARD WAS UNCOMFORTABLE WITH
23 THE CIRCUMSTANCES IN HIS DETENTION. THERE HAD BEEN A
24 NEWSPAPER ARTICLE ABOUT THAT. THE COURT HAD MADE A RULING
25 OUTSIDE OF THE PRESENCE OF THE JURY, BUT THAT WAS NOT

1 RELEVANT TO THE CHARGES WHICH MR. HOWARD WAS FACING, AND
2 THAT THAT COULD NOT BE BROUGHT INTO EVIDENCE, NOR COULD IT
3 BE DISCUSSED WITH THE JURY. MR. HOWARD HAD AS HE WAS
4 SEATED IN THE WITNESS STAND A NEWSPAPER ARTICLE THAT HAD A
5 BOLD TOP OF THE MASTHEAD HEADLINE THAT HAD SOMETHING TO DO
6 WITH HIS DISCONTENT OVER HIS CONDITION OF CONFINEMENT. I
7 WILL STATE FOR THOSE REVIEWING THIS RECORD THAT THE WAY
8 THE GEORGETOWN COUNTY COURTROOM IS LAID OUT, THE JUDGE'S
9 BENCH HAS TO ITS IMMEDIATE LEFT THE WITNESS BOX, AND THEN
10 BEYOND THAT WITNESS BOX, ALSO TO THE LEFT OF THE JUDGE IS
11 THE JURY BOX, TO THE RIGHT OF THE BENCH IS WHERE THE
12 LAWYERS COME UP FOR A SIDE CONFERENCE OR SIDEBAR. WHILE
13 MR. HOWARD WAS ON THE STAND, THE COURT CALLED THE LAWYERS
14 UP OR THE LAWYERS REQUESTED A SIDEBAR. WHILE I HAD MY
15 BACK TURNED TO MR. HOWARD AND TO THE JURY, TALKING TO THE
16 LAWYERS IN A QUIET TONE SO THAT NO ONE ELSE COULD HEAR IT
17 WITHIN THE COURTROOM, IT JUST SO HAPPENED THAT MY LAW
18 CLERK AT THE TIME WAS SEATED OVER BY THE ENTRANCE DOOR TO
19 THE COURTROOM, WHICH ACTUALLY IS A SEAT THE BACK ENTRANCE,
20 THE JUDGES ENTRANCE WHICH IS A SEAT RIGHT BESIDE THE JURY
21 BOX. WHILE I HAD MY BACK TURNED, MR. HOWARD PICKED UP
22 THAT NEWSPAPER AND FLASHED THE ARTICLE HEADLINE TO THE
23 JURY MORE THAN ONE TIME. WHEN THIS WAS BROUGHT TO MY
24 ATTENTION, AND THIS WAS AN INTENTIONAL ACT SO THEY WOULD
25 BE CERTAIN TO SEE IT. WHEN IT WAS BROUGHT TO MY

1 ATTENTION, I DID NOT REACT IN THE JURY'S PRESENCE OTHER
2 THAN TO STOP THAT BEHAVIOR. BUT, LATER OUTSIDE OF THE
3 JURY'S PRESENCE I HAD A CONTEMPT PROCEEDING, BECAUSE IT
4 WAS WHAT THE COURT FELT TO BE A DIRECT DISOBEDIENCE OF A
5 COURT ORDER, AND I SANCTIONED MR. HOWARD BY SENTENCING HIM
6 TO THE DEPARTMENT OF CORRECTIONS, I BELIEVE, FOR A PERIOD
7 OF SIX MONTHS. NOW, MR. HOWARD WAS LATER ACQUITTED BY
8 THAT SAME JURY ON THAT CHARGE, AND THEREFORE THE ONLY
9 SERVICE HE WAS REQUIRED TO DO IN CORRECTIONS AS A RESULT
10 OF THAT COURTROOM TRIAL WAS THAT PARTICULAR INCIDENT.
11 NOW, IN THIS COURT'S VIEW THAT IS A MATTER THAT HAPPENED
12 THREE YEARS AGO, IT IS OVER WITH. THERE WAS A SANCTION
13 EXACTED. THAT SANCTION WAS SERVED. THE COURT HAS NO
14 ANIMUS TOWARDS MR. HOWARD. THE COURT WOULD NOT ATTEMPT TO
15 WORK AGAINST HIM, OR BE UNFAIR TO HIM AS A RESULT OF THAT.
16 AND, THE COURT FINDS NO REASON TO RECUSE BASED ON THE
17 REQUEST OF THE DEFENDANT, AND BASED ON THAT PREVIOUS
18 INCIDENT. I WOULD ALSO POINT OUT THAT IF I ALLOWED THE
19 RECUSAL THE RESULT OF THAT WOULD BE THAT BY A DEFENDANT'S
20 MISBEHAVIOR THE DEFENDANT COULD RECUSE THE COURT, AND THUS
21 IN EFFECT DRIVE THE DOCKET IN SUCH A WAY THAT WOULD BE
22 INAPPROPRIATE TO THE INTEREST OF JUSTICE. AGAIN, I STATE
23 THAT I DO NOT HAVE ANY ANIMUS TOWARDS MR. HOWARD. I HAVE
24 NOT SEEN HIM SINCE THAT TIME. I HAVE NOT HEARD FROM HIM,
25 TO MY KNOWLEDGE. AND, WAS NOT AWARE THAT SOME COMPLAINT

1 HAD BEEN FILED WITH THE CLERK'S OFFICE. AGAIN, THIS IS
2 ALL A FIRST IMPRESSION TO ME. AND, AGAIN I FIND NO REASON
3 TO RECUSE.

4 THIS CASE HAS BEEN CALLED. I BEEN ASSIGNED HERE, AND
5 THE COURT WILL CONDUCT A TRIAL, AND I RESPECTFULLY DENY
6 YOUR MORTON.

7 MR. RUNYAN: THANK YOU VERY MUCH, YOUR HONOR.

8 THE COURT: ALL RIGHT, IS THERE ANYTHING NOW FURTHER
9 WITH REGARD TO THIS CASE THAT WE NEED TO RESOLVE?

10 MR. MODICA: YES SIR, YOUR HONOR. I JUST WANTED TO
11 PUT ON THE RECORD THAT I HAD SPOKEN TO MR. RUNYAN, ABOUT A
12 POSSIBLE PLEA IN THIS CASE TO THE CHARGE, AND HAD AGREED
13 TO RECOMMENDING AN EIGHT YEAR SENTENCE TO RUN CONCURRENT
14 TO ANY PAROLE OR PROBATION VIOLATION, WHICH THE DEFENDANT
15 OWES APPROXIMATELY EIGHT YEARS ON ONE SENTENCE INVOLVING
16 THE SLASHING OF HIS MOTHER'S FACE, A FEW YEARS IN REGARD
17 TO THE ASSAULT OF A HIGH AND AGGRAVATED NATURE THAT HE WAS
18 CONVICTED OF HERE IN GEORGETOWN IN WHICH IT IS THE SAME
19 VICTIM, LISA POWELL, AND FOR THE RECORD, THAT OFFER THAT
20 RECOMMENDATION IS RESENDED BY THE STATE.

21 THE COURT: ALL RIGHT. IS ARE THERE ANY COMMENTS
22 ABOUT THAT MR. RUNYAN, OR ANY RESPONSE TO IT SIR?

23 MR. RUNYAN: JUST FOR FURTHER CLARIFICATION, THE
24 HONORABLE SOLICITOR FORGOT TO PLACE ON THE RECORD THAT HE
25 ALSO DISMISSED AN UNRELATED CHARGE, PRACTICING LAW WITHOUT

1 A LICENSE IN RETURN FOR THAT PLEA. I HAVE INFORMED MR.
2 MODICA OF THE OFFER BY THE STATE, MY CLIENT HAS REJECTED
3 THAT, AND WE PUT THAT ON THE RECORD IN MR. HOWARD'S
4 PRESENCE TO ADVISE THE COURT WHETHER OR NOT MY STATEMENT
5 ABOUT HIS OBJECTION IS ACCURATE OR NOT.

6 THE COURT: ALL RIGHT, DO YOU WISH FOR ME TO DISCUSS
7 THAT WITH MR. HOWARD?

8 MR. RUNYAN: YES, SIR.

9 THE COURT: MR. HOWARD, WOULD YOU STAND, PLEASE. WE
10 ARE GOING TO PLACE YOU UNDER OATH, PLEASE FOLLOW OUR
11 CLERK'S INSTRUCTIONS.

12 STACEY W. HOWARD

13 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

14 THE COURT: GOOD MORNING, MR. HOWARD. YOU MAY PUT
15 YOUR HAND DOWN, SIR. MR. MODICA TELL US, AND AGAIN THE
16 COURT IS NOT IN THE BUSINESS OF EITHER MAKING PLEA OFFERS
17 OR DECIDING WHETHER TO ACCEPT THEM OR REJECT THEM. THIS
18 IS FOR THE PARTIES. BUT, MR. MODICA TELLS US THAT THERE
19 WAS AN OFFER, AND TELL ME WHAT WAS THE OFFER MR. MODICA
20 AGAIN? THE SERVICE REQUIREMENT AND THE OFFER.

21 MR. MODICA: ASSAULT AND BATTERY OF A HIGH AND
22 AGGRAVATED NATURE, MR. RUNYAN IS CORRECT, AND I WOULD
23 DISMISS PRACTICING LAW WITHOUT A LICENSE UNDER INDICTMENT
24 2006-GS-22-0128. MY RECOMMENDATION WOULD BE A EIGHT-YEARS
25 SENTENCE ON THE ASSAULT AND BATTERY OF A HIGH AND

1 AGGRAVATED NATURE TO RUN CONCURRENT TO ANY PAROLE OR
2 PROBATION VIOLATIONS.

3 THE COURT: ALL RIGHT, VERY GOOD. THAT WOULD HAVE
4 BEEN THE OFFER FROM THE STATE. MR. HOWARD DO YOU
5 UNDERSTAND THE TERMS OF THAT OFFER SIR?

6 MR. HOWARD: YES, SIR.

7 THE COURT: HAVE YOU DECIDED TO REJECT OR ACCEPT THAT
8 OFFER?

9 MR. HOWARD: YES SIR, WITH AN EXPLANATION.

10 THE COURT: ALL RIGHT, SIR, GO AHEAD.

11 MR. HOWARD: THE REASON WHY I REJECTED THE STATE'S
12 OFFER IS BECAUSE THERE IS EXCULPATORY INFORMATION ALL
13 THROUGH THE FILES IN THE STATE'S POSITION WHICH HE IS
14 WITHHOLDING FROM MY ATTORNEY. MY ATTORNEY HAS NOT DONE
15 DILIGENT RESEARCH INTO THE DEVELOPMENT OF THE LAW AS FAR
16 AS BEHIND THE PROSECUTORS FILES, AS FAR AS EXCULPATORY
17 EVIDENCE, OR OBTAINING THIS EXCULPATORY EVIDENCE. I HAVE
18 TRIED TO DISCUSS THIS WITH MY ATTORNEY. I HAVE ALSO TRIED
19 TO DISCUSS WITH MY ATTORNEY TO QUESTION CERTAIN WITNESSES
20 WHERE HE COULD GET A GENERAL UNDERSTANDING AS TO WHAT MY
21 DEFENSE WOULD BE, AND WHERE HE CAN ELICIT THE TESTIMONY
22 FROM THE STAND. HE HAS NOT DONE THIS.

23 THE COURT: ALL RIGHT.

24 MR. HOWARD: AND, I FEEL LIKE HE IS NOT ADEQUATELY
25 PREPARED TO REPRESENT ME AT TRIAL AT THIS TIME. HE HAS

1 ALSO INDICATED THAT HE THINGS THAT THE JURY, THE JURY
2 VINIRE AND THE COMPOSITION OF THE JURY VINIRE AND THE JURY
3 POOL HAS BEEN SPECIALLY SELECTED THROUGH THE DMV. I WOULD
4 ALSO LIKE FOR IT TO BE NOTED ON THE RECORD THAT I THINK
5 THAT MY JURY HAS NOT BEEN SELECTED FROM A RANDOM CROSS
6 SECTION OF THE COMMUNITY.

7 THE COURT: ALL RIGHT, NOW BACK TO THE QUESTION AT
8 HAND MR. HOWARD. THIS DECISION TO REJECT THE OFFER, IS
9 THIS YOUR DECISION THAT YOU HAVE MADE, SIR?

10 MR. HOWARD: YES SIR, BASED ON THE EVIDENCE.

11 THE COURT: ALL RIGHT, HAS ANYONE TRIED TO FORCE YOU
12 OR REQUIRE THAT YOU DO THIS?

13 MR. HOWARD: NO, SIR.

14 THE COURT: SO, YOU ARE TELLING ME THIS IS YOUR
15 VOLUNTARY DECISION TO REJECT THE OFFER?

16 MR. HOWARD: YES SIR, AND MY SIXTH AMENDMENT RIGHT.

17 THE COURT: SIR?

18 MR. HOWARD: AND, MY SIXTH AMENDMENT RIGHT.

19 THE COURT: ALL RIGHT, SIR. AND, DO YOU REALIZE
20 AGAIN, MY FINAL QUESTION TO YOU IS THAT WHAT THE STATE IS
21 SAYING IS THAT IF YOU DO NOT ACCEPT THE OFFER, AND THE
22 CASE GOES FORWARD, THAT IS A JURY IS DRAWN, THE OFFER IS
23 WITHDRAWN?

24 MR. HOWARD: YES, SIR. IT HAS ALSO BEEN EXPLAINED
25 TO ME THAT YOU ARE GOING TO STACK THOSE SENTENCES

1 CONSECUTIVELY, IF I AM SENTENCED. AND, I THINK THAT IS
2 BECAUSE YOU ARE GOING TO SHOW PARTIALITY THROUGHOUT THIS
3 TRIAL, BECAUSE OF THE CONTEMPT PROCEEDING THAT YOU HELD
4 AGAINST ME.

5 THE COURT: ALL RIGHT, SIR. MR. HOWARD FROM WHOM DID
6 YOU HEAR THAT THE SENTENCE WOULD BE STACKED AGAINST YOU
7 CONSECUTIVELY?

8 MR. HOWARD: FROM MY COUNSEL.

9 THE COURT: I WILL TELL YOU SIR, THAT I HAVE HAD
10 ABSOLUTELY NO SUCH DISCUSSION WITH YOUR ATTORNEY. I HAVE
11 NOT GIVEN HIM THAT INFORMATION. I DO NOT HAVE THAT
12 INTENTION TO DO SO, AT THIS POINT WHATEVER SENTENCE MAY BE
13 HANDED DOWN. FIRST OF ALL IF YOU ARE FOUND NOT GUILTY,
14 THERE WOULD BE NO SENTENCE HANDED DOWN. BUT, IF YOU ARE
15 FOUND GUILTY THEN IT WOULD BE UP TO THE COURT BASED ON THE
16 EVIDENCE BEFORE THE COURT AT THAT TIME AS TO WHAT THE
17 APPROPRIATE RESPONSE WILL BE. SO, I WILL TELL YOU NOW
18 THERE HAVE BEEN NO SENTENCING AFFIRMATION OR DECISION THAT
19 HAS BEEN STATED AS OF THIS MOMENT. DO YOU UNDERSTAND THAT
20 SIR?

21 MR. HOWARD: YES SIR, COURT'S INDULGENCE, MAY I MAKE
22 ONE MORE STATEMENT?

23 THE COURT: GO AHEAD.

24 MR. HOWARD: I ALSO FEEL THAT I HAVE BEEN COERCED,
25 AND INDUCED UNDER DURESS BY THE FORCE OF THIS COURT BY MY

1 ATTORNEY TO ENTER A PLEA OF GUILTY WHEN I AM NOT GUILTY.
2 I STRESS TO THIS COURT, THAT I AM NOT GUILTY. AND, I
3 DESIRE A TRIAL BY A JURY OF MY PEERS.

4 THE COURT: ALL RIGHT, THEN THAT IS SO NOTED. MR.
5 RUNYAN ANYTHING IN FOLLOWUP?

6 MR. RUNYAN: JUDGE, JUST FOR THE RECORD. IN
7 DISCUSSING PLEA OFFERS, AND I DON'T WANT TO GET INTO THE
8 ATTORNEY CLIENT PRIVILEGE, BUT IN DISCUSSING PLEA OFFERS
9 WE OFTEN DESCRIBE TO THE DEFENDANT, THE DEFENDANT'S
10 MAXIMUM EXPOSURE. THERE HAVE BEEN NO INDICATIONS, I HAVE
11 TO CLARIFY THE RECORD, THAT THE COURT HAS MADE ANY COMMENT
12 ABOUT WHAT THE COURT WOULD IN FACT DO IN THE EVENT OF A
13 CONVICTION. THERE HAS BEEN AN EXPLANATION TO MR. HOWARD
14 AS TO WHAT HIS MAXIMUM EXPOSURE COULD BE IN THE EVENT OF A
15 CONVICTION. SO, THEREFORE THERE HAS BEEN NO INDICATION
16 THAT THE COURT SAID THAT IT WAS GOING TO DO X, Y, OR Z.
17 CERTAINLY, WHEN YOU LOOK AT THE MAXIMUM EXPOSURE, THAT WAS
18 IN FACT ADVISED OR GIVEN TO MR. HOWARD, AND WE ARE
19 PREPARED, WE ARE PREPARED TO GO FORWARD. WE HAVE A THEORY
20 OF DEFENSE. WE HAVE GONE OVER THE MEDICAL RECORDS. WE
21 KNOW WHAT WE ARE ABOUT TO DO IF IT COMES TO THAT. BUT,
22 THE SIMPLE FACT IS THAT WE ARE PREPARED TO GO FORWARD.

23 THE COURT: ALL RIGHT, VERY GOOD. THEN HAVING HAD
24 THIS DISCUSSION I BELIEVE THIS MATTER IS CONCLUDED, AND
25 MR. HOWARD I AM GOING TO RETURN YOU BACK TO THE DETENTION

1 AREA UNTIL WE BRING YOU BACK TO PICK A JURY SIR, WHICH WE
2 WILL DO THAT SOMETIME BEFORE THE LUNCH HOUR. GOOD LUCK TO
3 YOU SIR.

4 JURY QUALIFICATIONS

5 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, COURT
6 COME TO ORDER. WELCOME BACK TO THE COURTROOM. THANK YOU
7 FOR YOUR PATIENCE. WE ARE A LITTLE BIT BEYOND THE TWELVE
8 O'CLOCK HOUR, AND I THANK YOU FOR YOUR UNDERSTANDING OF
9 OUR PROCESS. I WILL TELL YOU THAT HERE WE ARE NOT A
10 FACTORY WHERE WE PRODUCE A CERTAIN AMOUNT OF WIDGETS IN A
11 PARTICULAR TIME. WE ARE WORKING WITH SOME VERY IMPORTANT
12 ISSUES, WITH PEOPLES LIBERTY AND LIVELIHOOD, AND SOMETIMES
13 WE JUST HAVE TO TAKE A LITTLE EXTRA TIME AND DO THAT.
14 THANK YOU FOR YOUR UNDERSTANDING, AND FOR OUR SLIGHT DELAY
15 IN THE TIME THAT I ASKED YOU TO BE BACK.

16 ALL RIGHT, THE WAY OUR PROCESS WORKS HERE IN THE
17 CRIMINAL COURT IS THAT OUR SOLICITOR HAS THE
18 RESPONSIBILITY TO ACTUALLY SCHEDULE AND CALL THE CASES FOR
19 TRIAL. AND, MR. MODICA, PLEASE CALL YOUR FIRST CASE FOR
20 TRIAL FOR JURY SELECTION.

21 MR. MODICA: THANK YOU, YOUR HONOR. AT THIS TIME
22 THE STATE WILL CALL THE STATE OF SOUTH CAROLINA VERSUS
23 STACEY WALTER HOWARD, UNDER INDICTMENT 2007-GS-22-129,
24 CHARGING THE DEFENDANT WITH ASSAULT AND BATTERY OF A HIGH
25 AND AGGRAVATED NATURE.

1 THE COURT: ALL RIGHT, MR. RUNYAN, DO YOU REPRESENT
2 MR. HOWARD?

3 MR. RUNYAN: YES, YOUR HONOR. I REPRESENT MR.
4 HOWARD, AND THE DEFENDANT IS PRESENT IN THE COURT, AND WE
5 WAIVE FORMAL ARRAIGNMENT, JUDGE.

6 THE COURT: ALL RIGHT, VERY GOOD. YOU HAVE HEARD THE
7 CHARGE, AND WHAT PLEA DOES THE DEFENDANT ENTER TO THE
8 CHARGE?

9 MR. RUNYAN: NOT GUILTY, YOUR HONOR.

10 THE COURT: ALL RIGHT, THANK YOU, SIR. LADIES AND
11 GENTLEMEN YOU HAVE HEARD THE CHARGE. YOU HAVE HEARD A
12 PLEA OF NOT GUILTY, WHICH MEANS THE ISSUES ARE JOINED FOR
13 TRIAL, AND WE WILL NOW PROCEED TO PICK A JURY FOR THE
14 TRIAL OF THIS CASE.

15 LET ME FIRST SAY, BEFORE WE BEGIN JUST A THOUGHT
16 ABOUT THIS PROCESS. I KNOW PSYCHOLOGICALLY FROM WHERE YOU
17 SIT IN THE GROUP, THAT IT IS A LOT EASIER WHEN YOU HEAR A
18 QUESTION TO JUST SAY YOU KNOW I THINK THAT DOESN'T APPLY
19 TO ME. I AM NOT GOING TO RESPOND TO THAT. I AM GOING TO
20 ASK YOU TO DO JUST THE OPPOSITE. IF YOU HEAR A QUESTION
21 DURING OUR QUALIFICATIONS FOR WHICH YOU BELIEVE YOU SHOULD
22 MAKE A RESPONSE, PLEASE STAND UP AND GIVE US THE BENEFIT
23 OF THAT INFORMATION. THERE ARE NO WRONG ANSWERS IN JURY
24 QUALIFICATIONS I ASSURE YOU. THE PURPOSE OF THIS PROCESS
25 IS THAT WHATEVER JURY WE CHOOSE, AND I AM GOING TO USE THE

1 WORD DISINTERESTED. AND WHEN I SAY THAT I DON'T MEAN THAT
2 YOU DON'T CARE. WHAT I MEAN IS YOU DON'T HAVE SOME
3 CONNECTION TO THE CASE, RELATION TO A PARTY, OR SOME OTHER
4 CONNECTION THAT WOULD NOT MAKE YOU A GOOD JUROR FOR THIS
5 PARTICULAR CASE.

6 WE ARE GOING TO BEGIN BY LETTING THE ATTORNEYS
7 INTRODUCE THEMSELVES TO YOU AGAIN. I WILL START WITH
8 QUESTIONS ABOUT COUNSEL. WE WILL START WITH THE
9 PLAINTIFF, OR THE STATE EVERY TIME, BECAUSE THE STATE IS
10 THE ONE, BRINGING THESE CHARGES. THE STATE HAS THE BURDEN
11 OF PROOF. THE STATE GOES FIRST, SO MR. MODICA PLEASE
12 INTRODUCE YOURSELF, AND IF YOU HAVE AN ASSISTANT ATTORNEY
13 WHO WILL BE WORKING WITH YOU IN THIS CASE, PLEASE MAKE
14 THAT INTRODUCTION.

15 MR. MODICA: THANK YOU, YOUR HONOR. ONCE AGAIN MY
16 NAME IS MATTHEW MODICA, AND I AM AN ASSISTANT SOLICITOR
17 FOR THIS AREA. WITH ME IS GOING TO BE MS. BIAGIANTI, WHO
18 IS ALSO AN ASSISTANT SOLICITOR, MY LEGAL ASSISTANT TONYA
19 PRESSLEY IS IN THE COURTROOM, ALSO INVESTIGATOR GEORGE
20 SMITH.

21 THE COURT: THANK YOU. AND, NOW MR. RUNYAN TO THE
22 DEFENSE SIDE. PLEASE INTRODUCE YOURSELF TO THE JURY
23 PANEL.

24 MR. RUNYAN: MY NAME IS PHIL RUNYAN, I AM AN
25 ATTORNEY, AND I PRACTICE LAW PRIMARILY IN CHARLESTON

1 COUNTY. I AM IN ASSOCIATION WITH CHARLES BRYAN, ELLIOTT
2 BARNWELL, AND JAMES MCFADDEN FOR SEVERAL YEARS, THANK YOU.

3 THE COURT: NOW, I FIRST WANT TO ASK ABOUT THE
4 ATTORNEYS LADIES AND GENTLEMEN. YOU HAVE HEARD THE
5 INTRODUCTIONS. I FIRST WANT TO ASK ABOUT THE SOLICITOR'S
6 SIDE OF THE CASE. I ASK YOU LADIES AND GENTLEMEN IF THERE
7 IS ANY MEMBER OF THIS JURY PANEL RELATED BY BLOOD OR
8 MARRIAGE TO EITHER OF THE ATTORNEYS HERE REPRESENTING THE
9 STATE IN THIS CASE, OR HAVE SOME CLOSE PROFESSIONAL,
10 BUSINESS, OR SOCIAL CONNECTION TO THEM. IF THAT, APPLIES
11 TO YOU PLEASE STAND. RELATED BY BLOOD OR MARRIAGE, CLOSE
12 PROFESSIONAL, SOCIAL CONNECTION TO EITHER OF THESE
13 ATTORNEYS. LET THE RECORD REFLECT THAT NO ONE HAS STOOD.

14 NOW I WANT TO ASK ABOUT THE SOLICITOR'S OFFICE IN
15 GENERAL, WHICH IS THE PROSECUTING OFFICER HERE IN THE
16 FIFTEENTH JUDICIAL CIRCUIT WHICH IS HORRY AND GEORGETOWN
17 COUNTIES. I ASK YOU IF THERE IS ANY MEMBER OF THIS JURY
18 PANEL WHO HAS SOME BUSINESS CONNECTION TO THE SOLICITOR'S
19 OFFICE AS A VENDOR OR IN SOME OTHER CAPACITY; OR HAS
20 PREVIOUSLY BEEN REPRESENTED BY THE SOLICITOR'S OFFICE IN
21 ANY MATTER FOR WHICH THE SOLICITOR MAY HAVE REPRESENTED
22 YOU AS A VICTIM OR IN SOME OTHER CAPACITY, OR HAD SOME
23 OTHER CONNECTION TO ANY ATTORNEY IN THE SOLICITOR'S OFFICE
24 FOR THE FIFTEENTH CIRCUIT. IF THAT APPLIES TO YOU PLEASE
25 STAND. ALL RIGHT, MA'AM PLEASE TELL US YOUR NAME AND

1 JUROR NUMBER?

2 JUROR COLLINS: I AM JUROR NUMBER 30, AND MY NAME IS
3 MARVIE COLLINS. I HAVE A CLOSE RELATIVE THAT WORKS IN THE
4 SOLICITOR'S OFFICE.

5 THE COURT: ALL RIGHT, MS. COLLINS, TELL ME WHO THAT
6 IS PLEASE?

7 JUROR COLLINS: GERALDINE SHELLY.

8 THE COURT: AND, IN WHAT COUNTY IS THAT?

9 JUROR COLLINS: SHE WORKS HERE IN GEORGETOWN COUNTY.

10 THE COURT: ALL RIGHT. AND, WHAT IS HER POSITION
11 WITHIN THE SOLICITOR'S OFFICE, DO YOU KNOW MA'AM?

12 JUROR COLLINS: NO, SIR. I DON'T KNOW.

13 THE COURT: ACTUALLY, I WAS ASKING TO SEE IF YOU KNEW
14 THAT.

15 JUROR COLLINS: I DON'T KNOW THAT, SIR.

16 THE COURT: VERY GOOD. ALL RIGHT, MA'AM I WILL TELL
17 YOU WHAT. I AM GOING TO LET YOU BE SEATED. THANK YOU,
18 MS. COLLINS.

19 COUNSEL DO YOU HAVE A RESPONSE AS TO RATHER MS.
20 COLLINS MAY BE QUALIFIED IN A PARTICULAR CASE WHICH THIS
21 OFFICE IS PROSECUTING? I WILL BE GLAD TO HEAR FROM YOU
22 MR. MODICA.

23 MR. MODICA: YOUR HONOR I WOULD JUST ASK YOU TO ASK
24 HER IF SHE COULD BE FAIR AND IMPARTIAL. OBVIOUSLY IF SHE
25 CAN, ANSWER THAT QUESTION THEN WE WOULD NOT HAVE A

1 PROBLEM.

2 THE COURT: ALL RIGHT, MR. RUNYAN DO YOU HAVE A
3 POSITION?

4 MR. RUNYAN: YOUR HONOR, WITH ALL DUE RESPECT TO THE
5 JUROR; I WOULD ASK THAT THE COURT EXCUSE THIS JUROR FOR
6 CAUSE OUT OF AN ABUNDANCE OF CAUTION.

7 THE COURT: ALL RIGHT. MS. COLLINS, MA'AM, I AM
8 GOING TO DO THAT. I AM NOT SAYING THAT YOU ARE NOT
9 CAPABLE, BUT WHAT MY CONCERN IS, IF THERE IS SOMEONE WHO
10 MAY BE REVIEWING THIS MATTER THAT THERE WOULD BE AN
11 APPEARANCE OF A CONNECTION OR AN IMPROPRIETY, OR SOME
12 QUESTION ABOUT THAT. SO, TO PREVENT THAT WHAT I AM GOING
13 TO ASK YOU TO COME UP PLEASE, IF YOU WOULD, AND WE ARE
14 GOING TO SWITCH YOU TO A TERM OF COMMON PLEAS OR CIVIL
15 COURT SOMEWHERE DOWN THE ROAD. IS THAT SATISFACTORY TO
16 YOU?

17 JUROR COLLINS: YES, SIR.

18 THE COURT: VERY GOOD. PLEASE COME FORWARD. IN
19 FACT, MS. COLLINS, I AM GOING TO GIVE YOU THE OPTION
20 MA'AM. YOU HAVE COME, YOU MADE YOURSELF AVAILABLE TO
21 SERVE. I WILL EITHER RELEASE YOU AS A JUROR, AND YOU WILL
22 BE DONE; OR WE WILL SWITCH YOU TO THE CIVIL SIDE OF COURT,
23 AT SOME FUTURE TIME IF YOU WANT TO SEE HOW THE CIVIL COURT
24 WORKS. WHAT WOULD BE YOUR PREFERENCE?

25 JUROR COLLINS: I WOULD PREFER TO BE RELEASED.

1 THE COURT: FREE TO GO. ALL RIGHT, MA'AM YOU ARE
2 FREE TO GO MS. COLLINS. THANK YOU. YOU HAVE A GOOD DAY.

3 ALL RIGHT, NOW GOING BACK TO THE QUESTION ABOUT THE
4 SOLICITOR'S OFFICE. IS THERE ANYONE ELSE WHO WOULD STAND?
5 IN FACT, NOW EVERYONE MAY NOW REMEMBER THAT THEY HAVE A
6 RELATIVE WORKING IN THE SOLICITOR'S OFFICE.

7 IS THERE ANYONE ELSE WHO WOULD RESPOND TO THE
8 QUESTION ABOUT THE SOLICITOR'S OFFICE?

9 LET'S SWITCH NOW TO THE DEFENSE SIDE OF THE CASE.
10 YOU MET MR. RUNYAN. I ASK YOU NOW LADIES AND GENTLEMEN IS
11 THERE ANY MEMBER OF THIS JURY PANEL RELATED BY BLOOD OR
12 MARRIAGE TO MR. RUNYAN, HAVE SOME CONNECTION TO HIM
13 WHETHER IT IS BUSINESS, PROFESSIONAL, OR SOCIAL, OR HAVE
14 EITHER NOW OR IN THE PAST BEEN A CLIENT OF MR. RUNYAN. IF
15 THAT APPLIES TO YOU, PLEASE STAND. ALL RIGHT, LET'S LET
16 THE RECORD REFLECT THAT NO ONE HAS STOOD IN RESPONSE TO
17 THE COURT'S QUESTION.

18 NOW, MR. MODICA, I WANT YOU TO INTRODUCE IF YOU WILL,
19 IF YOU HAVE AN ALLEGED VICTIM IN THIS CASE. I WANT TO SAY
20 LADIES AND GENTLEMEN I USE THE TERM ALLEGED VICTIM NOT
21 BECAUSE THE COURT QUESTIONS ANY ISSUES HERE, BUT THIS IS
22 ULTIMATELY FOR THE JURY TO DETERMINE. SO, I ASK YOU DO
23 YOU HAVE A COMPLAINING WITNESS, OR AN ALLEGED VICTIM, AND
24 ALSO IF YOU WOULD INTRODUCE YOUR CASE OFFICER, AND I
25 BELIEVE YOU MAY HAVE DONE THAT ALREADY, BUT PLEASE DO SO.

1 AGAIN. JUST THOSE INDIVIDUALS, I WANT TO QUERY THIS JURY
2 ABOUT THEM INDIVIDUALLY.

3 MR. MODICA: THANK YOU, YOUR HONOR. LISA POWELL IS
4 SEATED OVER THERE THE VICTIM IN THIS CASE. INVESTIGATOR
5 GEORGE SMITH IS THE LEAD DETECTIVE, AND JARED BARDON IS
6 ONE OF THE OFFICERS INVOLVED IN THIS CASE AS WELL. THERE
7 IS ONE MORE OFFICER, RON CRABTREE, BUT HE IS NOT HERE JUST
8 YET.

9 THE COURT: ALL RIGHT. AND, YOUR CASE OFFICER WHO
10 WOULD BE SEATED WITH YOU AT THE TABLE. PLEASE GIVE US
11 YOUR NAME AGAIN SIR?

12 MR. SMITH: GEORGE SMITH.

13 THE COURT: ALL RIGHT, THANK YOU OFFICER SMITH.

14 MR. MODICA: AND, THERE IS ONE MORE OTHER WITNESS,
15 DOCTOR --

16 THE COURT: VERY GOOD, I AM JUST ASKING ABOUT
17 PRINCIPLE WITNESSES AT THIS TIME. THANK YOU.

18 NOW, LET'S SWITCH TO THE DEFENDANT'S SIDE OF THE
19 CASE, AND WOULD YOU PLEASE INTRODUCE MR. HOWARD TO THE
20 JURY PANEL.

21 MR. RUNYAN: STAND UP MR. HOWARD. YOUR HONOR, THIS
22 IS MR. STACEY HOWARD THE DEFENDANT IN THIS CASE.

23 THE COURT: VERY GOOD. MR. HOWARD PLEASE TURN, SO
24 OUR JURORS CAN SEE YOU, TO SEE WHETHER OR NOT THEY KNOW
25 YOU. ALL RIGHT, THANK YOU, YOU MAY BE SEATED.

1 LET'S SWITCH BACK TO THE STATE'S SIDE OF THE CASE.
2 YOU HEARD THE TWO PRINCIPLE PROSECUTING OFFICERS IN THIS
3 CASE, OFFICER GEORGE SMITH AS WELL AS THE ALLEGED VICTIM
4 WHO IS MS. LISA POWELL, SEATED IN THE COURTROOM. I ASK
5 YOU LADIES AND GENTLEMEN IF THERE IS ANY MEMBER OF THIS
6 JURY PANEL RELATED BY BLOOD OR MARRIAGE TO EITHER OF THESE
7 INDIVIDUALS; HAVE SOME BUSINESS, PROFESSIONAL, OR SOCIAL
8 CONNECTION TO THEM, OR THINK YOU MAY EVEN KNOW EITHER OF
9 THEM. IF THAT APPLIES TO YOU PLEASE STAND. LET'S LET THE
10 RECORD REFLECT THAT NO ONE HAS STOOD.

11 NOW WE SWITCH BACK TO THE DEFENSE, AND YOU WERE
12 INTRODUCED TO MR. HOWARD. I ASK YOU LADIES AND GENTLEMEN
13 IF THERE IS ANY MEMBER OF THIS JURY PANEL BELIEVE THAT YOU
14 ARE RELATED TO HIM BY BLOOD OR MARRIAGE, HAVE ANY
15 CONNECTION, BUSINESS, SOCIAL, PROFESSIONAL, WHATEVER IT
16 MAY BE, OR THINK THAT YOU MAY EVEN KNOW MR. HOWARD. IF
17 THAT APPLIES TO YOU, PLEASE STAND. LET'S LET THE RECORD
18 REFLECT THAT NO ONE HAS STOOD.

19 NOW, MR. MODICA PLEASE CALL THE REMAINING NAMES OF
20 THE WITNESSES WHO MAY APPEAR FOR THE STATE. PLEASE LISTEN
21 TO THE ADDITIONAL WITNESSES NAMES.

22 MR. MODICA: YES, SIR. THAT WOULD BE DEPUTY RON
23 CRABTREE, AND DOCTOR WILLIAM RICHMOND WHO WORKS FOR THE
24 GEORGETOWN MEMORIAL HOSPITAL.

25 THE COURT: ALL RIGHT, THANK YOU. AND, LADIES AND

1 GENTLEMEN, YOU HEARD NAMES OF ADDITIONAL WITNESSES. I ASK
2 YOU IF YOU EVEN KNEW THE OTHER PRINCIPAL WITNESS, NOW I
3 JUST SIMPLY ASKING, IS THERE ANY MEMBER OF THE JURY PANEL
4 RELATED BY BLOOD MARRIAGE TO EITHER OF THESE OR HAVE SOME
5 CLOSE BUSINESS, PROFESSIONAL OR SOCIAL CONNECTION TO THEM.
6 IF THAT APPLIES TO YOU, PLEASE STAND. ALL RIGHT, MA'AM,
7 PLEASE TELL ME YOUR NAME?

8 JUROR BALLARD: I AM JUROR NUMBER FOUR, MELISSA
9 BALLARD. I AM A REGISTERED NURSE, AND I WORK AT
10 GEORGETOWN MEMORIAL HOSPITAL WHERE DR. RICHMOND WORKS.

11 THE COURT: ALL RIGHT. AND IF YOU --- DO YOU WORK
12 FOR HIM OR DO YOU JUST WORK IN THE SAME HOSPITAL?

13 JUROR BALLARD: WELL, HE'S PRETTY MUCH OUR DIRECTOR
14 OF BOTH EMERGENCY ROOMS, SO HE'S OUR DOCTOR.

15 THE COURT: ALL RIGHT. AND LET ME ASK YOU, MS.
16 BALLARD, IF THIS INDIVIDUAL APPEARS AS A WITNESS AND YOU
17 ARE CALLED AS A JUROR WOULD THAT PREVENT YOU FROM GIVING A
18 FAIR AND IMPARTIAL TRIAL IN THIS CASE IN YOUR OPINION?

19 JUROR BALLARD: NO, SIR.

20 THE COURT: ALL RIGHT, THEN BY YOUR ANSWER I FIND
21 THAT YOU ARE QUALIFIED AND YOU MAY BE SEATED. THANK YOU,
22 MA'AM. ALL RIGHT, ANYONE ELSE. YES, SIR?

23 JUROR WALL: JUROR 143, CHARLES WALL. I DON'T KNOW
24 MR. HOWARD BUT I KNOW HIS FATHER.

25 THE COURT: ALL RIGHT.

1 JUROR WALL: AND WE ARE GOOD FRIENDS. I DIDN'T
2 REALIZE UNTIL I LOOKED BACK AND SEEN HIM. HE LOOKED
3 FAMILIAR BUT I DIDN'T SEE HIM EARLIER.

4 THE COURT: ALL RIGHT, SIR, AND LET ME ASK YOU.
5 WOULD THE FACT MR. WALL, THAT YOU KNOW MR. HOWARD, OR
6 ACTUALLY YOU KNOW HIS FATHER AND THROUGH HIS FATHER YOU
7 KNOW HIM, WOULD THAT PREVENT YOU FROM GIVING A FAIR AND
8 IMPARTIAL TRIAL IN THIS CASE IN YOUR OPINION?

9 JUROR WALL: NO, SIR.

10 THE COURT: ALL RIGHT, SIR, LET ME ASK IT A SECOND
11 WAY. WOULD YOU BE ABLE TO LISTEN TO THE EVIDENCE AND MAKE
12 YOUR DECISION BASED SOLELY ON THE EVIDENCE PUTTING OUT OF
13 YOUR MIND ANY CONNECTION THAT YOU MAY HAVE TO ANYONE IN
14 THE CASE, CAN YOU DO THAT?

15 JUROR WALL: YES, SIR, I CAN DO THAT.

16 THE COURT: DO YOU HAVE ANY DOUBT ABOUT THAT?

17 JUROR WALL: NO, SIR, I CAN DO THAT.

18 THE COURT: ALL RIGHT, THEN I FIND THAT YOU ARE
19 QUALIFIED BY YOUR RESPONSE. THANK YOU, SIR. ALL RIGHT,
20 ANYONE ELSE NOW WHO WOULD RESPOND, LET'S GO BACK TO THE
21 STATE'S SIDE, ABOUT THE STATE'S WITNESSES. ALL RIGHT,
22 THEN, I AM GOING TO ASK YOU ABOUT MR. HOWARD AGAIN IN A
23 MOMENT BUT BEFORE I DO THAT I WANT TO ASK MR. RUNYAN, MR.
24 RUNYAN, WELL EVEN BEFORE I ASK MR. RUNYAN I NEED TO SAY
25 THIS TO YOU.

1 LADIES AND GENTLEMEN, PLEASE UNDERSTAND THAT IN THIS
2 COURT, THE STATE HAS THE BURDEN OF PROOF AT ALL TIMES.
3 THE BURDEN OF PROOF NEVER SHIFTS TO THE DEFENDANT. THE
4 DEFENDANT DOES NOT HAVE TO PROVE HIS OR HER INNOCENSE.
5 THE BURDEN OF PROOF IS ON THE STATE TO PROVE THE CHARGES
6 BEYOND A REASONABLE DOUBT. AS A RESULT OF THAT, THE
7 DEFENDANT DOESN'T HAVE TO PUT UP ANY WITNESSES, DOESN'T
8 HAVE TO ACTUALLY PUT UP A CASE OF ANY KIND BECAUSE THE
9 DEFENDANT HAS NO BURDEN. BUT I ASK YOU MR. RUNYAN, ARE
10 THERE OTHER INDIVIDUALS WHO MAY TESTIFY FOR WHOM I MAY
11 NEED TO QUERY THIS JURY PANEL NOW?

12 MR. RUNYAN: NO, YOUR HONOR.

13 THE COURT: ALL RIGHT, VERY GOOD. NOW LET'S GO BACK,
14 WE HAD A RESPONSE ABOUT MR. HOWARD. IS THERE ANYONE ELSE
15 WHO WOULD RESPOND THAT THEY MAY KNOW MR. HOWARD OR BE
16 RELATED TO HIM SOMEHOW BY BLOOD OR MARRIAGE BASED ON A
17 FAMILY CONNECTION. ALL RIGHT, LET THE RECORD SHOW THAT NO
18 ONE FURTHER HAS RESPONDED.

19 ALL RIGHT, I HAVE IN MY HAND, LADIES AND GENTLEMEN,
20 THE INDICTMENT. I WANT TO SIMPLY SAY TO YOU THE
21 INDICTMENT IS JUST THIS. IT IS JUST A PIECE OF PAPER. IT
22 IS THE DOCUMENT BY WHICH THE SOLICITOR COMMENCES A
23 PROSECUTION AGAINST AN INDIVIDUAL. WHAT THE DOCUMENT
24 CONTAINED ARE ALLEGATIONS. THE ALLEGATIONS HAVE BEEN
25 DENIED HERE BECAUSE YOU HEARD A PLEA OF NOT GUILTY BUT

1 AGAIN, THE DEFENDANT HAS NO BURDEN OF PROOF. THE BURDEN
2 OF PROOF IS ON THE STATE TO PROVE THE ALLEGATIONS. BUT I
3 WANT YOU TO UNDERSTAND THAT AT THIS JUNCTURE THESE ARE
4 ALLEGATIONS ONLY AND THEY ARE NOT TO BE ACCEPTED
5 AUTOMATICALLY AS THE TRUTH, BECAUSE THAT IS WHAT THE
6 EVIDENCE IN THE CASE WILL OR WILL NOT SHOW, AND THE
7 ALLEGATIONS ARE NOT EVIDENCE IN THE CASE. IN OTHER WORDS,
8 YOUR DECISION SHOULD BE BASED NOT BECAUSE SOMETHING SAYS
9 SOMETHING IN AN INDICTMENT, BUT BECAUSE OF WHAT THE
10 EVIDENCE IN THE CASE SHOWS. I WILL TELL YOU THOUGH, THAT
11 THE ALLEGATIONS IN THE INDICTMENT, AND I SHOULD FURTHER
12 SAY THAT EVEN THOUGH YOU HEARD A PLEA OF NOT GUILTY, THE
13 DEFENDANT IS PRESUMED INNOCENT OF THESE CHARGES EVEN IF HE
14 HAD NOT ENTERED A PLEA IN THIS MATTER, SO PLEASE BE AWARE
15 OF THAT. THE ALLEGATIONS STATE THAT, AND I WILL QUOTE
16 FROM THE INDICTMENT. THAT STACEY WALKER HOWARD DID IN
17 GEORGETOWN COUNTY ON OR ABOUT DECEMBER 10, 2006 COMMIT AN
18 ASSAULT UPON THE VICTIM LISA POWELL ACCOMPANIED BY
19 CIRCUMSTANCES OF AGGRAVATION CONSTITUTING AN UNLAWFUL ACT
20 OF VIOLENT INJURY TO THE PERSON OR THE VICTIM.
21 ACCOMPANIES WITH CIRCUMSTANCES OF AGGRAVATION INCLUDING
22 BUT NOT LIMITED TO SLAMMING ON THE BRAKES IN THE CAR
23 CAUSING THE VICTIM TO HIT THE DASH, STRIKING THE VICTIM IN
24 THE FACE AND THE SIDE OF HER HEAD SEVERAL TIMES WITH A
25 CLOSED FIST ALL IN VIOLATION OF SOUTH CAROLINA LAW.

1. AGAIN, THESE ARE ALLEGATIONS ONLY. THE DATE WAS DECEMBER
2. 10, 2006. I ASK YOU, LADIES AND GENTLEMEN, WHETHER THERE
3. IS ANY MEMBER OF THIS JURY PANEL THAT KNOWS ANYTHING ABOUT
4. THIS CASE OR THESE ALLEGATIONS FROM WHAT SOURCE WHATSOEVER
5. IT MAY BE, IF THAT APPLIES TO, IF YOU KNOW SOMETHING ABOUT
6. THIS CASE, PLEASE STAND. ALL RIGHT, LET'S LET THE RECORD
7. REFLECT THEN THAT NO ONE HAS RESPONDED TO THE COURT'S
8. QUESTION.

9. I WANT TO YOU NOW, LADIES AND GENTLEMEN, WHETHER
10. THERE IS ANY MEMBER OF THE JURY PANEL WHO FORMERLY
11. YOURSELF HAS BEEN A FULL TIME LAW ENFORCEMENT OFFICER. IF
12. THAT APPLIES TO YOU, PLEASE STAND. IF YOU HAVE FORMERLY
13. BEEN A LAW ENFORCEMENT OFFICER, PLEASE STAND. LET THE
14. RECORD REFLECT NO ONE HAS STOOD. ALL RIGHT, SIR?

15. JUROR WALL: YOUR HONOR, AS I SAID EARLIER, I DID
16. SERVE AS A DULY ELECTED CORONER IN THE COUNTY FOR TWENTY-
17. YEARS PRIOR TO MY RETIREMENT.

18. THE COURT: WELL, A CORONER WOULD COUNT. AND LET ME
19. ASK YOU SIR, AS FULL TIME FORMER CORONER, WELL THEY SAY
20. IT'S A PART-TIME JOB BUT IT'S REALLY NOT, WOULD THAT
21. PREVENT YOU FROM GIVING A PARTIAL AND IMPARTIAL TRIAL IN
22. THIS CASE IN YOUR OPINION?

23. JUROR WALL: NO, SIR.

24. THE COURT: ALL RIGHT, SIR. THANK YOU. I FIND THAT
25. YOU ARE QUALIFIED BY YOUR RESPONSE. AND I WANT TO ASK

1 NOW, LADIES AND GENTLEMEN, WHETHER THERE IS ANY MEMBER OF
2 THIS JURY PANEL HAS A FAMILY MEMBER, IMMEDIATE FAMILY
3 MEMBER WHO IS PRESENTLY EMPLOYED IN FULL-TIME LAW
4 ENFORCEMENT, AND THIS IS HOW I AM GOING TO DEFINE
5 IMMEDIATE FAMILY MEMBER. YOUR SPOUSE OR YOUR CHILDREN
6 REGARDLESS OF WHERE THEY LIVE OR ANYONE LIVING IN YOUR
7 HOUSEHOLD. SO IMMEDIATE FAMILY IS SPOUSE, CHILDREN OR
8 ANYONE LIVING IN YOUR IMMEDIATE HOUSEHOLD. IS THERE ANY
9 MEMBER OF THIS JURY PANEL, HAVE SOMEONE IN THAT GROUP
10 PRESENTLY EMPLOYED FULL TIME IN LAW ENFORCEMENT, IF SO,
11 PLEASE STAND. AND LET'S LET THE RECORD REFLECT THAT NO
12 ONE HAS STOOD IN RESPONSE TO THE COURT'S QUESTION.

13 I ASK YOU NOW, LADIES AND GENTLEMEN, WHETHER THERE IS
14 ANY MEMBER OF THIS JURY PANEL WHO IS ALSO A MEMBER OF AN
15 ORGANIZATION THAT HAS AS ITS PURPOSE THE ADVOCACY FOR OR
16 PROTECTION OF THE RIGHTS OF VICTIMS OF CRIMES. AND I
17 HASTEN TO SAY, THERE IS NOTHING WRONG WITH SUCH A
18 MEMBERSHIP OR AN ORGANIZATION. I'M SIMPLY ASKING WHETHER
19 YOU ARE A MEMBER OF AN ORGANIZATION THAT HAS THIS AS ITS
20 STATED PURPOSE. EXAMPLES WOULD BE MOTHERS AGAINST DRUG
21 DRIVING, WHICH IS MADD; CASA, WHICH IS CITIZENS AGAINST
22 SPOUSAL ABUSE; CAVE, CITIZENS AGAINST VIOLENCE CRIMES AND
23 OTHER SIMILAR ORGANIZATIONS. IF THAT APPLIES TO YOU, IF
24 YOU ARE A PRESENT MEMBER OF SUCH AN ORGANIZATION, PLEASE
25 STAND. AND LET'S LET THE RECORD REFLECT THEN THAT NO ONE

1 HAS STOOD IN RESPONSE TO THE COURT'S QUESTION.

2 ALL RIGHT, LADIES AND GENTLEMEN, YOU HEARD THE
3 ALLEGATIONS WHICH ARE IN THE INDICTMENT, I ASK YOU NOW IF
4 THERE IS ANY MEMBER OF THIS JURY PANEL, BASED ON SOME
5 PERSONAL BELIEF FOR WHATEVER IF MAY DERIVE, A MORAL,
6 RELIGIOUS, OR PERSONAL BELIEF THAT YOU WOULD NOT BE AN
7 APPROPRIATE JURY IN THIS CASE FOR WHATEVER REASON PERSONAL
8 TO YOU. IF THAT APPLIES TO YOU, PLEASE STAND. ALL RIGHT,
9 IS THERE ANYONE ELSE WHO WISHES TO STAND? AND SIR, PLEASE
10 TELL ME YOUR NAME?

11 JUROR NEELEY: JUROR NUMBER 95, WILLIAM NEELEY.

12 THE COURT: ALL RIGHT, SIR. BEFORE YOU TELL ME
13 ANYTHING FURTHER WHAT I AM GOING TO DO IS, I AM GOING TO
14 LET THE ATTORNEYS COME UP TO THE STAND AND I AM GOING TO
15 TALK WITH YOU FURTHER, INDIVIDUALLY UP HERE AT THE WITNESS
16 STAND, BUT WE WILL DO THAT IN JUST A MOMENT AFTER I ASK
17 ONE OR TWO OTHER QUESTIONS. ALL RIGHT, THANK YOU.

18 ALL RIGHT, AND NOW I ASK, LADIES AND GENTLEMEN, IS
19 THERE ANY MEMBER OF THIS JURY PANEL WHO BELIEVES FOR A
20 RELIGIOUS, PERSONAL OR MORAL REASON THAT YOU CANNOT SIT IN
21 "JUDGMENT" OF ANOTHER INDIVIDUAL, I PUT THAT IN QUOTATIONS
22 MARKS BECAUSE JUDGMENT MAY BE A RELATIVE TERM, BUT I ASK
23 YOU, IS THERE ANYONE THAT HAS SUCH A BELIEF WITHIN THE
24 JURY PANEL. IF THAT APPLIES TO YOU, PLEASE STAND. LET'S
25 LET THE RECORD REFLECT THEN THAT NO ONE HAS STOOD IN

1 RESPONSE TO THE COURT'S QUESTION.

2 ALL RIGHT, SIR, I AM GOING TO ASK YOU, WOULD YOU
3 PLEASE COME FORWARD TO THE BAR. COUNSEL IF YOU WANT TO
4 COME STAND WITH ME AT THE COURT REPORTER'S STAND, WE ARE
5 GOING TO TALK WITH YOU IN ONE MOMENT.

6 THE COURT: ARE YOU MR. NEELEY?

7 MR. NEELEY: YES, SIR.

8 THE COURT: I AM JUDGE BAXLEY. TELL ME WHY YOU
9 RESPONDED TO THE QUESTION?

10 MR. NEELEY: JUST BECAUSE THERE HAS BEEN TWO ISSUES
11 OF DOMESTIC VIOLENCE IN MY FAMILY AND I FEEL THAT ANYTHING
12 THAT OCCURS BETWEEN A MAN OR WOMEN IN MY EYES, THAT I HAVE
13 SEEN, THE MAN HAS BEEN GUILTY.

14 THE COURT: ALL RIGHT. BASED ON THAT EXPRESSION, I
15 BELIEVE, AND YOU ARE CERTAINLY ENTITLED TO YOUR BELIEFS,
16 THE COURT IS GOING TO SET YOU ASIDE AS A JUROR IN THIS
17 CASE. WE HAVE OTHER CASES WHICH WE WILL DRAW TODAY BUT WE
18 WILL JUST REMOVE YOUR NAME FOR CONSIDERATION IN THIS CASE
19 BASED UPON THE FACT THE COURT MAY FIND THAT THAT
20 INTERFERES, AND TO LISTEN TO THE EVIDENCE AND MAKE A
21 DECISION. THANK YOU, MR. NEELEY, YOU MAY BE SEATED. WE
22 ARE GOING TO REMOVE MR. NEELEY FROM THIS CASE.

23 (WHEREUPON, A BENCH CONFERENCE TOOK PLACE OFF THE
24 RECORD.)

25 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, WHILE I

1 AM DOWN LET ME JUST ASK YOU THIS. THERE WAS A REFERENCE
2 EARLIER I BELIEVE, MR. AND MRS. HOWARD ARE PRESENT IN THE
3 COURTROOM. JUST TELL ME WHERE YOU ARE, PLEASE. ARE YOU
4 MR. HOWARD?

5 MR. HOWARD: YES, SIR.

6 THE COURT: MR. HOWARD, IS YOUR WIFE STILL LIVING,
7 SIR?

8 MR. HOWARD: YES, SIR.

9 THE COURT: IS SHE PRESENT TODAY?

10 MR. HOWARD: NO, SIR.

11 THE COURT: ALL RIGHT. WHAT IS HER NAME, SIR?

12 MR. HOWARD: ELAINE.

13 THE COURT: MRS. ELAINE HOWARD.

14 MR. HOWARD: YES, SIR.

15 THE COURT: THANK YOU, YOU CAN BE SEATED. MR. HOWARD,
16 PLEASE BE SEATED. I WANT TO ASK YOU NOW, LADIES AND
17 GENTLEMEN, IN THE EVENT THAT MR. OR MRS. HOWARD MAY
18 TESTIFY, IS THERE ANY MEMBER OF THIS JURY PANEL, WHO IS
19 RELATED BY BLOOD OR MARRIAGE OR HAS SOME CLOSE,
20 PROFESSIONAL, SOCIAL CONNECTION TO EITHER OF THEM. I DID
21 NOT ASK MR. WALL ABOUT IT, DOES THAT APPLIES TO ANY OTHER
22 MEMBER OF THE JURY PANEL. ALL RIGHT, SEEING NO RESPONSE.

23 MR. WALL, LET ME COME BACK TO YOU, SIR. MR. WALL, IF
24 MR. HOWARD OR MRS. HOWARD SHOULD TESTIFY IN THIS CASE WOULD
25 THAT PREVENT YOU FROM GIVING A FAIR AND IMPARTIAL TRIAL?

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33

1 JUROR WALL: NO, SIR.

2 THE COURT: AS A JUROR?

3 JUROR WALL: NO, SIR.

4 THE COURT: THEN I FIND THAT YOU ARE QUALIFIED. AND,
5 ALL RIGHT, AGAIN I ASK IS THERE ANY REASON THAT ANY OF YOU,
6 BELIEVE THAT YOU WOULD NOT BE ABLE TO BE A FAIR AND
7 IMPARTIAL JUROR IN THIS CASE, IF THAT APPLIES TO YOU AND
8 YOU WISH TO DISCUSS IT WITH THE COURT, PLEASE STAND. ALL
9 RIGHT, ANYONE ELSE. WE HAVE ONE. ANYONE ELSE? MA'AM, I
10 GOING TO ASK YOU TO STEP RIGHT BACK HERE TO THE COURT
11 REPORT'S STAND.

12 THE COURT: TELL ME YOUR NAME, PLEASE?

13 JUROR FAIRCHILD: MARY FAIRCHILD.

14 THE COURT: MS. FAIRCHILD, HOW ARE YOU?

15 JUROR FAIRCHILD: I AM FINE.

16 THE COURT: WHY DID YOU RAISE YOUR HAND?

17 JUROR FAIRCHILD: BECAUSE I DON'T FEEL LIKE I WOULD
18 BE A GOOD JUROR. I HAVE BEEN THROUGH THIS KIND OF
19 SITUATION BEFORE AND I FEEL LIKE HE SHOULD BE HUNG FROM THE
20 NEAREST TREE.

21 THE COURT: WHAT I AM GOING TO DO --

22 JUROR FAIRCHILD: -- I CAN'T STAND TO LOOK AT HIM.

23 THE COURT: YES, MA'AM, I WILL REMOVE YOU AS A JUROR
24 IN THIS CASE. WE HAVE OTHER CASES WHICH DON'T INVOLVE
25 THESE ISSUES AND WE WILL JUST NOT PUT YOUR NAME IN THE POOL

1 FOR THIS JURY DRAW. I WILL LET YOU RETURN BUT PLEASE DON'T
2 EXPRESS THAT OPINION TO ANY OF YOUR COLLEAGUES. THANK YOU,
3 MA'AM.

4 THE COURT: ALL RIGHT, NOW, ANY FURTHER QUESTIONS FROM
5 THE STATE WITH REGARD TO JURY QUALIFICATIONS?

6 MR. MODICA: NO, THANK YOU, YOUR HONOR.

7 THE COURT: AND FROM THE DEFENSE?

8 MR. RUNYAN: NO, YOUR HONOR.

9 THE COURT: ALL RIGHT, HOW MANY STRIKES ARE CLAIMED BY
10 THE DEFENSE?

11 MR. RUNYAN: I BELIEVE FIVE AND FIVE.

12 THE COURT: HOW MANY CLAIMED BY THE STATE?

13 MR. MODICA: FIVE AND FIVE.

14 THE COURT: ALL RIGHT, NOW LADIES AND GENTLEMEN,
15 HERE'S WHAT WE'RE GOING TO DO NOW, AND COUNSEL IF YOU WISH
16 TO TURN YOUR BACK TO ME AND FACE THE JURY YOU MAY, BECAUSE
17 I AM GOING TO LET THE JURORS JUST STAND WHERE THEY ARE
18 INSTEAD OF COME FORWARD. I'LL JUST EXPLAIN TO YOU, LADIES
19 AND GENTLEMEN, IN SOME COURTS WHEN A JUROR'S NAME IS CALLED
20 AT RANDOM, WELL THEN THEY GET OUT THEIR CHAIR AND COME UP
21 HERE TO THE FRONT. THAT IS A LITTLE BIT PSYCHOLOGICALLY
22 INVASIVE FOR YOU. WE'RE JUST GOING TO LET YOU REMAIN IN
23 THE COMFORT OF YOUR SEAT, OF YOUR SURROUNDINGS, BUT I AM
24 GOING TO ASK YOU TO STAND. NOW HERE'S WHAT IS HAPPENING,
25 JUST SO YOU WILL KNOW. WE ARE USING A COMPUTER SYSTEM TO

1 RANDOMLY PULL YOUR NAMES FROM WITHIN THE NUMBER OF JURORS
2 WHO ARE SEATED BEFORE ME. WHEN YOUR NAME IS CALLED, I AM
3 GOING TO ASK YOU TO STAND, PLEASE. WHEN YOU STAND BOTH
4 SIDES OF THE CASE ARE GOING TO BE GIVEN AN OPPORTUNITY TO
5 EITHER SEAT YOU OR EXCUSE YOU. NOW LET ME JUST SAY FIRST
6 OF ALL THAT THIS PROCESS IS ONE THAT HAS STOOD OUR COUNTRY
7 WELL FOR OVER TWO HUNDRED, ALMOST TWO HUNDRED AND FIFTY
8 YEARS NOW. IT'S A LITTLE BIT EMBARRASSING SOMETIMES THOUGH
9 WHEN YOU STAND AND YOU'RE STANDING THERE AND THE PEOPLE ARE
10 TALKING AT THE COUNSEL TABLE, AND YOU KNOW THEY'RE TALKING
11 ABOUT YOU AND EVERYBODY ELSE KNOWS THEY'RE TALKING ABOUT
12 YOU, AND THEY MAY DECIDE TO EMPLOY A STRIKE AND THAT MAY
13 SUIT YOU FINE, BUT I WANT TO TELL YOU, PLEASE DON'T BE
14 OFFENDED BY THAT. IT MAY BE THAT IT IS BASED ON SOME
15 STRATEGY OR TACTIC THAT ONLY COUNSEL OR THE PARTY KNOWS.
16 IT MAY BE SOME OTHER REASON, A RESPONSE GIVEN HERE IN JURY
17 QUALIFICATIONS. BUT I WILL TELL YOU WHAT IT WON'T BE,
18 BECAUSE IT IS AGAINST THE LAW TO STRIKE A JUROR ON THE
19 BASIS OF THEIR SEX OR THEIR RACE. AND EITHER SIDE HAS AN
20 OPPORTUNITY TO CHALLENGE THE STRIKES EMPLOYED BY THE OTHER
21 SIDE. SO I WILL TELL YOU IT WILL NOT BE FOR THAT REASON IF
22 YOU ARE NOT CHOSEN. NOW MADAM CLERK, ARE YOU READY TO
23 PROCEED?

24 CLERK OF COURT: YES, YOUR HONOR. WE ARE USING OUR
25 NEW COMPUTER JURY SELECTION, YOUR HONOR, AND WE ARE

1 PRINTING IT OUT, SO WE CAN GIVE EVERYBODY A COPY.

2 MR. MODICA: YOUR HONOR, MAY COUNSEL AND I APPROACH?

3 THE COURT: YES, YOU MAY, VERY GOOD.

4 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

5 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, LET ME
6 GIVE YOU A LITTLE BIT OF FURTHER INFORMATION. GEORGETOWN
7 COUNTY AND THE FIFTEEN CIRCUIT ARE VERY INNOVATIVE HERE
8 FROM A TECHNOLOGY STANDPOINT. WHAT ACTUALLY IS GOING TO BE
9 DONE IS THERE IS GOING TO BE A COMPUTER PROGRAM WHICH IS
10 GOING TO RANDOMLY DRAW A CERTAIN NUMBER OF NAMES. WE ARE
11 GOING TO LET COUNSEL REVIEW THOSE NAMES. WE WILL ALL JUST
12 SIT HERE TOGETHER FOR A MOMENT OR TWO SO THAT WILL SPEED
13 THE PROCESS OF JURY SELECTION AND THEN WE WILL GO INTO THE
14 PROCESS OF CALLING YOUR NAMES AS THEY HAVE BEEN CHOSEN AT
15 RANDOM. SO JUST BE AT EASE FOR A MOMENT OR TWO, IF YOU
16 WILL AND WE WILL BE BACK WITH YOU SHORTLY.

17 (PAUSE)

18 THE COURT: ALL, RIGHT, MR. MODICA, ON A COMPLETELY
19 DIFFERENT MATTER, HOW ABOUT COME UP AND JUST DISCUSS
20 SCHEDULING ON ANOTHER ISSUE IF YOU MAY. IT'S NOT ABOUT
21 THIS CASE, MR. RUNYAN. YOU ARE WELCOME TO JOIN US IF YOU
22 WISH BUT IT DOES NOT INVOLVE THE MATTER BEFORE US.

23 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

24 THE COURT: ALL RIGHT, LET ME ADDRESS TWO OF OUR
25 JURORS. MR. NEELEY AND MS. FAIRCHILD, JUST STAND IF YOU

1 WILL, AND COME RIGHT UP HERE TO THE SIDE, PLEASE.

2 (PAUSE)

3 THE COURT: LET'S PROCEED AT THIS TIME. LADIES AND
4 GENTLEMEN, PLEASE FOLLOW OUR CLERK'S INSTRUCTIONS, MADAM
5 CLERK.

6 CLERK OF COURT: WHEN I CALL YOUR NAME, YOU WILL
7 STAND WHERE YOU ARE AND IF YOU ARE SELECTED TO SIT IN THE
8 JURY BOX, YOU WILL BRING ALL OF YOUR BELONGINGS WITH YOU.

9 ALL RIGHT, JUROR NUMBER 6. STEPHEN BANTA. WHAT SAYS
10 THE STATE?

11 MR. MODICA: PLEASE EXCUSE, MR. BANTA.

12 CLERK OF COURT: YOU MAY BE SEATED. JUROR NUMBER 15,
13 JOHN BOGAN. WHAT SAYS THE STATE?

14 MR. MODICA: PLEASE PRESENT MR. BOGAN.

15 CLERK OF COURT: WHAT SAYS DEFENSE?

16 MR. RUNYAN: PLEASE SWEAR THE JURY, MADAM CLERK.

17 CLERK OF COURT: PLEASE HAVE A SEAT. JUROR NUMBER 3,
18 DAVID ATKINSON. WHAT SAYS THE STATE?

19 MR. MODICA: PLEASE PRESENT THE MR. ATKINSON.

20 CLERK OF COURT: WHAT SAYS DEFENSE?

21 MR. RUNYAN: PLEASE SWEAR THE JUROR, MADAM CLERK.

22 CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX.
23 JUROR NUMBER 138, BEULAH TOMLIN. WHAT SAYS THE STATE?

24 MR. MODICA: PLEASE PRESENT MS. TOMLIN.

25 CLERK OF COURT: WHAT SAYS DEFENSE?

1 MR. RUNYAN: PLEASE SWEAR THE JUROR, MADAM CLERK.

2 CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX.

3 JUROR NUMBER 4, MELISSA BALLARD. WHAT SAYS THE STATE?

4 MR. MODICA: PLEASE PRESENT MS. BALLARD.

5 CLERK OF COURT: WHAT SAYS DEFENSE?

6 MR. RUNYAN: PLEASE EXCUSE THE JUROR, MADAM CLERK.

7 THE COURT: MA'AM, YOU ARE EXCUSED FROM THIS CASE.

8 YOU ARE EXCUSED, THANK YOU. MADAM CLERK, I THINK OUR

9 JURORS MAY NOT BE ABLE TO HEAR, IF YOU WOULD PLEASE BE SURE
10 TO TELL THEM IF THEY ARE EXCUSED.

11 CLERK OF COURT: YES, YOUR HONOR. JUROR NUMBER 56,

12 MICHAEL GREEN. WHAT SAYS THE STATE?

13 MR. MODICA: PLEASE EXCUSE MR. GREEN.

14 CLERK OF COURT: YOU ARE EXCUSED. JUROR NUMBER 117,

15 RASHIEN RUTLEDGE. WHAT SAYS THE STATE?

16 MR. MODICA: PLEASE EXCUSE MR. RUTLEDGE.

17 CLERK OF COURT: YOU ARE EXCUSED FROM THIS CASE.

18 JUROR NUMBER 26, LARINA CARR. WHAT SAYS THE STATE?

19 MR. MODICA: PLEASE PRESENT MS. CARR.

20 CLERK OF COURT: WHAT SAYS DEFENSE?

21 MR. RUNYAN: PLEASE SWEAR THE JURY, MADAM CLERK.

22 CLERK OF COURT: PLEASE TAKE YOUR SEAT IN THE JURY

23 BOX. JUROR NUMBER 73, JENNIFER LAMBERT. WHAT SAYS THAT

24 STATE?

25 MR. MODICA: PLEASE PRESENT MS. LAMBERT.

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1 CLERK OF COURT: WHAT SAYS DEFENSE?

2 MR. RUNYAN: PLEASE EXCUSE THE JUROR, MADAM CLERK.

3 CLERK OF COURT: YOU ARE EXCUSED FROM THIS CASE.

4 JUROR NUMBER 50, PATRICIA BILLIARD. WHAT SAYS THE STATE?

5 MR. MODICA: PLEASE PRESENT MS. BILLIARD.

6 CLERK OF COURT: WHAT SAYS DEFENSE?

7 MR. RUNYAN: PLEASE SWEAR THE JURY, MADAM CLERK.

8 CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX.

9 JUROR NUMBER 148, WILSON WILLIAMS. WHAT SAYS THE STATE?

10 MR. MODICA: PLEASE PRESENT MR. WILLIAMS.

11 CLERK OF COURT: WHAT SAYS DEFENSE?

12 MR. RUNYAN: PLEASE EXCUSE THE JUROR, MADAM CLERK.

13 CLERK OF COURT: YOU ARE EXCUSED FROM THIS CASE.

14 JUROR NUMBER 133, GEORGE SWINDOLL. WHAT SAYS THE STATE?

15 MR. MODICA: PLEASE PRESENT MR. SWINDOLL.

16 CLERK OF COURT: WHAT SAYS DEFENSE?

17 MR. RUNYAN: PLEASE SWEAR THE JUROR, MADAM CLERK.

18 CLERK OF COURT: PLEASE HAVE A SEAT IN THE JUROR BOX.

19 JUROR NUMBER 24, CAROL BUDZINSKI. WHAT SAYS THE STATE?

20 MR. MODICA: THERE WAS NO ANSWER PREVIOUSLY.

21 CLERK OF COURT: SHE WAS A NO SHOW. YOUR HONOR, THIS

22 JUROR WAS NOT HERE THIS MORNING.

23 THE COURT: ALL RIGHT, PLEASE MOVE TO THE NEXT JUROR.

24 CLERK OF COURT: JUROR NUMBER 49, ROOSEVELT GILES.

25 WHAT SAYS THE STATE?

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1 MR. MODICA: PLEASE PRESENT MR. GILES.

2 CLERK OF COURT: WHAT SAYS DEFENSE?

3 MR. RUNYAN: PLEASE SWEAR THE JUROR, MADAM CLERK.

4 CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX.

5 JUROR NUMBER 124, REBECCA SINGLETON. WHAT SAYS THE STATE?

6 MR. MODICA: PLEASE PRESENT MS. SINGLETON.

7 CLERK OF COURT: WHAT SAYS DEFENSE?

8 MR. RUNYAN: PLEASE SWEAR THE JURY, MADAM CLERK.

9 CLERK OF COURT: PLEASE HAVE A SEAT IN THE BOX JURY.

10 JUROR NUMBER 1, PAULA ALMOND. WHAT SAYS THE STATE?

11 MR. MODICA: PLEASE PRESENT MS. ALMOND.

12 CLERK OF COURT: WHAT SAYS DEFENSE?

13 MR. RUNYAN: PLEASE SWEAR THE JURY, MADAM CLERK.

14 CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX.

15 JUROR NUMBER 52, LISA GIPPLE. WHAT SAYS THE STATE?

16 MR. MODICA: PLEASE PRESENT MS. GIPPLE.

17 CLERK OF COURT: WHAT SAYS DEFENSE?

18 MR. RUNYAN: PLEASE SWEAR THE JUROR, MADAM CLERK.

19 CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX.

20 JUROR NUMBER 35, DENISE DUNNING. WHAT SAYS THE STATE?

21 MR. MODICA: PLEASE PRESENT MS. DUNNING.

22 CLERK OF COURT: WHAT SAYS DEFENSE?

23 MR. RUNYAN: PLEASE SWEAR THE JUROR, MADAM CLERK.

24 CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX.

25 JUROR NUMBER 98, WILLIAM NICHOLSON. WHAT SAYS THE STATE?

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1 MR. MODICA: PLEASE PRESENT MR. NICHOLSON.

2 CLERK OF COURT: WHAT SAYS DEFENSE?

3 MR. RUNYAN: PLEASE EXCUSE THE JUROR, MADAM CLERK.

4 CLERK OF COURT: YOU ARE EXCUSED FROM THIS CASE.

5 THE COURT: DEFENSE HAS ONE STRIKE REMAINING.

6 CLERK OF COURT: JUROR NUMBER 45, CHARLTON GAMBLE,

7 JR. WHAT SAYS STATE?

8 MR. MODICA: PLEASE PRESENT MR. GAMBLE.

9 CLERK OF COURT: WHAT SAYS THE DEFENSE?

10 MR. RUNYAN: PLEASE SWEAR THE JUROR, MADAM CLERK.

11 CLERK OF COURT: PLEASE TAKE A SEAT IN THE JUROR BOX.

12 THE COURT: AND, MADAM CLERK, LET'S CHOSE ONE

13 ALTERNATE AND THE STRIKES WILL BE ONE FOR THE STATE AND TWO

14 FOR THE DEFENSE AS TO THE ALTERNATE.

15 CLERK OF COURT: JUROR NUMBER 38, CRYSTAL FENTERS.

16 WHAT SAYS THE STATE?

17 MR. MODICA: PLEASE PRESENT MS. FENTERS.

18 CLERK OF COURT: WHAT SAYS THE DEFENSE?

19 MR. RUNYAN: PLEASE EXCUSE THE JUROR, MADAM CLERK.

20 CLERK OF COURT: YOU ARE EXCUSED. JUROR NUMBER 143,

21 CHARLES WALL. WHAT SAYS THE STATE?

22 MR. MODICA: PLEASE EXCUSE MR. WALL.

23 CLERK OF COURT: YOU ARE EXCUSED FROM THIS CASE.

24 JUROR NUMBER 54, VERLAND GOSS. WHAT SAYS THE STATE?

25 MR. MODICA: PLEASE PRESENT MR. GOSS.

1 CLERK OF COURT: WHAT SAYS DEFENSE?

2 MR. RUNYAN: PLEASE SWEAR THE JUROR, MADAM CLERK.

3 CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX.

4 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, WELCOME

5 TO THE JURY BOX. LET ME JUST ASK FIRST OUT OF A POINT OF

6 CARE. HOW MANY OF YOU HAVE SERVED BEFORE AS A JUROR. IF

7 YOU HAVE SERVED BEFORE AS A JUROR, PLEASE RAISE YOUR HAND.

8 ALL RIGHT, WELL WE HAVE SOME THAT ARE FAMILIAR WITH THIS

9 PROCESS, BUT LET ME SAY TO THOSE WHO ARE NEW, DON'T BE

10 UNCOMFORTABLE ABOUT WHERE YOU FIND YOURSELF. THERE ARE TWO

11 TOOLS YOU NEED TO SERVE AND SERVE CAPABLY AS JURORS AND YOU

12 GOT THEM BOTH. THE FIRST IS YOUR ABILITY TO LISTEN, AND

13 THE SECOND IS YOUR COLLECTIVE COMMON SENSE. ARMED WITH

14 THOSE TWO THINGS YOU WILL FIND YOURSELF IN GOOD-STEAD. SO

15 DON'T BE UNCOMFORTABLE ABOUT BEING IN THE JURY BOX.

16 NOW, IS THERE ANY OBJECTION TO THE JURY DRAW

17 PROCEDURE, EMPLOYED BY THE COURT OR THE STRIKES EMPLOYED BY

18 THE OTHER SIDE. FIRST, FROM THE STATE?

19 MS. BIAGIANTI: NO, SIR, YOUR HONOR.

20 THE COURT: AND NOW FROM DEFENSE?

21 MR. RUNYAN: NOTHING FURTHER, YOUR HONOR.

22 THE COURT: ALL RIGHT, HEARING NONE, THEN COUNSEL COME

23 AROUND JUST A MOMENT AND LET'S TALK ABOUT SCHEDULING

24 BRIEFLY AND THEN WE WILL HAVE FURTHER INFORMATION FOR BOTH

25 OF OUR JURY PANELS.

1 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
2 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY.)

3 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, I JUST
4 HAVE SOME INSTRUCTIONS NOW, THAT ARE A LITTLE BIT DIFFERENT
5 FOR THE TWO GROUPS. FIRST OF ALL, LADIES AND GENTLEMEN OF
6 THE JURY WHICH WE HAVE CHOSEN FOR TRIAL. I AM GOING TO LET
7 YOU LEAVE TO GO TO LUNCH. I AM GOING TO ASK YOU TO BE BACK
8 AT 2:30, IT IS 1:00 NOW. THAT'S AN HOUR AND A HALF FOR
9 LUNCH. SURELY YOU WILL BE ABLE TO HAVE YOUR LUNCH AND COME
10 BACK BY THAT TIME. WHATEVER ERRANDS YOU MAY HAVE TO DO
11 DURING YOUR LUNCH TIME.

12 I WILL TELL YOU THAT WE NORMALLY WORK, GENERALLY END
13 OUR DAY AROUND 5:00 OR SHORTLY AFTER 5:00 FOR THOSE OF YOU
14 WHO HAVE LOVE ONES THAT WILL BE ASKING ABOUT YOUR SCHEDULE.
15 I ALSO WANT TO TELL YOU THAT YOU ARE NOT GOING TO BE
16 SEQUESTERED ANYWHERE TONIGHT. YOU ARE GOING TO GO HOME TO
17 BE WITH YOUR LOVE ONES AND FAMILY WHERE YOU OUGHT TO BE,
18 AND SO DON'T BE UNCOMFORTABLE ABOUT WHAT IS GOING TO HAPPEN
19 TO YOU LATER IN THE EVENING. SO PLEASE UNDERSTAND THAT WE
20 WILL COME BACK, WE WILL START ABOUT 2:30, WE WILL FINISH
21 APPROXIMATELY AT 5:00. I AM GOING TO ASK YOU DURING THE
22 LUNCH HOUR TO DO THESE THINGS. FIRST OF ALL, PLEASE WE
23 DON'T EVEN KNOW WHAT THE FACTS OF THIS CASE ARE. PLEASE
24 DON'T DISCUSS THE FACTS OF THIS CASE WITH ANYONE WHETHER
25 YOU ARE HAVING LUNCH WITH A FELLOW JUROR OR WITH WHOMEVER

1 YOU MAY BE HAVING, BECAUSE I DON'T WANT SOMETHING THAT
2 SOMEONE ELSE MAY SAY OUTSIDE OF THIS COURTROOM TO INFLUENCE
3 WHAT YOU DECIDE. YOUR DECISION SHOULD BE BASED ON EVIDENCE
4 WHICH IS WHY YOU SIT RIGHT THERE AND THE WITNESSES SIT
5 RIGHT HERE, SO PLEASE DON'T DO THAT. AND PLEASE DON'T
6 UNDER TAKE ANY TYPE OF INVESTIGATION ON YOUR OWN. JUST
7 COME BACK AT 2:30 WITH AN OPEN MIND; HAVING HAD A GOOD
8 LUNCH, AND WE WILL SEE YOU AT THAT TIME. NOW ANY QUESTIONS
9 FROM OUR JURY PANEL ABOUT WHERE WE GO FROM HERE. WE WILL
10 SEE YOU AT 2:30. LET'S EVERYONE REMAIN WHERE THEY ARE
11 WHILE THIS JUROR DEPARTS THE COURTROOM AND OUR BAILIFF WILL
12 SHOW YOU ON THE WAY OUT WHERE TO COME BACK TO AT 2:30 P.M.
13 ALL RIGHT, BACK TO THE JURY ROOM, PLEASE. HAVE A GOOD
14 LUNCH, LADIES AND GENTLEMEN.

15 (WHEREUPON, THE JURY EXITS THE COURTROOM AT 1:05 P.M.)

16 **THE COURT:** ALL RIGHT, NOW FOR THE REMAINING JURY
17 PANEL. WE HAVE DECIDED AT THIS TIME THAT THERE WILL NOT BE
18 ANOTHER JURY DRAW THIS AFTERNOON, WHICH MEANS THAT YOU ARE
19 FINISHED FOR TODAY. WHAT I AM GOING TO ASK YOU TO DO,
20 PLEASE, IS TO CALL BACK AFTER 6:00 TONIGHT FOR FURTHER
21 INSTRUCTIONS ON THE TELEPHONE SYSTEM, WHICH MAY BE TO
22 REPORT AT A CERTAIN TIME, OR MAY BE TO CALL BACK AT SIX
23 O'CLOCK TOMORROW NIGHT. I CAN'T TELL YOU NOW WHAT THEY
24 WILL BE. WE WON'T KNOW UNTIL THE END OF THE DAY. BUT
25 AGAIN, PLEASE CALL BACK AFTER SIX O'CLOCK TONIGHT FOR

1 FURTHER INSTRUCTIONS TO THE ENTIRE JURY PANEL. ANY
2 QUESTIONS NOW FROM OUR ENTIRE JURY PANEL? LADIES AND
3 GENTLEMEN, HAVE A GOOD AFTERNOON. YOU ARE FINISHED FOR
4 TODAY. YOU ARE FREE TO GO AT THIS TIME.

5 (WHEREUPON, THE JURY PANEL IS RELEASED AT 1:06 P.M.)

6 THE COURT: MR. HOWARD, I AM GOING ASK THE MEMBERS OF
7 YOUR FAMILY, IF YOU ALL WOULD WAIT PLEASE AND LET THE
8 JURORS FILE OUT ON THEIR OWN, AND THEN WE WILL DISMISS YOU
9 FROM THE COURTROOM.

10 MR. HOWARD: YES, SIR.

11 THE COURT: THANK YOU. IT'S A BEAUTIFUL DAY, LADIES
12 AND GENTLEMEN HAVE A GOOD AFTERNOON.

13 THE COURT: ALL RIGHT, COURT WILL BE IN RECESS NOW
14 UNTIL 2:30.

15 (WHEREUPON, A RECESS WAS TAKEN FROM 1:07 P.M. UNTIL
16 2:30 P.M.)

17 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, WE ARE
18 NOW BACK ON THE RECORD IN THE MATTER OF THE STATE VERSES
19 HOWARD. DO WE HAVE ANY ISSUES FOR DISPOSITION BEFORE THE
20 JURY IS BROUGHT IN? I AM ADVISED THAT THE JURY, IS ALL
21 PRESENT. MR. MODICA?

22 MR. MODICA: YOUR HONOR, OBVIOUSLY THERE HAS BEEN
23 PRIOR VIOLENCE BETWEEN THE VICTIM AND THE DEFENDANT. MY
24 INTENTION WAS TO ASK HER, HAS THERE BEEN PRIOR VIOLENCE IN
25 YOUR RELATIONSHIP. I EXPECT THE ANSWER TO BE YES. AND THEN

1 GO NO FURTHER.

2 THE COURT: AND FOR WHAT REASONS DO YOU BELIEVE THAT
3 TO BE RELEVANT?

4 MR. MODICA: BECAUSE THE VICTIM REFUSED TO TELL THE
5 DOCTOR OR THE POLICE THAT THE DEFENDANT HAD ASSAULTED HER
6 AND HER RATIONALE WOULD BE THAT SHE WAS AFRAID OF HIM. AND
7 WITHOUT SOME INDICATION TO THE JURY THAT THERE HAD BEEN
8 PRIOR PROBLEMS IN THE RELATIONSHIP IT WOULD SOUND STRANGE
9 AND WEAK.

10 MR. RUNYAN: JUDGE, AS A MATTER OF FACT I THINK THERE
11 WAS A PRIOR CASE WHEN HE WAS ACQUITTED, AND SO I DON'T
12 THINK TO BRING IT UP ON DIRECT, PARTICULARLY OR AT ANY TIME
13 IS EVEN RELEVANT TO THIS PARTICULAR CASE. I MEAN OBVIOUSLY
14 WE HAVE UNDER RULE 5, IT SAYS THAT SHE WAS CONCERNED, SHE
15 WAS FRIGHTENED BY MR. HOWARD SO THEREFORE SHE DIDN'T SAY
16 ANYTHING AT THE POINT AND TIME TO THE DOCTOR. BUT TO RAISE
17 THE INFERENCES THAT HE COMMITTED OTHER CRIMES FOR WHICH HE
18 HAS NOT BEEN CONVICTED I DON'T KNOW THAT WE'RE NOT GETTING
19 INTO SOME TROUBLE WATERS THERE.

20 THE COURT: I AM GOING TO HAVE TO DENY YOUR MOTION,
21 MR. MODICA. THAT WOULD NOT BE APPROPRIATE. THAT EVIDENCE
22 WOULD CLEARLY BE ANOTHER CRIME. I ASSUME THE REASON YOU
23 WISH TO PUT IT IN EVIDENCE THAT WAY IS BECAUSE, WELL I WILL
24 ASK YOU, IS YOUR VICTIM UNCOOPERATIVE WITH REGARD TO THIS
25 LINE OF QUESTIONING?

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1 MR. MODICA: NO.

2 THE COURT: ALL RIGHT.

3 MR. MODICA: AND YOUR HONOR, I WOULD STATE FOR THE
4 RECORD THAT THE DEFENDANT IN RELATION TO THIS VICTIM HAS
5 BEEN CONVICTED OF AN ASSAULT OF AN HIGH AND AGGRAVATE
6 NATURE.

7 THE COURT: ALL RIGHT.

8 MR. MODICA: SO, MR. RUNYAN INCORRECTLY STATES THAT.

9 THE COURT: THAT HE HAS A PREVIOUS CONVICTION?

10 MR. MODICA: I DON'T INTEND TO BEING IT UP. MY
11 QUESTION WOULD BE, HAS THERE -- I CAN CHANGE IT FROM
12 VIOLENCE TO PROBLEMS IN YOUR RELATIONSHIP. BUT WITHOUT
13 THAT IT JUST MAKES NO SENSE WHEN SHE HAS AN OPPORTUNITY TO
14 TELL LAW ENFORCEMENT AND SHE'S AT THE HOSPITAL AND
15 OBVIOUSLY, ARGUABLY IN A SAFE POSITION WHY SHE WOULDN'T SAY
16 SOMETHING ABOUT IT. AND THE IDEA IS THAT SHE WAS IN FEAR
17 FOR HER SAFETY AND LIFE.

18 THE COURT: WELL, COUNSEL --

19 MR. MODICA: -- AND I THINK --

20 THE COURT: I CAN'T TELL YOU THE STRATEGY AND TACTICS,
21 BUT WHAT PREVENTS YOU FROM ASKING YOUR VICTIM THAT, AND
22 HAVING THE RESPONSE THAT HAS NOTHING TO DO WITH PRIOR
23 CONDUCT BUT WITH JUST WHAT HER STATE OF MIND WAS AT THAT
24 TIME, AS OPPOSE TO DOING IT THE WAY THAT YOU PROPOSE TO DO
25 IT WHICH WOULD BRING INTO EVIDENCE OF PRIOR CRIMINAL

1 ACTIVITY?

2 MR. MODICA: THAT WOULD JUST INDICATE THAT THERE WERE
3 PRIOR PROBLEMS IN THE RELATIONSHIP.

4 THE COURT: WELL --

5 MR. MODICA: THAT DOESN'T MEAN CRIMINAL ACTIVITY.

6 THE COURT: ALL RIGHT. WELL, LET ME JUST STATE AGAIN
7 MY ANSWER AND I WILL LEAVE IT TO YOU GENTLEMEN AS TO HOW
8 YOU WISH TO STRUCTURE YOUR CASE. BUT I CANNOT LET YOU ASK
9 THAT QUESTION AS YOU PROPOSE TO DO, BECAUSE THAT WOULD BE
10 INDICATIVE OF PRIOR CRIMINAL CONDUCT AND THAT WOULD NOT BE
11 APPROPRIATE HERE.

12 MR. RUNYAN: YOUR HONOR, THERE IS ONE OTHER MATTER
13 SINCE THE JURY IS OUT, WE MIGHT AS WELL SINCE WE ARE DOING
14 HOUSEKEEPING HERE. MR. MODICA HAS TWO ITEMS WHICH MR.
15 HOWARD HAD IN HIS POSSESSION AT THE TIME HE WAS ARRESTED
16 SOMETIME LATER, THE NEXT DAY OR SO. ONE IS A STUN GUN, ONE
17 IS PEPPER SPRAY. BOTH OF THESE ITEMS ARE LEGALLY PURCHASED
18 OR WHAT HAVE YOU. MR. MODICA HAS INDICATED HE WANTS TO
19 OFFER THEM IN CONJUNCTION WITH THE OFFICER WHO ARRESTED MR.
20 HOWARD, SAYING THIS IS WHAT HE HAD IN HIS POSSESSION. BUT
21 AS A PRACTICAL MATTER, I DO NOT SEE WHERE THEY HAVE ANY
22 RELEVANCE TO THE CASE WHATSOEVER. THERE WAS NO SPRAY USED
23 ON ANYONE. NOBODY WAS STUNNED BY ANYTHING OR ATTEMPTED TO
24 STUN ANYBODY. AND I WOULD OBJECT TO THOSE BEING OFFERED
25 UNLESS HE COULD CONNECT IT WITH THE CASE IN CHIEF.

1 MR. MODICA: WE WOULD ALSO INDICATE THAT AT THE TIME
2 THEY ATTEMPTED TO PLACE HIM UNDER ARRESTED HE HAD HIS HANDS
3 IN HIS POCKET. HE WAS ORDERED A NUMBER OF TIMES TO TAKE
4 HIS HANDS OUT OF HIS POCKET AND WOULDN'T. HE EVENTUALLY
5 DID AND WHEN THEY CHECKED THEM, THOSE WERE THE TWO ITEMS HE
6 HAD IN HIS POCKET.

7 MR. RUNYAN: AND I CONCEDE THERE IS NOTHING ILLEGAL
8 ABOUT HAVING THESE ITEMS IN YOUR POCKET AND HE NEVER
9 ATTEMPTED TO UTILIZED THEM. HE HAD HIS HANDS IN HIS
10 POCKET. THE OFFICER SAID YOU'RE UNDER ARREST. HE NEVER
11 INTENDED TO YOU THEM AND I DON'T UNDERSTAND WHAT RELEVANCE
12 THAT HAS TO THE INSTANT CASE OTHER THAN TO ATTEMPT TO
13 IMPART BY INFERENCE SOME BAD CHARACTER AND ONLY BAD PEOPLE
14 CARRY THOSE THINGS AROUND.

15 THE COURT: WELL, COUNSEL, I DON'T HAVE THE BENEFIT OF
16 ALL THE EVIDENCE, BUT IF THERE IS EVIDENCE THAT THE VICTIM
17 --- THAT THESE ITEMS ARE GENERALLY CARRIED BY THE
18 DEFENDANT, AND THAT THE VICTIM WAS AWARE OF THAT, AND THIS
19 MAY HAVE SOMETHING TO DO WITH WHETHER OR NOT THE VICTIM WAS
20 FORTHCOMING TO THE POLICE, OR HAD SOME OTHER FEAR FOR HER
21 SAFETY WHILE THIS INCIDENT OCCURRED, WELL THAT WOULD BE
22 RELEVANT. BUT I DON'T KNOW ENOUGH ABOUT THE EVIDENCE TO
23 TELL YOU NOW THAT IT IS COMPLETELY IRRELEVANT OR WILL SOME
24 HOW BE RELEVANT.

25 MR. RUNYAN: OUT OF AN ABUNDANCE OF CAUTION, OUTSIDE

1 OF THE JURY, THAT IS PROBABLY GOING TO BECOME AN ISSUE AND,
2 OF COURSE, MY LEARNED FRIEND OVER HERE, CAN MAKE IT
3 RELEVANT AND OBVIOUSLY THE COURT WOULD SO RULE.

4 THE COURT: ALL RIGHT, SIR. I WOULD JUST HAVE TO ASK
5 YOU TO OBJECT CONTEMPORANEOUSLY, AND MR. MODICA, I WOULD
6 ASK YOU TO GIVE YOUR OPPOSING COUNSEL THE COURTESY OF
7 LETTING HIM KNOW WHEN YOU INTEND TO DO THAT SO THAT THE
8 EVIDENCE WILL NOT BE PRODUCED BEFORE THE JURY, AND THEN THE
9 OBJECTION COME. ALL RIGHT, SIR?

10 MR. MODICA: YES, SIR. IT WILL BE WHEN POLICE OFFICER
11 RON CRABTREE IS TESTIFYING, AND I WILL SAY, AT THE TIME
12 THAT YOU APPROACHED HIM WHAT HAPPENED.

13 THE COURT: ALL RIGHT. BUT AGAIN, AS A COURTESY TO
14 COUNSEL, I WOULD ASK THAT YOU DIRECTLY TELL OPPOSING
15 COUNSEL WHEN YOU INTEND TO APPROACH THAT SPECIFIC ISSUE SO
16 THAT HE WILL BE FOREWARNED AND ABLE TO OBJECT
17 CONTEMPORANEOUSLY.

18 MR. MODICA: YES, SIR.

19 MR. RUNYAN: YES, SIR. AND IN ALL CANDOR, MR. MODICA
20 AND I HAVE BEEN AROUND AND AROUND FOR SEVERAL YEARS, AND HE
21 HAS ALWAYS BEEN FORTHCOMING AND I THINK THAT BASED ON WHAT
22 HE HAS INDICATED TO ME, THAT PART WILL EASY.

23 THE COURT: ALL RIGHT, VERY GOOD. ALL RIGHT,
24 GENTLEMEN, IS THERE ANYTHING FURTHER, LADIES AND GENTLEMEN
25 BEFORE WE BRING IN THE JURY?

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1 MR. MODICA: I DON'T THINK SO. NO, YOUR HONOR.

2 THE COURT: ALL RIGHT. ANYTHING FROM THE DEFENSE
3 BEFORE WE BRING IN THE JURY?

4 MR. RUNYAN: NO FURTHER, YOUR HONOR.

5 THE COURT: ALL RIGHT, MR. MOORE, ARE YOU GOING TO
6 SWEAR THE JURY WHEN THEY COME IN.

7 CLERK OF COURT: YES, SIR.

8 THE COURT: ALL RIGHT, PLEASE BRING IN THE JURY.

9 (WHEREUPON, THE JURY ENTERS THE COURTROOM AT 2:37
10 P.M.)

11 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, WELCOME
12 BACK TO THE COURTROOM. I TRUST YOU HAD A NICE LUNCH BREAK
13 AND WE ARE GOING TO BEGIN THIS TRIAL WITH YOU TAKING THE
14 OATH AS JURORS IN THE SPECIFIC CASE. PLEASE FOLLOW OUR
15 CLERK'S INSTRUCTIONS.

16 CLERK OF COURT: LADIES AND GENTLEMEN, PLEASE STAND
17 AND RAISE YOUR RIGHT HAND.

18 (WHEREUPON, THE JURY PANEL IS SWORN FOR THIS CASE.)

19 THE COURT: ALL RIGHT, NOW, LET ME ASK, LADIES AND
20 GENTLEMEN, IS THERE ANY MEMBER OF THE JURY PANEL THAT DID
21 NOT TAKE THE JUST ADMINISTERED. IF YOU DID NOT TAKE THE
22 OATH, PLEASE RAISE YOUR HAND. LET'S LET THE RECORD REFLECT
23 THAT NO ONE HAS RAISED THEIR HAND AND THEREFORE ALL OF OUR
24 JURORS ARE APPROPRIATELY SWORN.

25 NOW BEFORE WE BEGIN, LET ME ASK YOU ONE THING. I

1 USUALLY GIVE OUR JURORS AN OPPORTUNITY IF THEY WISH TO TAKE
2 NOTES DURING A TRIAL. I WILL TELL YOU THAT IF YOU WISH TO
3 TAKE NOTES AND YOU ARE CERTAINLY NOT REQUIRED TO, THAN THE
4 PROPER USE OF THOSE NOTES IN DELIBERATION WOULD NOT BE TO
5 PROVE A POINT TO SOMEONE THAT THIS HAS EXISTED BECAUSE IT
6 IS IN YOUR NOTES, BUT WOULD BE TO REFRESH YOUR OWN
7 RECOLLECTION FOR PURPOSES OF DELIBERATION. IF YOU THINK
8 YOU MAY WANT A NOTE PAD AND PENCIL, PLEASE RAISE YOUR HAND
9 SO WE CAN MAKE PROVISION FOR THAT. ALL RIGHT, VERY GOOD.
10 WE'LL MAKE THAT AVAILABLE TO YOU. IN FACT, WHAT I WILL ASK
11 OUR CLERK OR BAILIFF STAFF TO DO IF WE WOULD JUST GATHER
12 THOSE UP AND WE CAN GIVE THOSE TO THE JURY AT ANYTIME THAT
13 THEY ARE AVAILABLE. WE MAY NOT HAVE THEM IMMEDIATELY
14 AVAILABLE. YES, WE DO. WE WILL GIVE THEM TO YOU RIGHT
15 NOW.

16 (PAUSE)

17 THE COURT: AND IF YOU SHOULD CHANGE YOUR MIND AND
18 SOMEONE LATER ON DECIDE THEY WANT ONE, JUST TELL US AT A
19 BREAK AND WE WILL MAKE THEM AVAILABLE TO YOU. ALL RIGHT,
20 THANK YOU, MR. BAILIFF AND LADIES AND GENTLEMEN.

21 NOW LET ME JUST TALK WITH YOU IF I MAY FOR A FEW
22 MOMENTS HERE AT THE BEGINNING OF THIS TRIAL IN WHAT CALL
23 THE INTRODUCTION TO A CRIMINAL CASE. AND THIS IS NOT
24 INTENDED TO SUPPLANT OR TAKE THE PLACE OF A MORE DETAILED
25 CHARGE ON THE LAW THAT I WILL GIVE YOU AT THE END OF THE

1 CASE. IN FACT, THE LAST PERSON YOU WILL HEAR WILL FROM
2 BEFORE YOU RETIRE TO DELIBERATE WOULD BE THE COURT GIVING A
3 MORE DETAILED CHARGE ON THE LAW. THESE ARE JUST A FEW
4 THINGS I WANT TO TELL YOU IN ADVANCE OF THE TRIAL SO THAT
5 YOU WILL HAVE THIS INFORMATION FOR WHATEVER REASON YOU MAY
6 WISH TO USE IT DURING THE COURSE OF THE TRIAL.

7 NOW AS YOU ARE AWARE, THE STATE, WHICH YOU MAY ALSO
8 HEAR ME REFER TO AS THE PROSECUTION HAS CHARGED THE
9 DEFENDANT, MR. HOWARD, MR. STACEY WALTER HOWARD, WITH THE
10 CHARGE OF ASSAULT AND BATTERY OF A HIGH AN AGGRAVATED
11 NATURE.. THE STATE IS SEATED AT THE TABLE CLOSEST TO YOU.
12 THE DEFENDANT IS SEATED AT THE TABLE FURTHEST FROM YOU. I
13 WILL TELL YOU THAT JUST ONE OF THE TRADITIONS IN OUR
14 COURTROOM IS THAT THE PARTY WITH THE BURDEN OF PROOF SITS
15 CLOSES TO THE JURY. PLEASE NOTE THE STATE IS SEATED CLOSES
16 TO YOU. AND I TELL YOU AGAIN, AT ALL TIMES THE STATE HAS
17 THE BURDEN OF PROOF IN PROVING THESE CHARGES BEYOND A
18 REASONABLE DOUBT WHICH IS A HIGH STANDARD. NOW, AND I
19 SHOULD ALSO ASK, LADIES AND GENTLEMEN, CAN YOU HEAR ME IN
20 THE JURY BOX. ARE YOU ABLE TO HEAR ME? ALL RIGHT. IF YOU
21 CANNOT AT SOME POINT HEAR THROUGHOUT THESE PROCEEDINGS
22 WHETHER IT BE A WITNESS TESTIFYING, OR THE COURT, OR A
23 LAWYER TALKING JUST IF YOU WILL GIVE US A SIGNAL OF YOUR
24 HAND BEHIND YOUR EAR, WE'LL UNDERSTAND WHAT THAT MEANS.

25 NOW AS I STATED A MOMENT AGO, THE CHARGES AGAINST THE

1 DEFENDANT ARE BASED ON AN INDICTMENT. AND THE INDICTMENT,
2 OF COURSE, CONTAINS CERTAIN ALLEGATIONS. BUT YOU'VE HEARD
3 THE DEFENDANT PLEAD NOT GUILTY TO THESE CHARGES, THAT IS
4 THESE ALLEGATION, BUT FURTHERMORE I SAY TO YOU THAT THE
5 DEFENDANT IN THIS COURTROOM IS PRESUMED INNOCENT EVEN IF
6 THE DEFENDANT ENTERED NO PLEA. AND THE DEFENDANT IS
7 PRESUMED INNOCENT AND ENTITLED TO A VERDICT OF NOT GUILTY
8 UNLESS AND UNTIL THE STATE PRODUCES EVIDENCE WHICH
9 SATISFIES YOU BEYOND A REASONABLE DOUBT THAT THE DEFENDANT
10 IS GUILTY OF THESE CHARGES.

11 NOW I WANT TO TALK WITH YOU ABOUT YOUR ROLE IN THIS
12 CASE. NOW I AM THE JUDGE OF THE LAW HERE IN THE COURTROOM.
13 THAT MEANS, I MAKE THE DECISIONS ABOUT THE LEGAL ISSUES
14 BEFORE US. BUT YOU AND YOU COLLECTIVELY, ALONE, ARE THE
15 JUDGE'S OF THE FACTS. I AM NOT THE JUDGE OF THE FACTS, NO
16 ONE ELSE IS JUDGE OF THE FACTS, YOU ARE. AND IN A NUTSHELL
17 WHAT THAT MEANS IS THE WAY THIS PROCESS WORKS IS YOU DECIDE
18 WHAT THE FACTS ARE, YOU APPLY TO THE LAW THAT I WILL GIVE
19 YOU HERE AT THE END OF THIS PROCEEDING. AND FROM THAT, YOU
20 MAKE A DECISION IN THIS CASE WHICH IS JUST AND WHICH WILL
21 BE FAIR.

22 NOW I TELL YOU IN ADVANCE THAT ONE OF THE THINGS YOU
23 WILL HAVE TO DO IN BEING THE JUDGES OF THE FACTS IS
24 DETERMINE WHAT THE EVIDENCE IN THE CASE IS, AND JUST LIKE
25 YOU, I HAVE NOT HEARD THE EVIDENCE IN THIS. BUT I WILL

1 TELL YOU THAT MANY TIMES IN CASES WE WILL HAVE WITNESSES
2 TESTIFY TO THINGS THAT SEEM SOMETIMES DIFFERENT OR
3 INCONSISTENT AND SOMETIME MUTUALLY EXCLUSIVE. I AM NOT
4 TELLING YOU THAT SOMEONE IS GOING TO COME IN AND BE
5 DISHONEST WITH YOU; PLEASE DON'T PERCEIVE THAT TO BE MY
6 POINT. MY POINT IS THIS, IS THAT WE PROBABLY ALL IN OUR
7 LIFE EXPERIENCED THIS, EITHER OBSERVED AN EVENT OR SOMEHOW
8 REVIEWED AN EVENT, HEARD DESCRIPTIONS OF IT FROM VARIOUS
9 PEOPLE THAT MAY HAVE BEEN WITNESSES AND THE DESCRIPTIONS
10 ARE SO VARIED THAT YOU WONDER, IS THIS THE SAME EVENT THAT
11 EVERYONE, IS TALKING ABOUT BECAUSE PEOPLE'S PERCEPTIONS CAN
12 BE DIFFERENT. IF YOU HAVE TESTIMONY THAT DIFFERS OR IS
13 MUTUALLY EXCLUSIVE ABOUT AN OCCURRENCE YOU WILL HAVE TO
14 DECIDE WHICH OF THE WITNESSES THAT GIVES YOU TESTIMONY IS
15 MORE BELIEVABLE AND CREDIBLE IN ORDER TO DETERMINE THE
16 FACTS. I WILL TELL YOU THAT YOU SHOULD USE WHAT CRITERIA
17 YOU BELIEVE IN YOUR OWN LIFE JUDGEMENT AND LIFE EXPERIENCES
18 INDICATE BELIEVABILITY AND CREDIBILITY. BUT SOME OF THE
19 THINGS THAT YOU MAY WISH TO LOOK TO WHILE THE WITNESSES ARE
20 TESTIFYING ARE; NUMBER 1, WHAT IS THE MANNER, OF THAT
21 WITNESS? IS IT HESITANT? IS IT STRAIGHTFORWARD? WHAT IS
22 THE APPEARANCE OF THE WITNESS? HOW DID THE WITNESS COME TO
23 KNOW WHAT IT IS THEY ARE TESTIFYING ABOUT? WHAT IS THEIR
24 ABILITY TO KNOW WHAT THEY ARE TALKING ABOUT? IS THE
25 WITNESSES TESTIMONY CONSISTENT EVEN WITH ITSELF AND IS IT

1 WEAKENED OR STRENGTHEN BY OTHER EVIDENCE IN THE CASE? AND
2 FURTHER IN LIGHT OF THE GLOBAL EVIDENCE IN THE CASE AS YOU
3 FIND IT, HOW REASONABLE IS WHAT THAT WITNESS IS SAYING.
4 AND THEN FINALLY, MIGHT THERE BE A REASON THAT A WITNESS
5 WOULD WANT TO HELP OR HURT ONE SIDE OR ANOTHER ON THE CASE.
6 MIGHT THAT WITNESS HAVE A BIAS OR A PREJUDICE? THESE ARE
7 SOME OF THE THINGS THAT YOU WILL NEED TO BE CONSIDERING AS
8 YOU LISTEN TO THE WITNESSES TESTIFY.

9 AND LET ME TELL YOU ABOUT HOW WE ARE GOING TO GO
10 FORWARD HERE. FIRST, WHEN I CONCLUDE THESE REMARKS IN JUST
11 A MOMENT, BOTH SIDES WILL COME BEFORE YOU IN OPENING
12 STATEMENTS. AN OPENING STATEMENT, IS NOT SOME PERSUASIVE
13 EVENT, IT IS JUST AN OPPORTUNITY FOR THE LAWYERS TO TELL
14 YOU WHAT I CALL A ROAD MAP TO THE CASE, WHAT THEY BELIEVE
15 THE EVIDENCE MAY SHOW OR WHAT THEY INTEND TO PROVE OR
16 DISPROVE. FURTHERMORE, AFTER THAT IS CONCLUDED, THEN THE
17 STATE WHO HAS THE BURDEN OF PROOF AND GOES FIRST, WILL CALL
18 THEIR WITNESSES ONE AFTER ANOTHER. EVERY TIME THE STATE
19 CALLS A WITNESS, THAT WITNESS WILL BE SUBJECT TO DIRECT
20 EXAMINATION AND THEN CROSS EXAMINATION BY OPPOSING COUNSEL.
21 THE STATE, WILL THEN REST AFTER CALLING ALL THEIR
22 WITNESSES. THE DEFENDANT WILL BE GIVEN AN OPPORTUNITY,
23 ALTHOUGH NOT REQUIRED TO DO SO, WILL BE GIVEN AN
24 OPPORTUNITY TO PUT UP EVIDENCE OR WITNESSES IF THEY WISH,
25 BUT ABSOLUTELY HAS NO DUTY OR NO REQUIREMENT TO DO SO.

1 EACH WITNESS CALLED BY THE DEFENSE IF THERE ARE WITNESSES,
2 WILL BE SUBJECT TO DIRECT EXAMINATION BY THE DEFENSE
3 COUNSEL AND THEN CROSS EXAMINATION BY THE STATE. THE
4 EVIDENCE WILL THEN CLOSE IN THE CASE. THE LAWYERS COME
5 BEFORE YOU IN CLOSING STATEMENT. I GIVE YOU A CHARGE ON
6 THE LAW AND YOU RETIRE TO DELIBERATE. THERE AGAIN, IS HOW
7 WE'RE GOING TO GO IN THIS PROCESS.

8 NOW I NORMALLY GO ABOUT AN HOUR AND A HALF BEFORE I
9 TAKE A BREAK. BUT I DON'T WANT YOU TO FEEL LIKE YOU ARE
10 PINNED OVER THERE IN THE JURY BOX. IF YOU NEED TO TAKE A
11 BREAK BEFORE WE REACH SOME POINT, NOW WE CAN'T ALWAYS STOP
12 TO THE MINUTE BECAUSE IT DEPENDS ON WHERE WE ARE AND I
13 DON'T WANT YOU WORRYING AND WATCHING YOUR WATCH, BUT IF YOU
14 NEED TO TAKE A BREAK BEFORE WE REACH A BREAK POINT, PLEASE
15 RAISE YOUR HAND. I WILL UNDERSTAND WHAT THAT MEANS AND WE
16 WILL STOP. WE WILL TAKE A BREAK RIGHT AT THAT MOMENT. AND
17 I DO THAT FOR TWO REASONS. NUMBER ONE, YOU ARE GIVING YOUR
18 TIME TO PERFORM AN IMPORTANT AND PIVOTAL FUNCTION HERE AND
19 I WANT YOU TO BE COMFORTABLE ABOUT IT. AND NUMBER TWO, I
20 DON'T WANT YOU WORRIED ABOUT SOMETHING ELSE. I WANT YOU TO
21 BE ABLE TO LISTEN AND FOCUS ON THE EVIDENCE THAT IS BEFORE
22 YOU IN THIS CASE COMING RIGHT HERE FROM THE WITNESS STAND.

23 NOW THE LAST THING I WANT TO COMMENT TO YOU, IS THIS.
24 AS I SAID A MOMENT AGO, JUST LIKE YOU I HAVE NOT HEARD THE
25 EVIDENCE IN THIS CASE, AND JUST LIKE YOU --- WELL WE.

1 OPERATE UNDER THE SYSTEM OF RULES AND IF ONE SIDE OR THE
2 OTHER BELIEVES THAT THE OTHER SIDE IS ABOUT TO OR IS
3 BREAKING THE RULES WELL THEY CALL THAT TO MY ATTENTION BY
4 AN OBJECTION. AND JUST LIKE YOU, I DON'T KNOW WHEN THE
5 OBJECTIONS ARE COMING. I SIMPLY RULE ON THEM BASED ON WHAT
6 IS BEFORE ME IN MY TRAINING AS A JUDGE, MY PREVIOUS
7 TRAINING AS A LAWYER AND EXPERIENCES AS A LAWYER AND A
8 JUDGE, BUT I NEVER RULE ON AN OBJECTION TO SOME HOW SEND
9 YOU A MESSAGE ABOUT HOW I MAY FEEL ABOUT THE FACTS OF THE
10 CASE. PLEASE, UNDERSTAND I DON'T HAVE A POSITION ON THE
11 FACTS. IF I DID, I WOULD BE INVADING YOUR PROVIDENCE AND
12 THAT WOULD BE APPROPRIATE. YOU ARE THE JUDGE OF THE FACTS.
13 SO TAKE NO INFERENCE FROM WHATEVER RULINGS YOU MAY SEE ME
14 MAKE RIGHT HERE IN YOUR PRESENCE IN THE COURTROOM.

15 NOW WITH THAT UNDERSTANDING WE ARE READY TO BEGIN THE
16 OPENING STATEMENTS OF COUNSEL AND THE COURT RECOGNIZES MR.
17 MODICA FOR THE PROSECUTION.

18 **OPENING STATEMENTS BY MR. MODICA**

19 **MR. MODICA:** THANK YOU, YOUR HONOR. TODAY IS AN
20 IMPORTANT DAY FOR MS. POWELL. THIS IS A DAY, THAT SHE GETS
21 TO STAND UP FOR HERSELF IN REGARDS TO WHAT HAPPEN TO HER ON
22 DECEMBER 10, 2006, JUST A COUPLE OF MONTHS AGO. SHE GETS
23 TO TELL YOU WHAT HAPPENED TO HER AND HOW IT HAPPENED, IN
24 FACT, HOW HER NOSE WAS BROKEN CONSIDERABLY TO THE POINT
25 THAT SHE HAD TO HAVE SURGERY TO REPAIR IT. WHILE THIS WILL

1 BE THE DAY, THAT SHE STANDS UP FOR HERSELF, EVEN THE DAY
2 THIS HAPPENED, DECEMBER 10, 2006, SHE DIDN'T. SHE LIED
3 WHEN SHE WAS AT THE ER IN GEORGETOWN SPEAKING WITH DR.
4 RICHMOND, TELLING HIM THAT HER NOSE WAS BROKEN AS A RESULT
5 OF THE DEFENDANT STOMPING ON THE BRAKES AND HER FACE
6 HITTING THE DASH BOARD. SHE LIED WHEN THE POLICE GOT
7 THERE. SHE LIED THE FOLLOWING DAY WHEN SHE MET WITH
8 INVESTIGATOR GEORGE SMITH.
9 NOW FOR YOU WHO HAVE NEVER WALKED A SECOND IN HER
10 SHOES, THAT JUST DOESN'T SEEM POSSIBLE, IT DOESN'T SOUND
11 LIKE A RATIONAL THING THAT A PERSON WOULD DO. BUT WHEN
12 THESE SITUATIONS OCCUR WHERE SOMEONE THAT YOU LOVE AND
13 TRUST VIOLATES THAT AND CAUSES YOU, PHYSICAL INJURY YOU
14 DON'T ALWAYS THINK RATIONALLY. YOU MIGHT BE GUIDED BY
15 OTHER THINGS, LIKE INTENSE FEAR, FOR YOUR SAFETY, FEAR OF
16 YOUR WELL-BEING. AND IT WOULD BE FOR YOU TO DETERMINE
17 WHETHER OR NOT THAT IS UNDERSTANDABLE, OR FEASIBLE, OR
18 PLAUSIBLY UNDER THE CIRCUMSTANCES.

19 I WANTED TO TELL YOU THAT UP FRONT, BECAUSE OBVIOUSLY
20 WHILE SHE IS ON THE WITNESS STAND SHE IS GOING TO ADMIT
21 THAT SHE DID NOT TELL THE TRUTH. EVEN WHEN, FROM YOUR
22 POINT OF VIEW, YOU HAVE NEVER WALKED A MOMENT IN HER SHOES.
23 SHE WAS IN A PLACE OF SAFETY. EVEN AT THE TIME THAT SHE
24 CONTINUED TO SAY THAT SHE BROKE HER NOSE ON THE DASHBOARD
25 THE DEFENDANT WAS ALREADY ARRESTED. YOU WOULD THINK NEVER

1 HAVING WALKED A MOMENT IN HER SHOES THAT YOU WOULD NOT DO
2 THAT.

3 SO I AM GOING TO ASK YOU DURING THE COURSE OF THIS
4 TRIAL, WHICH WILL BE DIFFICULT IN A WAY BECAUSE WE ARE
5 VIEWING THIS EVENT KIND OF IN A VACUUM. WE ARE NOT TALKING
6 ABOUT ANYTHING OTHER THAN DECEMBER 10. IT MAYBE DIFFICULT
7 FOR YOU, YOU THE JURY, TO TRY AND GRASP THAT CONCEPT. I
8 THOUGHT IT WAS IMPORTANT TO TELL EACH AND EVERY ONE OF YOU
9 ABOUT THAT EARLY ON SO THAT YOU COULD IT GIVE IT SOME
10 THOUGHT. I WANT YOU TO GIVE IT THOUGHT AND SCRUTINY WHEN
11 SHE TESTIFIES WHICH WILL BE IN MINUTES.

12 NOW HAVING SAID THAT, I HAVE KIND OF WATCHED YOU AND
13 GAZED YOU A LITTLE BIT AS YOU HAVE BEEN DOING TO US, WE ALL
14 DO THAT. IT MAY MAKE SOME OF YOU FEEL UNEASY OR
15 UNCOMFORTABLE ABOUT THAT POSITION AND BEING PUT IN THAT
16 POSITION TO DETERMINE THAT SOMEBODY IS GUILTY OF A CRIME
17 WHEN YOU KNOW THAT A PERSON EVEN ARGUABLY IN YOUR MIND ARE
18 IN COMPLETELY SAFETY, HAVE LIED ABOUT THE EVENTS. I HOPE
19 THAT WHAT I TELL YOU NEXT, WILL MAKE YOU FEEL SOMEWHAT MORE
20 COMFORTABLE ABOUT DOING JUST THAT. DR. RICHMOND, AN
21 EMERGENCY ROOM DOCTOR AT THE HOSPITAL, WILL TESTIFY ABOUT
22 THE INJURIES AND HOW SHE APPEARED. THE JUDGE WILL TELL YOU
23 ABOUT EXPERT TESTIMONY. YOU CAN CHOOSE TO BELIEVE IT OR
24 NOT. YOU CAN GIVE IT MORE WEIGHT OR NOT AS YOU DEEM
25 APPROPRIATE. AND THE MERE FACT THE PERSON IS AN EXPERT

1 THAT YOU TAKE THEIR WORD FOR IT AND DON'T QUESTION IT. I
2 AM NOT SUGGESTING THAT. BUT ARGUABLY, BY HIS EDUCATION AND
3 EXPERIENCE HE POSSESSES CERTAIN THINGS THAT ARGUABLY WE
4 DON'T IN THE MEDICAL FIELD. HE WILL TELL YOU ABOUT HOW SHE
5 ACTED AND HE WILL TELL YOU HIS OPINION ABOUT WHETHER THAT
6 INJURY, THE TYPE OF INJURY THAT SHE HAD COULD BE CAUSED BY
7 STRIKING THE DASHBOARD. IN THE END YOU WILL FIND THAT IT
8 IS NOT, THAT IS NOT, WHAT OCCURRED, THAT THE DEFENDANT,
9 ACTUALLY STRUCK HER. YOU WILL SEE A COUPLE OF PHOTOGRAPHS
10 IN EVIDENCE REGARDING HER INJURIES. AND I THINK BETWEEN
11 HER TESTIMONY, LOOKING AT THE PHOTOGRAPHS THEMSELVES AND
12 THE TESTIMONY OF DR. RICHMOND, YOU WILL BE AT EASE WHEN IT
13 COMES TO MAKING THAT IMPORTANT DECISION AS IT RELATES TO
14 THE DEFENSE. BUT JUST AS IMPORTANT, AS THIS CASE IS TO THE
15 DEFENDANT IT IS IMPORTANT TO LISA POWELL, BECAUSE THIS IS
16 HER DAY TO STAND UP TO IT.

17 THE COURT: DEFENSE.

18 OPENING STATEMENTS BY MR. RUNYAN

19 MR. RUNYAN: LADIES AND GENTLEMEN OF THE JURY, I
20 AM NOT SURE WHAT THE FUTURE OF THIS TRIAL HOLDS BUT WE
21 DO KNOW --

22 THE COURT: COUNSEL, EXCUSE ME, I AM GOING TO STOP YOU
23 JUST A MOMENT PLEASE. WE HAVE A MESSAGE FOR ONE OF OUR
24 JURORS. PLEASE GIVE THAT TO MS. TOMLIN IF YOU WOULD.
25 MA'AM, TELL US IF YOU NEED TO RESPOND TO THAT. MS. TOMLIN

1 IS SEATED, ON THE FRONT ROW, JUROR NUMBER TWO.

2 MS. TOMLIN: JUDGE, I DO NEED TO TALK TO SOMEONE.

3 THE COURT: ALL RIGHT, JUST STEP RIGHT THROUGH THAT

4 DOOR. WE'LL TAKE YOU TO A TELEPHONE. DO YOU MIND IF WE

5 TELL OUR COLLEAGUES WHAT THAT MESSAGE IS ABOUT? NOT THE

6 SPECIFICS OF IT BUT JUST WHY WE DO THAT SO THEY'LL KNOW.

7 MS. TOMLIN: THAT'S OKAY.

8 THE COURT: ALL RIGHT, GO AHEAD, YOU CAN STEP RIGHT

9 THROUGH THERE AND A TELEPHONE WILL BE AVAILABLE TO YOU.

10 COUNSEL, JUST BE AT EASE AND WE'LL LET YOU BEGIN AT THE

11 BEGINNING IN JUST A MOMENT.

12 MR. RUNYAN: NO PROBLEM.

13 THE COURT: OUR JUROR'S DAUGHTER HAS DIABETES AND SHE

14 CHECKS HER BLOOD SUGAR LEVEL AT SCHOOL THROUGH THE SCHOOL

15 NURSE, AND FROM TIME TO TIME HAS TO HAVE SOME CONTACT WITH

16 THE PARENT. SHE CAME UP TO ME BEFORE WE BEGAN THIS MORNING

17 AND EXPLAINED THAT TO ME, AND I ASKED IF SHE WAS WILLING TO

18 REMAIN AND SERVE, IF WE COULD ACCOMMODATE HER IN CASE A

19 MESSAGE CAME IN AND OBVIOUSLY IT JUST DID, THAT WOULD SHE

20 REMAIN AND SERVE, AND SHE AGREED TO THAT. SO IF YOU ALL

21 WILL JUST BE AT EASE A MOMENT, WE'LL WAIT AND RETURN FOR

22 DEFENSE OPENING STATEMENT WHEN OUR JUROR RETURNS.

23 (PAUSE)

24 THE COURT: COUNSEL, COME AROUND AND LET'S TALK ABOUT

25 SCHEDULING IF WE MAY JUST A MOMENT WHILE WE HAVE A LITTLE

1 BIT OF DOWN TOWN.

2 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
3 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY.)

4 THE COURT: ALL RIGHT, MS. TOMLIN, ARE YOU COMFORTABLE
5 MA'AM?

6 MS. TOMLIN: YES.

7 THE COURT: DO YOU NEED TO BE EXCUSED?

8 MS. TOMLIN: NO.

9 THE COURT: ALL RIGHT, VERY GOOD. LADIES AND
10 GENTLEMEN, I WILL TELL YOU ONE THING THAT I DIDN'T MENTION
11 AND IT IS NEVER GOOD TO TRY TO PREDICT HOW LONG A CASE WILL
12 TAKE. AND I WANT TO TELL YOU THAT IMPORTANCE OF A CASE IS
13 NEVER MEASURED BY ITS LENGTH. I AM TOLD BY COUNSEL THAT
14 THIS CASE WILL PROBABLY END THE TESTIMONIAL PHASE SOMETIME
15 TOMORROW. I JUST TELL YOU THAT FOR YOUR OWN SCHEDULING
16 PURPOSES. I KNOW YOU HAVE OTHERS OF SIGNIFICANCE IN YOUR
17 LIFE, AND WHEN THEY ASK YOU WHERE ARE YOU GOING TO BE WHEN,
18 I JUST GIVE THAT AS INFORMATION. ANYTHING MORE SPECIFIC
19 I'M JUST NOT ABLE TO GIVE YOU AT THIS TIME, BUT I WILL TELL
20 YOU THAT.

21 ALL RIGHT, COUNSEL, MR. RUNYAN, THANK YOU FOR YOUR
22 PATIENCE AND PLEASE BEGIN AT THE BEGINNING.

23 OPENING STATEMENTS BY MR. RUNYAN

24 MR. RUNYAN: LADIES AND GENTLEMEN OF THE JURY, HIS
25 HONOR HAS TOLD YOU, AND HE WILL TELL YOU AT THE END OF THIS

1 TRIAL THAT THE INDICTMENT IN THIS CASE IS NOT EVIDENCE. IT
2 IS MERELY A ROADMAP FOR WHAT THE STATE INTENDS TO PROVE OR
3 TRY TO PROVE.

4 NOW I AM NOT GOING TO TAKE A LONG TIME UP HERE. THE
5 PROSECUTOR HAS ALREADY TOLD, MR. MODICA ALREADY TOLD YOU
6 THAT THE COMPLAINING WITNESS IN THIS CASE HAS LIED ON
7 NUMEROUS OCCASIONS ON HOW SHE RECEIVED HER INJURIES. THEY
8 HAVE ALLEGED, PRESENTED EVIDENCE TO A GRAND JURY THAT SHE
9 IN FACT STRUCK HER FACE ON THE DASH BOARD OF THE
10 DEFENDANT'S CAR, WHEN HE SLAMMED ON THE BRAKES. THEY ALSO
11 ALLEGE THAT HE STRUCK HER. NOW I AM WAITING TO HEAR THE
12 EVIDENCE JUST LIKE YOU ARE. YOU WILL HEAR EVIDENCE I AM
13 SURE FROM PEOPLE, FROM THE DOCTOR WHO TREATED HER, I AM
14 SURE WE MAY IN FACT HEAR FROM PEOPLE WHO HAVE EXAMINED THE
15 TRUCK, AND THE FORENSIC EVIDENCE, AND WHAT HAVE YOU. AS TO
16 WHETHER OR NOT THIS INJURY COULD HAVE, SHOULD HAVE, OR WAS
17 IN FACT CAUSED IN WHATEVER FASHION THEY CLAIM IT OCCURRED.
18 ONCE THE SO CALL TRUTHFUL TESTIMONY OR FACTS ARE PRESENTED
19 TO YOU, AT THAT POINT AND TIME WE WILL BE ABLE TO TALK WITH
20 YOU MORE RATIONALLY ABOUT THIS CASE.

21 IT IS OUR POSITION AS MR. MODICA HAS TOLD YOU THAT
22 THIS YOUNG LADY WAS INJURED BY STRIKING HER FACE ON THE
23 DASHBOARD OF A TRUCK WHEN THE TRUCK SLAMMED ON ITS BRAKES.
24 THERE WILL BE NO EVIDENCE PRESENTED WHICH WOULD INDICATE
25 THAT THAT IS NOT THE WAY IT COULD HAVE HAPPENED. THE

1 DOCTOR WILL TELL YOU, THE EMERGENCY ROOM DOCTOR WILL TELL
2 YOU, PERHAPS IN PAINTING IT ONE WAY OR THE OTHER, THAT
3 THERE HAS BEEN NO EXAMINATION OF THIS TRUCK THAT WE ARE
4 AWARE OF, OR IF IT WAS IT WOULD BE PRESENTED TO YOU. BUT
5 IN ANY EVENT, THEY ARE GOING TO HAVE TO PROVE TO YOU THAT
6 THE SLAMMING ON THE BRAKES OF THE TRUCK WAS DONE WITH A
7 SPECIFIC INTENT OF HARMING THE ALLEGED VICTIM. THEY WILL
8 HAVE TO PROVE TO YOU THAT THIS PERSON STRUCK HER WITH
9 SPECIFIC INTENT TO DO BODILY HARM TO HER.

10 IT IS ESSENTIALLY AN ASSAULT AND BATTERY CASE. IT IS
11 NOT THAT COMPLICATED UNTIL YOU HAVE TO DEAL WITH QUESTION
12 OF WHO IS TELLING THE TRUTH. WE ALREADY KNOW THAT THERE IS
13 SOMEBODY IN THIS CASE WHO IS NOT TELLING THE TRUTH AND THAT
14 HAPPENED AT SOME POINT IN TIME ON AT LEAST ON THREE
15 OCCASIONS, AND WE KNOW THE PROSECUTION HAS ALREADY TOLD YOU
16 THE COMPLAINING WITNESS DID NOT TELL THE TRUTH ON NUMEROUS
17 OCCASIONS.

18 SO WITH THAT, I AM GOING TO SIT DOWN. LATER ON WE
19 WILL BE BACK AND DISCUSS THE CASE WITH YOU MUCH MORE
20 INTELLECTUALLY, BECAUSE WE WILL HAVE SOME EVIDENCE AND
21 FACTS IN THE RECORD WHICH YOU CAN RENDER A JUST DECISION.
22 THANK YOU.

23 THE COURT: COUNSEL, PLEASE CALL YOUR FIRST WITNESS.

24 MR. MODICA: THE STATE CALLS LISA POWELL, YOUR HONOR.

25 THE COURT: PLEASE COME FORWARD AND TAKE THE OATH OF A

LISA POWELL - DIRECT EXAMINATION BY MR. MODICA

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1 WITNESS.

2 LISA POWELL,

3 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

4 CLERK OF COURT: PLEASE BE SEATED. STATE YOUR NAME
5 FOR THE RECORD, SPELLING THE LAST.

6 MS. POWELL: MY NAME IS LISA POWELL.

7 DIRECT EXAMINATION BY MR. MODICA:

8 Q. MS. POWELL, HOW OLD ARE YOU?

9 A. THIRTY-SEVEN.

10 Q. DO YOU HAVE ANY CHILDREN?

11 A. I HAVE TWO CHILDREN.

12 Q. WHAT ARE THEIR NAMES AND AGES, PLEASE?

13 A. ASHLYN AND AARON. ASHYLN IS 11 AND SHE, WAS BORN
14 MARCH 1. AARON IS 7.

15 Q. NEITHER OF THOSE CHILDREN ARE THE DEFENDANT'S
16 CHILDREN, ARE THEY?

17 A. NO, SIR.

18 Q. COULD YOU TELL OUR JURY HOW YOU FIRST CAME TO MEET
19 STACEY HOWARD?

20 A. YES, SIR. HE OBTAINED MY PHONE NUMBER FROM A FRIEND
21 OF A FRIEND AND WE BEGAN TALKING OVER THE PHONE.

22 Q. WHEN WAS THAT?

23 A. DECEMBER OF 1999.

24 Q. WHEN DID YOU START DATING?

25 A. SHORTLY AFTER THAT, JANUARY 2000.

LISA POWELL - DIRECT EXAMINATION BY MR. MODICA

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1 Q. WHEN DID YOUR RELATIONSHIP CHANGE FROM DATING TO MORE
2 OF A SERIOUS RELATIONSHIP?

3 A. IT PROGRESSED FROM THERE.

4 Q. HOW SOON AFTER YOU STARTED DATING DID IT PROGRESS TO A
5 MORE SERIOUS RELATIONSHIP?

6 A. PROBABLY THE END OF JANUARY.

7 Q. HAVE YOU BEEN WITH THE DEFENDANT ON AND OFF SINCE
8 JANUARY THAT YEAR THROUGH DECEMBER OF 2006?

9 A. YES, SIR.

10 Q. WHAT I WOULD LIKE TO DO IS, BRING YOUR ATTENTION TO
11 THE WEEKEND THAT INCLUDED DECEMBER 10. DO YOU RECALL
12 WHAT DAY OF THE WEEK DECEMBER 10 WAS?

13 A. YES, SIR. IT WAS ON A SUNDAY.

14 Q. DURING THE COURSE OF THAT WEEK, FRIDAY, SATURDAY,
15 SUNDAY, DID YOU HAVE INTERACTION WITH STACEY HOWARD?

16 A. YES, SIR. WE WERE TOGETHER ALL WEEKEND.

17 Q. WHAT I WANT YOU TO DO NOW, JUST SO THE JURY KNOWS WHO
18 WE ARE TALKING ABOUT, COULD YOU POINT OUT STACEY
19 HOWARD AND THE ARTICLE OF CLOTHING HE IS WEARING?

20 A. HE IS SITTING RIGHT BESIDE HIS ATTORNEY. HE IS
21 WEARING A BURGUNDY SHIRT. HE HAS DARK HAIR AND BLUES
22 EYES.

23 Q. YOUR HONOR MAY THE RECORD PLEASE REFLECT, THIS WITNESS
24 IDENTIFIED THE DEFENDANT. TELL THE JURY ABOUT WHAT
25 WAS GOING ON THAT WEEKEND, THE WEEKEND THAT INCLUDED

1 THE SUNDAY ATTACK.

2 A. WELL, HE HAD JUST GOTTEN A STEREO EQUIPMENT FOR HIS
3 TRUCK. MY NEPHEW JASON, IS VERY GOOD WITH PUTTING
4 STUFF LIKE THAT IN. AND RADIO SHACK WAS REALLY HIGH.
5 SO I GOT HIM TO -- I CALLED MY NEPHEW AND MY NEPHEW
6 SAID HE WOULD DO IT FOR A LOT LESS OR WHATEVER. SO WE
7 WENT AND PICKED MY NEPHEW UP AND THEY WERE INSTALLING
8 THE EQUIPMENT THAT WEEKEND. IT IS A LOT OF EQUIPMENT.
9 IT TOOK A COUPLE OF DAYS.

10 Q. WHAT IS YOUR NEPHEW'S FULL NAME, PLEASE?

11 A. DANIEL JASON DAYTON.

12 Q. WHERE WAS HE RESIDING BACK IN DECEMBER 2006?

13 A. HE LIVES IN ON

14 WITH MY SISTER.

15 Q. WHERE IS IT THAT YOUR NEPHEW JASON WAS WORKING ON THE
16 DEFENDANT'S TRUCK?

17 A. HE DID PART OF IT IN MY BACKYARD WHICH IS IN
18 GEORGETOWN COUNTY, BUT THEN THEY NEEDED MORE TOOLS AND
19 STUFF AND IT WAS COLD SO WE WENT OUT TO THE FARM. HE
20 LIVED WITH HIS FATHER AND MOTHER. AND WE -- WELL THEY
21 STAYED OUT THERE IN THE SHED AND INSTALLED IT UNTIL IT
22 GOT DARK. IT WAS DARK. UNTIL THE NEXT DAY THEY BEGAN
23 WORKING ON IT AGAIN.

24 Q. WOULD THAT BE SATURDAY AND SUNDAY?

25 A. SATURDAY AND SUNDAY.

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1 Q. HE WORKED ON IT ON SATURDAY AND SUNDAY AS WELL?

2 A. YES.

3 Q. WHERE IS THE DEFENDANT'S FOLK'S PLACE?

4 A. STACEY'S?

5 Q. YES.

6 A. IN WILLIAMSBURG COUNTY ON PARKER ROAD.

7 Q. IS IT A FARM?

8 A. YES, SIR.

9 Q. DID YOU HAVE YOUR CHILDREN WITH YOU WHEN YOU WERE AT
10 THE DEFENDANT'S FARM, HIS PARENTS FARM, SATURDAY AND
11 SUNDAY?

12 A. NO, SIR. MY LITTLE GIRL WAS WITH HER DADDY AND MY SON
13 WAS WITH MY GRANDMA, WITH HER GRANDMOTHER. AND WHICH
14 THAT IS WHERE I PICK THEM BOTH UP FROM SUNDAY.

15 Q. DID YOU AND THE NEPHEW JASON STAY OVER AT THE
16 DEFENDANT'S PARENTS HOUSE IN WILLIAMSBURG COUNTY?

17 A. YES. SATURDAY NIGHT.

18 Q. DID THERE COME A TIME THAT THEY FINISHED UP OR STOPPED
19 DOING WORK IN PUTTING THE STEREO IN THE DEFENDANT'S
20 TRUCK?

21 A. YES. THEY FINALLY FINISHED UP ON SUNDAY EVENING ABOUT
22 DARK.

23 Q. DID THERE COME A TIME WHEN YOU ALL LEFT?

24 A. YES.

25 Q. WHO LEFT?

1 A. US THREE.

2 Q. WHAT THREE?

3 A. ME, STACEY AND JASON.

4 Q. WHERE DID YOU ALL GO?

5 A. WE DECIDED WE GOT GAS IN NEWTON AND DECIDED TO TAKE
6 JASON HOME FIRST.

7 Q. DID YOU DO THAT?

8 A. YES.

9 Q. AFTER DROPPING OFF JASON WHAT HAPPENED NEXT?

10 A. WE WERE COMING TO MY HOUSE. WE WERE COMING FROM
11 PIKES, SO WE CAME DOWN 51, WHICH GOES BY THE
12 JAILHOUSE.

13 Q. WHILE YOU WERE IN THE TRUCK, DID YOU AND THE DEFENDANT
14 GET INTO AN ARGUMENT?

15 A. AT WHAT POINT?

16 Q. AT SOME POINT AS YOU WERE TRAVELING TOWARDS --

17 A. YES.

18 Q. TELL OUR JURY ABOUT WHAT THE ARGUMENT WAS ABOUT AND
19 WHAT HAPPENED?

20 A. JUST ARGUING. HE WAS IN A HURRY. HE NEEDED TO
21 ACTUALLY GO SOMEWHERE. THEN HE DID NOT SEE --- HE WAS
22 WANTING TO GET ME HOME BECAUSE I WANTED TO GET HOME
23 AND GET MY KIDS FROM MY MOM. IT WAS MONDAY. TOMORROW
24 WAS SCHOOL.

25 Q. WHAT DID HE WANT TO DO?

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1 A. I DON'T KNOW.

2 Q. DID HE WANT YOU TO GO PICK UP YOUR CHILDREN?

3 A. NO, NOT REALLY.

4 Q. YOU WENT THERE SO YOU'RE GOING TO TELL US ABOUT THAT?

5 A. IT WAS JUST ARGUING. I THREW MY GLOVE OUT THE WINDOW
6 WHICH KEPT ME FROM GETTING --- HE ACTUALLY HAD TO TURN
7 THE TRUCK AROUND AND THAT AGGRAVATED HIM MORE.

8 Q. GOING AHEAD, WHAT I WANT YOU TO DO IS TELL THE JURY
9 ABOUT WHAT YOU WERE ARGUING ABOUT. DO YOU UNDERSTAND
10 MY QUESTION, MS. POWELL? DO YOU UNDERSTAND MY
11 QUESTION?

12 A. NOT REALLY.

13 Q. WE WEREN'T IN THE TRUCK WITH YOU, SO I WANT YOU TO
14 TELL THE JURY WHAT YOU AND STACEY WERE ARGUING ABOUT
15 PRIOR TO SOMETHING ABOUT THE GLOVE?

16 A. JUST BICKERING AND ARGUING. IT WASN'T REALLY ARGUING,
17 AT THAT POINT TOO MUCH. IT WASN'T ARGUING OR A FIGHT
18 AT THAT POINT.

19 Q. DID HE WANT YOU TO GO HOME?

20 A. NO, HE DIDN'T WANT TO GO BY, HE DIDN'T WANT TO GO
21 STRAIGHT TO THE HOUSE AND STUFF LIKE THAT.

22 Q. DID HE WANT YOU TO STAY IN YOUR HOUSE OR AT THE FARM?

23 A. THAT WASN'T TALKED ABOUT. WE JUST --- IT WAS LIKE HE
24 JUST WANTED TO DO WHAT HE WANTED TO DO AND HE WASN'T
25 READY I GUESS FOR ME TO BE DOING WHAT I WANTED TO DO.

1 HE WANTS TO CONTROL THE ISSUE OF WHERE TO GO.

2 Q. WHERE DID YOU WANT TO DO?

3 A. I WANTED TO GO HOME, GET MY CAR AND GO GET MY KIDS.

4 Q. ALL RIGHT. YOU WERE SAYING SOMETHING ABOUT TRAVELING
5 DOWN THE ROAD AND WHAT HAPPENED?

6 A. I THREW --- STATING THE OBVIOUS, I THREW A CAN OUT THE
7 WINDOW AND MY GLOVE WENT OUT THE WINDOW INSTEAD.

8 Q. WHAT KIND OF CAN?

9 A. A BEER CAN. IT WAS A FULL BEER CAN. I DID NOT WANT
10 TO DRINK. I DID NOT WANT TO PARTY. I WAS TIED OF IT.
11 AND HE WAS STEADILY AND DRINKING AND PARTYING. THAT
12 IS ALL THEY HAD BEEN DOING ALL THAT DAY.

13 Q. WHO GAVE YOU THE BEER?

14 A. STACEY.

15 Q. DID YOU WANT TO DRINK THAT BEER?

16 A. NO. THAT IS WHY I THREW IT OUT THE WINDOW.

17 Q. YOU SAID YOUR GLOVE WENT OUT THE WINDOW?

18 A. YEAH.

19 Q. WHAT HAPPENED?

20 A. HE GETS UPSET BECAUSE I MISSED AND THREW THE GLOVE OUT
21 THE WINDOW AND HE SAID, HE STARTS TO ARGUING ABOUT HE
22 WILL BUY ME ANOTHER GLOVE AND I SAID IT IS AN ISOTONOR
23 GLOVE, PLEASE TURN AROUND. SO THAT INFURIATED HIM
24 MORE. HE TURNED AROUND, HE GOT MY GLOVE AND THEN WE
25 STARTED BACK TO THE HOUSE AGAIN.

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1 Q. BACK TO WHOSE HOUSE?

2 A. STARTED BACK TOWARDS MY HOUSE.

3 Q. WHAT HAPPENED?

4 A. WHEN WE GET NEAR RIGHT THERE NEAR MY HOUSE ARGUING
5 GETS --- IT GOT WORSE.

6 Q. HOW DID IT GET WORSE?

7 A. WELL, I DON'T NEED YOU ANYMORE ANYWAY AND THIS THAT
8 AND THE OTHER. I'VE GOT MANY GIRLFRIENDS AND STUFF
9 LIKE THAT. OR WHATEVER KIND OF SICKENING ARGUMENTS
10 YOU WANT TO TALK ABOUT.

11 Q. WHAT WAS HE SAYING? WE WEREN'T THERE.

12 A. JUST STUFF LIKE, LIKE THAT AND I SAID WELL, ONE THING
13 YOU GOT ALL THE MATERIAL THINGS YOU WANTED TO ACHIEVE
14 YOU DID, AND THAT'S GOOD BECAUSE YOU CAN'T BUY LOVE.
15 AND THAT IS THE ONE THING YOU CAN'T BUY. TO WHAT
16 POINT I SAID SOMETHING ABOUT SOMETHING THAT HE TEED
17 HIM OFF REALLY BADLY AND HE THREW HIS FIST AND WHACKED
18 ME BESIDE THE HEAD AND I SAW IT COMING AND I DUCKED
19 THAT FIRST TIME. I KNEW I HAD GOTTEN, I PINCHED THAT
20 NERVE WHEN I SAID WHAT I SAID AND I SHOULDN'T OF SAID
21 IT. BUT I GUESS THAT DOESN'T GIVE HIM ANY REASON TO
22 HIT ME LIKE THAT.

23 Q. WHAT HAPPENED AFTER HE HIT YOU?

24 A. WHENEVER I LOOKED UP, HE HAD DONE WENT FOR ANOTHER
25 BLOW AND I DIDN'T DUCK OUT AND HE LAID MY NOSE ACROSS

1 THE SIDE.

2 Q. HOW DID HE HIT YOU?

3 A. WITH HIS HAND. HE HAD A RING, TWO RINGS. I THINK HE
4 HAD A RING ON THIS HAND AND A RING ON THIS HAND. IT'S
5 USUALLY HOW HE WORE IT. AND WHEN I LOOKED THIS WAY HE
6 HIT ME FROM LIKE WOW, LIKE THAT'S MY NOSE AND HE HIT
7 WITH THAT WHICH HIT THAT WAY AND IT CRUSHED THIS SIDE,
8 BROKE TWO BONES HERE AND A BROKEN BONE HERE.

9 Q. WAS HE WEARING A RING ON THAT HAND?

10 A. YES. AND I'VE GOT A SCARE HERE FROM THE CUT.

11 Q. WE WILL GET TO ALL OF THAT. IF YOU COULD STAY WITH
12 THE QUESTIONS AND ANSWER THEM. ONE MOMENT. WHAT DID
13 YOU SAY TO HIM THAT MADE HIM SO ANGRY?

14 A. I SAID THE MATERIAL THINGS THAT HE WANTED BY SELLING
15 HIS MARIJUANA.

16 MR. RUNYAN: OBJECTION, YOUR HONOR.

17 THE COURT: WE'LL SUSTAIN THAT OBJECTION. I'LL ASK
18 THE JURY TO DISREGARD THAT REMARK, AND PLEASE MOVE TO YOUR
19 NEXT QUESTION.

20 Q. (BY MR. MODICA) WHAT HAPPENED AFTER HE ACHIEVED --

21 A. THE BLOOD WAS PROFUSELY POURING AND STUFF AND HE
22 REALIZED HE WAS LIKE HOLLERING I'M SORRY, I DIDN'T
23 MEAN TO HIT YOU LIKE THAT. YOU KNOW I DIDN'T MEAN TO
24 HIT YOU LIKE THAT. AND STACEY, THE FIRST HIT I COULD
25 UNDERSTAND THAT FIRST TIME, BUT THAT WASN'T GOOD.

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1 ENOUGH HE HIT ME TWICE, HE WASN'T HAPPY UNTIL HE SAW
2 BLOOD. WHEN WE GOT RIGHT THERE TO THE HOUSE SO
3 WHENEVER WE TURNED AROUND THE CORNER HE SAID GIVE ME
4 THE KEYS, GIVE ME THE KEYS AND I GAVE HIM THE KEYS. I
5 COULDN'T DO ANYTHING. THERE WAS SO MUCH BLOOD I COULD
6 NOT BREATHE. AND HE FINALLY GOT THE DOOR OPENED AND HE
7 GOT INTO THE HOUSE AND I WENT STRAIGHT TO THE
8 BATHROOM. I FELT LIKE I NEEDED TO PEE. HE HIT MY
9 FACE WITH A TOWEL AND STUFF. GETTING TOWELS TO MY
10 FACE AND STUFF BECAUSE THE BLOOD WAS SO BAD. AND HE
11 WAS TELLING ME AND SAID STACEY YOU'VE GOT TO GET ME TO
12 A HOSPITAL AND HE SAID IT'S NOT BROKEN. YOU'RE GOING
13 TO BE FINE. YOU'RE GOING TO BE FINE. AND I SAID
14 STACEY, I KNOW MY NOSE IS BROKEN WE HAVE GOT TO GET TO
15 THE HOSPITAL. I CAN'T HARDLY BREATHE. AND HE SAID
16 THERE I GO, I'M GOING TO GET TEN YEARS. I'M GOING TO
17 GET TEN YEARS I MIGHT AS WELL GO DO WHAT I NEED TO DO,
18 WHAT I WANT TO DO TONIGHT BECAUSE I WILL BE GONE FOR
19 TEN YEARS. THAT IS ALL I COULD THINK ABOUT WAS
20 GETTING TEN YEARS. HE WASN'T THINKING ABOUT GETTING
21 ME TO A HOSPITAL, JUST TENDING TO, YOU KNOW, GETTING
22 MY GETTING CARE FOR MY FACE.

23 Q. AND THEN WHAT HAPPENED?

24 A. I WAS SITTING ON THE TOILET AND YOU KNOW HE WAS
25 JABBERING ABOUT ALL OF THIS AND HE ALL OF SUDDEN

1 FREEZES UP AND SAYS DOES ANYBODY KNOW YOU ARE WITH ME,
2 LIKE THAT.

3 Q. WHAT DID YOU THINK?

4 A. THAT SCARED ME.

5 Q. WHY?

6 A. BECAUSE IT MADE ME FEEL LIKE THAT IF HE THOUGHT
7 IN HIS MIND AT THAT POINT AND TIME THAT IF ANYBODY DID
8 NOT KNOW WHERE I WAS OR WITH HIM THAT I DON'T KNOW
9 WHAT HE WOULD DO TO ME. HE WOULD GO AHEAD AND DO ME
10 IN, GET ME OUT THE WAY.

11 MR. RUNYAN: I OBJECT TO THIS LINE OF QUESTION AND I
12 WOULD LIKE A SIDE BAR FOR A MINUTE, JUDGE.

13 THE COURT: ALL RIGHT, COUNSEL, WE'LL GIVE YOU A
14 SIDEBAR. YOU MAY COME TO THE SIDE. JUST ONE MOMENT,
15 LADIES AND GENTLEMEN.

16 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
17 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY.)

18 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, LET ME
19 JUST TELL YOU THE LAST COMMENT MADE BY THE WITNESS, I WANT
20 THE JURY TO UNDERSTAND THAT IS NOT INDICATIVE OF THE ACTUAL
21 INTENTIONS OF THE DEFENDANT. BECAUSE THE WITNESS WOULD
22 HAVE NO KNOWLEDGE OF WHAT THAT MAY BE BUT IT MAY GO TO THE
23 STATE OF MIND, OR THE PERCEPTION OF THE WITNESS AND THE
24 TIME. MR. MODICA, YOU MAY PROCEED.

25 Q. (BY MR. MODICA) THANK YOU. I AM GOING TO BACK UP.

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1 WHERE WAS IT THAT HE STRUCK YOU IN THE FACE? WHERE
2 WERE YOU?

3 A. WHERE WERE WE WERE IN HIS TRUCK.

4 Q. I KNOW THAT BUT WHAT ROAD?

5 A. RIGHT THERE ON LIKE MAY BE TWO HUNDRED FEET FROM MY
6 HOUSE. LIKE IT'S CALLED APPLEJACK.

7 Q. ANY QUESTION THAT IS IN GEORGETOWN COUNTY?

8 A. NO, IT IS IN GEORGETOWN COUNTY.

9 Q. WHEN HE SAID YOU KNOW WE'RE TOGETHER, WHAT DID YOU SAY
10 TO HIM AS A RESULT OF HIM SAYING THAT?

11 A. I SAID STACEY WE JUST LEFT MY SISTER'S HOUSE.

12 EVERYBODY KNOWS THAT WE ARE TOGETHER. HE SAID --

13 Q. THANK YOU. DID THERE COME A TIME WHEN HE MADE A PHONE
14 CALL?

15 A. YEAH.

16 Q. WHO DID HE MAKE A PHONE CALL TO?

17 A. HE SAID, LET ME CALL MY DADDY AND HE GRABBED THE PHONE
18 AND HE CALLED HIS FATHER.

19 Q. DID YOU HEAR PART OF HIS CONVERSATION?

20 A. YES.

21 Q. TELL THE JURY ABOUT THE PART THAT YOU HEARD?

22 OBVIOUSLY YOU COULD NOT HEAR WHAT HIS FATHER SAID BUT
23 WHAT THE DEFENDANT SAID ON THE PHONE, OKAY?

24 A. OKAY. HE SAID THIS GIRL HAS CAUSED ME TO HIT HER. I
25 KNOW I AM GOING TO GET TEN YEARS. I DON'T KNOW WHAT

1 TO DO. SHE NEEDS TO GO TO THE HOSPITAL BUT I CAN'T
2 TAKE HER. CAN YOU MEET ME IN TOWN? Y'ALL GOT TO MEET
3 ME IN TOWN. HE'S REAL UPSET SO HE KEPT OVER AND OVER
4 SAYING THINGS BECAUSE IT WAS, YOU KNOW, OVER AND OVER
5 SAID THINGS LIKE THAT. AND HE WAS LIKE ACTUALLY TO
6 THE POINT, WE'LL SHE CAUSED ME TO HIT HER. OF COURSE,
7 BLAMING THE WHOLE DAMN THING ON ME FROM THE VERY
8 BEGINNING. AND I TOLD HIM I SAID STACEY STOP LYING ON
9 ME. STOP LYING ON ME. DON'T WORRY SO MUCH ABOUT YOUR
10 BUTT, JUST GET ME TO THE HOSPITAL.

11 Q. HOW DID IT FEEL WHEN HE STRUCK YOU IN THE FACE WHEN
12 THAT HAPPENED TO YOU?

13 A. I HAD NEVER FELT PAIN LIKE THAT IN MY LIFE.

14 Q. CAN YOU DESCRIBE IT FOR US?

15 A. I WAS SEEING STARS. I COULDN'T DO ANYTHING. THERE
16 WAS SO MUCH BLOOD. I COULDN'T BREATHE. AND IT ALMOST
17 KNOCKED ME OUT.

18 Q. DID THERE COME A TIME WHEN HE GOT OFF OF THE PHONE
19 THAT YOU ALL LEFT YOUR HOUSE?

20 A. YES. HE GOT OFF THE PHONE WITH HIS DADDY. THE PLAN
21 WAS TO MEET IN TOWN IN ANDREWS RIGHT THERE ON 41 AT A
22 LITTLE STORE.

23 Q. DID YOU GET IN THE CAR?

24 A. I GOT IN THE CAR WITH HIS MAMMA AND DAD.

25 Q. WHAT A SECOND. LISTEN TO MY QUESTION. DID YOU GET IN

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1 THE TRUCK WITH HIM?

2 A. YES.

3 Q. WHERE DID YOU ALL DRIVE TO? EXCUSE, ME WHERE DID YOU
4 DRIVE TO?

5 A. TO THE STORE, WASHERETTE OR SOMETHING. A PLACE RIGHT
6 THERE ON 41.

7 Q. WHAT HAPPENED WHEN YOU GO THERE?

8 A. THEY PULLED UP.

9 Q. WHO IS THERE?

10 A. HIS MAMMA AND DAD.

11 Q. COULD YOU SAY THEIR NAMES, PLEASE?

12 A. ELAINE HOWARD AND OLEN HOWARD.

13 Q. THEN WHAT HAPPENED?

14 A. I GOT IN THE BACKSEAT OF THE CAR.

15 Q. WHERE YOU STILL BLEEDING?

16 A. YES.

17 Q. WHAT HAPPENED WHEN YOU GOT IN THE CAR?

18 A. WE BEGAN TO GO TOWARDS THE HOSPITAL.

19 Q. PRIOR TO LEAVING, WHAT, IF ANYTHING, WAS SAID BETWEEN
20 THE DEFENDANT AND HIS PARENTS?

21 A. AT THAT POINT, SOMETHING ABOUT JUST CALL HIM, LET HIM
22 KNOW WHAT'S GOING ON OR SOMETHING.

23 Q. YOU TRAVELED TOWARDS THE HOSPITAL?

24 A. UH-HUH.

25 Q. WHAT WERE YOU TALKING ABOUT, YOU AND HIS PARENTS? AND

1 IF ONE OF THEM IS SAYING SOMETHING, TRY TO IDENTIFY AS
2 THE MOTHER AND FATHER SO THE JURY KNOWS WHICH OF THE
3 TWO YOU ARE TALKING ABOUT?

4 A. WE WERE TALKING ABOUT THE INCIDENT. I WAS TELLING
5 WHAT HAD HAPPENED.

6 Q. WHAT DID YOU TELL THEM HAPPENED?

7 A. I TOLD THEM THAT WE WERE ALMOST RIGHT THERE AT THE
8 HOUSE WHEN HE HIT ME. I TOLD HIM WE GOT JASON HOME,
9 HAD TURNED AROUND TO GET THE GLOVE AND ALL OF THAT WE
10 HAD EVEN STOPPED AND PEED ALONG SIDE THE ROAD. WE GOT
11 NEAR THE HOUSE AND GOT INTO THIS TOUCHY ARGUMENT WE
12 GOT INTO I SAID THAT AND HE WENT OFF THE HANDLE AND HE
13 HIT ME TWICE.

14 Q. TELL US ABOUT WHAT THEY SAID TO YOU? AND AGAIN,
15 IDENTIFY WHO IS TALKING?

16 A. MS. ELAINE SAID WELL, SHE WAS UPSET.

17 MR. RUNYAN: OBJECTION.

18 THE COURT: I WILL SUSTAIN THAT HEARSAY OBJECTION.

19 MR. MODICA: HEARSAY, OBJECTION?

20 THE COURT: YES, SIR.

21 MR. MODICA: YOUR HONOR, I AM NOT OFFERING IT FOR THE
22 TRUTH OF THE MATTER. I AM OFFERING IT AS A BASIS FOR WHAT
23 WAS TOLD AT THE HOSPITAL, AND I THINK IT'S RELEVANT IF YOU
24 WANT ME TO APPROACH AND TALK A LITTLE BIT MORE I WILL.

25 THE COURT: LADIES AND GENTLEMEN, JUST A MOMENT. I

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1 WILL LET YOU COME TO THE SIDEBAR SO MAY DISCUSS THAT
2 BRIEFLY.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
4 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY.)

5 THE COURT: LADIES AND GENTLEMEN, FROM TIME TO TIME
6 THERE ARE MATTERS THAT I NEED TO DISCUSS MATTERS OF LAW, ON
7 THE RECORD OUTSIDE OF YOUR PRESENCE. JUST LIKE WE WON'T BE
8 BACK IN THE JURY ROOM WHEN YOU DECIDING MATTERS OF FACT, I
9 AM GOING TO ASK YOU TO STEP FROM THE COURTROOM NOW WHILE WE
10 DISCUSS A MATTER OF LAW. AND WHAT I WOULD ASK YOU TO DO,
11 PLEASE, WHEN WE GO BACK AND TAKE THIS BREAK, PLEASE DON'T
12 DISCUSS THE CASE. THAT WOULD NOT BE APPROPRIATE. PLEASE
13 WAIT UNTIL THE END AND DELIBERATIONS BEGIN TO DISCUSS THE
14 CASE. AND ENJOY YOUR BREAK. LET'S EVERYONE REMAIN WHERE
15 THEY ARE WHILE OUR JURY DEPARTS TO THE JURY ROOM.

16 (WHEREUPON, THE JURY DEPARTS THE COURTROOM AT 3:30
17 P.M.)

18 THE COURT: ALL RIGHT, MR. RUNYAN, YOU BEGAN WITH AN
19 OBJECTION. I AM GOING TO LET YOU STATE THAT ON THE RECORD
20 NOW.

21 MR. RUNYAN: JUDGE, I OBJECT TO THIS LINE OF
22 QUESTIONING BECAUSE NUMBER ONE; THERE IS NO INDICATION THAT
23 STACEY HOWARD, THE DEFENDANT, WAS PRESENT AT THIS POINT AND
24 TIME. SECONDLY, THIS IS NOW THE THIRD INCIDENT WHERE THE
25 STATE IS ELICITING, OR THE WITNESS IS ATTEMPTING TO ELICIT

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1 TESTIMONY ABOUT THE CRIMINAL CONDUCT. AND I THINK WE HAVE
2 JUST REACHED THE POINT, JUDGE, WHERE NUMBER ONE, WE OBJECT
3 TO THAT TESTIMONY BECAUSE IT IS HEARSAY, NUMBER ONE.

4 NUMBER TWO, WE OBJECT TO THE TESTIMONY BECAUSE IT IS
5 INTRODUCING CRIMINAL CONDUCT, OBSTRUCTION OF JUSTICE,
6 CONSPIRACY TO OBSTRUCT JUSTICE, WHATEVER YOU WANT TO CALL
7 IT. AND FRANKLY, JUDGE, WE HAVE NOW REACHED THIS POINT IN
8 THIS TRIAL WHERE SHE HAS MADE HIM A DRUG DEALER. WE
9 OBJECT. SHE MADE HIM A, IN HER STATE OF MIND, A MURDER AND
10 WE OBJECT, AND THE COURT GAVE CURATIVE INSTRUCTION. AND
11 NOW, SHE IS PUTTING HIM IN A LEAGUE BY INFERENCE WITH HIS
12 PARENTS TO CONCOCT A STORY TO OBSTRUCT JUSTICE. AND,
13 JUDGE, I JUST THINK WE ARE AT A POINT WHERE I HAVE TO
14 RESPECTFULLY OBJECT TO THIS LINE OF QUESTIONING, AND
15 RESPECTFULLY ASK FOR THE COURT TO DECLARE A MISTRIAL,
16 BECAUSE WE ARE NOT EVEN THROUGH THE FIRST WITNESS AND HE IS
17 A DRUG DEALER, A MURDERER AND AN OBSTRUCTOR OF JUSTICE.

18 THE COURT: ALL RIGHT, MR. MODICA, DO YOU HAVE A
19 RESPONSE, SIR?

20 MR. MODICA: YES, THERE HAS BEEN NO TESTIMONY THAT
21 THE DEFENDANT WAS INVOLVED IN THE CONVERSATION IN THE
22 VEHICLE SO IT DOES NOT GO TO HIM, SO I FAIL TO SEE THAT.
23 IS IT HEARSAY? ABSOLUTELY. HOWEVER, THE PURPOSE OF IT IS
24 NOT TO PROVE THAT HIS PARENTS SAID THAT. IT IS TO PROVE AN
25 EXPLANATION WHY SHE, IS TELLING LAW ENFORCEMENT, THE DOCTOR

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1 OF THE HOSPITAL THAT SHE HIT HER NOSE ON THE DASHBOARD
2 WHICH IS OBVIOUSLY RELATIVE TO THIS CASE SINCE CREDIBILITY
3 IS AN ISSUE IN EVERY CASE AND THAT KIND OF CREDIBILITY IS
4 IMPORTANT. AND IF SHE CAN OFFER AN EXPLANATION AS TO WHY
5 SHE SAID THOSE THINGS I WOULD SUBMIT THAT AS RELEVANT.

6 THE COURT: ALL RIGHT, COUNSEL.

7 MR. MODICA: AS IT RELATES TO THE OTHER MATTER, NO,
8 YOU GAVE CURATIVE INSTRUCTIONS, AS TO HER STATE OF MIND
9 ABOUT HOW SHE FELT AS A RESULT OF WHAT SHE HAS SAID, AND
10 THE FACT THAT SHE IS IN FEAR OF HIM AND I HAVE NOT TALKED
11 ABOUT ANYTHING ELSE OTHER THAN THIS TIME PERIOD. THAT SHE
12 IS IN FEAR OF HIM DURING THIS TIME PERIOD IS RELEVANT AS TO
13 WHY SHE MADE TELL LAW ENFORCEMENT AND THE DOCTOR THAT IT
14 HAPPENED A DIFFERENT WAY.

15 THE COURT: HAS THERE BEEN OBSTRUCTION OF JUSTICE
16 CHARGES, BROUGHT AGAINST THE INDIVIDUAL?

17 MR. MODICA: NO, SIR.

18 THE COURT: DO YOU HAVE A REPLY, MR. RUNYAN?

19 MR. RUNYAN: JUDGE, IT IS WHAT IT IS. MY FRIEND,
20 WHO SPOKE HE HAS A FAVORITE PHRASE. IT IS WHAT IT IS. AND
21 I HAVE HEARD HIM MANY TIMES BEFORE AND WHAT HAVE YOU. BUT
22 WE DON'T GIVE A TIME TO CONSTRUCT HOW THE STATE PUTS THEIR
23 CASE TOGETHER BUT WE DO GET A CHANCE TO OBJECT BEING CALLED
24 A DRUG DEALER, INFERRED MURDERER, AND INFER THAT FROM SOME
25 HOW OR OTHER THERE IS THIS OTHER CRIME OUT THERE. NOW THEY

1 HAVE NOT INDICTED ANYBODY FOR OBSTRUCTION OF JUSTICE QUITE
2 FRANKLY. FRANKLY, JUDGE, IT IS ALSO A VARIANCE FROM THEIR
3 INDICTMENT. WELL WE KNOW INDICTMENTS, AND THIS IS NOT LIKE
4 A PLEADING IN A CIVIL CASE. BUT THEY DID INDICT HIM AND
5 SAY THAT HE STOPPED SHORT AND SHE STRUCK HER FACE AGAINST
6 THE DASHBOARD AND HE STRUCK HER AND WHAT HAVE YOU. NOW
7 THEY ARE TRYING TO CHANGE THE ELEMENTS OF THE FACTUAL
8 SITUATION OF THE CRIME FOR WHICH THEY CHARGED. I THINK WE
9 HAVE REACHED THE POINT WHERE MY CLIENT CAN'T GET A FAIR
10 TRIAL FROM A JURY AND WE HAVE NOT COMPLETED THE FIRST
11 WITNESS YET.

12 THE COURT: ALL RIGHT, MR. MEDICA, I AM GOING TO
13 SUSTAIN THE OBJECTION. I AM DOING IT FOR SEVERAL REASONS.
14 NUMBER ONE, THE COURT IS CONCERNED ABOUT THE TOTALITY OF
15 WHAT IS HAPPENING HERE. YOU ARE CORRECT, WE ARE IN THE
16 FIRST WITNESS AND THE REFERENCE TO MARIJUANA USE OR SELLS,
17 DISTRIBUTION, WHATEVER THAT MAY HAVE BEEN. THEN THERE WAS
18 A REFERENCE TO HER CONCERN THAT SHE WAS ABOUT TO DONE AWAY
19 WITH. AND THEN THIRDLY, THE HATCHING OF THE OBSTRUCTION OF
20 JUSTICE PLOT WHICH MAY RELATE BACK SOMEHOW TO THE
21 DEFENDANT, ALTHOUGH NOT PRESENT, HAVING SPAWNED THE IDEA AT
22 LEAST IN THE MIND OF THE JURY. I AM JUST CONCERNED THAT
23 THE TOTALITY OF THAT IS NOT APPROPRIATE AND IT DOES, AND IT
24 IS UNFAIR. AND FURTHER, THE BEST EVIDENCE OF WHAT WAS SAID
25 WOULD BE PERHAPS TO CALL THE WITNESS HERSELF WHO HAS

LISA POWELL - DIRECT EXAMINATION BY MR. MODICA

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1 SUPPOSEDLY SPOKE THE WORDS. I AM GOING TO SUSTAIN THE
2 OBJECTION, COUNSELOR.

3 NOW, LET'S GO BACK TO THE ISSUE OF WHETHER THERE IS A
4 FURTHER CURATIVE INSTRUCTION REQUESTED WITH REGARD TO THE
5 FIRST TWO ISSUES OF THE REFERENCE TO MARIJUANA AND THE
6 REFERENCE TO WHAT THE IMPRESSION OF THE WITNESS WAS. DO
7 YOU ASK FOR ANYTHING FURTHER, MR. RUNYAN?

8 MR. RUNYAN: YOUR HONOR, I WOULD, IN FACT, REQUEST
9 THE CURATIVE INSTRUCTION TO PROTECT THE RECORD; HOWEVER,
10 JUDGE, I THINK WE HAVE REACHED A POINT WHERE CURATIVE
11 INSTRUCTIONS AREN'T GOING TO DO THE JOB.

12 THE COURT: WELL, LET'S DO THIS. I DENY YOUR MOTION
13 FOR A MISTRIAL. I DON'T BELIEVE THAT WHAT HAS HAPPENED
14 HERE IN ANY WAY REACHES THE LEVEL OF NECESSITATING OR EVEN
15 MAKING APPROPRIATE A MISTRIAL. HOWEVER, I WILL GIVE YOU
16 THE OPPORTUNITY IF YOU WISH TO PREPARE CURATIVE
17 INSTRUCTIONS FOR ME TO GIVE TOMORROW MORNING, I WILL BE
18 GLAD TO GIVE IT. I DON'T THINK IT IS APPROPRIATE TO TRY TO
19 GIVE ONE CONTEMPORANEOUSLY, BECAUSE I DON'T WANT TO SOMEHOW
20 WEIGH THE BALANCE, ONE WAY OR THE OTHER. ALL RIGHT?

21 MR. RUNYAN: I TRIED TO, IN MY FORTY YEARS NEVER
22 ARGUE WITH THE BENCH AND I AM NOT TRYING TO ARGUE WITH THE
23 BENCH THIS TIME, BUT FOR MATTERS OF THE RECORD, I
24 UNDERSTAND THE COURT'S RULING. BUT FURTHER FOR THE RECORD
25 POINT OUT THAT BY PLACING THE INFERENCE OF SOME OF THE

1 CRIME, PARTICULARLY THIS LAST TESTIMONY THAT PUT THE
2 DEFENDANT IN THE POSITION OF SHIFTING THE BURDEN AND
3 ACTUALLY HAVING TO CALL SOMEONE AS A WITNESS WHEN THEY HAVE
4 NO DUTY CONSTITUTIONALLY TO BRING THAT PERSON IN TO SAY DID
5 YOU TELL THE LIE, THAT SORT OF THING.

6 THE COURT: WELL NO WHAT I MEANT WAS FOR MR. MODICA TO
7 CALL A WITNESS. NOT TO PUT THAT BURDEN ON YOU. HE HAS THE
8 RIGHT TO CALL THE WITNESS. IF HE HAS A WITNESS THAT
9 CONSPIRED AND PLACED THE IDEA IN THIS WITNESSES MIND THEN
10 THAT IS HIS RESPONSIBILITY TO CALL. I WASN'T TRYING TO SAY
11 YOU THAT YOU HAVE SOME DUTY TO CALL THE WITNESS.

12 MR. RUNYAN: I'M NOT SUGGESTING THE COURT SAID WE HAD
13 THE DUTY.

14 THE COURT: RIGHT.

15 MR. RUNYAN: I AM JUST SUGGESTING THE FACTS AND IN
16 THE MINDS OF THE JURY. IT HAS GOTTEN KIND OF AROUND THE
17 BEND REAL FAST HERE.

18 THE COURT: ALL RIGHT. I RESPECTFULLY WOULD DENY YOUR
19 MOTION FOR A RELIEF IN THE FORM OF A MISTRIAL. NOW THE
20 QUESTION IS, DO WE WANT TO BRING THE JURY BACK IN AND TAKE
21 A BREAK AFTER THIS WITNESS OR DO YOU WANT TO GO AHEAD AND
22 TAKE OUR COURT PERSONNEL BREAK AT THIS MOMENT AND TELL THE
23 JURY WE'VE DONE THAT. WHAT SAYS THE STATE? I'LL GIVE AN
24 OPINION?

25 MR. MODICA: LET'S BREAK NOW.

LISA POWELL - DIRECT EXAMINATION BY MR. MODICA

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1 THE COURT: WHAT SAY YOU, MR. RUNYAN?

2 MR. RUNYAN: I WOULD WELCOME A BREAK NOW, JUDGE. I'M
3 GETTING OLD.

4 THE COURT: ALL RIGHT. WELL THEN WE'RE GOING TO STAND
5 DOWN FOR APPROXIMATELY TEN TO FIFTEEN MINUTES. PLEASE
6 ADVISE THE JURY THAT WE ARE TAKING A COURTROOM BREAK NOW
7 AND IT WILL BE ABOUT FIFTEEN MINUTES. MA'AM, I AM GOING TO
8 LET YOU STEP DOWN BUT I AM GOING TO INSTRUCT YOU, PLEASE,
9 DON'T DISCUSS WITH ANY WITNESS OR ANY PARTY HERE OR ANY
10 LAWYER ANYTHING ABOUT YOUR TESTIMONY. JUST REMAIN TO
11 YOURSELF, PLEASE.

12 MS. POWELL: OKAY.

13 THE COURT: ALL RIGHT, COURT WILL BE IN RECESS NOW FOR
14 15 MINUTES.

15 (WHEREUPON, A RECESS WAS TAKEN FROM 3:30 P.M. UNTIL
16 3:51 P.M.)

17 THE COURT: ALL RIGHT, ARE WE READY FOR JURY.

18 MR. MODICA: YES, SIR.

19 THE COURT: VERY GOOD. LET'S BRING IN THE JURY.

20 (WHEREUPON, THE JURY ENTERS THE COURTROOM AT 3:52
21 P.M.)

22 THE COURT: ALL RIGHT, WELCOME BACK TO THE COURTROOM,
23 LADIES AND GENTLEMEN. LET ME SAY TO YOU, OTHER THAN OUR
24 ALTERNATE WE WOULD ASK YOU TO SIT IN THAT SEAT EACH TIME.
25 IF YOU WISH TO MOVE AROUND WITHIN THE JURY BOX IF EITHER

1 YOUR VIEW OR YOUR HEARING IS BETTER OR YOU JUST PREFER TO
2 MOVE TO ANOTHER SEAT PLEASE, FEEL FREE TO DO SO.

3 WHEN YOU LEFT THE COURTROOM A FEW MOMENTS AGO WE HAD
4 HAD AN OBJECTION. I WANT TO TALK WITH YOU ABOUT THAT. THE
5 OBJECTION WAS HEARSAY. AND IT REALLY MEANS JUST AS IT
6 SOUNDS. IT'S WHERE A WITNESS PURPORTS OR INTENDS TO SAY
7 SOMETHING THAT THEY'VE HEARD AND GENERALLY HEARSAY IS NOT
8 ALLOWED. THERE ARE CERTAIN EXCEPTIONS TO THE HEARSAY RULE.
9 BUT I WILL YOU IT'S BASED ON PROBABLY SOMETHING WE ALL DID
10 AS CHILDREN WHEN YOU MAY SIT AROUND IN A CIRCLE AND PLAY A
11 GAME WHERE YOU WHISPER SOMETHING TO ONE PERSON AND IT GOES
12 AROUND THE CIRCLE AND WHEN IT COMES BACK, IT IS COMPLETELY
13 DIFFERENT THAN WHAT IT BEGAN. HEARSAY IS AN ISSUE OF
14 RELIABILITY. THE BEST EVIDENCE OF WHAT SOME THIRD SAID IS
15 TO BRING THAT THIRD PERSON IN, AND HAVE THEM SAY, WHAT THEY
16 SAID AS OPPOSE TO WHAT SOMEONE MAY HAVE HEARD OR MISHEARD
17 THAT SOMEONE SAID. THE COURT SUSTAINED THE HEARSAY
18 OBJECTION, AND NOW WE ARE READY TO GO FORWARD. GO AHEAD
19 MR. MODICA.

20 Q. (BY MR. MODICA) WITHOUT TELLING US, YOU HAD A
21 CONVERSATION WITH HIS PARENTS ON THE WAY TO THE
22 HOSPITAL WHERE THE -- BUT YOU HAD A CONVERSATION?

23 A. YES.

24 Q. YOU GET TO THE HOSPITAL?

25 A. YES.

LISA POWELL - DIRECT EXAMINATION BY MR. MODICA

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1 Q. DOES HIS MOTHER WORK AT THE HOSPITAL?

2 A. YES.

3 Q. GEORGETOWN?

4 A. ER REGISTRATION.

5 Q. DID THERE COME A TIME WHEN YOU WERE TAKEN TO THE AREA
6 KNOWN AS TRIAGE?

7 A. YES.

8 Q. IF ANYONE, WHO WENT WITH YOU?

9 A. MRS. ELAINE HOWARD, HIS MOM.

10 Q. WHEN YOU WERE TRAVELING TOWARDS THE HOSPITAL, DID YOU
11 SEE MR. HOWARD?

12 A. YES, SIR.

13 Q. WOULD YOU TELL OUR JURY ABOUT THAT?

14 A. HE CAME UP BESIDE THE CAR IN HIS TRUCK AND MADE US
15 SLOW DOWN THEY ROLLED THE WINDOWS DOWN AND HE SAID I'M
16 GOING TO THE HOSPITAL. I AM FOLLOWING Y'ALL TO THE
17 HOSPITAL BECAUSE HE HAD TURNED AROUND GOING THE OTHER
18 WAY BEFOREHAND. HE DECIDED TO FOLLOW US TO THE
19 HOSPITAL. HE SAID MAKE SURE YOU GO IN THERE WITH HER,
20 TO KNOW IT'S OWN THE INCIDENT REPORT. FIND OUT WHAT
21 IS ON THE INCIDENT REPORT AND FIND ME.

22 Q. WHEN YOU WERE ARRIVED AT THE HOSPITAL, DID YOU SEE HIM
23 THERE?

24 A. STACEY?

25 Q. YES.

1 A. HE WAS IN THE PARKING LOT.

2 Q. WAS THERE A CONVERSATION BETWEEN HIM AND HIS PARENTS?

3 JUST SAY YES OR NO.

4 A. YES.

5 Q. WHAT DID HE SAY TO HIS PARENTS?

6 A. I COULD NOT HEAR THE CONVERSATION AT THAT POINT.

7 Q. WHEN YOU WERE IN THE TRIAGE AREA WHO WAS WITH YOU?

8 A. MRS. ELAINE HOWARD.

9 Q. WAS THERE A TIME WHEN THROUGH THE TRIAGE AREA TO A
10 ROOM OR A SECTIONED OFF AREA OF THE ER?

11 A. YES, SIR.

12 Q. WHO WAS WHEN YOU THEN?

13 A. MRS. ELAINE HOWARD.

14 Q. DID YOU HAVE A CONVERSATION WITH DR. RICHMOND?

15 A. YEAH.

16 Q. ABOUT WHAT HAD HAPPENED?

17 A. YES, SIR.

18 Q. WHAT DID YOU TELL DR. RICHMOND?

19 A. I TOLD DR. RICHMOND THAT I HAD HIT THE DASHBOARD OF
20 THE TRUCK. THAT IT WAS AN ACCIDENT.

21 Q. HOW IS IT --- WHAT DID YOU TELL HIM AS TO HOW YOU HIT
22 THE DASHBOARD?

23 A. THAT MY BOYFRIEND SLAMMED ON BRAKES AND THAT I HIT THE
24 DASHBOARD OF THE TRUCK.

25 Q. WAS THAT THE TRUTH?

LISA POWELL - DIRECT EXAMINATION BY MR. MODICA

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- 1 A. NO.
- 2 Q. WITHOUT SAYING WHAT THE DOCTOR SAID, DID YOU BELIEVE
- 3 THAT THE DOCTOR BELIEVED YOU?
- 4 A. NO.
- 5 MR. RUNYAN: OBJECTION. CALLS FOR A CONCLUSION.
- 6 MR. MODICA: HER CONCLUSION.
- 7 THE COURT: OVERRULED. GO AHEAD.
- 8 Q. (BY MR. MODICA) DID HE ASK YOU WITHOUT SAYING WHAT HE
- 9 SAID DID HE ASK YOU ABOUT HOW IT OCCURRED ON MORE THAN
- 10 ONE OCCASION?
- 11 A. A COUPLE OF TIMES.
- 12 Q. DID THERE COME A TIME WHEN YOU WERE IN THE TREATMENT
- 13 AREA OF THE ER THAT LAW ENFORCEMENT SHOWED UP?
- 14 A. YES.
- 15 Q. WAS THAT DEPUTY RON CRABTREE, THIS GENTLEMEN HERE?
- 16 A. YES, SIR.
- 17 Q. WHOM I POINTING TO?
- 18 A. YES, SIR.
- 19 Q. DID YOU CALL THE LAW?
- 20 A. NO, SIR.
- 21 Q. DID HE INQUIRE AS TO WHAT HAD HAPPENED?
- 22 A. YES, SIR.
- 23 Q. WHAT DID YOU TELL HIM?
- 24 A. I TOLD HIM THE SAME THING TOLD I DR. RICHMOND. THAT
- 25 WE SLAMMED ON BRAKES, MY BOYFRIEND SLAMMED ON BRAKES

1 AND I HIT THE DASHBOARD OF THE TRUCK.

2 Q. DID YOU GIVE HIM THE NAME OF YOUR BOYFRIEND?

3 A. YEAH.

4 Q. WHAT NAME DID YOU GIVE?

5 A. STACEY HOWARD.

6 Q. DID YOU TELL HIM WHETHER OR NOT YOU HAD YOUR SEATBELT
7 ON?

8 A. YES.

9 Q. WHAT DID YOU TELL HIM?

10 A. I HAD MY SEATBELT ON.

11 Q. WITHOUT SAYING HE, THAT IS DEPUTY CRABTREE, WITHOUT
12 SAYING WHAT HE SAID DID HE CONFRONT YOU ABOUT THAT?

13 A. YES.

14 Q. DID HE ASK YOU ON MORE THAN ONE OCCASION WHAT
15 HAPPENED?

16 A. HE ASKED ME TWICE.

17 Q. WAS YOUR CONVERSATION WITH DEPUTY CRABTREE INTERRUPTED
18 IN SOME FASHION?

19 A. YES.

20 Q. HOW WAS IT INTERRUPTED?

21 A. THE X-RAY RADIOLOGIST LADY CAME IN. IT WAS TIME FOR
22 ME TO GO BACK AND GET MY X-RAYS DONE. AND WE CUT OUR
23 CONVERSATION SHORT.

24 Q. BECAUSE YOU HAD TO GO TO X-RAY?

25 A. YEAH. THEY TOOK ME BACK.

LISA POWELL - DIRECT EXAMINATION BY MR. MODICA

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- 1 Q. WAS MRS. ELAINE PRESENT?
- 2 A. YES.
- 3 Q. WHEN YOU WERE HAVING THIS CONVERSATION WITH DEPUTY
- 4 CRABTREE?
- 5 A. YES.
- 6 Q. SO YOU LIED TO DEPUTY CRABTREE?
- 7 A. YES, I DID.
- 8 Q. THE FOLLOWING DAY, MONDAY, SEPTEMBER 11, I'M SORRY, I
- 9 MEANT TO SAY DECEMBER, MONDAY, DECEMBER 11, 2006, DID
- 10 YOU REACH OUT TO LAW ENFORCEMENT?
- 11 A. YES.
- 12 Q. WHO DID YOU REACH OUT TO?
- 13 A. I CALLED DEPUTY CRABTREE.
- 14 Q. WHY DID YOU CALL DEPUTY CRABTREE?
- 15 A. TO GIVE HIM THE TRUTH. TO TELL HIM THE TRUTH BECAUSE
- 16 I HAD LIED TO HIM.
- 17 Q. WHY DEPUTY CRABTREE?
- 18 A. BECAUSE HE WAS THERE AND HE LOOKED ME IN MY EYES IN
- 19 THAT EMERGENCY ROOM AND I KNEW HE KNEW I WAS LYING AND
- 20 I WANTED TO TALK TO HIM.
- 21 Q. DID YOU KNOW DEPUTY CRABTREE PRIOR TO THAT?
- 22 A. NO, I HAD NEVER SEEN HIM BEFORE.
- 23 Q. HOW DID YOU KNOW TO CALL HIM? WAS THERE A WAY YOU
- 24 KNOW TO CALL HIM?
- 25 A. BECAUSE I REMEMBER HIS TAG. WHENEVER WE WERE IN THE

1 ROOM I REMEMBER SEEING HIS TAG AND CRABTREE IS KINDA
2 EASY TO REMEMBER BUT ANYWAY --

3 Q. FROM THE NAME TAG?

4 A. IT STUCK IN MY HEAD AND I KNEW THEN I COULDN'T TALK
5 THEN.

6 Q. HOLD ON A SECOND. MY QUESTION IS, DID YOU CALL HIM
7 BECAUSE YOU RECOGNIZED HIS NAME TAG?

8 A. YES.

9 Q. ALL RIGHT. DID YOU HAVE A CONVERSATION WITH HIM AT
10 SOME TIME AFTER 6:30 P.M. ON DECEMBER 11?

11 A. YES.

12 Q. WITHOUT SAYING WHAT HE SAID, WHAT DID YOU SAY?

13 A. I TOLD HIM THAT I WANTED TO TALK TO HIM AND TELL HIM
14 THE TRUTH OF WHAT HAPPENED THE NIGHT BEFORE.

15 Q. DID YOU TALK ABOUT MAKING ARRANGEMENTS TO MEET UP WITH
16 HIM?

17 A. YES.

18 Q. TELL THE JURY WHAT THAT CONVERSATION IS ABOUT?

19 A. I HAD --

20 Q. WITHOUT SAYING WHAT HE SAID.

21 A. WE ARRANGED FOR HIM TO CALL ME AT ELEVEN O'CLOCK.

22 Q. OKAY.

23 A. P.M.

24 Q. WHY DID YOU NOT HAVE HIM COME OUT RIGHT THEN AND
25 THERE?

LISA POWELL - DIRECT EXAMINATION BY MR. MODICA

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1 A. BECAUSE STACEY WAS ACTUALLY COMING TO THE HOUSE AND
2 ALSO I HAD TO GET MY CHILDREN BEFOREHAND.

3 Q. SO WHAT IF STACEY WAS THERE?

4 A. BECAUSE STACEY WOULD HAVE BEEN INFURIATED
5 AUTOMATICALLY. I WOULD HAVE NEVER FELT SAFE LIKE
6 THAT, I CAN'T DO THAT.

7 Q. WERE YOU INSIDE YOUR HOUSE AT ELEVEN O'CLOCK TO
8 RECEIVE A PHONE CALL FROM DEPUTY CRABTREE? IT JUST
9 CALLS FOR A YES OR NO ANSWER.

10 A. NO.

11 Q. DID THERE COME A TIME AROUND 11:15 THAT THREE MEMBERS
12 OF THE SHERIFF'S DEPARTMENT SHOWED UP?

13 A. YES.

14 Q. DID YOU KNOW THEY WERE COMING?

15 A. NO, I DIDN'T.

16 Q. YOU HAD NOT MADE ARRANGEMENTS FOR THEM TO COME?

17 A. NO.

18 Q. DID IT INCLUDE DEPUTY CRABTREE AND DEPUTY BARNUM?

19 A. YES.

20 Q. AND I POINTED TO THE SECOND DEPUTY, DEPUTY BARNUM,
21 CORRECT?

22 A. YES.

23 Q. THERE WAS ANOTHER DEPUTY AS WELL?

24 A. RIGHT.

25 Q. HOW MANY POLICE UNITS, IF YOU RECALL, SHOWED UP?

1 A. THREE.

2 Q. DID THEY, IN FACT, ARREST THE DEFENDANT?

3 A. YES.

4 Q. TELL OUR JURY WHAT YOU TOLD LAW ENFORCEMENT TO DO WHEN
5 THEY PUT STACEY HOWARD IN THE BACK OF THE UNIT AND WAS
6 DRIVING OFF?

7 A. I TOLD THEM THAT I WOULD NOT TALK TO THEM UNTIL THEY
8 GOT HIM DOWN THE ROAD AND AWAY FROM THE HOUSE WHERE
9 THEY WOULD NOT SEE ME TALKING TO HIM, BECAUSE IF AND
10 HOW HE GOT OUT THEN HE HAS HIS WAYS OF DOING THAT. HE
11 WOULD COME TO ME AND HURT ME FOR TELLING THE TRUTH.

12 Q. SO YOU WERE AFRAID?

13 A. I WAS VERY AFRAID. EVEN WITH HIM LOCKED CUFFED.

14 Q. DID HE, IN FACT, LAW ENFORCEMENT DRIVE DOWN THE ROAD?

15 A. YES, THEY DID.

16 Q. DID THEY COME BACK?

17 A. THEY CAME BACK?

18 Q. YOU GAVE A STATEMENT?

19 A. YEP.

20 Q. IN THE STATEMENT DID YOU INCLUDE THAT HE SLAMMED ON
21 THE BRAKES AND YOU HIT THE DASHBOARD?

22 A. YES.

23 Q. THE FOLLOWING DAY, DECEMBER 12, 2006, DID YOU MEET
24 WITH INVESTIGATOR GEORGE SMITH, THE PERSON I AM
25 TOUCHING RIGHT NOW?

LISA POWELL - DIRECT EXAMINATION BY MR. MODICA

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1 A. YES.

2 Q. DID YOU ALSO TELL HIM ABOUT WHAT HAD HAPPENED?

3 A. YES.

4 Q. DID YOU GIVE A VIDEO TAPE STATEMENT?

5 A. YES, SIR.

6 Q. WHEN YOU RELATED TO HIM WHAT HAD HAPPENED DID YOU
7 INCLUDE THE FACT THAT THE DEFENDANT HAD LODGED ON THE
8 BRAKES?

9 A. YES, I DID.

10 Q. DID YOU GIVE THESE DEPUTIES A WRITTEN STATEMENT ON
11 MONDAY, DECEMBER 11?

12 A. YES, SIR.

13 Q. CAN YOU TELL US IN THE WRITTEN STATEMENT NOT ONLY DID
14 YOU TALK ABOUT HITTING THE DASHBOARD BUT DID YOU TELL
15 THEM IN THE WRITTEN STATEMENT THAT HE HAD STRUCK YOU
16 WITH HIS FISTS?

17 A. YES.

18 Q. IN THAT VIDEO INTERVIEW THAT YOU GAVE TO INVESTIGATOR
19 GEORGE SMITH DID YOU INCLUDE WITHIN THERE, DESPITE THE
20 FACT YOU STRUCK THE DASHBOARD, DID YOU INCLUDE THAT HE
21 STRUCK YOU WITH HIS FISTS?

22 A. YES.

23 Q. TELL US WHY YOU CONTINUED TO TELL THAT YOU STRUCK THE
24 DASHBOARD?

25 A. BECAUSE I LIED THE FIRST TIME. WITH A LIE YOU LIE TO

1 COVER UP THE NEXT ONE AND THAT IS WHY I JUST FELT LIKE
2 A FOOL. I DID NOT WANT TO BE LYING. JUST LIKE IT IS
3 NOW, IT MAKES ME LOOK BAD AND I DIDN'T WANT TO BE IN A
4 LIE, BUT I AM TRYING TO CLEAR UP AND TELL THE TRUTH.

5 Q. WERE YOU WEARING A SEATBELT THAT NIGHT?

6 A. YES, I WAS WEARING MY SEATBELT.

7 Q. DID YOU STRIKE THE DASHBOARD?

8 A. NO.

9 Q. AFTER YOU HAD DEALT WITH DR. RICHMOND AND BECAME AWARE
10 THAT YOUR NOSE WAS BROKEN, CORRECT?

11 A. RIGHT.

12 Q. SUBSEQUENT TO THAT DID YOU SEE A SPECIALIST AND HAVE
13 SURGERY TO REPAIR YOUR NOSE?

14 A. YES.

15 Q. WHEN OFFICER BARNUM AND OFFICER CRABTREE WERE AT YOUR
16 HOUSE ON DECEMBER 11 MONDAY, DECEMBER 11, DID THEY
17 TAKE PHOTOGRAPHS OF THE INJURIES TO YOUR FACE?

18 A. YES. AND I SHOWED THEM X-RAYS.

19 Q. I AM SHOWING YOU TWO PHOTOGRAPHS, STATE'S EXHIBIT
20 NUMBER 1 AND NUMBER 2. WOULD YOU TAKE A PEAK AT
21 THOSE, PLEASE?

22 A. YES.

23 Q. DO YOU RECOGNIZE WHAT IS SHOWN IN THOSE PHOTOGRAPHS?

24 A. YES, SIR.

25 Q. WHAT DOES THAT SHOW IN THOSE PHOTOGRAPHS?

LISA POWELL - DIRECT EXAMINATION BY MR. MODICA

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1 A. MY NOSE BROKEN IN THREE PLACES AND CRUSHED ON ONE
2 SIDE.

3 Q. THOSE ARE THE PHOTOGRAPHS STATE THEN AS BEST THAT YOU
4 KNOW ON DECEMBER 11, 2006?

5 A. YES, AND MY LIP IS BUSTED, I THINK MY TOOTH IS MESSED
6 UP TOO.

7 Q. THAT IS NOT YOUR WHOLE FACE BUT A PORTION OF YOUR
8 FACE?

9 A. YES.

10 Q. DOES THAT FAIRLY AND ACCURATELY DEPICT HOW YOUR FACED
11 LOOKED AS A RESULT OF WHAT THE DEFENDANT HAD DONE TO
12 YOU?

13 A. YES.

14 Q. THANK YOU. YOUR HONOR, AT THIS TIME I AM SHOWING
15 COUNSEL AND I'VE ALREADY SHOWED HIM BUT I WILL SHOW
16 EXHIBITS NUMBER ONE AND TWO.

17 THE COURT: IS THERE AN OBJECTION?

18 MR. RUNYAN: ONE MOMENT, YOUR HONOR.

19 THE COURT: ALL RIGHT.

20 MR. RUNYAN: NO OBJECTIONS, JUDGE.

21 THE COURT: ALL RIGHT, LET'S GIVE THOSE OUR COURT
22 REPORTER SO SHE CAN MARK THEM AS ADMITTED. STATES
23 EXHIBIT'S ONE AND TWO IN EVIDENCE WITHOUT OBJECTION.

24 WHEREUPON, PLAINTIFF'S

25 EXHIBIT'S NUMBER ONE AND TWO,

1 WERE MARKED AND ADMITTED INTO
2 THE RECORD.

3 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, YOU WILL
4 HAVE EXHIBITS WITH YOU IN THE JURY ROOM WHEN YOU RETIRE TO
5 DELIBERATE. YOU WISH TO PUBLISH?

6 MR. MODICA: PLEASE.

7 THE COURT: WELL YOU MAY HAND THEM TO THE JURY NOW.
8 THAT'S FINE. BUT YOU WILL ALSO HAVE THEM WITH YOU WHEN YOU
9 RETIRE TO DELIBERATE. ANYTHING FURTHER?

10 MR. MODICA: NO.

11 THE COURT: CROSS EXAMINATION?

12 MR. MODICA: YOUR HONOR, MAY THE JURY HAVE A MOMENT
13 TO LOOK AT THOSE PHOTOGRAPHS AND CONCENTRATE?

14 THE COURT: COUNSEL, NO, WE'LL GO FORWARD.

15 MR. MODICA: THANK YOU, YOUR HONOR.

16 THE COURT: VERY GOOD.

17 CROSS EXAMINATION BY MR. RUNYAN:

18 Q. MS. POWELL, NOW I UNDERSTAND THE SITUATION IS YOU
19 WERE DRIVING DOWN THE ROAD, YOU WERE WEARING YOU SEAT
20 BELT?

21 A. YES, I WAS WEARING MY SEATBELT. HE WAS DRIVING.

22 Q. WHICH INCLUDED A SHOULDER BELT AS WELL AS A LAP BELT?

23 A. YES, SIR.

24 Q. AND MR. HOWARD WAS WEARING HIS SEATBELT?

25 A. I DON'T KNOW.

- 1 Q. YOU DON'T REMEMBER?
- 2 A. I DON'T KNOW IF HE WAS WEARING HIS SEATBELT, YES,
3 SIR, I DON'T KNOW THAT.
- 4 Q. YOU JUST LEFT HIS MOTHER AND FATHER'S PLACE IN
5 WILLIAMSON COUNTY. AS I UNDERSTAND WHAT YOU SAID, IS
6 THAT CORRECT?
- 7 A. WE HAD JUST LEFT MY SISTER'S HOUSE IN GREENVILLE
8 HEIGHTS IN GEORGETOWN.
- 9 Q. DRIVING DOWN THE ROAD AND WHEN DID YOU THROUGH THE
10 CAN OF BEER OUT?
- 11 A. ON THE HIGHWAY 51, 41, EXCUSE ME.
- 12 Q. AND THAT IS WHEN YOUR GLOVE WENT OUT WITH IT?
- 13 A. YES, SIR.
- 14 Q. MR. HOWARD, DID, IN FACT, STOP THE CAR ABRUPTLY, THE
15 TRUCK ABRUPTLY AND SAY GO BACK AND GET YOUR GLOVE?
- 16 A. HE TURNED AROUND AND HE GOT MY GLOVE, HE DID.
- 17 Q. YOU DID NOT HIT THE DASHBOARD AT THAT POINT AND TIME?
- 18 A. NO, SIR.
- 19 Q. BUT YOU ARE SITTING IN THE RIGHT-HAND PASSENGER SIDE
20 OF THE VEHICLE, CORRECT? IS THAT CORRECT?
- 21 A. YES, SIR.
- 22 Q. I APOLOGIZE FOR MAKING YOU ANSWER THE COURT REPORTER
23 CANNOT DO A NOD OF YOUR HEAD. YOU'VE INDICTED THAT
24 HE STRUCK YOU WITH BOTH OF HIS FISTS?
- 25 A. NO, SIR.

1 Q. SEE I HAVE TO LISTEN AND ANSWER AND I APOLOGIZE FOR
2 MAKING YOU SAY YES OR NO. AND I REALIZE YOU ARE
3 NODDING YOUR HEAD OKAY BUT YOU HAVE TO SPEAK OUT SO
4 THAT THE LADY OVER HERE, CAN PUT IT DOWN, OKAY?

5 A. YES.

6 Q. SO ULTIMATELY YOU WERE TAKEN TO THE HOSPITAL?

7 A. YES.

8 Q. YOU SAW THE PHYSICIAN?

9 A. YES.

10 Q. YOU LIED TO THE PEOPLE AT THE HOSPITAL ABOUT HITTING
11 YOUR FACE ON THE DASHBOARD?

12 A. YES, I DID.

13 Q. YOU ULTIMATELY WHEN YOU TALKED TO LAW ENFORCEMENT YOU
14 LIED TO THEM ABOUT HITTING YOUR FACE ON THE
15 DASHBOARD?

16 A. YES, I DID.

17 Q. AND A MATTER OF FACT YOU LIED TO THEM TWO OR THREE
18 TIMES ABOUT HITTING YOUR FACE ON THE DASHBOARD?

19 A. YES, I DID.

20 Q. OKAY. BUT YOU ALSO THEN ADDED THAT HE STRUCK YOU
21 WITH HIS FIST, IN ADDITION TO YOU HITTING YOUR FACE
22 ON THE DASHBOARD?

23 A. I NEVER ADDED THAT. I WAS ALWAYS TRUTHFUL. THAT
24 ALWAYS TOLD THE TRUTH ABOUT HIM HITTING ME AFTER I
25 GOT AWAY FROM HIS PARENTS AND COULD TELL THE TRUTH.

LISA POWELL - CROSS EXAMINATION BY MR. RUNYON

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1 I TOLD THE TRUTH.

2 Q. YOU TOLD THE TRUTH TO THE POLICE OFFICER?

3 A. YES, ABOUT HIM HITTING ME, YES SIR, I DID.

4 Q. BUT YOU ALSO TOLD A LIE ABOUT HITTING THE DASHBOARD?

5 A. YES, I ADMIT THAT I WAS WRONG AND I DID DO THAT.

6 Q. I AM JUST TRYING TO GET THIS STRAIGHT. SO YOU BOTH
7 LIED AND TOLD THE TRUTH. WAS THERE ANY PARTICULAR
8 REASON YOU CONTINUE TO SAY YOU STRUCK THE DASHBOARD
9 EVEN WHEN YOU WERE TALKING TO LAW ENFORCEMENT?

10 A. BECAUSE ONE THING I WAS ASKED TO LIE AND ANOTHER
11 THING IS THAT I FELT EMBARRASSED BECAUSE I HAD
12 ALREADY LIED AND I JUST DIDN'T --- I WAS SCARED. I
13 WAS FRIGHTENED. I DID NOT KNOW WHAT TO DO. THERE I
14 WAS WITH A BUSTED UP FACE. I WAS IN PAIN. I DID NOT
15 KNOW WHAT TO DO AND YOU ARE JUST SCARED AND YOU DON'T
16 KNOW WHAT TO DO. YOU DON'T KNOW WHAT TO DO NEXT.
17 YOU GOT PEOPLE THAT ARE NOT ON YOUR SIDE EVIDENTLY
18 AND THEY WANT YOU TO LIE SO TO KEEP THIS MAN RIGHT
19 HERE OUT OF JAIL.

20 Q. MAY I HAVE A TISSUE? THANK YOU.

21 A. YOU DON'T NEED TO BE NICE LIKE THAT. THANK YOU. I
22 ADMIT I DID LIE AND I AM SORRY I DID LIE ABOUT THE
23 DASHBOARD.

24 Q. YOU CALLED MR. HOWARD AND YOU ASKED SOMEBODY TO GO TO
25 THE DOCTOR?

1 A. NO, SIR.

2 Q. YOU NEVER GOT MONEY FROM ANYONE?

3 A. STACEY HOWARD, COME TO MY HOUSE THAT NIGHT AND HE
4 SAID DON'T WORRY, YOU WILL BE COMPENSATED. THAT IS
5 WHAT HE WAS COMING TO THE HOUSE THAT NIGHT TO TALK TO
6 ME ABOUT AND HE LEFT THREE HUNDRED DOLLARS WITH ME
7 THAT NIGHT. HE SURE DID. BUT I WOULD NEVER HAVE
8 ASKED FOR ANY MONEY. THEY WANTED TO BUY ME OFF SO I
9 WOULDN'T TELL THE TRUTH. BUT I KNEW I HAD ALREADY
10 MADE ARRANGEMENTS. I WAS GOING TO TELL THE TRUTH NO
11 MATTER WHAT. NO MATTER HOW MANY MILLIONS OF DOLLARS,
12 STACEY, IT DOESN'T MATTER. YOU HURT ME AND YOU MEANT
13 TO.

14 Q. SO YOU WERE BOUND AND DETERMINED THAT NIGHT THAT YOU
15 WERE GOING TO TELL THE TRUTH?

16 A. THE TRUTH NEEDED TO BE TOLD.

17 Q. SO YOU MADE CONTACT WITH THIS FINE DEPUTY BACK THERE
18 BECAUSE HIS NAME HAD A RING TO IT, CRABTREE?

19 A. I KNEW THAT IS WHO I NEEDED TO TALK TO. THAT'S THE
20 DEPUTY THAT CAME TO ME.

21 Q. RIGHT, AND HE IS A NICE FELLOW, CORRECT?

22 A. I DON'T KNOW IF HE'S NICE OR NOT. HE WAS ON CALL
23 THAT NIGHT.

24 Q. HE WAS NICE TO YOU, WASN'T HE? HE WAS ACTING
25 PROFESSIONALLY.

LISA POWELL - CROSS EXAMINATION BY MR. RUNYON

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1 A. ACTUALLY HE WAS AGGRAVATED WITH ME FOR LYING TO TELL
2 YOU THE TRUTH.

3 Q. SO HE WAS NICE BUT A AGGRAVATED FELLOW. BUT THAT
4 NIGHT YOU MADE THE DECISION THAT YOU WERE GOING TO
5 TELL, CORRECT?

6 MR. MODICA: YOUR HONOR, I DIDN'T HEAR THE QUESTION,
7 COULD YOU REPEAT IT?

8 MS. POWELL: I KNOW I'M CONFUSED RIGHT NOW. I DON'T
9 KNOW HOW TO ANSWER THE QUESTION.

10 THE COURT: JUST ONE AT THE TIME. PLEASE RESTATE THE
11 QUESTION, COUNSEL.

12 Q. (BY MR. RUNYON) MS. POWELL, ON THE NIGHT AFTER HE
13 TOLD YOU THAT HE WOULD TAKE CARE OF MEDICAL EXPENSES,
14 YOU MADE A DECISION THAT YOU WOULD CONTACT LAW
15 ENFORCEMENT AND TELL THE TRUTH. ISN'T THAT CORRECT?

16 A. I MADE THAT DECISION BEFORE HE EVEN SAID HE WAS GOING
17 TO PAY FOR MY MEDICAL BILLS.

18 Q. BUT THEN WHEN YOU DID CONTACT LAW ENFORCEMENT YOU
19 CONTINUED TO TELL A PART LIE, CORRECT?

20 MR. MODICA: YOUR HONOR, I AM GOING TO OBJECT. THIS
21 IS LIKE ASKED AND ANSWERED OVER AND OVER AGAIN.

22 THE COURT: OVERRULED. GO AHEAD, MA'AM, YOU MAY
23 ANSWER.

24 Q. YOU DID?

25 A. REPEATEDLY YOU ARE TELLING ME, YES, I'VE LIED,

LISA POWELL - CROSS EXAMINATION BY MR. RUNYON

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1 OKAY, I'VE LIED. I LIED ABOUT THE DASHBOARD. IS
2 THERE ANYTHING ELSE?

3 Q. WHAT KIND OF TRUCK DID MR. HOWARD DRIVE AT THAT
4 TIME?

5 A. KINGCAB FORD OR CHEVROLET Z71, WHATEVER MAKES
6 THE Z71, FORD OR CHEVROLET. CHEVROLET.

7 Q. CHEVROLET TRUCK?

8 A. YES.

9 Q. EXCUSE ME, ONE SECOND. SO YOU ULTIMATELY WENT
10 TO A PHYSICIAN OTHER THAN GEORGETOWN HOSPITAL,
11 RIGHT?

12 A. THEY REFERRED ME TO A RIGHT THERE IN PAWLEY'S
13 ISLAND, A SPECIALIST.

14 Q. SO YOU WERE REFERRED TO A DOCTOR ON PAWLEY'S
15 ISLAND?

16 A. UH-HUH.

17 Q. AND YOU WENT IN AND ULTIMATELY THEY OPERATED ON
18 YOUR NOSE TO CORRECT THE PROBLEM, CORRECT?

19 A. UH-HUH.

20 Q. AT THAT POINT IN TIME DID YOU CLARIFY THE SOURCE OF
21 THE TRAUMA THAT HAD BROKEN YOUR NOSE?

22 A. I THINK SO.

23 Q. YOU THINK SO?

24 A. I DON'T REMEMBER WHAT I TOLD, YES, YES, I SURE DID.

25 YES, I DID BECAUSE ME AND THE LADY, THE NURSE, WE HAD

1 A LONG CONVERSATION ABOUT IT, WE SURE DID.

2 Q. AND YOU'VE TALKED TO PLENTY OF PEOPLE ABOUT THIS
3 INCIDENT, HAVEN'T YOU. HOW ABOUT GIVING US, AND
4 DON'T TELL US WHAT ANYBODY SAID BUT GIVES US THE
5 NAMES OF THE PEOPLE YOU HAVE TALKED TO ABOUT WHAT
6 HAPPENED ON THAT PARTICULAR NIGHT?

7 MR. MODICA: OBJECTION.

8 THE COURT: OVERRULED.

9 A. JESUS CHRIST, I DON'T KNOW. WELL, I DON'T KNOW WHAT
10 YOU ARE GETTING AT. I DON'T UNDERSTAND.

11 Q. DID YOU TALK TO APRIL SMITH ABOUT IT?

12 A. YES, I TALKED WITH HER ABOUT IT A LITTLE BIT.

13 Q. OKAY. DID YOU TELL APRIL SMITH THAT YOU LIED ON MR.
14 HOWARD?

15 A. NO, I DID NOT TALK ABOUT THE --- IF YOU WILL GIVE A
16 SECOND A LET ME REMEMBER WHAT WE EVEN --

17 MR. RUNYAN: LET ME GO AHEAD AND SIT DOWN AND I'M
18 SURE THE COURT WILL INDULGE US.

19 (PAUSE)

20 A. OH, BOY, ALL APRIL SMITH WANTED TO TALK ABOUT WAS
21 WHERE SHE WAS GOING TO SELL PILLS NEXT AFTER STACEY
22 IS ALL LOCKED UP.

23 Q. SO YOU NEVER TALKED TO APRIL SMITH ABOUT THE
24 INCIDENT?

25 A. ME AND APRIL HAVE TALKED ABOUT STACEY QUITE A FEW

1 TIMES.

2 Q. LET'S NOT TALK ABOUT WHAT SHE SAID BUT WHEN YOU
3 TALKED TO HER DID YOU TELL HER ABOUT --

4 A. -- I TOLD HER THAT HE HAD, YES, THAT WE HAD ARGUMENT
5 AND THAT HE HAD BASHED IN MY NOSE CAUSING ME TO GET
6 MY NOSE RECONSTRUCTED AND HERE IT WAS, CHRISTMAS
7 TIME, YES. I ACTUALLY TOLD THE GIRL THAT IF SHE
8 SPENT ENOUGH TIME WITH THE SITUATION, THAT IT WAS
9 PROBABLY GOING TO HAPPEN TO HER TOO, BECAUSE I DID
10 NOT BELIEVE IT WHEN I WAS TOLD IN THE PAST.

11 Q. INsofar AS GEOGRAPHY NOW, LET'S JUST TRACE THE STEPS
12 HERE BECAUSE I THINK THAT IS IMPORTANT IN THE
13 TRANSCRIPT. YOU WERE IN WILLIAMSBURG COUNTY. YOU
14 AND STACEY LEFT HIS PARENTS HOUSE?

15 A. YEAH.

16 Q. AND WENT TO YOUR SISTER'S HOUSE?

17 A. YEAH.

18 Q. WHERE IS THAT?

19 A. IN GEORGETOWN COUNTY.

20 Q. WHAT DID YOU DO THERE?

21 A. WE LEFT MY NEPHEW OFF. WE WENT IN FOR A SECOND.
22 JUST FOR A FEW MINUTES. AND THEN WE LEFT.

23 Q. THEN WHERE DID YOU FROM THERE?

24 A. WE WERE TRAVELING BACK TOWARDS ANDREWS WHICH IS DOWN
25 HIGHWAY 51 THEN 41.

LISA POWELL - CROSS EXAMINATION BY MR. RUNYON

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1 Q. APPROXIMATELY HOW FAR DOES THIS TRIP TAKE? IS IT TEN
2 MILES, TWENTY-MILES, FIFTEEN MILES?

3 MR. MODICA: WHAT TRIP? OBJECTION AS TO FORM.

4 MR. RUNYON: THE TRIP FROM HIS PARENT'S HOUSE TO
5 ANDREWS OR WHEREVER SHE WAS ALLEGEDLY STRUCK?

6 MR. MODICA: AGAIN, OBJECTION TO THE FORM. SHE SAID
7 SHE WAS --

8 THE COURT: OVERRULED, COUNSEL. LET THE WITNESS IF
9 SHE HAS A PROBLEM WITH THE QUESTION THE WITNESS CAN STATE
10 THAT.

11 A. WHERE ARE YOU TALKING ABOUT? ARE YOU TALKING ABOUT
12 THE DISTANCE FROM MY SISTER'S HOUSE OR ARE YOU
13 TALKING ABOUT THE WHOLE DIFFERENT PLACES THAT WE
14 WENT?

15 Q. BASICALLY, YOU WENT THREE PLACES, DIDN'T YOU? YOU
16 STARTED --

17 A. ACTUALLY THERE WAS FOUR BUT I, I THOUGHT I WOULD OMIT
18 THAT ONE.

19 Q. YOU WENT FOUR PLACES?

20 A. YEP.

21 Q. ABOUT HOW FAR WAS THIS ALL TOTAL? TEN MILES, FIFTEEN
22 MILES, TWENTY MILES?

23 MS. POWELL: CAN I TAKE A SECOND AND ASK MY
24 COUNSELOR SOMETHING?

25 THE COURT: WELL, MA'AM, NO. THE BEST THING

1 WOULD BE RATHER THAN TO DISCUSS IT WITH THE ATTORNEY IS
2 JUST ANSWER THE QUESTION HOW FAR YOUR DISTANCES ARE, IF
3 YOU KNOW IT.

4 Q. IF YOU DON'T KNOW, YOU DON'T KNOW?

5 A. I DON'T KNOW, I DON'T.

6 Q. BUT THERE IS NO QUESTION IN YOUR MIND THAT THE
7 ARGUMENT AND THE STRIKING AS YOU ALLEGE OCCURRED IN
8 GEORGETOWN COUNTY?

9 A. YEAH, IT WAS IN GEORGETOWN.

10 Q. NOT WILLIAMSBURG COUNTY?

11 A. NO. IT WASN'T IN WILLIAMSBURG COUNTY IT WAS RIGHT
12 THERE AT MY HOUSE.

13 Q. RIGHT THERE AT YOUR HOUSE?

14 A. UH-HUH.

15 Q. RIGHT THERE IN THE YARD OR NEAR THE HOUSE OR ---
16 ABOUT HOW FAR FROM THE HOUSE?

17 A. FROM MY MAILBOX TO MY HOUSE, THAT KIND OF A DISTANCE.
18 A FEW HUNDRED YARDS OR WHATEVER.

19 Q. THE ASSAULT OCCURRED AS YOU ALLEGED NEAR OR AROUND
20 THE MAILBOX AT YOUR HOUSE CLOSE ENOUGH?

21 A. YEAH, LIKE AROUND THE CURVE OF MY HOUSE. A HALF A
22 BLOCK SAY.

23 Q. AROUND THE CURVE, A HALF A BLOCK, AROUND THE CURVE IS
24 PRETTY GOOD IN THE COUNTRY, ISN'T IT?

25 A. WELL --

LISA POWELL - CROSS EXAMINATION BY MR. RUNYON

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1 Q. YOUR INJURY AT THAT POINT AND TIME PRODUCED COPIOUS
2 AMOUNTS OF BLOOD, DIDN'T IT NOT?

3 A. YEAH.

4 Q. YOU HAD BLOOD ALL OVER YOUR CLOTHES?

5 A. YEAH.

6 Q. THERE WAS BLOOD ALL OVER THE TRUCK?

7 A. YES.

8 Q. YOU WENT IN THE HOUSE AND YOU GOT SOME TOWELS AND
9 WHAT HAVE YOU AND YOU WENT OUT --- WHO WENT OUT AND
10 CLEANED UP THE TRUCK?

11 A. MUST HAVE BEEN STACEY.

12 Q. MUST HAVE BEEN STACEY. AND YOU WERE, OF COURSE, TOLD
13 LAW ENFORCEMENT THAT YOU BLED ALL OVER THE TRUCK?

14 A. UH-HUH.

15 Q. DOES HE HAVE A LEATHER INTERIOR IN THAT TRUCK OR IS
16 IT CLOTH SEATS OR WHAT HAVE YOU?

17 A. I DON'T REMEMBER.

18 MR. RUNYON: NO FURTHER QUESTIONS OF THIS WITNESS
19 YOUR HONOR.

20 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, THE WAY
21 THE PRESENTATION OF A WITNESS WORKS YOU HAVE DIRECT, THEN
22 CROSS AND THEN RE-DIRECT ALLOWED TO THE PROponent OF THE
23 WITNESS ON ANY NEW ISSUES BUT NEW ISSUES ONLY BROUGHT UP
24 IN CROSS. IS THERE RE-DIRECT, COUNSEL?

25 MR. MODICA: YES.

LISA POWELL - REDIRECT EXAMINATION BY MR. MODICA

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1 THE COURT: ALL RIGHT, PLEASE PROCEED.

2 RE-DIRECTION EXAMINATION BY MR. MODICA:

3 Q. COUNSEL WAS ASKING YOU ABOUT THE FACT THAT YOU LIED
4 AND I BELIEVE YOU INDICATED THAT ONE OF THE REASONS
5 WHY IS BECAUSE YOU WERE SCARED?

6 A. YES, SIR.

7 Q. IN TERMS OF BEING SCARED WHEN YOU WERE AT YOUR HOUSE
8 JANUARY, I'M SORRY, DECEMBER 11, 2006, THAT MONDAY
9 PRIOR TO THE OFFICERS ARRIVING YOU WERE THERE WITH
10 STACEY HOWARD?

11 A. YES.

12 Q. DID HE SAY SOMETHING THREATENING TO YOU?

13 A. YES.

14 Q. CAN YOU TELL THE JURY ABOUT THAT?

15 A. I TOLD HIM THAT I WAS GOING TO END UP TELLING THE
16 TRUTH AND HE GOT INFURIATED AND HE TOLD ME HE STOOD
17 UP IN FRONT OF ME WITH HIS ARMS WIDE OPEN LIKE THIS
18 AND HE SAYS, WELL TEN YEARS, TEN YEARS, I KNOW I'LL
19 GET TEN YEARS AND AFTER THE TEN YEARS WE GOT A DATE.
20 YOU GOT A DATE WITH THE DEVIL. YOU GOT TO DEAL WITH
21 ME, ONE WAY OR THE OTHER. YEAP.

22 MR. MODICA: NOTHING FURTHER, YOUR HONOR.

23 THE COURT: ALL RIGHT, IS THERE RE-CROSS ON THAT
24 POINT?

25 MR. RUNYAN: NO, YOUR HONOR, THERE IS NO RE-CROSS.

DEPUTY RON CRABTREE - DIRECT EXAMINATION BY MR. MODICA 115

1 THE COURT: ALL RIGHT, MA'AM, YOU MAY STEP DOWN.

2 MS. POWELL: THANK YOU.

3 THE COURT: PLEASE CALL YOUR NEXT WITNESS.

4 MR. MODICA: THANK YOU. THE STATE WOULD CALL DEPUTY
5 RON CRABTREE.

6 DEPUTY RON CRABTREE

7 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS:

8 CLERK OF COURT: PLEASE BE SEATED AND SPELL YOUR
9 LAST NAME FOR THE RECORD, PLEASE.

10 MR. CRABTREE: MY NAME IS DEPUTY RONALD C.
11 CRABTREE. SPELLED C-R-A-B-T-R-E-E. I WORK FOR THE
12 GEORGETOWN COUNTY SHERIFF'S OFFICE.

13 CLERK OF COURT: THANK YOU.

14 DIRECT EXAMINATION BY MR. MODICA:

15 Q. YOU BEAT ME TO THE PUNCH. I WAS GOING TO ASK YOU
16 WHERE YOU ARE EMPLOYED, THE LENGTH OF TIME AND IN
17 WHAT CAPACITY, GIVE THAT SHOT?

18 A. ONCE AGAIN, GEORGETOWN COUNTY SHERIFF'S OFFICE. I
19 HAVE BEEN EMPLOYED FOR SIX MONTHS AS DEPUTY SHERIFF.

20 Q. DO YOU HAVE PRIOR LAW ENFORCEMENT EXPERIENCE PRIOR TO
21 COMING TO SOUTH CAROLINA?

22 A. YES, SIR.

23 Q. WHERE IS THAT?

24 A. IN THE STATE OF OHIO.

25 Q. WERE YOU A CERTIFIED POLICE OFFICER?

1 A. YES, SIR.

2 Q. WENT THROUGH TRAINING?

3 A. YES, SIR.

4 Q. HOW LONG WERE YOU A POLICE OFFICER THERE?

5 A. FOR A YEAR AND A HALF.

6 Q. ARE YOU PRESENTLY IN THE ACADEMY?

7 A. YES, SIR.

8 Q. THAT IS TO GET YOUR SOUTH CAROLINA CERTIFICATION?

9 A. YES, SIR.

10 Q. DESPITE THAT FACT, YOU BE A POLICE OFFICER IN
11 GEORGETOWN COUNTY?

12 A. YES, SIR, I CAN.

13 Q. I SHOULD SAY A LAW ENFORCEMENT OFFICER?

14 A. YES, SIR.

15 Q. NOW I WANT TO DIRECT YOUR ATTENTION TO SOMETIME AFTER
16 10:00 P.M. ON SUNDAY, DECEMBER 10, 2006 AND ASK YOU
17 IF YOU HAVE AN OCCASION TO GO TO THE GEORGETOWN
18 HOSPITAL?

19 A. YES, SIR, I DID.

20 Q. AND WHAT WAS THE NATURE OF THE CALL?

21 A. SUSPECTED PHYSICAL ABUSE.

22 Q. AND WHEN YOU ARRIVED AT THE HOSPITAL DID YOU HAVE A
23 CONVERSATION WITH DR. RICHMOND?

24 A. YES, SIR.

25 Q. NOW WITHOUT SAYING WHAT HE TOLD YOU, DO YOU

DEPUTY RON CRABTREE - DIRECT EXAMINATION BY MR. MODICA

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1 UNDERSTAND THAT, DID HE FILL YOU IN ON SOME
2 INFORMATION?

3 A. YES, HE DID.

4 Q. AS A RESULT OF THAT, AND BY THE WAY, DID IT CONCERN
5 LISA POWELL?

6 A. YES, SIR.

7 Q. AS A RESULT OF THAT, DID YOU GO OUT AND SEEK TO SPEAK
8 WITH LISA POWELL?

9 A. YES, SIR.

10 Q. DID YOU DO THAT?

11 A. YES, I DID.

12 Q. WHERE WITHIN THE HOSPITAL SETTING WAS THAT?

13 A. IN WAS IN THE MAIN FLOOR OF THE EMERGENCY ROOM IN ONE
14 OF THE ROOMS WHERE THE CURTAINS ARE.

15 Q. WAS THERE SOMEBODY ELSE PRESENT IN THAT ROOM?

16 A. YES, SIR.

17 Q. DO YOU KNOW WHO THAT PERSON WAS?

18 A. AT THE TIME, I DID NOT.

19 Q. CAN YOU DESCRIBE THAT PERSON?

20 A. SHE WAS AN OLDER LADY.

21 Q. WHITE FEMALE?

22 A. YES, SIR.

23 Q. DID YOU MAKE INQUIRY OF LISA POWELL AS TO WHAT
24 HAPPENED?

25 A. YES, SIR, I DID.

DEPUTY RON CRABTREE - DIRECT EXAMINATION BY MR. MODICA

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1 Q. WHAT DID SHE SAY?

2 A. SHE STATED TO ME THAT SHE HAD --

3 Q. -- LET ME BACK UP FOR A SECOND. DESCRIBE HER
4 PHYSICAL APPEARANCE.

5 THE COURT: SIR, BEFORE YOU ANSWER I AM GOING TO ASK
6 YOU TO PULL A LITTLE CLOSER TO THE MICROPHONE BECAUSE I
7 WANT TO MAKE SURE ALL OF OUR JURORS CAN HEAR YOU. JUST A
8 LITTLE BIT CLOSER, THANK YOU.

9 DEPUTY CRABTREE: YES, SIR.

10 Q. DESCRIBE HER PHYSICAL APPEARANCE.

11 A. HER PHYSICAL APPEARANCE WAS SHE HAD A LACERATION ON
12 HER NOSE, SOME SWELLING AROUND HER EYES AND SHE WAS
13 STILL PRETTY BLOODY AT THAT TIME.

14 Q. HOW ABOUT HER EMOTIONAL STATE?

15 A. SHE SEEMED TO BE DISTRAUGHT, NERVOUS, UPSET.

16 Q. CRYING?

17 A. YES, SIR.

18 Q. DID YOU INQUIRE OF HER AS TO WHAT HAD HAPPENED?

19 A. YES, SIR, I DID.

20 Q. WHAT DID SHE RELATE TO YOU?

21 A. SHE STATED THAT SHE HAD STRUCK HER FACE ON THE
22 DASHBOARD WHEN HER BOYFRIEND SLAMMED ON THE BRAKES OF
23 A VEHICLE.

24 Q. DID YOU MAKE A FURTHER INQUIRY?

25 A. YES, SIR, I DID.

DEPUTY RON CRABTREE - DIRECT EXAMINATION BY MR. MODICA 119

1 Q. TELL US ABOUT THAT?

2 A. I ASKED HER IF THAT WAS REALLY WHAT HAPPENED. I
3 ASKED HER IF SHE WAS WEARING HER SEATBELT AT THE
4 TIME.

5 Q. WHAT DID SHE SAY?

6 A. SHE SAID THAT SHE WAS.

7 Q. WAS THAT A PARTICULAR INTEREST TO YOU?

8 A. YES, SIR.

9 Q. WHY? LET ME WITHDRAW THE QUESTION. WHEN SHE SAID
10 THAT WHAT DID YOU SAY TO HER?

11 A. I SAID YOU WERE WEARING YOUR SEATBELT AND YOU STILL
12 STRUCK YOUR FACE ON THE DASHBOARD.

13 Q. OKAY. DID YOU INQUIRE AS TO WHO HER BOYFRIEND WAS?

14 A. YES, SIR, I DID.

15 Q. DID SHE GIVE YOU A NAME?

16 A. YES, SIR.

17 Q. WHAT NAME DID SHE GIVE YOU?

18 A. STACEY HOWARD.

19 Q. CAN YOU RECALL IF YOU MADE OTHER INQUIRY OF HER
20 REGARDING WHAT HAD HAPPENED?

21 A. I ASKED HER AGAIN WHAT HAD HAPPENED AND IF SHE WAS
22 TELLING ME THE TRUTH ABOUT THE SITUATION, AND AGAIN
23 SHE SAID THAT SHE HIT HER FACE ON THE DASHBOARD.

24 Q. WAS YOUR CONVERSATION CUT SHORT?

25 A. YES, SIR, IT WAS.

DEPUTY RON CRABTREE - DIRECT EXAMINATION BY MR. MODICA 120

1 Q. HOW SO?

2 A. THEY TOOK HER BACK TO PERFORM THE X-RAYS.

3 Q. DID YOU BELIEVE HER WHEN SHE TOLD YOU ABOUT HOW THE
4 INJURY TO HER FACE AND NOSE OCCURRED?

5 A. NO, I DID NOT.

6 Q. NOW, CORRECT ME IF I'M WRONG, BUT AT THIS POINT AND
7 TIME SHE IS NOT A COOPERATING WITNESS AGAINST
8 ANYBODY, CORRECT?

9 A. CORRECT.

10 Q. YOU DID NOT HAVE SUFFICIENT INFORMATION?

11 A. NO, SIR.

12 Q. TO GET A WARRANT?

13 A. NO, SIR.

14 Q. WHAT, IF ANY, POLICE ACTION DID YOU TAKE REGARDING
15 WHAT SHE HAD TOLD YOU, WHAT DID YOU DO?

16 A. I WROTE A REPORT ABOUT RESPONDING TO THE EMERGENCY
17 ROOM.

18 Q. WHY WOULD YOU DO THAT?

19 A. THE REASON I WROTE THE REPORT WAS BECAUSE I DID NOT
20 BELIEVE WHAT SHE WAS TELLING ME REALLY THE WHOLE
21 STORY OF WHAT HAD HAPPENED.

22 Q. WHY NOT JUST WIPE YOUR HANDS? WHY ARE YOU WRITING A
23 REPORT?

24 A. IF WE HAVE ANY REASON TO BELIEVE OTHERWISE THAT IS
25 WHAT WE ARE SUPPOSE TO.

DEPUTY RON CRABTREE - DIRECT EXAMINATION BY MR. MODICA 121

1 Q. YOU DID THAT?

2 A. YES, SIR.

3 Q. WAS PART OF THE REASON FOR GENERATING A REPORT WAS
4 BECAUSE YOU WERE CONCERNED ABOUT HER SAFETY?

5 A. YES.

6 Q. NOW I WANT TO DIRECT YOUR ATTENTION TO THE FOLLOWING
7 DAY, MONDAY, DECEMBER 11 AT APPROXIMATELY 6:30 P.M.

8 DID YOU HAVE AN OCCASION TO LOOK IN YOUR MESSAGE BOX
9 AT WORK?

10 A. YES, SIR.

11 Q. DID YOU HAVE A MESSAGE?

12 A. I DID.

13 Q. WHAT WAS IT IN RELATION TO?

14 A. THE MESSAGE WAS I HAD A REQUEST TO CALL MS. POWELL
15 WHEN I GOT TO WORK THAT EVENING.

16 Q. DID YOU DO THAT?

17 A. YES, I DID.

18 Q. TELL US ABOUT THE CONSERVATION YOU HAD?

19 A. WHEN I SPOKE TO HER AROUND 7:00 P.M. SHE STATED THAT
20 SHE HAD LIED TO ME PREVIOUSLY THE NIGHT BEFORE AT THE
21 HOSPITAL AND SHE WANTED TO TELL ME THE TRUTH AND
22 WANTED TO MAKE A STATEMENT, BUT IT WAS NOT A GOOD
23 TIME TO SPEAK TO ME AT THAT TIME AND WANTED ME TO
24 CALL HER LATER ON.

25 Q. LATER ON BEING 11:00 OR SOMETIME IN THE EVENING?

DEPUTY RON CRABTREE - DIRECT EXAMINATION BY MR. MODICA 122

1 A. ACTUALLY I CALLED HER AGAIN AT 8:30 P.M.

2 Q. TELL US WHAT HAPPENED WHEN YOU CALLED HER AT 8:30?

3 A. AGAIN AT 8:30 I SPOKE WITH HER ON THE PHONE AND SHE
4 STATED AT THAT TIME A LITTLE BIT ABOUT THE INCIDENT.

5 THAT SHE DID NOT HIT HER FACE ON THE DASHBOARD THAT
6 SHE WAS STRUCK. THAT SHE WAS HIT TWO TIMES AND THAT
7 SHE WANTED TO MAKE A STATEMENT ABOUT THE INCIDENT.

8 BUT THEN AGAIN AT THAT TIME SHE COULD NOT TALK TO ME.
9 SHE HAD AN ERRAND TO RUN TO PICK HER CHILDREN UP AND
10 WANTED ME TO CONTACT HER AGAIN AT 11 O'CLOCK.

11 Q. DID YOU TRY TO CONTACT HER AT 11:00 O'CLOCK?

12 A. YES, I DID.

13 Q. WHAT HAPPENED WHEN YOU CALLED AT 11:00 O'CLOCK?

14 A. AT 11:00 O'CLOCK I GOT NO ANSWER.

15 Q. WAS THAT OF ANY OF ANY CONCERN TO YOU?

16 A. YES, IT WAS.

17 Q. WHY SO?

18 A. BECAUSE WHEN I SPOKE TO HER THE TWO PREVIOUS TIMES
19 SHE SEEMED SCARED. THAT SHE HAD STATED THAT SHE DID
20 NOT WANT ANYBODY TO KNOW WHY SHE WAS TALKING TO THE
21 SHERIFF'S OFFICE AND SHE WAS AFRAID THAT SOMEBODY
22 WOULD FIND OUT.

23 Q. 11:00 O'CLOCK WHEN YOU DID NOT GET A HOLD OF HER WERE
24 YOU CONCERNED FOR HER SAFETY?

25 A. YES, WE WERE.

DEPUTY RON CRABTREE - DIRECT EXAMINATION BY MR. MODICA 123

1 Q. WHAT DID YOU DO?

2 A. AT THAT TIME I DECIDED TO PROCEED TO HER RESIDENCE TO
3 DO A WELFARE CHECK?

4 Q. WHAT IS A WELFARE CHECK?

5 A. A WELFARE CHECK IS WHERE YOU GO TO CHECK ON THE
6 SAFETY OF ANY INDIVIDUAL.

7 Q. WELL THESE ARE INDIVIDUALS WHERE THERE ARE
8 ALLEGATIONS OF VIOLENT OCCURRENCE AGAINST THEM,
9 CORRECT?

10 A. YES, SIR, IT CAN BE.

11 Q. YOU HAD TO HAVE THAT KIND OF INFORMATION FIRST?

12 A. YES, SIR.

13 Q. DID YOU GO WITH ANYBODY?

14 A. YES, SIR, I DID.

15 Q. WHO DID YOU GO WITH?

16 A. DEPUTY BARNUM AND CORPORAL MCKAY.

17 Q. WHY THREE OFFICERS?

18 A. BECAUSE I HAD SPOKEN WITH MY CORPORAL, A HIGHER
19 RANKING DEPUTY, ABOUT THE SITUATION AND HE FELT THAT
20 IT WOULD BE BETTER IF MORE OFFICERS WENT OUT.

21 Q. TO THE RESIDENCE?

22 A. TO THE RESIDENCE.

23 Q. LISA POWELL'S RESIDENCE?

24 A. YES, SIR.

25 Q. APPROXIMATELY 11:15 OR SO THE THREE OF YOU ARRIVED?

1 A. YES, WE ARRIVED AT 11:15.

2 Q. DESCRIBE FOR OUR JURY WHAT YOU SEE WHEN YOU ARRIVE
3 THERE?

4 A. WHEN WE ARRIVE AT 11:15 I SAW THROUGH THE RESIDENCE
5 -- YOU COULD SEE INTO THE BACKYARD FROM THE ROAD
6 THERE WAS A MALE SUBJECT STANDING BESIDE A PICKUP
7 TRUCK IN THE BACKYARD. AND WHEN WE PULLED UP IN
8 FRONT OF THE RESIDENCE MS. POWELL MET US AT THE END
9 OF THE FRONT YARD.

10 Q. OKAY. WHAT HAPPENED WHEN SHE MET YOU?

11 A. SHE REQUESTED THAT WE SAY THE NEIGHBORS CALLED US
12 BECAUSE SHE WAS AFRAID THAT MR. HOWARD WOULD KNOW
13 THAT SHE CALLED.

14 Q. BUT SHE DID NOT ASK YOU TO CALL OR COME THERE AT GET
15 MR. HOWARD, DID SHE?

16 A. NO, SHE DID NOT.

17 Q. IT WAS AT THAT POINT AND TIME YOU REALIZE THE PERSON
18 IN THE BACK WAS MR. HOWARD?

19 A. YES, SIR.

20 Q. WHAT, IF ANYTHING, DID YOU DO AFTER LISA POWELL
21 RELAYED THAT INFORMATION TO YOU?

22 A. MYSELF AND THE OTHER TWO DEPUTIES, ENCOUNTERED MR.
23 HOWARD IN THE BACKYARD.

24 Q. DID YOU ARREST HIM?

25 A. YES, SIR, I DID.

DEPUTY RON CRABTREE - DIRECT EXAMINATION BY MR. MODICA 125

1 MR. MODICA: ONE MOMENT, YOUR HONOR. YOUR HONOR,
2 MAY WE APPROACH?

3 THE COURT: YOU MAY.

4 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
5 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY.)

6 THE COURT: GO AHEAD, COUNSEL.

7 Q. (BY MR. MODICA) WHEN YOU APPROACHED --- BY THE WAY
8 DO YOU SEE NOW THE PERSON THAT YOU INDICATED AS
9 STACEY HOWARD IN THE COURTROOM?

10 A. SIR?

11 Q. DO YOU SEE THE PERSON, STACEY HOWARD IN COURTROOM
12 HERE?

13 A. YES, SIR, I DO.

14 Q. FOR OUR JURY, WOULD YOU IDENTIFY BY POINTING TO HIM
15 AND DESCRIBING THE ARTICLE OF CLOTHING?

16 A. YES, SIR. HE IS SITTING, RIGHT OVER THERE BY THE
17 DEFENSE COUNSEL IN THE RED SHIRT.

18 Q. WHAT HAPPENED AS Y'ALL APPROACHED THE DEFENDANT IN AN
19 EFFORT TO ARREST HIM?

20 A. HE WANTED TO KNOW WHAT THE SITUATION WAS ABOUT.

21 Q. WHAT, IF ANYTHING, DID HE DO BODY WISE?

22 A. HE APPROACHED US TO TALK TO US.

23 Q. WHERE WERE HIS HANDS?

24 A. THEY WERE IN HIS POCKETS.

25 Q. TELL THE JURY ABOUT THAT?

1 A. HIS HANDS WERE IN HIS POCKETS. HE WAS INSTRUCTED
2 SEVERAL TIMES TO REMOVE HIS HANDS FROM HIS POCKETS.

3 Q. DID HE DO SO IMMEDIATELY?

4 A. NO, SIR, HE DID NOT.

5 Q. DID HE FINALLY DO SO?

6 A. YES, HE DID.

7 Q. PLACED UNDER ARREST?

8 A. YES, HE WAS.

9 Q. DID YOU CHECK HIS POCKETS?

10 A. YES, SIR, I DID.

11 Q. WHAT DID YOU FIND IN THE POCKETS?

12 A. HE HAD A STUN GUN DEVICE AND ALSO A CAN OF PEPPER
13 SPRAY.

14 Q. JUST IN CASE SOMEONE DOESN'T KNOW WHAT A STUN GUN
15 DEVICE IS, CAN YOU EXPLAIN WHAT THAT IS?

16 A. IT IS A DEVICE YOU COULD TOUCH TO ANOTHER PERSON AND
17 PULL THE TRIGGER ON IT AND IT WILL SEND AN ELECTRICAL
18 SHOCK THROUGH YOUR BODY.

19 Q. DID YOU PLACE THE DEFENDANT IN THE BACK OF THE POLICE
20 UNIT?

21 A. YES.

22 Q. AND THAT WAS CORPORAL MCKAY?

23 A. YES, SIR, IT WAS.

24 Q. DID YOU HAVE A DISCUSSION WITH LISA POWELL STAYING
25 THERE AND TALKING TO HER ABOUT WHAT HAD HAPPENED THE

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1 NIGHT BEFORE?

2 A. YES, I DID.

3 Q. TELL US ABOUT THAT CONVERSATION?

4 A. SHE WAS CONCERNED AND WAS STILL AFRAID THAT HE WOULD
5 KNOW THAT SHE WANTED TO SPEAK WITH US. SO SHE ASKED
6 US IF WE WOULD ALL DRIVE AWAY FROM THE HOUSE SO THAT
7 HE WOULD THINK THAT WE WERE NOT THERE TO DO A REPORT
8 FOR HER.

9 Q. DID YOU DO WHAT SHE REQUESTED?

10 A. YES, WE DID.

11 Q. DID YOU RETURN?

12 A. YES, I DID.

13 Q. DO YOU RECALL AT SOME POINT IN TIME WHEN YOU ALL WERE
14 TALKING AND YOU WENT BACK AND TALKED TO LISA POWELL
15 ABOUT WHETHER SHE POINTED OUT A PLACE WHERE THE
16 INCIDENT HAD OCCURRED?

17 A. YES, I DO.

18 Q. JUST SO OUR JURY KNOWS IS THAT IN GEORGETOWN COUNTY?

19 A. YES, SIR, IT WAS.

20 Q. AND HER HOUSE IS IN GEORGETOWN COUNTY?

21 A. YES, SIR, IT IS.

22 Q. WHILE YOU WERE THERE DID YOU TAKE PHOTOGRAPHS OF HER
23 INJURIES?

24 A. YES, I DID. YES, SIR.

25 Q. I AM SHOWING YOU WHAT IS NOW IN EVIDENCE AS STATE'S

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1 EXHIBIT'S ONE, 1-A AND 2-A. I AM SORRY, THAT MEANS
2 ADMITTED ONE AND TWO. DO YOU RECOGNIZE WHAT IS SHOWN
3 IN THOSE PHOTOGRAPHS?

4 A. YES, I DO.

5 Q. JUST SO THE JURY KNOWS WE ARE ON THE SAME PAGE, WHAT
6 IS THE OF?

7 A. THESE ARE THE INJURIES TO THE NOSE AND THE EYE AREA.

8 Q. OF MS. POWELL?

9 A. OF MS. POWELL'S FACE.

10 Q. AND THAT'S HOW IT LOOKED THAT NIGHT?

11 A. YES, SIR.

12 Q. AT SOME DEGREE THE NIGHT BEFORE?

13 A. IT LOOKED WORSE THE NIGHT BEFORE.

14 Q. BECAUSE SHE WAS BLEEDING?

15 A. YES, SIR.

16 Q. DURING THE COURSE OF TIME WHEN YOU SPOKE TO MS.
17 POWELL AT HER HOUSE WAS SHE UPSET?

18 A. YES, SHE WAS.

19 Q. DID SHE CRY?

20 A. YES.

21 Q. DID SHE DISPLAY WHAT APPEARED TO YOU TO BE FEAR?

22 A. YES, SIR, SHE DID.

23 MR. MODICA: THANK YOU. ANSWER ANY QUESTIONS,
24 COUNSEL MAY HAVE.

25 THE COURT: CROSS EXAMINATION.

DEPUTY RON CRABTREE - CROSS EXAMINATION BY MR. RUNYAN

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CROSS EXAMINATION BY MR. RUNYAN:

Q. DURING THE COURSE OF CONDUCTING THIS EXAMINATION YOU
TALKED TO MS. POWELL, MR. HOWARD'S TRUCK WAS RIGHT
THERE, CORRECT?

A. YES, SIR, IT WAS.

Q. ROUGHLY, DO YOU REMEMBER, WHAT COLOR IT WAS?

A. IT WAS WHITE.

Q. DID YOU GO OVER TO IT?

A. NO, SIR, I DID NOT.

Q. YOU DID NOT LOOK IN THE TRUCK?

A. NO, SIR.

Q. YOU DID NOT LOOK FOR SIGNS OF HOW SHE MAY HAVE BEEN
INJURED ON THE DASH, DID YOU SIR?

A. NO, SIR.

Q. YOU DID NOT LOOK FOR SIGNS OF BLOOD IN THE TRUCK OR
ON THE SEAT OR ANYTHING OF THAT SORT?

A. NO, SIR, I DID NOT.

Q. DO YOU KNOW IF THERE WERE CLOTH SEATS OR LEATHER
SEATS OR FAKE LEATHER SEATS OR WHATEVER ELSE IS WAS?

A. I DO NOT KNOW.

Q. YOU DID NOT TAKE ANY PICTURES OF THE INTERIOR?

A. NO, SIR.

Q. EVEN THOUGH MS. POWELL CONTINUED TO TELL YOU THE PART
ABOUT THE FACT SHE STRUCK HER FACE IN THE TRUCK?

A. YES, SIR.

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1 Q. OKAY. THE TRUCK WAS A LARGE ONE, WASN'T IT?

2 A. YES, IT WAS.

3 Q. BUT YOU ARRESTED MR. HOWARD DID YOU NOT?

4 A. YES, SIR.

5 Q. AND IN THE COURSE OF ARRESTING HIM YOU TOOK THINGS
6 OUT OF HIS POCKETS INCLUDING THIS MACE OR PEPPER
7 SPRAY AND A STUN GUN, CORRECT?

8 A. YES, SIR.

9 Q. DID YOU TAKE HIS CAR KEYS OUT?

10 A. WE DID NOT.

11 Q. YOU DID NOT TAKE HIS CAR KEYS AWAY FROM HIM?

12 A. I DID NOT TAKE HIS CAR KEYS.

13 Q. SO IN POINT AND FACT THERE IS NO EVIDENCE OF ANY
14 BLOOD IN THAT TRUCK TO YOUR KNOWLEDGE?

15 A. TO MY KNOWLEDGE, NO.

16 Q. BASED ON WHAT YOU DID?

17 A. CORRECT.

18 MR. RUNYAN: NO FURTHER QUESTIONS.

19 THE COURT: REDIRECT?

20 MR. MODICA: NOTHING ELSE. HOWEVER, YOUR HONOR, HE
21 IS ACTUALLY IN THE ACADEMY, AND WE WOULD ASK THAT HE BE
22 EXCUSED FROM THE SUBPOENA?

23 MR. RUNYON: JUDGE, WE HAVE NO OBJECTION TO HIM
24 GOING BACK TO THE ACADEMY.

25 THE COURT: ALL RIGHT, SIR, YOU ARE FREE TO LEAVE.

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1 YOU ARE NOT REQUIRED TO LEAVE BUT YOU CAN FREE TO LEAVE IF
2 YOU WISH?

3 OFFICER CRABTREE: THANK YOU, SIR.

4 THE COURT: THANK YOU.

5 MR. MODICA: THE STATE WOULD CALL DR. RICHMOND.

6 THE COURT: COUNSEL, IS YOUR WITNESS PRESENT. I
7 HEARD YOU CALL A WITNESS NAME. IS THE WITNESS PRESENT?

8 MR. MODICA: YES, SIR.

9 THE COURT: ALL RIGHT.

10 WILLIAM D. RICHMOND, M.D.

11 BEING DULY SWORN TESTIFIES AS FOLLOWS:

12 THE COURT: PLEASE BE SEATED AND STATE YOUR NAME FOR
13 THE RECORD.

14 DR. RICHMOND: YES, SIR. MY NAME IS WILLIAM
15 DICKINSON RICHMOND, AND THAT IS R-I-C-H-M-O-N-D.

16 VOIR DIRE EXAMINATION BY MR. MODICA:

17 Q. DR. RICHMOND, I THINK WE ARE GOING TO JUMP STRAIGHT TO
18 A CRITICAL POINT. YOU ARE AN EMERGENCY ROOM DOCTOR?

19 A. YES, SIR, I AM.

20 Q. HOW LONG HAVE YOU BEEN AN EMERGENCY ROOM DOCTOR?

21 A. ABOUT TWENTY-THREE YEARS. TWENTY-THREE, TWENTY-FOUR
22 YEARS.

23 Q. AS AN EMERGENCY ROOM DOCTOR?

24 A. YES, SIR.

25 Q. CERTAINLY YOU HAVE MORE EXPERIENCE THAN SOMEONE WHO

1 MIGHT ROTATE IN AND OUT TO SEE IT MIGHT BE AN
2 INTERESTING CAREER?

3 A. ABSOLUTELY. CERTAINLY MORE EXPERIENCE THAN ANYONE IN
4 THE COUNTY. MORE EXPERIENCE THAN MOST PEOPLE IN THE
5 STATE.

6 MR. RUNYAN: YOUR HONOR, I DON'T MEAN TO INTERRUPT MY
7 FRIEND BUT WE KNOW DR. RICHMOND IS LICENSED TO PRACTICE
8 MEDICINE IN THE STATE, AND HAS DONE SO FOR A NUMBER OF
9 YEARS, AND THAT HE WOULD BE ACCEPTED SUBJECT TO OF COURSE
10 OF YOUR RULING WITH ACCEPTED AS AN EXPERT IN THE AREA OF
11 MEDICINE AND EMERGENCY MEDICINE.

12 THE COURT: ALL RIGHT, VERY GOOD. LADIES AND
13 GENTLEMEN OF THE JURY, LET ME JUST EXPLAIN WHAT THAT MEANS
14 IN PRACTICAL TERMS. THE WITNESS IS OFFERED AS AN EXPERT
15 WITNESS. ALL OF OUR WITNESSES PREVIOUSLY HAVE BEEN LAY
16 WITNESSES. LAY WITNESSES ARE INDIVIDUALS WHO, CAN TELL
17 ABOUT WHAT THEY SAW, OR WHAT THEY HEARD. AN EXPERT WITNESS
18 IS SOMEONE WHO HAS THE REQUISITE TRAINING, OR KNOWLEDGE,
19 EXPERIENCE, TO NOT ONLY TELL ABOUT WHAT THEY SAY OR HEARD
20 BUT ALSO EXPRESS AN OPINION ABOUT WHAT THEY SAW OR HEARD.
21 THERE IS NO OBJECTION TO THE WITNESS BEING ACCEPTED AS AN
22 EXPERT AND THEREFORE THE COURT WILL FIND THE WITNESS TO BE
23 QUALIFIED AS AN EXPERT WITNESS. LET ME SAY TO YOU, THAT
24 ULTIMATELY THE WEIGHT THAT YOU GIVE ANY TESTIMONY IS UP TO
25 YOU. YOU ARE NOT NECESSARILY TO ACCEPT THE TESTIMONY OF AN

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1 EXPERT AS TRUE AND UNDISPUTED AND ACCURATE. YOU MUST WEIGH
2 IT FOR TERMS OF CREDIBILITY AND BELIEVABLE AS YOU WOULD ANY
3 OTHER WITNESS. IT'S NOT GIVEN FOR THE PURPOSE OF
4 CONTROLLING YOUR JUDGMENT BUT TO ASSIST YOU IN DETERMINING
5 MATTERS OF FACT WHICH ARE BEFORE YOU THAT ARE WITHIN THE
6 EXPERT'S AREA OF EXPERTISE. SO WITH THAT UNDERSTANDING,
7 THE WITNESS IS RECOGNIZED AS AN EXPERT AND YOU MAY PROCEED
8 MR. MODICA.

9 MR. MODICA: THANK YOU, YOUR HONOR.

10 DIRECT EXAMINATION BY MR. MODICA:

11 Q. I NOTICED THAT YOU HAVE NEGLECTED TO BRING A COPY OF
12 THE MEDICAL RECORDS?

13 A. YES, I DID. I AM SORRY. I WAS IN A HURRY. I AM
14 WORKING TODAY AND I FORGOT TO BRING THEM, I APOLOGIZE.

15 Q. BAD DOCTOR, I HAVE A COPY, AND YOU CAN USE IT TO
16 REFRESH YOUR MEMORY.

17 A. THANK YOU SO MUCH.

18 MR. RUNYAN: FOR THE RECORD, WE HAVE NO OBJECTION TO
19 THE GOOD DOCTOR HAVING THESE RECORDS IF IT IS A COPY OF THE
20 FILE WHICH WAS GENERATED BUT WE DON'T STIPULATE THEIR ENTRY
21 AS AN EXHIBITS, SIMPLY TO REFRESH HIS MEMORY.

22 THE COURT: ALL RIGHT, WITH THAT UNDERSTANDING THEN,
23 WE'LL PROVIDE A COPY WITHOUT MARKING IT AS AN EXHIBIT AT
24 THIS POINT, AND PLEASE PROVIDE IT TO DR. RICHMOND.

25 Q. (BY MR. MODICA) WHILE WE ARE GOING ALONG, IF YOU NEED

1 TO TAKE A LOOK AT IT GO AHEAD AND IF YOU NEED A MOMENT
2 TO LOOK AT IT LET US KNOW.

3 A. THANK YOU.

4 Q. DOCTOR, LET ME START OVER HERE IN YOUR AREA OF
5 EXPERTISE. A MOTOR VEHICLE ACCIDENT. WHEN PEOPLE
6 HAVE MOTOR VEHICLE ACCIDENTS, THEY GENERALLY GO TO THE
7 EMERGENCY ROOM FIRST?

8 A. YES, SIR. PROBABLY 99% OF THE TIME OR IF IS A
9 SIGNIFICANT ACCIDENT A 100% OF THE TIME.

10 Q. SO I TAKE IT YOU HAVE PROBABLY SEEN COUNTLESS PEOPLE
11 INJURED IN MOTOR VEHICLE ACCIDENTS?

12 A. YES, SIR. THOUSANDS.

13 Q. ONE OF THE IMPORTANT THINGS TO DO THERE, IS TO ACCESS
14 WHAT THE PERSON SAID AND ASSIST THEIR INJURY IN
15 RELATION TO WHAT THEY MIGHT HAVE STRUCK, CORRECT?

16 A. ABSOLUTELY.

17 Q. ONE OF THE THINGS YOU WANT THE INFORMATION FROM THE
18 PATIENT IS SO THEY FIGURE OUT WHAT MIGHT BE WRONG,
19 WHAT YOU NEED TO DO, WHAT KIND OF FOLLOW UP TASKS, X-
20 RAYS, CAT SCANS, ETCETERA?

21 A. CERTAINLY.

22 Q. WHEN YOU GET THOSE RESULTS, YOU ARE ABLE TO COMPARE
23 WHAT THE PERSON TOLD YOU AND TO WHAT THE RESULT IS AND
24 KIND OF MESH THEM TOGETHER?

25 A. THAT IS CORRECT. YOU WANT TO MAKE SURE THAT THE TWO

1 ARE CONSISTENT. THE HISTORY THAT YOU GET AND THE
2 PHYSICAL EXAMINATION SHOULD BE CONSISTENT.

3 Q. ALL RIGHT. NOW IF I MIGHT DIRECT YOUR ATTENTION TO
4 DECEMBER 10, 2006 AROUND 10:00 O'CLOCK OR 10:15, WAS
5 THERE AN OCCASION THAT LISA POWELL, THE VICTIM IN THIS
6 CASE, HAS OCCASION TO COME TO THE EMERGENCY ROOM?

7 A. SHE DID. I WAS WORKING THAT EVENING AND I REMEMBER
8 SEEING MS. POWELL ON DECEMBER 10, OF THIS PAST YEAR
9 ABOUT 10:00 O'CLOCK IN THE EVENING OR TWELVE AFTER
10 10:00.

11 Q. OKAY. AND DO YOU KNOW IF SHE WAS IN THE COMPANY OF
12 SOMEBODY ELSE?

13 A. I THINK THERE WAS SOMEBODY ELSE WITH HER IN THE ROOM
14 INITIALLY WHEN I EXAMINED HERE. I THINK I EXAMINED
15 HER A SECOND TIME WHEN THERE WAS SOMEBODY IN THE ROOM
16 BUT I DIDN'T PAY ATTENTION TO THE OTHER PERSON. I WAS
17 MAINLY FOCUSED ON MS. POWELL.

18 Q. AT SOME POINT AND TIME YOU REALIZED THAT SOMEBODY ELSE
19 WAS PRESENT?

20 A. I DO AGREE WITH THAT. I REMEMBER THE PRESENCE OF
21 SOMEBODY BUT AGAIN I COULDN'T TELL YOU WHO IT WAS.

22 Q. QUITE FRANKLY, YOU'RE NOT INTERESTED IN THAT PERSON,
23 YOU ARE INTERESTED IN THE PATIENT?

24 A. RIGHT. I WAS INTERESTED IN MS. POWELL. SHE WAS THE
25 ONE WHO WAS INJURED AND SO MY ATTENTION WAS FOCUSED

1 WITH HER.

2 Q. OKAY. WHEN YOU OBSERVED HER WHAT WAS YOUR INITIAL
3 REACTION AS TO THE NATURE OF HER INJURIES?

4 A. IT WAS OBVIOUS TO ME SIMPLY FROM EXAMINATION THAT JUST
5 LOOKING AT HER THAT SHE HAD A BROKEN NOSE. SHE HAD
6 BADLY BRUISED NOSE. A LOT OF SWELLING. IT WAS
7 DISPLACED. AND I'VE SEEN MANY MANY BROKEN NOSES AND
8 SOME YOU CAN TELL BY LOOKING AT THEM AND DON'T EVEN
9 NEED AN X-RAY ALTHOUGH YOU X-RAY BUT IT WAS CLEAR THAT
10 THIS ONE WAS FRACTURED BADLY AND IT WAS A BADLY
11 INJURED NASAL FRACTURE.

12 Q. OKAY. AND I TAKE IT AT SOME POINT AND TIME YOU
13 DISCUSSED WITH HER AS TO HOW THIS INJURY OCCURRED?

14 A. I DID. WE TALKED ABOUT THAT AT LENGTH.

15 Q. OKAY. I WANT YOU TO TELL OUR JURY ABOUT THAT,
16 PLEASE.

17 A. I WAS WORRIED WHEN MS. POWELL PRESENTED THAT THIS WAS
18 SECONDARY TO AN ASSAULT. SHE SAID THAT SHE HAD BEEN
19 IN A CAR WRECK BUT AGAIN ONE THING YOU DO WHEN YOU
20 EXAMINE SOMEBODY YOU WANT TO MAKE SURE OF THE HISTORY
21 AND THE PHYSICAL EXAMINATION ARE CONSISTENT. THE
22 PHYSICAL EXAMINATION WAS OBVIOUSLY A BROKEN NOSE BUT
23 THE HISTORY SHE WAS GIVEN DID NOT SEEM TO BE
24 COMPATIBLE WITH THE PHYSICAL FINDING. GENERALLY, WHEN
25 SOMEBODY IS IN A CAR WRECK AND THEY HIT THEIR FACE,

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1 HARD ENOUGH TO BREAK THEIR NOSE, MOST OF THE TIME THEY
2 HAVE SOME OTHER INJURY. THEY WILL HAVE A BRUISE HERE
3 OR A BROKEN BONE THERE, A SCRAPE OR LACERATION. SHE
4 HAD THIS ISOLATED INJURY WHICH WAS SUSPICIOUS TO ME.
5 AND THEN ALSO HER BEHAVIOR. SHE WAS VERY ANXIOUS,
6 TEARFUL, NERVOUS. A LOT OF TREPIDATION IN THE WAY SHE
7 WOULD ANSWER QUESTIONS, FEARFUL, JUST SCARED. AND
8 THAT IS INCONSISTENT. AND SO I REALLY AFTER I BEEN IN
9 THERE JUST A FEW MINUTES MY IMPRESSION WAS THAT
10 SOMEHOW SHE HAD BEEN ASSAULTED IN SOMEWAY. HAD NO
11 IDEA, I STILL HAVE NO IDEA WHO IT MAY BE JUST MY
12 IMPRESSION FROM MY EXAM AND TALKING WITH HER AS IF
13 THIS WAS AN ASSAULT AND NOT A CAR WRECK. AND SO BASED
14 ON THAT I THINK I WENT BACK AND FORTH TO THE ROOM
15 SEVERAL TIMES, I DON'T KNOW HOW MANY TIMES I DID, JUST
16 TO SEE IF I COULD GET HER TO TELL ME THE TRUTH BUT SHE
17 WAS VERY FRIGHTENED. NOT THE TRUTH AS I THOUGHT IT
18 WAS BUT ONLY SHE KNEW THE TRUTH. SHE WAS VERY
19 FRIGHTENED AND JUST WAS INSISTENT IT WAS A CAR WRECK.
20 AND I ACTUALLY ---- IT WAS A CHANGE OF SHIFT, I WAS
21 WORKING A DOUBLE COVERAGE SHIFT SO I TURNED HER OVER
22 TO ONE OF MY PARTNERS AND I TURNED HER OVER TO LET HIM
23 MAKE THE FINAL DISPOSITION AFTER I HAD DONE THE EXAM
24 AND X-RAYS. I SAID LOOK DR. GAMBLE, WHO IS MY
25 PARTNER, I THINK THIS IS AN ASSAULT. I DON'T THINK

1 THIS IS A MOTOR VEHICLE ACCIDENT, A CAR WRECK, AND SO
2 I TURNED IT OVER TO HIM THAT WAY, AND THEN HE TALKED
3 TO MS. POWELL AS WELL. BUT I WAS CONVINCED WITH MY
4 EXAM AND HISTORY, THIS WAS AN ASSAULT, NOT A CAR WRECK
5 FROM MY EXAMINATION.

6 Q. BUT DESPITE THE FACT THAT YOU SPOKE WITH HER A NUMBER
7 OF TIMES AND TRIED TO GET HER TO TELL THE TRUTH, THAT
8 DID NOT HAPPEN?

9 A. NO, SHE INSISTED THAT IT WAS A CAR WRECK. I DID NOT
10 BELIEVE HER, BUT I HAD NO WAY OF KNOWING OTHER THAN
11 THE HISTORY SHE WAS GIVING ME. SO NO, SHE INSISTED
12 THAT IT WAS A CAR WRECK AND I CONTINUED TO BELIEVE IT
13 WAS AN ASSAULT.

14 Q. OKAY. NOW, ALSO IN YOUR AREA OF --

15 A. LET ME -- LET ME, MAY I --

16 Q. GO AHEAD.

17 A. I THOUGHT THIS WAS A TRAUMA. I DIDN'T KNOW HOW THE
18 TRAUMA OCCURRED BUT I WAS CONVINCED IT WAS NOT A CAR
19 WRECK. AND AGAIN I WAS -- I THOUGHT IT WAS AN ASSAULT
20 BASED ON HER BEHAVIOR BUT YOU CAN'T TELL WHAT TYPE OF
21 TRAUMA.

22 Q. OKAY. THE INJURY WAS TRAUMA. THE WAY SHE ACTED YOU
23 BELIEVE IT WAS AN ASSAULT?

24 A. ABSOLUTELY, WITHOUT QUESTION.

25 Q. MY NEXT QUESTION WILL FOLLOW UP ON THAT QUESTION.

1 BEING AN EMERGENCY ROOM DOCTOR AND OBVIOUSLY BEING
2 DEEMED AN EXPERT IN THAT FIELD, I TAKE IT YOU HAVE HAD
3 OCCASION TO OBSERVE PEOPLE WHO HAVE TRAUMATIC
4 INJURIES?

5 A. MULTIPLE TIMES.

6 Q. PART OF YOUR ASSESSMENT INCLUDES WHETHER OR NOT THEY
7 WERE PHYSICALLY ASSAULTED BY ANOTHER AND HOW AND WHAT
8 OBJECTS, THINGS OF THAT NATURE, CORRECT?

9 A. YES, SIR.

10 Q. AGAIN, THAT IS FOR PURPOSES AMONG OTHER THINGS,
11 DIAGNOSES AND FOLLOWUP TESTS AND CAT SCANS, X-RAYS,
12 ETCETERA?

13 A. EXACTLY.

14 Q. CORRECT ME IF I AM WRONG, DOCTOR, YOU HAVE AN ETHICAL
15 OBLIGATION TO REPORT SUSPECTED PHYSICAL ABUSE TO LAW
16 ENFORCEMENT?

17 A. WE DO. YES, WE DO.

18 Q. I TAKE IT YOU DO THAT ON A REGULAR BASIS?

19 A. WE DO WHEN WE HAVE SUSPICION, WE DO.

20 Q. IN THIS CASE, DID YOU HAVE THAT SUSPICION AND
21 CONTACTED LAW ENFORCEMENT?

22 A. ABSOLUTELY.

23 Q. IF YOU NEED TO, I HAVE THE X-RAYS HERE AND YOU LET ME
24 KNOW, BUT CAN YOU DESCRIBE THE SEVERITY OF THE INJURY
25 TO THE NOSE?

1 A. IT WAS A SEVERELY BROKEN NOSE WITH A LOT OF SOFT
2 TISSUE TRAUMA. A LOT OF BRUISING. IT ULTIMATELY
3 REQUIRED SURGERY WHICH IS VERY UNUSUAL FOR A BROKEN
4 NOSE, MOST DO NOT OR MOST SOMETIMES, OR SOME MAY
5 REQUIRE AN OFFICE PROCEDURE BUT THIS ULTIMATELY WAS
6 FRACTURED BADLY ENOUGH TO TAKE IT TO THE OPERATING
7 ROOM. AND AGAIN, ON A SCALE OF ONE TO TEN, TEN BEING
8 HORRIBLE, THIS IS PROBABLY ANE EIGHT AND A HALF.

9 Q. OKAY. AND WAS IT BROKEN IN A NUMBER OF DIFFERENT
10 PLACES?

11 A. SEVERAL DIFFERENT PLACES.

12 Q. WOULD THAT GIVE YOU AN INDICATION THAT WAS NOT -- I
13 SHOULD SAY WOULD THAT BEING BROKEN IN SEVERAL PLACES
14 BE PART OF AN INDICATION THAT IT WAS AN ASSAULT RATHER
15 THAN A CAR WRECK?

16 A. ALL OF THE INFORMATION TOGETHER LED TO THE DIRECTION
17 THIS WAS AN ASSAULT. I'M NOT SURE THAT ONE IN
18 PARTICULAR BUT PUTTING IT ALL TOGETHER ALL THE
19 DIFFERENT INFORMATION THE PIECES OF DATE YOU HAD IT
20 ALL LEAD TO THIS AN ASSAULT NOT A CAR WRECK.

21 Q. DOCTOR, I AM SHOWING THAT YOU WHAT HAS ALREADY BEEN
22 ADMITTED AS STATE'S EXHIBIT NUMBER ONE AND TWO.
23 PHOTOGRAPHS OF THE VICTIM. AND, OF COURSE, YOU WERE
24 NOT HERE BUT THE TESTIMONY WAS TAKEN A DAY LATER, ARE
25 THOSE CONSISTENT TO SOME DEGREE BECAUSE OBVIOUSLY IT

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1 WOULD HAVE BEEN DIFFERENT CIRCUMSTANCES OF HOW MS.

2 POWELL LOOKED, WHEN YOU DID YOUR DIAGNOSES?

3 A. IT IS CONSISTENT, YES, SIR.

4 Q. AND I NOTICE IN REGARDS TO STATE'S EXHIBIT NUMBER ONE,
5 THERE ARE CERTAIN, WOULD YOU CALL THESE LACERATIONS?

6 A. SUPERFICIAL LACERATIONS, YES, SIR.

7 Q. WOULD THAT BE CONSISTENT WITH HITTING A DASHBOARD?

8 A. NOT REALLY. SOMETIMES YOU WILL SEE ABRASIONS.

9 GENERALLY, THERE WOULD MORE DEFUSE OVER THE NOSE BUT I
10 MEAN IT'S NOT --- YOU COULD SEE THAT INJURY IN A CAR
11 WRECK BUT IT WOULD BE UNUSUAL TO SEE IT THAT WAY.

12 Q. MOST OF THE TIMES, WOULD IT BE FAIR TO SAY THAT MOST
13 OF THE TIME YOU WOULD SEE THAT TYPE OF LACERATION
14 INJURY IF THERE HAD BEEN SOME SHATTERED GLASS?

15 A. RIGHT. YOU CAN SEE IT THAT WAY AND THE GLASS WOULD
16 LACERATE THE NOSE ALL OVER NOT JUST IN ONE PLACE. BUT
17 I'VE SEEN BROKEN NOSES, I MEAN LACERATIONS LIKE THAT
18 FROM CAR WRECK BUT STILL, I AGREE THAT MOST OF THEM DO
19 NOT LOOK LIKE THAT FROM A CAR WRECK.

20 MR. MODICA: THANK YOU, DOCTOR. ANSWER ANY QUESTIONS
21 COUNSEL MAY HAVE FOR YOU.

22 A. YES, SIR.

23 CROSS EXAMINATION BY MR. RUNYAN:

24 Q. BRIEFLY, DOCTOR, IF I UNDERSTAND IT, YOUR TESTIMONY IS
25 THAT THIS IS A RESULT IN YOUR OPINION, TRAUMA?

1 A. YES, SIR. IN MY OPINION IT WAS AN ASSAULT.

2 Q. LET ME EXPLAIN TO YOU THAT IT TOOK ME THREE SEMESTERS
3 TO GET CREDIT FOR TWO SEMESTERS FOR FRESHMAN BIOLOGY
4 IN COLLEGE SO LET ME TAKE ONE STEP AT A TIME.

5 A. YES, SIR.

6 Q. AND MAYBE YOU COULD HELP ME UNDERSTAND?

7 A. CERTAINLY.

8 Q. BASICALLY WHAT WE HAVE IS AN INJURY CONSISTENT WITH
9 TRAUMA FROM SOME SOURCE?

10 A. NO DOUBT, UNEQUIVOCALLY IT'S TRAUMA. YOU CAN'T INJURY
11 YOUR NOSE LIKE THIS WITHOUT BEING TRAUMA SO THAT IS A
12 GIVEN, YES, SIR.

13 Q. OKAY. AND SO THE SECOND PART OF THAT IS THE SOURCE OF
14 THE TRAUMA, IS REALLY THE QUESTION HERE?

15 A. YES, SIR.

16 Q. YOU HAD REASONABLE SUSPICION BASED UPON YOUR EXPERTISE
17 AND YOUR EXPERIENCE THAT SOMEONE HIT HER?

18 A. YES, SIR.

19 Q. NOW, YOU AND MY FRIEND OVER THERE TALK ABOUT A CAR
20 WRECK BUT YOU CAN CHECK YOUR NOTES THERE NEVER WAS A
21 REPORT TO YOU OF THERE BEING AN AUTOMOBILE ACCIDENT
22 WAS THERE?

23 A. WELL, FROM THE PATIENT THERE WAS.

24 Q. WAS IT MORE LIKELY SHE WAS IN A AUTOMOBILE THAT
25 STOPPED SHORT AND SHE HAD AN ACCIDENT WITHIN THE CAR?

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1 A. WELL THAT IS STILL CONCERNED AN INJURY FROM A CAR
2 WRECK OR CAR ACCIDENT NOT A CAR WRECK BUT A CAR
3 ACCIDENT.

4 Q. OKAY. I AM JUST TRYING TO REMEMBER --

5 A. CERTAINLY.

6 Q. -- REMEMBER MY LIMITATIONS?

7 A. I DO.

8 Q. AND THE NOSE CAN BE EASILY BROKEN FROM SPORTS, FROM
9 CAR, FROM HITTING YOU, FROM ALL SORTS OF SOURCES?

10 A. MULTIPLE DIFFERENT WAYS TO FRACTURE YOUR NOSE, YES,
11 SIR, ALL INVOLVING TRAUMA.

12 Q. AND IN THE NOSE THERE ARE LOTS OF THINGS AND
13 CAPILLARIES AND ALL THAT SORT OF STUFF ISN'T THERE?

14 A. THERE ARE. THERE ARE A LOT OF DIFFERENT BLOOD VESSELS
15 IN THE NOSE. THAT IS VERY TRUE.

16 Q. WHEN YOU HAVE TRAUMA TO THE NOSE YOU GET LOTS OF BLOOD
17 LOTS OF TIME?

18 A. SOMETIMES YOU DO. MORE COMMONLY THAN NOT, YES, SIR.

19 Q. SO YOU HAVE GOT IN YOUR OPINION WOULD THIS TRAUMA TO
20 THIS NOSE PRODUCE COPIOUS AMOUNTS OF BLOOD?

21 A. NOT SO MUCH IT WOULD RUN OUT OF THE NOSE, BUT BLOOD
22 AROUND THE NOSE, ON THE OUTSIDE, AROUND THE EYES, I
23 THINK THAT IS DEPICTED IN THE PICTURES, BUT YOU DON'T
24 OFTEN GET NOSE BLEEDS WHERE IT RUNS OUT OF THE NOSE.
25 YOU CAN, BUT THAT WOULD BE LESS FREQUENT.

1 Q. ALL RIGHT. DID SHE REPORT NOSE BLEEDS TO YOU?

2 A. SHE HAD SOME BLOOD IN HER NOSE YOU CAN SEE ON THE
3 PICTURES. I DON'T THINK THAT WAS A BIG PART OF THE
4 EXAM. IT WAS DRY BLOOD WHEN I WHEN I SAW HER THERE
5 WAS NO ACTIVE BLEEDING AND THEN I SAW AGAIN SOME BLOOD
6 AROUND THE NOSE, SOME ECCHYMOSIS, WHICH IS BRUISING,
7 WHICH IS BLOOD AROUND THE NOSE AND UNDER THE EYES.

8 Q. SO THERE WOULD HAVE BEEN NONE OF THIS COPIOUS AMOUNTS
9 OF BLEEDING PRIOR TO COMING TO THE EMERGENCY ROOM?

10 A. NOT THAT I AM AWARE OF. BUT AGAIN, THAT IS NOT USUAL
11 TO HAVE. USUALLY YOU DON'T HAVE LOTS OF BLEEDING.
12 YOU CAN, IT JUST DEPENDS ON WHETHER OR NOT THE TRAUMA
13 DISRUPTED BLOOD VESSELS. IF IT DOES, YOU WILL HAVE --
14 AND WHERE THE BLOOD VESSELS ARE. IF THE BLOOD VESSELS
15 ARE TO THE AREA INSIDE OF THE NOSE THEN IT WILL LEAK
16 OUT. IF THE BLOOD VESSELS ARE NOT THEN IT JUST FILLS
17 UP AROUND THE NOSE, THE BLOOD DOES, SO IT DEPENDS.

18 Q. AND AT NO TIME DURING THE COURSE OF THIS CASE YOUR
19 TOTAL RESPONSIBILITY WAS TO TREAT THE PATIENT AND FORM
20 AN OPINION?

21 A. ABSOLUTELY, YES, SIR.

22 Q. YOU WERE NOT ASKED TO COMPARE YOUR INJURY TO ANY
23 PHYSICAL OBJECTS OR ANYTHING LIKE THAT?

24 A. NO, SIR.

25 Q. AND BASICALLY WHAT YOU ARE TELLING ME IS THAT THIS WAS

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1 A TRAUMATIC INJURY FROM SOME SOURCE, IS THAT CORRECT?

2 A. YES, SIR, THAT IS CORRECT.

3 Q. I HATE TO MAKE YOU TALK --

4 A. NO, SIR, YOU ARE EXACTLY RIGHT, NO DOUBT ABOUT IT.

5 Q. YOUR REASONABLE SUSPICION BASED UPON YOUR EXPERIENCE
6 WAS SOMEBODY HIT HER?

7 A. YES, SIR.

8 Q. AND THAT THERE WOULD NOT HAVE BEEN A WHOLE BUNCH OF
9 BLOOD OVER HER AND ALL OVER THE CAR, ANYTHING LIKE
10 THAT?

11 A. WELL THERE CAN BE, THERE MAY OR MAY NOT HAVE BEEN.
12 YOU JUST DON'T, YOU KNOW, I DON'T KNOW WITHOUT SEEING
13 THE CAR. IT'S NOT RELEVANT TAKING CARE OF THE INJURY.
14 BUT SOMETIMES YOU HAVE A LOT OF BLOOD WITH THESE
15 INJURIES AND SOMETIMES YOU DON'T, SO THE BLEEDING IS
16 NOT RELEVANT TO THE CURE OF THE PATIENT IN THE REGARD.

17 Q. DO YOU KNOW IF SHE TOLD YOU WHETHER OR NOT SHE CHANGED
18 CLOTHES?

19 A. I CAN'T REMEMBER. I CAN'T REMEMBER.

20 MR. RUNYON: NO FURTHER QUESTIONS.

21 THE COURT: IS THERE REDIRECT?

22 REDIRECT EXAMINATION BY MR. MODICA:

23 Q. DOCTOR, CORRECT ME IF I'M WRONG, DURING THE COURSE OF
24 YOUR TESTIMONY YOU USED THE --- CONVINCED THERE WAS AN
25 ASSAULT?

1 A. I WAS, YES.

2 Q. WHAT IS DISPLACEMENT?

3 A. WELL, GENERALLY REFERS TO FRACTURES. FRACTURES IS A
4 BROKEN BONE. AND A DISPLACED FRACTURE IS A FRACTURE
5 WHERE THE BONES THAT ARE BROKEN DON'T LINE UP
6 PROPERLY. SO IF YOU BROKE YOUR ARM AND THE TWO BONES
7 ARE NOT LINES UP LIKE THEY SHOULD BE THERE ARE
8 DISPLACED FROM ONE ANOTHER. THAT'S WHAT IT MEANS. SO
9 A DISPLACED FRACTURE MEANS ESSENTIALLY THE BONES ARE
10 OUT OF ALIGNMENT. DISPLACED NASAL FRACTURES OF THE
11 BONES ARE OUT OF THEIR PROPERTY POSITION. THEY ARE
12 NOT JUST BROKEN BY THEY ARE NOW PUSHED OUT OF THEIR
13 PROPERTY LOCATION.

14 Q. WHEN A BONE IS PUSHED OUT OF ITS PROPERTY POSITION IT
15 TRAVERSE SKIN, CAPILLARIES OTHER THINGS?

16 A. IT CERTAINLY CAN TRAVERSE BLOOD VESSELS, SOFT TISSUE.
17 IT GENERALLY DOESN'T GO THROUGH THE SKIN. YOU CAN GO
18 THROUGH THE SKIN. THAT WOULD BE A DIFFERENT TYPE OF
19 FRACTURE, AN OPEN FRACTURE.

20 Q. WHEN THERE IS A DISPLACEMENT OF THE NOSE IS IT
21 POSSIBLE --- AND I KNOW YOU CAN'T SAY, YOU CAN'T SAY
22 CAN OR CANNOT, CAN THAT CAUSE MORE BLEEDING?

23 A. ABSOLUTELY.

24 Q. LAST QUESTION, DOCTOR. IS THIS KIND OF BREAK THAT YOU
25 SAW IN LISA POWELL, IS THAT PAINFUL?

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1 A. VERY PAINFUL.

2 MR. MODICA: THANK YOU.

3 THE COURT: ALL RIGHT, ANY OBJECTION TO THE RELEASE OF
4 THE WITNESS?

5 MR. MODICA: NO OBJECTION, JUDGE.

6 MR. RUNYAN: NO, JUDGE.

7 THE COURT: ALL RIGHT, SIR, YOU ARE FREE TO GO. THANK
8 YOU.

9 DR. RICHMOND: THANK YOU SO MUCH.

10 THE COURT: HAVE A GOOD DAY. ALL RIGHT, LADIES AND
11 GENTLEMEN, WE HAVE COME TO THE END OF THE BUSINESS DAY AND
12 WE WILL END OUR PROCEEDINGS NOW. WHAT I WOULD ASK YOU TO
13 DO IS TO BE BACK TOMORROW MORNING AT 9:30 IN THE JURY ROOM.

14 NOW BEFORE YOU LEAVE FOR THE DAY LET ME SAY THIS TO
15 YOU. WHEN YOU GO HOME YOUR SPOUSE OR YOUR LOVED ONES ARE
16 GOING TO SAY WHAT HAPPENED IN COURT TODAY, AND THEY ARE
17 GOING TO WANT TO DISCUSS THE FACTS OF THIS CASE, AND NOW WE
18 HAVE HEARD SOME FACTS OR SOME TESTIMONY IN THE CASE.
19 PLEASE, TELL YOUR LOVED ONES AT HOME THE COURT HAS
20 INSTRUCTED YOU NOT TO DISCUSS THE FACTS. AGAIN, THE REASON
21 I DON'T WANT SOMEONE OF INFLUENCE IN YOUR LIFE TO MAKE SOME
22 COMMENTS OUTSIDE OF THESE PROCEEDINGS THAT MAY INFLUENCE
23 YOU. TELL YOUR SPOUSE YOUR LOVES ONES THAT YOU CAN DISCUSS
24 IT WITH THEM FULLY WHEN THE CASE IS OVER BUT NOT UNTIL THAT
25 TIME. AGAIN, PLEASE DON'T UNDERTAKE YOUR OWN

1 INVESTIGATION, JUST GET A GOOD NIGHT'S SLEEP COME BACK AT
2 9:30 AND WE WILL SEE YOU AT 9:30 TOMORROW MORNING IN THE
3 JURY ROOM.

4 EVERYONE ELSE REMAIN WHERE THEY ARE WHILE OUR JURY
5 DEPARTS THE COURTROOM FOR THE EVENING. IF YOU WISH TO
6 LEAVE YOUR PADS IN THE SEAT WHERE YOU ARE WE WILL COLLECT
7 THEM AND GIVE THEM BACK TO YOU TOMORROW. HAVE A NICE
8 EVENING.

9 (WHEREUPON, THE JURY EXITS THE COURTROOM FOR THE DAY
10 AT 5:09 P.M.)

11 THE COURT: AND I WOULD ASK OUR BAILIFF IF YOU WOULD
12 PLEASE TAKE RESPONSIBILITY FOR THE PADS AND GIVE THOSE BACK
13 FIRST THING TOMORROW MORNING. IF YOU WILL JUST COLLECT THE
14 PADS, SO THEY WON'T REMAIN THERE IN THE SEATS.

15 COUNSEL, I WOULD ASK THAT YOU BE HERE TOMORROW MORNING
16 BY 9:20 IN THE EVENT THERE IS ANYTHING THAT WE NEED TO
17 DISCUSS TOMORROW MORNING. ALL RIGHT, I WANT TO WAIT UNTIL
18 THE DOOR IS CLOSED.

19 ALL RIGHT, THERE WAS AN ISSUE THAT CAME UP AT SIDEBAR
20 AND COUNSEL, I WILL GIVE YOU AN OPPORTUNITY NOW TO PLACE AN
21 OBJECTION ON THE RECORD IF YOU WISH.

22 MR. RUNYAN: JUDGE, JUST A QUICK RECAP. THE FIRST
23 SIDEBAR WAS THE, WITH THE APPROVAL OF THE COURT, WE PLACED
24 BEFORE THE COURT THE QUESTION OF THE SEIZURE OF THESE TWO
25 ITEMS THAT WERE REFERENCED IN DEPUTY CRABTREE'S TESTIMONY,

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1 I.E., A STUN GUN AND PEPPER SPRAY. WE OBJECT THERETO. IT
2 DOESN'T HAVE ANY RELEVANCE TO THE CASE. THAT WAS OUR
3 POSITION. AND THE COURT LISTENS TO OUR OBJECTION AND THEN
4 MADE THE DECISION THAT YOU WOULD ALLOW THAT IN OVER OUR
5 OBJECTION AND THAT WE WOULD AT THIS TIME PLACE IT ON THE
6 RECORD THAT YOU OVERRULED OUR OBJECTION TO THAT TESTIMONY.

7 THE COURT: ALL RIGHT. AND LET'S LET THE RECORD
8 REFLECT THAT OBJECTION WAS NOT CONTEMPORANEOUS, BECAUSE I
9 GAVE COUNSEL THE OPTION SO AS TO NOT TO DISRUPT THE FLOW OF
10 THE PROCEEDING TO WAITE UNTIL NOW TO POSE THE OBJECTION,
11 AND YOU HAVE DONE SO. MR. MODICA, IF YOU HAVE SOMETHING
12 YOU WISH TO SAY IN THE DEFENSE OF THE DECISION TO LET THE
13 EVIDENCE IN, I WOULD GLAD TO HEAR FROM YOU.

14 MR. MODICA: YOUR HONOR, WE NEED NO DEFENSE.

15 THE COURT: ALL RIGHT. LET THE COURT RESPOND TO YOU.
16 I FELT THAT BECAUSE ONE OF THE ISSUE HERE WAS WHETHER OR
17 NOT THE VICTIM WAS IN FEAR, THAT WHAT WAS IN THE POCKETS OF
18 THE ---- EXCUSE ME, WHETHER OR NOT THE VICTIM WAS IN FEAR
19 OF WHAT WAS IN THE POCKETS OF THE DEFENDANT WOULD BE
20 RELEVANT ON THAT ISSUE, AND CERTAINLY COULD BE PROBATIVE.
21 THAT DEPENDS ON WHETHER THE JURY WHAT WEIGHT THEY GIVE TO
22 IT. BUT I FELT THAT GIVEN THE ISSUES IT WAS APPROPRIATE TO
23 LET THE TESTIMONY IN. I DID NOT FEEL LIKE THIS ROSE TO THE
24 EVIDENCE OF SOME OTHER CRIME. THERE WAS NOT A RESISTING OF
25 ARREST. THERE WAS NO EVIDENCE THAT IT IS ILLEGAL TO

1 POSSESS THOSE SUBSTANCES OR DEVICES. FOR THOSE REASONS, I
2 FELT IT WAS NOT SOMETHING THAT WOULD AS A MATTER OF LAW
3 PREJUDICE THE DEFENDANT AND THAT IT WOULD BE APPROPRIATE TO
4 BE ADMITTED.

5 MR. RUNYAN: AND FOR THE RECORD, JUDGE, OUR OBJECTION
6 WAS TOTALLY AS TO RELEVANCE SINCE THIS WAS A SEIZURE
7 INCIDENT TO A LAWFUL ARREST AT THE TIME AND WE WERE NOT
8 OBJECTING TO ANY SEARCH THEREIN.

9 THE COURT: ALL RIGHT, VERY GOOD. THEN THAT IS SO
10 NOTED. COUNSEL, WE'LL SEE YOU TOMORROW AT 9:20. THIS
11 COURT WILL BE IN RECESS UNTIL 9:30.

12 MR. MODICA: THANK YOU, YOUR HONOR.

13 (WHEREUPON, THE DAY WAS CONCLUDED AT 5:09 P.M. ON
14 FEBRUARY 27, 2007.)

1 (WHEREUPON, DAY TWO OF THIS TRIAL BEGAN AT 9:33 A.M.
2 ON FEBRUARY 28, 2007.)

3 THE COURT: ALL RIGHT, WE'RE READY TO GO.

4 MR. MODICA: YOUR HONOR, THE REASON WHY I ASK BEFORE
5 THE JURY COMES OUT, IS BECAUSE WHEN THE JURY CAME OUT I WAS
6 GOING TO REST, SO I FIGURED WE WOULD DO SOME PROCEDURAL
7 THINGS NOW, ANY MOTIONS HE MIGHT HAVE, YOU KNOW, SO DON'T
8 HAVE THE JURY COME --

9 THE COURT: PULL THAT MICROPHONE A LITTLE CLOSE SO I
10 CAN HEAR YOU BETTER PLEASE. MR. HOWARD, COUNSEL, SIR,
11 PLEASE, I AM TRYING TO LISTEN OVER HEAR. IF YOU COULD HOLD
12 DOWN THE CONVERSATION, THANK YOU. EXCUSE ME, DID YOU NOT
13 HEAR ME?

14 MR. HOWARD: YES, SIR, I'M SORRY JUDGE.

15 THE COURT: YOUR HONOR, WHAT I WAS SAYING IS THAT WHEN
16 THE JURY CAME OUT I WAS GOING TO REST IN FRONT OF THE JURY.
17 RATHER THAN REST IN FRONT OF THE JURY AND HAVE THEM GO BACK
18 OUT I THOUGHT THAT IT MIGHT BE A GOOD IDEA TO HANDLE SOME
19 OF THE MOTIONS IN REGARD TO THE DEFENDANT IN TERMS OF
20 TESTIFYING AND ACCOMPLISH ALL THOSE THINGS. THANK YOU,
21 YOUR HONOR.

22 THE COURT: ALL RIGHT. THANK YOU, COUNSEL. I AM
23 ADVISED THEN THAT STATE INTENDS TO REST AND LET ME FIRST
24 ASK MR. RUNYAN, DO YOU INTEND TO PUT UP A CASE?

25 MR. RUNYAN: YOUR HONOR, AT THIS POINT AND TIME JUST

1 FOR THE RECORD TO MAKE IT VERY CLEAR, MR. HOWARD IS
2 CHOOSING HIS RIGHT TO TESTIFY.

3 THE COURT: ALL RIGHT, VERY GOOD.

4 MR. RUNYAN: THAT'S HIS RIGHT AND THAT IS HIS CHOICE
5 AND WE ARE GOING TO PUT THAT ON THE RECORD AS IT RELATES TO
6 --- OBVIOUSLY I THINK WE CAN, FOR HOUSEKEEPING PURPOSES WE
7 SHOULD TAKE THE MOTIONS SINCE IT IS MORE ECONOMICAL TO DO
8 IT WITHOUT THE JURY PRESENT. AND THESE MOTIONS WERE MADE
9 FOR PURPOSE WITH THE KNOWLEDGE THAT THE STATE HAS CHOSEN
10 NOT TO CALL ANY OTHER WITNESS AND, IN FACT, RESTED, BUT
11 THEY WILL REST BEFORE THE JURY FORMALLY.

12 WE WOULD MOVE AT THIS TIME FOR THE COURT TO DISMISS
13 THIS CASE ON THE GROUNDS THAT THE STATE HAS FAILED TO PROVE
14 A PRIMA FACIE CASE OF AGGRAVATED ASSAULT. THE SUPREME
15 COURT REQUIRES US TO MAKE THOSE MOTIONS. I ALSO RECOGNIZE
16 THAT THE STATED TESTIMONY NO MATTER WHAT THE QUALITY OF THE
17 TESTIMONY IS THE STATED TESTIMONY FROM THE COMPLAINING
18 WITNESS IS CONTRADICTORY BUT BASICALLY SHE HAS LAID OUT
19 CERTAIN FACTS WHICH SHE SAYS NOW IS TRUE, BUT WE STILL MADE
20 THAT MOTION AND RESERVE OUR RIGHTS ON THE RECORD FOR ANY
21 APPEAL.

22 NOW HAVING SAID THAT JUDGE, WE WOULD RENEW OUR MOTIONS
23 FOR A MISTRIAL AT THIS POINT IN TIME ON THE GROUNDS THAT
24 THE STATE'S CHIEF WITNESS RAISED THE ISSUE OF MARIJUANA
25 POSSESSION AND SELL, ACTUALLY NOT JUST POSSESSION BUT SALE.

1 SHE RAISED THE ISSUE OR INFERENCE OF MURDEROUS THOUGHTS ON
2 BEHALF OF THIS DEFENDANT, AND SHE ALSO RAISED THE ISSUE OF
3 SUBORNATION OF NOT SUBORNATION OF PERJURY, OF CONSPIRACY TO
4 OBSTRUCT JUSTICE.

5 THE COURT: BUT COUNSEL, LET ME STOP YOU. CONSPIRACY,
6 I BELIEVE, THIS IS YOUR TERM WAS NOT BROUGHT TO THE JURY
7 BECAUSE I SUSTAINED YOUR MOTION TO PREVENT THAT TESTIMONY.

8 MR. RUNYAN: I UNDERSTAND THAT, JUDGE. I AM JUST
9 TRYING TO MAKE THE RECORD THAT WE MADE A TIMELY MOTION, THE
10 COURT RULED, BUT I THINK THE WEIGHT OF HER TESTIMONY KIND
11 OF POINTED IN A DIRECTION OF, SOMEONE TOLD ME TO SAY THIS.
12 I JUST THINK IT'S AN AGGREGATION OF BOTH ALLEGATIONS OF
13 CRIMINAL CONDUCT, OR PERHAPS CONFLICT OF CRIMINAL CONDUCT
14 AS WELL AS SUSPICIOUS CIRCUMSTANCES THAT LEAD US TO THE
15 POINT WHERE I'M NOT SURE THAT WE CAN SAY TO THE JURY,
16 PARTICULARLY IN A CASE LIKE THIS, JUDGE, WHERE AT THIS
17 POINT AND TIME YOU HAVE GOT A LOT OF DIRECT TESTIMONY FROM
18 THE CHIEF WITNESS BUT YOU ALSO HAVE A LOT OF CIRCUMSTANTIAL
19 EVIDENCE THAT MAY OR MAY NOT BE WEIGHED BY THE JURY FOR OR
20 AGAINST THE DEFENDANT. AND I WOULD RESPECTFULLY RENEW MY
21 MOTIONS FOR A MISTRIAL AS I MADE PREVIOUSLY DURING THE
22 COURSE OF THE TRIAL.

23 THE COURT: ALL, RIGHT. AND WE'LL HEAR FROM THE
24 RESPONSE FROM MR. MODICA WITH REGARD TO YOUR POSITION
25 BEFORE I RULE.

1 MS. BIAGIANTI: YOUR HONOR, I CAN SPEAK FOR MR.
2 MODICA THAT THE STATE DOES NOT HAVE A POSITION. I THINK
3 YOU HAVE ALREADY RULED ON THAT.

4 THE COURT: ALL RIGHT. AND WHAT IS YOUR POSITION ON
5 HIS DIRECTED VERDICT MOTION?

6 MS. BIAGIANTI: ON THE DIRECTED VERDICT MOTION, YOUR
7 HONOR, THE VICTIM, LISA POWELL, HAS GIVEN TESTIMONY TO THE
8 FACT THAT SHE WAS ASSAULTED BY THE DEFENDANT AND THAT IS
9 ENOUGH FOR IT GO TO THE JURY.

10 THE COURT: ALL RIGHT, MR. RUNYAN, I AM GOING TO DENY
11 BOTH OF MOTIONS FOR THE FOLLOWING REASONS. FIRST, THE
12 ISSUE AT THE DIRECTED VERDICT STAGE IS WHETHER THE EVIDENCE
13 BEFORE THE COURT, BEFORE THE JURY, WOULD SUPPORT FINDING OF
14 GUILT OF WHETHER THERE IS SUFFICIENT EVIDENCE TO SUPPORT A
15 FINDING OF GUILT AGAINST THE DEFENDANT. I FIND THAT THERE
16 IS SUFFICIENT EVIDENCE. NOW WHAT THE JURY WILL DETERMINE
17 FROM THAT EVIDENCE IS THEIR DETERMINATION. BUT AS FAR AS
18 THIS CASE GOING FORWARD, THERE IS SUFFICIENT EVIDENCE BOTH
19 FROM THE COMPLAINING WITNESS AS WELL AS THE PHYSICIAN'S
20 SUPPORTIVE TESTIMONY TO WHAT THE COMPLAINING WITNESS
21 TESTIFIED OF. FOR THESE REASONS I AM GOING TO DENY YOUR
22 DIRECTIVE VERDICT MOTION.

23 THE NEXT ISSUE IS WHETHER OR NOT YOU ARE ENTITLED TO A
24 MISTRIAL. WE HAD THIS DISCUSSION YESTERDAY. I NOW REVISIT
25 IT WITH YOU AT THE END OF ALL THE EVIDENCE AND AGAIN, DENY

1 THAT MOTION. FIRST OF ALL, YOUR CLAIM OF SUBORNATION OR
2 PERJURY, IF YOU WISH TO CALL IT THAT OR CONSPIRACY NEVER
3 REALLY GOT TO THE JURY. THAT MOTION THAT YOU MADE TO
4 PREVENT THE TESTIMONY ON THE GROUNDS OF HEARSAY WAS
5 SUSTAINED. NOW WHETHER THERE IS SOME INFERENCE WITHIN
6 THESE FACTS, WELL THAT'S UP FOR THE JURY TO DETERMINE BUT
7 THE COURT DID NOT ALLOW THAT TESTIMONY IN AND THEREFORE IT
8 WOULD NOT AN APPROPRIATE GROUND FOR MISTRIAL.

9 AS TO THE ALLEGATION OF MARIJUANA, AS WELL AS THE
10 ALLEGATION OF THE INTENTION OF MR. HOWARD, THE COURT GAVE A
11 BRIEF CURATIVE INSTRUCTION, DID NOT BELIEVE THAT IT ROSE TO
12 THE LEVEL THAT WOULD REQUIRE A MISTRIAL OR THAT IT EVEN
13 SOME HOW POISONED HER TAINTED THESE PROCEEDINGS. I THINK
14 SIMPLY THAT WAS EVIDENCE THAT THE WITNESS GAVE ABOUT WHAT
15 HER PRESENT SINCE IMPRESSION AND BELIEFS WERE, AND THE
16 COURT DOES NOT BELIEVE A MISTRIAL WOULD BE APPROPRIATE
17 UNDER THOSE CIRCUMSTANCES.

18 NOW I DID OFFER YOU THE OPPORTUNITY TO BRING IN THIS
19 MORNING A FURTHER CURATIVE INSTRUCTION AND I HAVE NOT SEEN
20 SUCH A DOCUMENT THIS MORNING. IT MAY BE YOUR POSITION THAT
21 YOU DON'T HAVE ONE OR THAT YOU DON'T BELIEVE IT WOULD BE OF
22 ANY BENEFIT TO YOU. BUT I WOULD NOTE FOR OUR RECORD THAT
23 THERE HAS BEEN NO SUCH CURATIVE INSTRUCTION PROVIDED TO ME.

24 MR. RUNYAN: JUDGE, FOR THE RECORD, AND WE APPRECIATE
25 THE COURT OFFERING US THAT OPPORTUNITY, BUT RESEARCHING

1 LAST NIGHT AND ACTIVELY CONSIDERING FROM A TACTICAL
2 STRATEGIC POINT, I THINK NUMBER ONE WE HAD TO ACKNOWLEDGE
3 TO THE COURT AT THAT POINT IN TIME MADE A CURATIVE
4 INSTRUCTION AND YOU ADMONISHED THE JURY TO DISREGARD THAT
5 AND I THINK AT THIS STAGE OF THE GAME IF WE OFFERED AND
6 ASKED FOR AND TOOK THE COURT UP ON ITS OFFER ALL WE WOULD
7 BE DOING IS CALLING THE JURY ATTENTION BACK TO THE ISSUES
8 SO THEREFORE WE RESPECTFULLY DECLINED ALTHOUGH GRATEFULLY
9 DECLINE TO ASK THE COURT TO GIVE A FURTHER CURATIVE
10 INSTRUCTION.

11 THE COURT: AND IT IS THEREFORE THEN YOUR REQUEST THAT
12 THE COURT NOT MENTION IT FURTHER IN RENEWING OR GIVING THE
13 COURT'S FURTHER CURATIVE INSTRUCTIONS?

14 MR. RUNYAN: THAT, IS CORRECT YOUR HONOR.

15 THE COURT: ALL RIGHT, VERY GOOD.

16 MR. RUNYAN: THE BELL HAS BEEN RUNG AND I THINK THAT
17 THE TONE HAS KIND OF FADED AND NO SINCE RINGING IT AGAIN.

18 THE COURT: ALL RIGHT, FOR THOSE REASONS THEN THE
19 COURT WILL NOT FURTHER ADDRESS THAT ISSUE AT ANY TIME WITH
20 THE JURY TODAY.

21 NOW, MR. HOWARD, LET ME SPEAK WITH YOU A MOMENT, SIR.
22 IF YOU WOULD KINDLY STAND, LET'S PLACE YOU UNDER OATH
23 AGAIN. IF YOU WILL FOLLOW OUR CLERK'S INSTRUCTIONS.

24 STACEY HOWARD,

25 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS:

1 THE COURT: MR. HOWARD, GOOD MORNING. YOU HAVE HEARD
2 THAT THE STATE IS GETTING READY TO REST WHEN THE JURY COMES
3 IN THIS MORNING, WHICH MEANS IT IS NOW TIME FOR THE DEFENSE
4 TO PUT A CASE IF YOU WISH TO DO SO. MR. RUNYAN ADVISES ME
5 THAT YOU INTEND TO TESTIFY.

6 MR. HOWARD: YES, SIR.

7 THE COURT: AND I WANT TO DISCUSS WITH YOU YOUR RIGHTS
8 ABOUT TESTIFYING AND ABOUT REMAINING SILENT AND MAKING SURE
9 YOU THAT YOU UNDERSTAND. YOU AND I HAVE THE SAME
10 UNDERSTANDING ABOUT THESE RIGHTS. FIRST OF ALL, HAS MR.
11 RUNYAN, DISCUSSED WITH YOU THE FACT THAT YOU HAVE THE RIGHT
12 TO REMAIN SILENT IN THIS PROCEEDING?

13 MR. HOWARD: YES, SIR.

14 THE COURT: AND HAS HE TOLD YOU THAT YOU DO NOT HAVE
15 TO TESTIFY IN THIS CASE?

16 MR. HOWARD: YES, SIR.

17 THE COURT: PLEASE SPEAK UP SO I CAN HEAR YOU.

18 MR. HOWARD: YES, SIR.

19 THE COURT: DO YOU UNDERSTAND THAT UNDER OUR U.S. AND
20 SOUTH CAROLINA CONSTITUTIONS, YOUR RIGHT TO REMAIN SILENT
21 IS A PARAMOUNT RIGHT? IT CANNOT BE TAKEN AWAY FROM YOU AND
22 IF DECIDE TO REMAIN SILENT THE COURT WILL INSTRUCT THE JURY
23 THAT THEY CANNOT HOLD THAT AGAINST YOU IN ANY WAY AND
24 SHOULD NOT EVEN MENTION THAT IN THE JURY ROOM BECAUSE YOU
25 HAVE A CONSTITUTIONAL RIGHT TO REMAIN SILENT AND DO YOU

1 UNDERSTAND THAT?

2 MR. HOWARD: YES, SIR.

3 THE COURT: NOW IS THE SAME THING I JUST TOLD YOU
4 ABOUT YOUR RIGHT TO REMAIN SILENT, IS THAT THE SAME AS MR.
5 RUNYAN TOLD YOU?

6 MR. HOWARD: NO, SIR. HE DIDN'T EXPLAIN THE ISSUES
7 TO ME. I WOULDN'T BRING THIS TO THE COURT --

8 THE COURT: I CAN'T UNDERSTAND YOU.

9 MR. HOWARD: HE HASN'T EXPLAINED THIS PART OF THE
10 DEFENSE TO ME AND I WANT TO BRING THAT TO THE ATTENTION OF
11 THE COURT AS FAR AS WHAT I FEEL THE ATTORNEY THAT MY
12 ATTORNEY AND HIS MALFEASANCE. I WANT TO EXPLAIN IT TO THE
13 COURT. I HAVE READ UNDER CANON THREE --

14 THE COURT: I AM GOING TO STOP YOU THERE. I AM GOING
15 TO STOP YOU THERE. BECAUSE LET ME CONTINUE WITH MY
16 QUESTIONS. PULL YOUR MICROPHONE BACK TO YOU, SO WE CAN
17 HEAR YOU A LITTLE BETTER IN THE COURTROOM. THANK YOU.

18 NOW, BEFORE WE GO FURTHER ABOUT WHAT MR. RUNYAN DID OR
19 DID SAY TO YOU, LET ME CONTINUE TALKING WITH YOU ABOUT YOUR
20 RIGHTS. AT THIS POINT IN THE TRIAL YOU ALSO HAVE THE RIGHT
21 TO TESTIFY. DO YOU UNDERSTAND THAT?

22 MR. HOWARD: YES, SIR.

23 THE COURT: ALL RIGHT. AND IF YOU DECIDE TO TESTIFY
24 IF YOU TAKE THE STAND OF COURSE YOU WILL BE SUBJECT TO
25 DIRECT EXAMINATION BY YOUR OWN ATTORNEY BUT ALSO IN THE

1 PRESENCE IN THE JURY CROSS EXAMINATION BY THE STATE. DO
2 YOU UNDERSTAND THAT?

3 MR. HOWARD: YES, SIR.

4 THE COURT: AND WHAT YOU SAY MAY BE USED AGAINST YOU
5 OR FOR YOU DEPENDING ON HOW THE JURY PROCEEDS IT. THAT IS
6 THE JURY'S DECISION. DO YOU UNDERSTAND THAT?

7 MR. HOWARD: YES, SIR.

8 THE COURT: IF YOU TAKE THE STAND AND IF YOU HAVE SOME
9 PRIOR CRIMINAL RECORD THAT WOULD BEAR ON YOUR CREDIBILITY
10 AND BELIEVABILITY AS A WITNESS, THAT RECORD MAY COME INTO
11 EVIDENCE ON THE ISSUE OF CREDIBILITY OR BELIEVABILITY. DO
12 YOU UNDERSTAND THAT?

13 MR. HOWARD: YES, SIR.

14 THE COURT: ALL RIGHT, SO, DO YOU UNDERSTAND THEN THAT
15 YOU HAVE THE RIGHT TO TESTIFY AND THAT THERE MAY BE
16 BENEFITS TO THAT AND THERE MAY BE RISKS ASSOCIATED WITH
17 THAT TO YOU. DO YOU UNDERSTAND THAT, SIR?

18 MR. HOWARD: TO AN EXTENT.

19 THE COURT: ALL RIGHT. AND DO YOU HAVE ANY QUESTIONS
20 NOW ABOUT YOUR RIGHT TO REMAIN SILENT WHICH I HAVE
21 DISCUSSED WITH YOU AS WELL AS YOUR RIGHT TO TESTIFY?

22 MR. HOWARD: I HAVE A FEW QUESTIONS IN REGARDS TO MY
23 ATTORNEY, BUT I WOULD LIKE TO ADDRESS THE COURT ABOUT
24 ATTORNEY MISCONDUCT.

25 THE COURT: WELL, WHAT I WILL DO I'LL GIVE YOU AN

1 OPPORTUNITY AFTER THIS --- WHEN THE JURY IS OUT AND IF YOU
2 WISH TO HAVE A DISCUSSION ABOUT ATTORNEY MISCONDUCT AS YOU
3 CALL IT, THIS IS YOUR TERM, I WILL LET YOU HAVE A STATEMENT
4 THEN. I'LL GIVE MR. RUNYAN AN OPPORTUNITY TO RESPOND AT
5 THAT TIME. BUT RIGHT NOW I WANT TO FOCUS ON YOUR RIGHT TO
6 REMAIN SILENT, OR YOUR RIGHT TO TESTIFY.

7 MR. HOWARD: YES, SIR. ONE POINT, OF THAT MATTER IS
8 HOW HE IS GOING TO DIRECT MY TESTIMONY AT TRIAL BECAUSE HE
9 HAS NOT SPOKEN WITH ME IN REGARDS TO MY TESTIMONY. I WROTE
10 HIM A LETTER AND HE HAS NEVER CONVERSED WITH ME REGARDING
11 MY TESTIMONY. HE DIDN'T SPEAK WITH MY WITNESSES OR
12 INTERVIEW MY WITNESSES. ONE OF MY WITNESSES WAS SENT TO
13 THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS YESTERDAY. HE
14 COULD OF DISCUSSED WITH THAT WITNESS. THAT WITNESS COULD
15 HAVE IMPEACHED LISA POWELL, SHE WAS HER YESTERDAY. HE
16 ALLOWED THAT WITNESS TO -- HE --- THE WITNESS --

17 THE COURT: ALL RIGHT, MR. HOWARD, YOU VEERED OFF
18 POINT AGAIN, SIR. AGAIN, I NEED TO FOCUS ON YOUR RIGHT TO
19 REMAIN SILENT, OR YOUR RIGHT TO TESTIFY. AND I WILL GIVE
20 YOU AN OPPORTUNITY IF YOU HAVE SOME ISSUES OR COMPLAINS
21 CONCERNS ABOUT YOUR ATTORNEY AT A LATER TIME --

22 MR. HOWARD: -- ALL RIGHT, SIR.

23 THE COURT: -- TO ADDRESS THOSE.

24 MR. HOWARD: ALL RIGHT, SIR.

25 THE COURT: BUT DO YOU HAVE QUESTIONS ABOUT YOUR RIGHT

1 TO TESTIFY, AND YOUR RIGHT TO REMAIN SILENT?

2 MR. HOWARD: YES, SIR, I HAVE A QUESTION FOR MY
3 ATTORNEY. HOW IS HE GOING TO DIRECT MY TESTIMONY WHEN HE
4 DOESN'T KNOW, WHAT I AM GOING TO SAY. BECAUSE WHEN YOU GO
5 TO A JOB YOU GOTTA KNOW WHAT YOU'RE GOING TO PERFORM ON
6 THAT JOB, SO HE DOES NOT KNOW WHAT HE IS GOING TO BRING OUT
7 FROM THIS STAND TODAY.

8 THE COURT: ALL RIGHT, MR. HOWARD --

9 MR. HOWARD: -- AND FROM THE LAST TIME, YOUR HONOR, I
10 GOT A CONTEMPT OF COURT CHARGE FROM YOU BECAUSE I HAD TO
11 TESTIFY THINGS THAT MY ATTORNEY DID NOT KNOW HOW TO DRAW
12 OUT SO I HAD TO TESTIFY TO THE BEST OF MY ABILITY TO LET
13 THIS COURT KNOW THE FACTS OF THE CASE.

14 THE COURT: I AM GOING TO STOP YOU THERE, MR. HOWARD.
15 HOW YOUR TESTIMONY, IS TO BE DIRECTED IS A MATTER THAT YOU
16 AND YOUR ATTORNEY WILL DISCUSS AND I WILL GIVE YOU AN
17 OPPORTUNITY TO DO THAT AFTER WE FINISH THIS PROCEEDING.
18 BUT NOW I WANT TO ASK YOU DO YOU UNDERSTAND YOUR RIGHT TO
19 REMAIN SILENT AND YOUR RIGHT TO TESTIFY?

20 MR. HOWARD: YES, SIR.

21 THE COURT: ALL RIGHT, THEN.

22 MR. HOWARD: I UNDERSTAND, I UNDERSTAND MY RIGHT TO
23 REMAIN SILENT. BUT I ALSO KNOW THAT I HAVE BEEN SURPRISED
24 BY THE DISCOVERY RULE 5. I DON'T KNOW ANYTHING --

25 THE COURT: MR. HOWARD, YOU CONSISTENTLY SIR, CONTINUE

1 TO TALK WHEN I'M TELLING YOU THAT YOU AND I ARE TALKING
2 ABOUT YOUR RIGHTS TO REMAIN SILENT AND YOUR RIGHT TO
3 TESTIFY. DO NOT, SIR, CONTINUE. WE WILL GIVE YOU AN
4 OPPORTUNITY WHEN THE JURY IS NOT SITTING IN THE JURY ROOM
5 WAITING. I AM TRYING TO BE COURTESY TO THE JURY.

6 MR. HOWARD: YES, SIR.

7 THE COURT: AND I AM TELLING YOU NOW THAT WHAT WE ARE
8 CONFINING THIS DISCUSSION TO IS YOUR RIGHT TO TESTIFY AND
9 YOUR RIGHT TO REMAIN SILENT. THE COURT FINDS, AS A MATTER
10 OF RECORD AND THE RECORD WILL REFLECT THAT MR. HOWARD AND I
11 HAVE HAD A DISCUSSION ABOUT HIS RIGHTS. THAT HE FULLY
12 UNDERSTANDS HIS RIGHT TO TESTIFY AS WELL AS HIS RIGHT TO
13 REMAIN SILENT. AND MR. HOWARD, THE FINAL QUESTION I HAVE
14 FOR YOU, SIR, IS DO YOU INTEND TO TESTIFY?

15 MR. HOWARD: YES, SIR, I DO.

16 THE COURT: AND IS THIS A DECISION THAT YOU HAVE MADE
17 YOURSELF?

18 MR. HOWARD: I HAVE BEEN FORCED BECAUSE OF THE
19 INEFFECTIVENESS OF COUNSEL TO TESTIFY.

20 THE COURT: ALL RIGHT, SIR. AND I AM TELLING YOU
21 THOUGH THAT YOU ARE NOT REQUIRED TO TESTIFY HERE AND I DO
22 NOT WISH FOR YOU TO DO ANYTHING UNDER DURESS. DO YOU NEED
23 FURTHER TIME TO DISCUSS THIS MATTER WITH YOUR ATTORNEY?

24 MR. HOWARD: YES, SIR, I DO.

25 THE COURT: ALL RIGHT, SIR. THEN WE'LL STAND DOWN FOR

1 A FEW MOMENTS AND GIVE YOU THAT OPPORTUNITY. WE'LL SEND A
2 MESSAGE TO THE JURY THAT WE WILL BE WITH THEM MOMENTARILY.
3 WE ARE GOING TO STAND DOWN FOR FIVE MINUTES WHILE YOU HAVE
4 THAT DISCUSSION.

5 THE COURT: ALL RIGHT, PLEASE, TELL OUR JURY THAT WE
6 WILL BE WITH THEM IN FIVE TO TEN MINUTES. THANK YOU.

7 (WHEREUPON, A BRIEF RECESS IS TAKEN FOR MR. HOWARD
8 AND MR. RUNYAN TO HAVE A DISCUSSION AT 9:50 A.M. UNTIL
9 10:00 A.M.)

10 THE COURT: NOW I NOTE THAT YOU ARE STANDING, MR.
11 RUNYAN. DO YOU HAVE SOMETHING THAT YOU WISH TO SAY?

12 MR. RUNYAN: YES, YOUR HONOR. I DID NOT REALIZE THAT
13 MR. MODICA WASN'T --

14 THE COURT: I'M SURE THEY WILL JOIN US SHORTLY.

15 MR. RUNYAN: OKAY.

16 THE COURT: GO AHEAD.

17 MR. RUNYAN: YOUR HONOR, IN RECORDS FROM THE
18 GEORGETOWN COUNTY JAIL REFLECTS, AND THE SHERIFF'S OFFICE
19 REFLECTS MY PRESENCE IN GEORGETOWN COUNTY JAIL ON FEBRUARY
20 14, TO MEET WITH MR. HOWARD ABOUT THIS MATTER. SO TO
21 SUGGEST THAT WE HAVEN'T DONE THE APPROPRIATE INVESTIGATION
22 AND THE APPROPRIATE CONVERSATIONS IS NOT ACCURATE.

23 IN ADDITION TO THAT FOR THE RECORD THERE WAS EXTENSIVE
24 COMMUNICATION, CONVERSATION AND DISCUSSION OF EVIDENCE
25 YESTERDAY BEFORE THIS CASE WAS BROUGHT TO TRIAL AND BECAUSE

1 THE COURT HAS ALREADY PUT ON THE RECORD THE FACT THERE WAS
2 AN OFFER AND WITHDRAWN IF THE JURY WAS DRAWN, ETCETERA. SO
3 INsofar AS WHETHER OR NOT THERE HAVE BEEN ANY INVESTIGATION
4 OR WHAT HAVE YOU, I WILL JUST LET THE RECORD SPEAK FOR
5 ITSELF.

6 IN ADDITION TO THAT JUDGE, I THINK THE RECORD WILL
7 REFLECT, AND I DON'T MIND PUTTING ON THE RECORD SINCE HE
8 RAISED THE ISSUE. HE CHOSE NOT TO BRING WITNESSES IN HERE
9 WHO HAD SOME ASSOCIATION WITH DRUGS QUITE FRANKLY, JUDGE.
10 MERELY TO SAY THAT LISA POWELL LIED AND THE REASON FOR THAT
11 IS VERY SIMPLY. BECAUSE LISA POWELL GOT ON THE STAND AND
12 ADMITTED SHE LIED AND AS A MATTER OF FACT IN OPENING
13 STATEMENT THE STATE SAID THAT LISA POWELL LIED SO WE DON'T
14 NEED TO MUDDY UP THE WATERS WITH A SWIRL OF DRUG ACTIVITY
15 AROUND POTENTIAL VIEW OF DRUG ACTIVITY AROUND MR. HOWARD.
16 AND THAT IS WHAT I AM GOING TO SAY ABOUT THAT.

17 NOW MR. HOWARD HAS REQUESTED AND I WILL MOVE BEFORE
18 THE COURT TO LIMIT THE MOTION IN LIMINE TO PREVENT THE
19 STATE FROM BRINING UP HIS PRIOR CONVICTION FOR AGGRAVATED
20 ASSAULT ON THIS ONE AND SAME PERSON. HIS POSITION IS
21 BECAUSE HE READS THE LAW, HIS POSITION IS THAT HE THINKS
22 THAT IT IS A BALANCING TEST WHEREIN THE PREJUDICIAL VALUE
23 OUTWEIGHS THE PROBATIVE VALUE. I DO NOT AGREE WITH THAT
24 POSITION. ALTHOUGH, I AM SUBMITTING IT FOR THE RECORD FOR
25 THE COURT TO RULE ON. MR. HOWARD, UNFORTUNATELY DOES NOT

1 UNDERSTAND THE VARIOUS RULES BOTH IN OUR BASIC RULE AND
2 LYLE, AND WHAT HAVE YOU IS ALL KIND OF COMBINED AND
3 ASSOCIATES WITH THE SAME MATERIAL QUESTIONS IN A THE
4 FEDERAL COURT SYSTEM. IT'S A FAIRLY SIMPLE RULE AND IN
5 THIS CASE I CAN OBJECT AND I WOULD LIKE TO PUT THE
6 OBJECTION ON THE RECORD NOW THAT MR. MODICA ASKING HIM
7 ABOUT THAT PRIOR CONVICTION BUT ON THE OTHER HAND I
8 UNDERSTAND WHAT THE RULING OF THE COURT WILL BE.

9 THE COURT: ALL RIGHT. AND COUNSEL, LET ME ASK YOU,
10 IS -- AND I REALIZE WE'VE NOT HAD THIS TESTIMONY, IT'S
11 GETTING READY TO OCCUR BUT IS THE POSITION OF THE DEFENDANT
12 GOING TO BE THAT THE WITNESS STRUCK THE DASHBOARD?

13 MR. RUNYAN: I BEG YOUR PARDON?

14 THE COURT: IS THE POSITION OF THE DEFENDANT GOING TO
15 BE THAT THE WITNESS DID, IN FACT, STRIKE THE DASHBOARD?
16 THAT THE COMPLAINING WITNESS STRUCK THE DASHBOARD OF THE
17 VEHICLE AND WAS INJURED IN THAT FASHION?

18 MR. RUNYAN: YES, YOUR HONOR.

19 THE COURT: ALL RIGHT, NOW MR. MODICA, TELL ME WHAT
20 PRIORS THAT YOU HAVE THAT YOU WOULD INTEND TO PUT IN IF MR.
21 HOWARD TAKES THE STAND?

22 MR. MODICA: A CONVICTION IN 1992 FOR BURGLARY IN THE
23 THIRD DEGREE WHICH HE RECEIVED A YOASUSPENDED ON
24 PROBATION. RECEIVING STOLEN GOODS IN 1992. BOTH OF THOSE
25 ARE JULY 31 OF '92. CRIMINAL SEXUAL CONDUCT WITH A MINOR.

1 SECOND DEGREE, NOVEMBER 13, 1992 IN WHICH HE RECEIVED A
2 SENTENCE OF SEVEN YEARS SUSPENDED TO THREE YEARS ACTIVE
3 TIME AND FIVE YEARS PROBATION. ASSAULT AND BATTERY OF A
4 HIGH AND AGGRAVATED NATURE IN 1995 IN WHICH HE RECEIVED A
5 FOUR YEAR SENTENCE.

6 THE COURT: AND WHO IS THE VICTIM IN THAT CASE, DO YOU
7 KNOW?

8 MR. MODICA: I DON'T KNOW.

9 THE COURT: ALL RIGHT. KEEP GOING IF THERE ARE
10 OTHERS.

11 MR. MODICA: THEN THE ASSAULT AND BATTERY OF A HIGH
12 AND AGGRAVATED NATURE AS IT RELATES TO LISA POWELL, THE
13 VICTIM IN WHICH THE SENTENCING DATE WAS APRIL 22, 2004. IN
14 WHICH HE RECEIVED FIVE YEARS SUSPENDED TO FIVE AND HALF
15 MONTHS SERVED AND TWO YEARS PROBATION. AND THEN THE
16 CONVICTION INVOLVING HIS MOTHER IN WHICH THE START DATE WAS
17 DECEMBER 28, 2004 IN WHICH HE WAS CONVICTED OF ASSAULT AND
18 BATTERY OF A HIGH AND AGGRAVATED NATURE AND GOT TEN YEARS
19 SUSPENDED UPON THE SERVICE OF TWO YEARS AND TWO YEARS
20 PROBATION.

21 THE COURT: ALL RIGHT. TELL ME, MR. RUNYAN, WHICH OF
22 THOSE FROM THAT LIST OF CONVICTION DO YOU BELIEVE ARE
23 EITHER NOT ADMISSIBLE OR NOT APPROPRIATE TO OUR CLIENT'S
24 POSITION?

25 MR. RUNYAN: JUDGE, I THINK EVERYTHING BEFORE THE

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1 LISA POWELL CONVICTION AND THE MOTHER'S CONVICTION BEYOND
2 TEN YEARS SHOULD THEREFORE BE EXCLUDED.

3 THE COURT: ALL RIGHT, LET ME STOP YOU RIGHT THERE.
4 LET'S GO BACK TO THE '92. THERE WAS A CSC IN '92 WHICH YOU
5 SAID WAS A SEVEN YEAR SENTENCE?

6 MR. MODICA: WELL, CHRONOLOGICALLY, YOUR HONOR, THERE
7 WAS A BURGLARY THIRD AND RECEIVING STOLEN GOODS.

8 THE COURT: ALL RIGHT, STOP RIGHT THERE. HOW DO YOU
9 BRING THOSE TWO WITHIN THE TEN YEARS, COUNSEL?

10 MR. MODICA: WELL FOR TWO REASONS. ONE IT WAS TOLLED
11 BY THE AMOUNT OF TIME HE SERVED IN THE JAIL.

12 THE COURT: AND WHEN WAS THAT?

13 MR. MODICA: WHEN DID HE SERVE TIME IN JAIL?

14 THE COURT: WELL I NEED TO KNOW WHEN HE GOT OUT ON
15 THOSE CHARGES?

16 MR. MODICA: I ACTUALLY HAVE BOBBY JONES HERE WHO GOT
17 HIS RECORDS FROM THE DEPARTMENT OF CORRECTIONS WHO CAN
18 INDICATE WHEN HE WENT IN AND WENT OUT OF JAIL TO HELP ME
19 TOTAL TEN YEAS.

20 THE COURT: OKAY.

21 AGENT JONES: 1994

22 THE COURT: ALL RIGHT.

23 MR. MODICA: IN ANY EVENT, WE CAN DO THAT IN A SECOND
24 BUT TO ANSWER YOUR QUESTION IT WAS NOVEMBER 13, 1992 WHICH
25 HE RECEIVED A SEVEN YEAR SENTENCE SUSPENDED TO THREE YEARS

1 AND FIVE YEARS PROBATION. AND THAT WAS NOVEMBER 13, 1992
2 FOR CRIMINAL SEXUAL CONDUCT WITH A MINOR. THEN IN NOVEMBER
3 30, 1995 HE RECEIVED A FOUR-YEAR SENTENCE FOR ASSAULT AND
4 BATTERY OF A HIGH AND AGGRAVATED NATURE. THEN --

5 THE COURT: WELL, LET'S --- IT'S GOING TO TAKE A
6 LITTLE WHILE COUNSEL, LET'S JUST FOCUS ON THESE AS WE GO.
7 THE 1992 CHARGES THAT ARE FOR BURGLARY AND RECEIVING STOLEN
8 GOOD, TELL ME WHEN WAS THE FINISH DATE FOR THOSE SENTENCES?

9 AGENT JONES: SIR, I DO NOT HAVE THAT THAT IS PRIOR
10 TO THIS SYSTEM.

11 THE COURT: ALL RIGHT, COUNSEL, THEY'VE GOT TO BE
12 WITHIN TEN YEARS.

13 MR. MODICA: WELL, NO THEY DON'T ARGUABLY IF I COULD
14 SHOW THAT THE TEN YEARS GETS POLLED. YES, IT DOES INDICATE
15 THAT IT'S TEN YEARS BUT THERE'S CRITERIA HERE. ONE, IS
16 THERE ANYTHING ELSE TO CONSIDER THAT IT IS REALLY WASN'T TEN
17 YEARS BECAUSE HE WAS IN JAIL DURING THOSE, MORE THAN THOSE
18 TEN YEAR, ON AND OFF OF COURSE. AND SECONDLY --

19 THE COURT: WELL, NO, HE HAS TO BE IN JAIL FOR THOSE
20 CHARGES FOR NOT FOR WHATEVER ELSE HE MAY BE IN JAIL FOR
21 DURING THE TEN YEARS.

22 MR. MODICA: THAT IS NOT MY UNDERSTANDING, YOUR HONOR,
23 BUT EVEN IF --

24 THE COURT: ALL RIGHT, WELL WHAT PRECEDENT OR AUTHORITY
25 DO YOU HAVE FOR YOUR POSITION THAT JAIL TIME OF ANY KIND

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1 WOULD TOLL A TEN YEAR PERIOD?

2 MR. MODICA: YES, SIR. I BELIEVE IT'S RIGHT IN THE
3 STATUTE.

4 MR. MODICA: IT SAYS EVIDENCE OF CONVICTION UNDER THIS
5 RULE IS NOT ADMISSIBLE IF A PERIOD OF MORE THAN TEN YEARS
6 HAS ELAPSED SINCE THE DATE OF THE CONVICTION, OR THE RELEASE
7 OF THE WITNESS FROM THE CONFINEMENT IMPOSED FOR THAT
8 CONVICTION. SO IT DOES SPECIFICALLY SAY IN REGARD TO THAT
9 CONVICTION. HOWEVER, UNLESS THE COURT DETERMINES IN THE
10 INTEREST OF JUSTICE THAT THE PROBATIVE VALUE OF THE
11 CONVICTION SUPPORTED BY SPECIFIC FACTS AND CIRCUMSTANCES
12 SUBSTANTIALLY OUTWEIGHS THE PREJUDICIAL EFFECT. I AM GOING
13 TO GIVE YOU ARGUABLY TWO REASONS. ONE IT IS QUITE POSSIBLE
14 THAT YOU ARE GOING TO INCLUDE SOME OR ALL OF THE ASSAULT AND
15 BATTERY OF A HIGH AND AGGRAVATED NATURE. THOSE ARE THREE
16 SEPARATE CONVICTIONS THAT THE JURY IS NOT GOING TO HEAR
17 ABOUT BECAUSE OF THE NATURE OF THE OFFENSE, THAT IS ONE
18 REASON. TWO, THE FACT THAT HE DID ON AND OFF DO JAIL TIME,
19 SO IT IS NOT LIKE IT HAS BEEN MORE THAN TEN YEARS. THREE,
20 THAT CREDIBILITY IN THIS CASE, IS AN IMPORTANT ISSUE
21 OBVIOUSLY A VERY IMPORTANT ISSUE. NUMBER FOUR, YOUR HONOR,
22 IS THAT BOTH OF THESE CRIMES ARE CRIMES WHERE THE DEFENDANT
23 HAS PUT HIS OWN SELF-INTEREST ABOVE SOCIETIES AND THE TEN
24 YEAR, THERE IS A SPECIFIC PROVISION UNDER 609(A) (1) (2) WHICH
25 INDICATES EVIDENCE THAT A WITNESS HAS BEEN CONVICTED OF A

1 CRIME SHALL BE ADMITTED IF IT INVOLVES DISHONESTY OR A FALSE
2 STATEMENT REGARDLESS OF PUNISHMENT. OBVIOUSLY, RECEIVING
3 STOLEN GOODS IS THAT TYPE OF CRIME, AND SO IS BURGLARY IN
4 THE THIRD DEGREE. SO FOR ALL OF THOSE REASONS I WOULD
5 SUBMIT THAT THE STATE SHOULD BE ALLOWED TO ASK THE DEFENDANT
6 IF HE WAS CONVICTED OF THOSE TWO CRIMES.

7 THE COURT: ALL RIGHT, I HATE FOR THE JURY TO SIT BACK
8 THERE WHILE WE GO THROUGH THIS POINT BY POINT, BUT WE HAVE
9 NO OTHER OPTION THAN TO DO THAT. ALL RIGHT, THE RECEIVING
10 STOLEN GOODS CHARGE, COUNSEL CAN YOU TELL ME --- I AM
11 ADVISED THAT YOU ARE UNABLE TO TELL ME THE EXACT DATE THAT
12 THE DEFENDANT WAS RELEASED FROM CORRECTIONS ON THAT ISSUE,
13 ON THAT CONVICTION.

14 MR. MODICA: YOUR HONOR, I WILL TELL YOU THAT HE
15 RECEIVED, THE SENTENCE WAS YOA, ONE MONTH TO TWELVE MONTHS
16 SUSPENDED TO THREE YEARS PROBATION. SO, IN A SENSE IT DOES
17 NOT TERMINATE UNTIL THE PROBATION TERMINATES.

18 THE COURT: RIGHT.

19 MR. MODICA: SO, AT THE VERY LEAST HE WOULD HAVE BEEN
20 UNDER PAROLE ONE TO TWO YEARS, AND I WOULD EVEN ACCEPT --- I
21 THINK WHEN YOU CALCULATE ALL THE TIME HERE, I THINK YOU WILL
22 FIND THAT THERE WAS A GOOD PERIOD OF TIME IN WHICH THE
23 DEFENDANT WAS NOT INCARCERATED. I WOULD ALSO ADD YOUR
24 HONOR, THERE WAS A PERIOD OF TIME WHERE THE DEFENDANT WAS AT
25 LARGE ON A BENCH WARRANT FOR THE CRIMES INVOLVING LISA

1 POWELL, AND WHAT HAPPENED WAS WHILE HE WAS OUT ON BOND FOR
2 THAT CHARGE INVOLVING THE SLASHING OF HIS MOTHERS FACE,
3 WHICH HE WAS CONVICTED, A BENCH WARRANT WAS ISSUED. SO HE
4 WAS A FUGITIVE FROM JUSTICE. YOU KNOW, WHEN YOU CALCULATE
5 ALL THE TIME REALLY TEN YEARS HAS NOT PASSED.

6 THE COURT: COUNSEL, THERE IS NO WAY YOU CAN TAKE FROM
7 1992 TO 2006, ADD IN ALL THOSE THINGS YOU JUST ADDED, AND
8 NOT HAVE A LAPSE OF TEN YEARS. RECEIVING OF STOLEN GOODS
9 CANNOT COME IN UNLESS YOU CAN SHOW ME THAT ON THAT
10 PARTICULAR CHARGE HE WAS EITHER ON PROBATION OR RELEASED
11 FROM CUSTODY WITHIN TEN YEARS OF TODAY'S DATE. I DON'T HEAR
12 IT.

13 MR. MODICA: THEN YOUR HONOR I WOULD DIRECT YOUR
14 ATTENTION TO THE TWO REMAINING IMPORTANT FACTORS:

15 THE COURT: I AM COMPLETELY FAMILIAR WITH THE RULE, AND
16 YOU SAY THAT THE PROBATIVE NATURE OF IT OVERRIDES THE TIME
17 CONSTRAINTS WITHIN THE RULE, IS YOUR POSITION.

18 MR. MODICA: MUCH MORE IMPORTANTLY SUBDIVISION
19 (6) (A) (1) (2) HAS NO REFERENCE AS TO TIME.

20 THE COURT: WELL, OF COURSE IT DOESN'T, BECAUSE (B)
21 609(B) PUTS A TIME LIMIT ON 609(A) (2), B PUTS A TIME LIMIT
22 ON THE WHOLE RULE, NOT JUST ANY SUBSECTION BEING EXEMPTED
23 THEREFROM. SO THE 609(A) (2) IS SUBJECT TO THE PROVISIONS OF
24 609(B) WHICH SAYS, EVIDENCE OF A CONVICTION UNDER THIS RULE
25 IS NOT ADMISSIBLE IF MORE THAN A PERIOD OF TEN YEARS HAS

1 ELAPSED. I RESPECTFULLY --- YOU ARE MISCONSTRUING WHICH
2 PART OF THE RULE CONTROLS THERE.

3 MR. MODICA: I AM SAYING THAT THE RULES SPECIFICALLY
4 DELINEATE CRIMES OF DISHONESTY AS SOMETHING THAT YOU CAN
5 ASK. FOR EXAMPLE THEN YOU CAN ASK ABOUT PETTY LARCENY,
6 WHICH WE KNOW DOES NOT CARRY UP TO A YEAR OR A YEAR AND A
7 DAY IN JAIL.

8 THE COURT: RIGHT.

9 MR. MODICA: SO THE COURTS ARE SAYING EVEN THOUGH IT
10 IS NOT A CRIME THAT YOU NORMALLY COULD, BUT BECAUSE IT
11 INVOLVES DISHONEST THE COURT SHOULD TAKE A GOOD HARD LONG
12 LOOK AT IT. I WOULD SUBMIT THAT WHEN YOU COUPLE THAT FACT
13 THAT THEY DELINEATED THAT SEPARATELY ALONG WITH THE
14 PROBATIVE VALUE ISSUE AND THE TIME PERMIT AND THE FACT THAT
15 THIS DEFENDANT HAS SPENT A GOOD TIME IN JAIL, AND THE FACT
16 THAT IT IS QUITE POSSIBLY THAT WE KNOW THAT YOU ARE GOING TO
17 INCLUDE SOME OR ALL OF THE ASSAULT AND BATTERY OF A HIGH AND
18 AGGRAVATED NATURE. THE JURY IS NOT GOING TO GET A TRUE
19 FLAVOR OF THIS DEFENDANT'S CREDIBILITY WITHOUT MY ABILITY TO
20 ASK HIM ABOUT THOSE CONVICTIONS.

21 THE COURT: ALL RIGHT, THE COURT IS NOT GOING TO ALLOW
22 THE RECEIVING STOLEN GOODS, BECAUSE IT IS BEYOND THE TEN
23 YEAR TIME LIMIT.

24 NOW TELL ME ABOUT, I BELIEVE YOU SAID THERE IS A GRAND
25 LARCENY OR A LARCENY CHARGE?

1 MR. MODICA: NO, YOUR HONOR I SAID THERE WAS A
2 BURGLARY CHARGE IN 1992.

3 THE COURT: EXCUSE ME. AND, THE BURGLARY SENTENCE IN
4 1992 CAN YOU GIVE ME THE DATE OF THAT CONVICTION AND THE
5 SENTENCE PLEASE.

6 MR. MODICA: YES, SIR., IT WAS THE SAME AS THE
7 RECEIVING STOLEN GOODS, YOA ONE TO FIVE SUSPENDED UPON THREE
8 YEARS PROBATION, SIX MONTHS AND SPECIAL CONDITION OF
9 PROBATION, AND THAT WAS JULY 31, 1992.

10 THE COURT: AND, DO YOU HAVE ANY EVIDENCE THAT UNDER
11 THAT CONVICTION THAT THE DEFENDANT WAS EITHER ON PROBATION
12 OR INCARCERATED FOR THIS CONVICTION OR A REVOCATION OF THE
13 PAROLE OR PROBATION WITHIN TEN YEARS OF TODAY'S DATE?

14 MR. MODICA: NO.

15 THE COURT: ALL RIGHT, SIR, I WOULD RESPECTFULLY WOULD
16 INTEND TO EXCLUDE THAT PURSUANT TO RULE 609.

17 ALL RIGHT, THE NEXT ONE IS A CSC, 11/13/92. TELL ME
18 AGAIN WHAT THE SENTENCE WAS AGAIN PLEASE?

19 MR. MODICA: CRIMINAL SEXUAL MISCONDUCT WITH A MINOR
20 SECOND DEGREE, CONVICTED. SEVEN YEARS SUSPENDED UPON THE
21 SERVICE OF THREE YEARS WITH FIVE YEARS PROBATION.

22 THE COURT: THREE YEARS PLUS FIVE PROBATION.

23 MR. MODICA: YES, SIR.

24 THE COURT: ALL RIGHT, MR. RUNYAN, I WILL HEAR FROM YOU
25 ON A CSC CHARGE.

1 MR. RUNYAN: YOUR HONOR, I JUST THINK AS A PRACTICAL
2 MATTER WE, THE STATE'S POSITION IS WE ASSUME THAT HE WAS
3 STILL ON PROBATION OR SERVING OUT SOMETHING FOR THE STATE
4 LESS THAN TEN YEARS AGO. I THINK IT'S INCUMBENT UPON THEM
5 TO SHOW WHEN THAT TERMINATED BECAUSE WE ALL KNOW THESE
6 THINGS TERMINATE EARLY. IT IS VERY EASY. ALL THEY HAVE TO
7 DO IS CHECK THE RECORDS.

8 THE COURT: ALL RIGHT. THANK YOU, COUNSEL. DO WE
9 HAVE A RELEASE DATE ON THE CSC CHARGE, MR. MODICA

10 MR. MODICA: YOUR HONOR, I CAN TELL YOU THAT ACCORDING
11 TO THE RECORDS OF PROBATION AND PAROL HE WAS REVOKED ON THAT
12 IN MAY 6, 1996 AND HE WAS REVOKED ON THAT CHARGE ON HIS
13 PROBATION PAROL SENTENCE AND THEIR RECORDS DON'T ALLOW OR
14 INDICATE WHEN HE ACTUALLY MAXED OUT BUT CERTAINLY VERY CLOSE
15 WITHIN THE TEN YEARS. AND I WILL SUBMIT THAT GIVEN ALL THE
16 OTHER FACTORS THAT I DELINEATED FOR YOU THE STATE SHOULD BE
17 ABLE TO ASK THAT IF HE WOULD OF MAXED OUT ON PROBATION ON
18 THE REVOCATION ACCORDING TO THEIR RECORDS ON JULY 4, 1999.

19 THE COURT: AND THEN COUNSEL, THAT WOULD BRING HIM
20 WITHIN THE TEN YEARS AND THE COURT WOULD ALLOW THAT INTO
21 EVIDENCE.

22 MR. RUNYAN: YES, SIR, I UNDERSTAND THAT COURT'S
23 RULING.

24 THE COURT: ALL RIGHT, VERY GOOD. SO WE HAVE
25 SUFFICIENT LEVEL OR PROOF AND CERTAINTY ON THE CSC, THAT

1 CHARGE WILL COME INTO EVIDENCE. YOUR NEXT CHARGE IS AN
2 ABHAN THAT INVOLVES THE SAME VICTIM, I BELIEVE, 11/30/95?

3 MR. MODICA: I DON'T KNOW THE VICTIM IN THAT CASE.

4 THE COURT: ALL RIGHT. THE CHARGE WITH THE VICTIM
5 HERE, WITH MS. POWELL. WHAT IS THE DATE, OF THAT CHARGE?

6 MR. MODICA: THE DATE, THE COURT DATE IS APRIL 22,
7 2004.

8 THE COURT: THE COURT IS GOING TO DISALLOW THE EVIDENCE
9 OF THAT CHARGE BECAUSE OF THE HIGH PREJUDICIAL IMPACT IT
10 WILL HAVE WITH REGARD TO THIS SPECIFIC CASE BEING THE SAME
11 VICTIM.

12 MR. MODICA: YOUR HONOR I WOULD ASK ABOUT TWO THINGS.
13 ONE IS THAT A COMPROMISE THAT I MAY BE ABLE TO ASK THE
14 DEFENDANT ISN'T IT TRUE THAT HE WAS CONVICTED ON APRIL 22,
15 2004 FOR A CRIME WHICH CARRIED UP TO TEN YEARS IN JAIL
16 WITHOUT SPECIFYING?

17 THE COURT: WE'LL COME BACK AND VISIT THAT IN JUST A
18 MOMENT. LET ME HEAR ABOUT THE 11/30/95 ABHAN. TELL ME WHAT
19 PENALTY WAS IMPOSED?

20 MR. MODICA: THAT SENTENCE, YOUR HONOR, WAS THAT HE
21 WAS SENTENCED TO FOUR YEARS. THE START DATE WAS MAY 23,
22 1996 AND HIS MAX OUT DATE IS ACCORDING TO THEIR RECORDS,
23 JUNE 20, 1999.

24 THE COURT: THAT WOULD BE WITHIN THE TEN YEARS AND THEN
25 THE COURT WOULD ALLOW THE EVIDENCE OF THAT WITHOUT MENTION,

1 AGAIN, YOU DON'T KNOW WHO THE VICTIM IS, BUT WITHOUT MENTION
2 OF THE SPECIFICS OF THE CASE THE COURT WOULD ALLOW THAT INTO
3 EVIDENCE ON THE ISSUE OF CREDIBILITY AND BELIEVABILITY.

4 MR. MODICA: THANK YOU.

5 THE COURT: ALL RIGHT. NOW AS TO THE VICTIM IN THIS
6 CASE, IT WOULD BE THE COURT'S INTENTION TO ALLOW AN INQUIRY
7 ABOUT THE FACT THAT THERE IS A CONVICTION OF ABHAN ON A
8 PARTICULAR DATE THAT THE VICTIM WAS INVOLVED IN BUT NOT THE
9 MENTION OF THE VICTIM'S NAME.

10 MR. MODICA: YES, SIR.

11 THE COURT: ALL RIGHT, AND THEN WITH REGARD TO THE
12 FINAL ABHAN WHICH I BELIEVE OCCURRED IN 2004?

13 MR. MODICA: YOUR HONOR, ACCORDING TO THE RECORDS THE
14 START DATE WAS DECEMBER 28, 2004, IT WAS THE DEFENDANT'S
15 MOTHER, MRS. ELAINE HOWARD WAS THE VICTIM.

16 THE COURT: ALL RIGHT, CLEARLY WITHIN THE TEN YEARS AND
17 THE COURT WILL ALLOW YOU TO GO INTO THAT. NOW I WOULD BE
18 GLAD TO HEAR FROM YOU SINCE WE'VE SORT OF REDUCED THESE
19 ISSUES, MR. RUNYAN, ON THE FACT THERE ARE THREE ABHAN'S. IF
20 YOU HAVE SOMETHING, YOU WISH TO SAY ABOUT THOSE SPECIFIC
21 CHARGES IN A GROUP I WILL BE GLAD TO HEAR FROM YOU.

22 MR. RUNYAN: JUDGE, I TRY TO KEEP QUITE WHEN THE
23 COURT'S BEEN RULING FOR YOU, SO TO SPEAK. THAT IS A RULE I
24 LEARNED A LONG TIME AGO. AND I THINK, AND I AM NOT BEING
25 SARCASTIC WHEN I WAY SAY THAT, I THINK THE COURT'S RULINGS

1 HERE HAS BEEN VERY BENEFICIAL TO THE DEFENDANT. MY CLIENT
2 TAKES THE POSITION THAT ALL OF THAT SHOULD BE DISALLOWED AND
3 THE COURT IS ALLOWING TO DISALLOW BECAUSE THE PREJUDICIAL
4 NATURE OF THE CONVICTIONS OUT WEIGHTS IT PROBATIVE VALUE. I
5 PUT THAT ON THE RECORD FOR MY CLIENT BECAUSE HE ASKED ME TO.

6 MR. HOWARD: EXCUSE ME, EXCUSE ME, --

7 THE COURT: ALL RIGHT. AND COUNSEL, I WISH TO RESPOND
8 SPECIFICALLY TO THAT. MR. HOWARD, EXCUSE US. MAY I SPEAK
9 TO MR. RUNYAN AND THEN WE'LL COME BACK AND GIVE YOU AN
10 OPPORTUNITY TO DISCUSS THIS WITH YOUR ATTORNEY. THE COURT
11 HAS REVIEWED THAT ISSUE SPECIFICALLY AND GIVEN IT A
12 SIGNIFICANT AMOUNT OF THOUGHT. THE QUESTION, IN THIS CASE
13 IS ONE OF CREDIBILITY. DID THIS HAPPEN OR DID IT NOT HAPPEN
14 AND I SUSPECT WHEN THE TESTIMONY IS CONCLUDED WE'RE GOING TO
15 HAVE A VICTIM WHO SAYS THAT IT DID IN A PARTICULAR WAY AND
16 THE DEFENDANT IS GOING TO SAY THAT IT NOT HAPPEN IN THAT
17 PARTICULAR WAY. AND, THUS, I FIND THE PREVIOUS ABHAN'S ARE
18 CLEARLY PROBATIVE ON THE ISSUE OF WHETHER THE DEFENDANT MAY
19 BE CAPABLE OF SUCH AN EVENT AND FOR THAT REASON I FIND THE
20 PROBATIVE VALUE OUT WEIGHTS THE PREJUDICIAL VALUE AND THIS
21 IS THE REASON FOR THE COURT'S DECISION.

22 NOW, COUNSEL, MR. MODICA, DO YOU INTEND TO ELICIT
23 TESTIMONY ABOUT THE VICTIM BEING THE DEFENDANT'S MOTHER IN
24 ONE OF THESE ISSUES? DO YOU INTEND TO GO INTO WHO THE
25 VICTIM IS?

1 MR. MODICA: YOUR HONOR, MY INTENTION IS NOT TO DO
2 THAT UNLESS THE DEFENSE OPEN THE DOOR.

3 THE COURT: ALL RIGHT.

4 MR. MODICA: AND I WILL INDICATE TO THE COURT THAT
5 PRIOR TO DOING THAT I WILL APPROACH THE BENCH AND ASK FOR
6 PERMISSION.

7 THE COURT: ALL RIGHT, I WOULD DIRECT YOU NOT TO DO
8 THAT UNTIL WE HAVE A SPECIFIC DISCUSSION ON THAT BECAUSE
9 THAT WOULD BE PREJUDICIAL FURTHER TO THE DEFENDANT AND I
10 WISH TO LIMIT THE PREJUDICIAL EFFECT BY NOT ALLOWING YOU TO
11 DISCUSS WHO THE VICTIMS ARE IN THESE MATTERS. NOW, MR.
12 RUNYAN, MR. HOWARD WANT TO YOU SPEAK TO YOU. ANYTHING
13 FURTHER BEFORE WE CLOSE THIS DISCUSSION?

14 (PAUSE)

15 MR. RUNYAN: MY CLIENT VERY STUPIDLY HAS ASKED ME TO
16 PLACE ON THE RECORD THAT HE THINKS ALLOWING THOSE THREE
17 ABHAN'S WILL ALLOW THE JURY TO INFER HE MAY HAVE COMMITTED
18 THIS ONE WHICH WHILE PREJUDICIAL TO HIS POSSIBLE DEFENSE.
19 OF COURSE, THE COURT'S RULING IS THAT IT IS PROBATIVE AND
20 THEREFORE I WILL PUT THAT ON THAT RECORD. FRANKLY, JUDGE,
21 THIS IS ONE OF THE REASONS WHY FOR THE RECORD, MR. HOWARD
22 PLACES THINGS ON THE RECORD. MY PARTICULAR TRIAL STRATEGY
23 WAS TO NOT EXPOSE THE JURY TO THIS AND I SPOKE TO MY CLIENT
24 ABOUT THIS.

25 THE COURT: RIGHT.

1 MR. RUNYAN: BUT BE THAT AS IT MAY, I WILL PLACE THAT
2 ON THE RECORD. HE TAKES THE POSITION THAT JUST ALLOWING THE
3 ABHAN'S PREJUDICIAL NATURE OUT WEIGHS THE PROBATIVE VALUE.

4 THE COURT: AND THE COURT TO FURTHER LIMIT THE
5 PREJUDICIAL EFFECT WILL GIVE A CONTEMPORANEOUS INSTRUCTION
6 TO THE JURY THAT THESE CHARGES ARE NOT TO BE USED FOR THE
7 PURPOSE OF DETERMINING GUILT OR INNOCENCE TODAY BUT SIMPLY
8 FOR DETERMINING CREDIBILITY AND BELIEVABILITY OF THE
9 DEFENDANT AND FOR THAT REASON ONLY.

10 NOW, MR. HOWARD, YOU KNOW IN ADVANCE THAT THESE MATTERS
11 ARE COMING IN. THE COURT WILL GIVE YOU AN OPPORTUNITY TO
12 REVISIT THE ISSUE OF WHETHER YOU WISH TO TESTIFY AT THIS
13 TIME. DO YOU STILL WISH TO TESTIFY, SIR?

14 MR. HOWARD: YES, SIR.

15 THE COURT: VERY GOOD. PLEASE BRING IN THE JURY.

16 MR. MODICA: YOUR HONOR, THERE WAS SOMETHING I WANTED
17 TO BRING UP.

18 THE COURT: IT'S FORTY-FIVE-MINUTES BEYOND THE TIME.

19 MR. MODICA: YES, SIR. DURING THE COURSE OF THE
20 INCIDENT INVOLVING THE VICTIM, THE DEFENDANT MADE A
21 STATEMENT TO HER THAT IF IS SHE CALLED THE POLICE THEY WOULD
22 FIND HER IN A BURLAP BAG. NOW I WASN'T GOING TO DOVETAIL IT
23 WITH THE CONVICTION I WAS JUST GOING TO ASK ON SUCH AND SUCH
24 DATE DID YOU IN FACT SAY THAT TO THE VICTIM.

25 THE COURT: I DIDN'T HEAR WHAT YOU SAID. A WHAT?

1 MR. MODICA: THAT THE DEFENDANT DID DURING THE TIME
2 PERIOD IN WHICH HE GOT CONVICTED ON ONE OF THE ABHAN'S, HE
3 THREATENED THE VICTIM SAYING IF SHE CALLED THE POLICE THEY
4 WOULD FIND HER, IN A BURLAP BAG.

5 THE COURT: ALL RIGHT.

6 MR. MODICA: WHAT I WANTED TO ASK HIM IS HAVE YOU
7 PREVIOUSLY SAID THAT TO THE VICTIM, NOT DOVETAILING IT WITH
8 A CONVICTION?

9 MR. RUNYAN: JUDGE, I THINK HE'S GOING TO THE BACK
10 DOOR TO GET -- WHEN YOU CAN'T GET THROUGH THE FRONT DOOR. I
11 THINK THE COURT HAS RULED THAT YOU CAN SAY DON'T YOU HAVE
12 THIS CONVICTION AGGRAVATED ASSAULT AND NOT NAME, WHO THE
13 VICTIMS ARE, BUT THEN HE WANTS TO --- AND I WOULD OBJECT TO
14 THAT?

15 THE COURT: THE COURT IS GOING TO SUSTAIN YOUR
16 OBJECTION. ALTHOUGH THAT MAY GO TO THE ISSUE OF WHAT THE
17 DEFENDANT STATE OF MIND WITH REGARD TO WHETHER SHE
18 APPROPRIATELY REPORTED THIS OR WAS DISHONEST WITH COUNSEL, I
19 MEAN WITH THE POLICE, I AM CONCERNED THAT THAT WOULD ADVISE
20 THE COURT THAT, OR THE JURY THAT THE DEFENDANT, THAT THE
21 VICTIM HAS BEEN A PREVIOUS VICTIM OF THE DEFENDANT AND IT
22 WOULD BE UNFAIR SO OBJECTION SUSTAINED.

23 NOW PLEASE BRING THE JURY. THANK YOU. PLEASE BRING IN
24 THE JURY.

25 (WHEREUPON, THE JURY ENTERS THE COURTROOM AT 10:19

1 A.M.)

2 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.

3 JUROR PANEL: GOOD MORNING.

4 THE COURT: DID YOU THINK WE HAD FORGOTTEN THAT YOU
5 WERE IN THE JURY ROOM? I APOLOGIZE FOR WHAT HAS BEEN A
6 LENGTHY DELAY. WE ARE FORTY-FIVE MINUTES BEYOND OUR
7 PREDICTED START TIME THIS MORNING.

8 I WANT TO TELL YOU THAT ONE OF MY RESPONSIBILITIES IN
9 ADMINISTERING THE COURT IS ALWAYS BEING AWARE OF THE FACT
10 THAT YOU ARE GIVEN YOUR TIME. THAT YOUR SCHEDULES ARE BUSY.
11 AND THAT WE NEED TO OPERATE ON TIME, AND YOU HAVE A RIGHT TO
12 RESPECT THAT WE WOULD BE ON TIME. I WILL TELL YOU THAT WE
13 HAVE BEEN INVOLVED IN SOME MATTERS IN THE CASE THIS MORNING,
14 THAT HAVE TAKEN A LITTLE BIT LONGER THAN EXPECTED. I
15 DISCUSSED HOW THAT HAPPENS FROM TIME TO TIME YESTERDAY.
16 THANK YOU FOR YOUR PATIENCE WITH US.

17 LADIES AND GENTLEMEN, LET ME ASK SINCE WE WERE LAST
18 TOGETHER IS THERE ANY MEMBER OF THIS JURY PANEL WHO HAS HAD
19 DISCUSSION ABOUT THE FACTS OF THIS CASE WITH ANY THIRD
20 PERSON OR A FELLOW JUROR OR BEEN CONTACTED BY ANYONE ABOUT
21 THIS CASE. IF THAT APPLIES TO YOU, PLEASE RAISE YOUR HAND.
22 AND LET THE RECORD REFLECT NO ONE HAS RAISED THEIR HANDS.
23 AND I DIDN'T THINK ANYONE WOULD BE CONTACTING YOU, BUT OF
24 COURSE I WOULD WANT TO KNOW THAT IF IT DID HAPPEN. BUT I
25 APPRECIATE YOUR COMPLIANCE WITH THE COURT'S INSTRUCTIONS AND

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1 REQUESTS. NOW, YOU WILL RECALL WE WERE IN THE STATE'S CASE
2 WHEN WE ENDED THE DAY YESTERDAY AND MR. MODICA, PLEASE CALL
3 YOUR NEXT WITNESS.

4 MR. MODICA: THANK YOU, YOUR HONOR. THE STATE RESTS.

5 THE COURT: ALL RIGHT, THE STATE HAS RESTED MEANING THE
6 STATE HAS NO FURTHER TESTIMONY IN THIS CASE SO WE NOW MOVE
7 TO THE DEFENSE SIDE OF THE CASE, AND MR. RUNYAN, DO YOU
8 INTEND TO CALL ANY WITNESSES, SIR?

9 MR. RUNYAN: YES, YOUR HONOR, MOTIONS BEING RESERVED
10 ON THE RECORD, THE DEFENSE WILL CALL THE DEFENDANT MR.
11 STACEY HOWARD.

12 THE COURT: ALL RIGHT, PLEASE COME AROUND AND TAKE THE
13 OATH OF A WITNESS.

14 STACEY HOWARD

15 FIRST DULY SWORN AND TESTIFIES AS FOLLOWS:

16 CLERK OF COURT: PLEASE BE SEATED. STATE OUR FULL
17 NAME, SPELLING THE LAST.

18 MR. HOWARD: STACEY MOORE HOWARD.

19 THE COURT: COUNSEL?

20 DIRECT TESTIMONY BY MR. RUNYAN:

21 Q. MR. HOWARD, HOW OLD ARE YOU, SIR?

22 A. THIRTY-TWO-YEARS OLD.

23 Q. WHERE DO YOU LIVE?

24 A. SANTEE, SOUTH CAROLINA.

25 Q. I NO, BUT WHERE DO YOU LIVE?

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1 A. SANTEE, SOUTH CAROLINA ON

2 Q. OKAY. NOW --

3 THE COURT: JUST A MOMENT. MR. HOWARD, OUR COURT
4 REPORTER IS TAKING DOWN WHAT YOU SAY AND IF SPEAK A LITTLE
5 MORE SLOWLY SO WE CAN ALL UNDERSTAND YOU AND MAKE SURE WE
6 MAKE A RECORD HERE THAT IS APPROPRIATE, ALL RIGHT?

7 MR. HOWARD: YES, SIR, YOUR HONOR.

8 THE COURT: THANK YOU.

9 Q. (BY MR. RUNYON) MR. HOWARD YOU KNOW LISA POWELL?

10 A. YES, SIR.

11 Q. ALL RIGHT, ON THE DATE IN QUESTION BACK IN DECEMBER,
12 DID YOU STRIKE MS. POWELL WITH YOUR FISTS IN ANY WAY?

13 A. DID I STRIKE LISA POWELL WITH MY FISTS IN ANY WAY?

14 Q. YES, SIR.

15 A. NO, SIR, NOT INTENTIONALLY.

16 Q. ALL RIGHT. NOW DID MS. POWELL SUFFER INJURIES ON THAT
17 PARTICULAR DAY?

18 A. YES, SIR.

19 Q. ALL RIGHT.

20 A. I WOULD LIKE TO EXPLAIN THOUGH.

21 Q. WOULD YOU PLEASE EXPLAIN TO THE COURT AND THE JURY HOW
22 MS. POWELL RECEIVED HER INJURIES ON THE DAY IN
23 QUESTION?

24 A. YES, SIR. I HAVE A CHRONOLOGICAL OUTLINE OF THAT I
25 HAVE WROTE DOWN. I WANT TO GO IN SEQUENCES --

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1 THE COURT: ALL RIGHT --

2 A. -- AS IT HAPPENED.

3 THE COURT: -- SIR, NOW PLEASE, I COULDN'T UNDERSTAND
4 YOU. YOU ARE GOING TO HAVE TO SLOW DOWN AND SPEAK MORE
5 CLEARLY. AND WERE YOU ADDRESSING SOMETHING TO ME OR TO THE
6 JURY?

7 MR. HOWARD: YES, SIR. THE POINT OF THE MATTER IS I
8 AM FACING EIGHTEEN YEARS FOR THIS CHARGE AND I WANT TO
9 HIGHLIGHT FOR THIS JURY --

10 THE COURT: ALL RIGHT, SIR, JUST ONE MOMENT.

11 MR. HOWARD: YES, SIR.

12 THE COURT: JUST A MOMENT. MR. HOWARD, DO NOT -- FIRST
13 OF ALL LET ME SAY THIS TO YOU, SIR, DO NOT DISCUSS WITH ME
14 OR HAVE ANY CONVERSATION WITH ME. IT'S NOT APPROPRIATE FOR
15 YOU TO DIRECT A QUESTION TO ME.

16 MR. HOWARD: YES, SIR.

17 THE COURT: NOW ALSO, LADIES AND GENTLEMEN, LET ME SAY
18 TO YOU WHAT THE PENALTY MAY BE FOR A CHARGE WHICH MAY OR MAY
19 NOT HAVE BEEN CORRECT, I WILL TELL YOU THAT MAY OR MAY NOT
20 HAVE BEEN THE CORRECT STATEMENT. IT IS NEVER THE PROVINCE
21 OF THE JURY TO IMPOSE A PENALTY. IT'S NOT THE CONCERN OF
22 THE JURY AS TO WHAT THE PENALTY FOR A PARTICULAR MATTER IS.
23 THAT IS A CONCERN FOR THE COURT. IT'S FOR THE JURY TO
24 DETERMINE GUILT OR INNOCENCE AND THE COURT TO DETERMINE
25 SENTENCING. SO PLEASE UNDERSTAND, THERE IS A DISTINCTION

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1 THERE. AND IS THERE ANYTHING FURTHER? ACTUALLY LET'S JUST
2 DO THIS, IF YOU WOULD GO INTO YOUR QUESTIONING, MR. RUNYAN,
3 AND PROCEED. THANK YOU.

4 Q. (BY MR. RUNYON) MR. HOWARD, WOULD YOU PLEASE EXPLAIN
5 TO THE JURY --

6 A. -- YES, SIR.

7 Q. -- HOW LISA POWELL RECEIVED HER INJURIES BACK IN
8 DECEMBER?

9 A. SHE LUNGED OVER THE CONSOLE OF MY TRUCK AND SLAPPED ME
10 IN MY FACE. I WENT TO KNOCK HER HANDS FROM HER FACE
11 AND SLAMMED ON BRAKES SIMULTANEOUSLY AT THE SAME TIME
12 SHE WENT INTO MY DASHBOARD. SHE WAS DRUNK. SHE
13 THREW A GLOVE OUT THE WINDOW. I TURNED AROUND TO GET
14 HER GLOVES. I TOOK HER TO HER HOUSE. THE POINT OF THE
15 MATTER HER SAYING ABOUT IN FRONT OF HER HOUSE SAYING
16 WHERE THE INCIDENT OCCURRED, YEAH, THE INCIDENT
17 OCCURRED BUT IT WASN'T AT HER MAILBOX IT WAS IN HER
18 FRONT YARD. SHE PULLED A KNIFE ON ME.

19 THE COURT: ALL RIGHT, EXCUSE ME, SIR, YOU'RE TALKING A
20 HUNDRED MILES AN HOUR.

21 MR. HOWARD: YES, SIR.

22 THE COURT: YOU ARE GOING TO HAVE TO SLOW DOWN. I CAN
23 SEE OUR JURORS ARE STRUGGLING TO HEAR YOU. THE ACOUSTICS IN
24 THIS COURTROOM ARE NOT VERY GOOD. PLEASE SLOW DOWN AND MAKE
25 SURE EVERYONE UNDERSTANDS WHAT YOU ARE SAYING.

1 MR. HOWARD: YES, SIR.

2 THE COURT: GO AHEAD.

3 A. LISA POWELL PULLED A KNIFE ON ME. I TOLD HER TO GET
4 OUT OF MY TRUCK. SHE WOULDN'T GET OUT OF MY TRUCK. I
5 DID NOT BELIEVE HER NOSE WAS BROKEN. I DID NOT THINK
6 HER NOSE WAS BROKE. I TOLD HER TO GET OUT OF MY TRUCK.
7 SHE PULLED A KNIFE ON ME. SHE HAD IT IN HER RIGHT
8 HAND. SHE GOT THE KNIFE OUT OF FLOORBOARD, OR OUT OF
9 HER POCKETBOOK. WHEN SHE WENT TO PULL THE KNIFE ON ME
10 I GRABBED THE KNIFE FROM HER. I TOOK THE KNIFE FROM
11 HER. I GRABBED HER LEFT ARM. I MADE HER GET OUT OF
12 THE TRUCK. I TOOK THE KNIFE AND SLUNG IT OVER A
13 TRAILER. SHE CUT ME ON HAND RIGHT HERE. I STILL GOT
14 FRESH SCAR. I THREW THE KNIFE OVER HER TRAILER AND
15 THEN I OPENED HER TRAILER DOOR. I GOT HER KEYS AND
16 OPENED HER TRAILER DOOR AND I CALLED MY MAMMA AND DADDY
17 CAUSE I WANT WITNESSES. SO TOOK HER TO THE HOSPITAL.
18 WHEN AT THE HOSPITAL I WAITED ON THE DEPUTY SHERIFF. I
19 FIGURED HE'D WANT TO GIVE ME A FIELD SOBRIETY TEST OR
20 HE WANTED TO GIVE ME BREATHALYZER/ANALYZER CAUSE LISA
21 HAD BEEN DRINKING AND I FIGURED HE MIGHT THINK I WAS
22 DRINKING. THERE WAS GOING TO BE A NEGLIGENT CLAIM
23 BEHIND IT BECAUSE THAT IS WHAT SHE SAID WHEN SHE WAS IN
24 HER HOUSE THAT SHE WAS GOING TO SUE MY INSURANCE. THAT
25 IS ANOTHER REASON I CALLED MY FAMILY. I HAVEN'T HAD MY

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1 LICENSE BUT ABOUT WEEK BEFORE THIS WHOLE INCIDENT.

2 Q. MR. HOWARD, LET'S JUST DO THIS ONE STEP AT A TIME
3 BECAUSE WE NEED TO MAKE IT CLEAR FOR THE JURY, OKAY?

4 A. YES, SIR. CAN I START FROM THE NINTH WHEN THEY STAYED
5 AT MY HOUSE? CAN I START FROM THE NINTH?

6 Q. LET ME ASK YOU THE QUESTIONS. ON THE DAY IN QUESTION
7 BACK IN DECEMBER YOU SAY YOU SLAMMED ON BRAKES?

8 A. YES, SIR.

9 Q. WAS MS. POWELL WEARING HER SEATBELT?

10 A. NO, SIR. NO, SIR, SHE WAS NOT WEARING HER SEATBELT.
11 SHE WAS ON MY SIDE. SHE SLAPPED MY FACE BLOCKED MY
12 VIEW OF THE ROAD. I TRIED TO KNOCK HER HAND BACK. I
13 DON'T KNOW IF I HIT HER IN THE FACE OR IF HER FACE HIT
14 THE DASHBOARD. ALL I KNOW IS WHEN SHE CAME UP HER NOSE
15 WAS BLEEDING. AND THE ONLY REASON I KNOCKED HER ARM
16 AWAY FROM MY FACE WAS TO WHERE I COULD GET VIEW OF THE
17 ROAD.

18 Q. NOW, DID THIS OCCUR IN GEORGETOWN COUNTY OR
19 WILLIAMSBURG COUNTY, WHERE DID THIS OCCUR?

20 A. IT OCCURRED ON HIGHWAY 41.

21 Q. WHERE ON HIGHWAY 41, ROUGHLY?

22 A. ABOUT THREE MILES FROM WILLIETOWN ROAD, WHICH IS A DIRT
23 ROAD THAT GOES THROUGH BROWNS FERRY AND CUTS OFF
24 HIGHWAY 41.

25 Q. THAT IS IN GEORGETOWN COUNTY?

1 A. YES, SIR.

2 Q. AFTER YOU TOOK HER IN THE TRAILER YOU SAID SHE WAS
3 INTOXICATED?

4 A. YES, SIR. HIGHLY INTOXICATED, BEEN DRINKING ALL DAY.

5 Q. AND SHE WAS COMPLAINING ABOUT AN INJURY?

6 A. YES, SIR. SHE SAID HER NOSE WAS POSSIBLY BROKEN. I
7 DIDN'T THINK HER NOSE WAS BROKEN BECAUSE I DIDN'T --- I
8 DIDN'T --- I DIDN'T NO THAT --- I SLAMMED ON BRAKES
9 IMMEDIATELY -

10 Q. SLOW DOWN AGAIN.

11 A. YES, SIR.

12 Q. SLOW DOWN. YOU'RE TALKING --

13 A. -- YES, SIR --

14 Q. -- A HUNDRED MILES AN HOUR.

15 A. YES, SIR.

16 Q. NOW ONCE SHE COMPLAINED ABOUT HER INJURY DID YOU, IN
17 FACT, SEE TO IT SHE WAS TAKEN FOR MEDICAL TREATMENT?

18 A. YES, SIR. YES, SIR. I CALLED HER MOTHER AND FATHER AND
19 I HAD THEM CARRIED HER TO THE HOSPITAL. AFTER
20 EVERYTHING WENT DOWN I WANTED MY MAMA THERE AT THE
21 HOSPITAL.

22 MR. MODICA: OBJECTION. NON RESPONSIVE.

23 THE COURT: SUSTAINED.

24 Q. (BY MR. RUNYON) ON THE DAY IN QUESTION BACK IN
25 DECEMBER, HOW MUCH HAD LISA POWELL HAD AS IT RELATES TO

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1 DRINKING ANYTHING NON-ALCOHOLIC OR ALCOHOLIC, WHAT WAS
2 THAT?

3 A. ON THE TENTH WHILE ME AND JASON WAS INSTALLING THE
4 RADIO, ABOUT A \$2,500.00 SYSTEM, LISA STARTED DRINKING
5 AROUND 12:00 O'CLOCK BECAUSE PRIOR TO THAT DAY WHICH IS
6 ON THE NINTH WE STAYED THE NIGHT AT MY HOUSE --

7 MR. MODICA: OBJECTION.

8 A. -- A QUARTER OUNCE OF COCAINE.

9 THE COURT: ALL RIGHT, JUST A MOMENT, SIR. JUST A
10 MOMENT.

11 MR. MODICA: OBJECTION IS NON-RESPONSIVE. I ASK THAT
12 IT BE STRICKEN.

13 THE COURT: YES, I AM GOING TO GRANT YOUR MOTION TO
14 STRIKE THAT FROM THE RECORD. THAT IS NOT PART OF THE
15 QUESTION THAT WAS ASKED BY COUNSEL AND THAT IS NOT AN
16 APPROPRIATE RESPONSE. PLEASE DISREGARD THAT. AS I ASK YOU
17 TO DISREGARD SOMETHING YESTERDAY THAT WAS SIMILAR. PLEASE
18 ASK YOUR QUESTION AGAIN AND MR. HOWARD, PLEASE ANSWER THE
19 QUESTION THAT YOU ARE ASKED.

20 MR. HOWARD: YES, SIR.

21 Q. (BY MR. RUNYON) SO ON THE DAY OF THE INJURY SHE HAD
22 BEER OR ALCOHOL?

23 A. YES, SIR. AND OXYCONTIN, HER MAMMA HAS A PRESCRIPTION
24 AND SHE GOT THEM THE DAY BEFORE THAT SO WAS UNDER THE
25 INFLUENCE OF ALCOHOL AND OXYCONTIN.

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1 MR. MODICA: OBJECTION.

2 THE COURT: ALL RIGHT, COUNSEL, COME TO THE SIDEBAR IF
3 YOU WILL JUST A MOMENT.

4 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE PRESENCE
5 OF THE JURY BUT OUT OF THE HEARING OF THE JURY.)

6 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, LET ME
7 TALK WITH YOU A MOMENT. LET'S GO BACK TO SOMETHING THAT
8 HAPPENED YESTERDAY. THERE WAS A REFERENCE TO DRUG USE
9 YESTERDAY IN THE TRIAL AND I ASKED YOU TO DISREGARD THAT.
10 AND, YOU KNOW, THERE'S THE OLD SAYING ABOUT HOW HARD IT IS
11 TO UN-RING A BELL WHEN YOU HEAR SOMETHING. IT'S JUST VERY
12 DIFFICULT TO DO. BUT THAT IS REALLY NOT PART OF THIS CASE.
13 AND THAT IS WHY I ASKED YOU YESTERDAY TO DISREGARD THAT
14 BECAUSE IT HAS REALLY NOTHING TO DO WITH WHETHER THE EVENT
15 THAT IS ALLEGED HERE OCCURRED OR DIDN'T OCCUR. THAT IS JUST
16 SORT OF A WAY TO REACH OUT IN AN ATTEMPT TO DESMIRCH
17 SOMEONE'S CHARACTER OR WHATEVER THE PURPOSE MAY BE, AND IT
18 IS NOT RELEVANT TO THIS PROCEEDING. SO I AM GOING TO ASK
19 YOU JUST AS I ASKED YOU YESTERDAY TO DISREGARD, TO DISREGARD
20 THE COMMENTS THAT YOU JUST HEARD THAT REFER TO ILLEGAL DRUG
21 USE ON THE PART OF ANYONE ELSE IN THIS CASE. THIS IS JUST
22 NOT APPROPRIATE TESTIMONY. I HAVE INSTRUCTED MR. HOWARD
23 THAT IT IS NOT APPROPRIATE TESTIMONY. MR. HOWARD, YOU ARE
24 NOT TO DO THAT AGAIN, SIR.

25 MR. HOWARD: ALL RIGHT, I'M SORRY.

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1 THE COURT: ALL RIGHT, AND PLEASE DISREGARD WHAT YOU
2 HEARD ABOUT ILLEGAL DRUG USE. ALL RIGHT, NOW, LET'S GO TO
3 YOUR NEXT QUESTION, PLEASE.

4 Q. (BY MR. RUNYON) MR. HOWARD, WHEN YOU, MS. POWELL AND
5 JASON GOT INTO THE TRUCK TO TAKE JASON HOME, I BELIEVE
6 WAS THE TESTIMONY?

7 A. YES, SIR.

8 Q. WAS MS. POWELL DRINKING BEER?

9 A. YES, SIR, SHE HAD BEEN DRINKING BEER SINCE ABOUT 12:00
10 OR 1:00 O'CLOCK THAT DAY. AND I TOOK HIM HOME I'D SAY
11 ABOUT 7:30, RIGHT AT DARK.

12 Q. OKAY.

13 A. IT WAS DARK WHEN HE GO TO HIS HOUSE.

14 Q. ALL RIGHT.

15 A. WHEN WE GOT TO HIS HOUSE.

16 Q. NOW WERE THE WINDOWS IN YOUR TRUCK DOWN?

17 A. WHEN ARE YOU TALKING ABOUT?

18 Q. AFTER YOU DROPPED JASON OFF?

19 A. NO, SIR.

20 Q. WERE YOUR WINDOWS DOWN?

21 A. NO, SIR, IT WAS WINTER TIME. SHE ROLLED HER WINDOW
22 DOWN WHEN SHE THREW THE BEER CAN OUT.

23 Q. OKAY. AND DID SHE HAVE A PAIR OF GLOVES AT THAT TIME?

24 A. YES, SIR.

25 Q. ALL RIGHT. DID ANYTHING HAPPEN WITH ONE OR BOTH OF THE

1 GLOVES?

2 A. I THINK IT WAS ONE OF THE GLOVES.

3 Q. ALL RIGHT. WHAT DID YOU DO AT THAT PARTICULAR POINT
4 AND TIME?

5 A. I TURNED AROUND.

6 Q. OKAY. YOU TURNED AROUND, DID YOU GO BACK?

7 A. YES, SIR.

8 Q. WHAT DID YOU ALL DO, PICK UP THE BEER CAN?

9 A. I PICKED UP A GLOVE. SHE PICKED UP HER GLOVE.

10 Q. PICKED UP A GLOVE. NOW AFTER YOU PICKED UP THE GLOVE
11 WHERE WERE YOU GOING?

12 A. I WAS TAKING HER HOME. I ALSO WANTED TO POINT OUT AN
13 ISSUE. I PICKED UP HER GLOVE AFTER HER NOSE WAS
14 BLEEDING.

15 MR. MODICA: OBJECTION. NON RESPONSIVE.

16 THE COURT: OVERRULED.

17 Q. (BY MR. RUNYON) ALL RIGHT. NOW, MR. HOWARD, AT WHAT
18 POINT IN TIME DID MS. HOWARD, DID MS. POWELL SUFFER HER
19 INJURY?

20 A. BEFORE SHE THREW THE GLOVE OUT THE WINDOW.

21 Q. ALL RIGHT. AND HOW DID THAT COME ABOUT?

22 A. SIR?

23 Q. HOW DID HER INJURY, COME BACK?

24 A. OKAY. SHE THREW -- OKAY, YOU TWISTED ME RIGHT THERE
25 FOR A SECOND. SHE THREW THE GLOVES OUT OF THE WINDOW.

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1 I TOLD HER I WAS NOT GOING TO STOP FOR THOSE GLOVES AND
2 SHE SAID IT'S A SIXTY DOLLAR PAIR OF ISOTONER GLOVES
3 SHE SAID TO TURN AROUND. I TOLD HER I WAS NOT GOING TO
4 TURN AROUND AND THAT'S WHAT CAUSED HER TO SLAP ME IN
5 THE FACE. AND THE ARGUMENT --- THE ARGUMENT --- AND
6 REMEMBER HOW SHE SHUDDERED YESTERDAY AND SHE STUMBLED
7 ON THIS HERE, THE ARGUMENT CAME ABOUT BECAUSE SHE
8 WANTED TO GO GET, AND, YOUR HONOR, I'M SORRY BUT THIS
9 IS THE CONVERSATION --

10 THE COURT: NO, SIR. NO, SIR, I AM GOING TO TELL YOU,
11 MR. HOWARD, DO NOT TESTIMONY ABOUT ANY FURTHER DRUG
12 ALLEGATIONS.

13 MR. HOWARD: ALL RIGHT. ANY WAY, AN ARGUMENT WAS
14 CREATED FROM THAT. YES, SIR. SHE THREWED THE GLOVE OUT.
15 AND I THINK SHE THREWED THE GLOVE OUT IN SPITE TO MAKE ME
16 TURN AROUND. BUT ANY WAY, I TURNED AROUND AND WHEN I TURNED
17 AROUND HER NOSE WAS ALREADY BLEEDING.

18 Q. ALL RIGHT. HAD YOU SLAMMED ON THE BRAKES BEFORE THAT?

19 A. YES, SIR, I SLAMMED ON THE BRAKES BEFORE I TURNED
20 AROUND.

21 Q. ALL RIGHT. DID YOU STRIKE HER WITH YOUR FIST WITH THE
22 INTENT TO DO GRAVE BODILY HARM?

23 A. NO, SIR. I NEVER INTENDED TO HIT HER. THE ONLY THING
24 I WANTED TO DO WAS KNOCK HER ARM BACK WHERE I COULD GET
25 VIEW OF THE ROAD AND I SLAMMED ON BRAKES AND THE SAME

1 TIME I SLAMMED BRAKES I HIT HER LIKE THIS. SHE'S OVER
2 MY CONSOLE LIKE THIS. SHE SLAMMED ME IN MY FACE AND
3 SHE GRABBED ME LIKE THIS.

4 Q. WAS SHE WEARING HER SEATBELT?

5 A. NO, SIR, SHE WASN'T WEARING A SEATBELT.

6 Q. WERE YOU WEARING A SEATBELT?

7 A. NO, SIR.

8 MR. RUNYAN: ANSWER ANY QUESTIONS THAT MR. MODICA MAY
9 HAVE OR OTHER COUNSEL MAY HAVE FOR YOU.

10 THE COURT: CROSS EXAMINATION.

11 CROSS EXAMINATION BY MR. MODICA:

12 Q. I NOTICE THAT YOU HAVE A WHOLE BUNCH OF NOTES IN FRONT
13 OF YOU?

14 A. YES, SIR.

15 Q. ARE THOSE NOTES ABOUT YOUR TESTIMONY HERE TODAY?

16 A. WELL IT IS CHRONICALLY NOTES BUT MY ATTORNEY DOESN'T
17 KNOW HOW TO ELICIT MY TESTIMONY BECAUSE HE HASN'T
18 DISCUSSED THAT WITH ME. BUT I HAVE A LOT OF NOTES HERE
19 THAT I WOULD LIKE TO BRING OUT TO THE JURY.

20 Q. MR. HOWARD, DO YOU HAVE A CONVICTION FROM NOVEMBER OF
21 1992 FOR A CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE
22 SECOND DEGREE?

23 A. YES, SIR, AND I WOULD LIKE TO EXPLAIN THAT CHARGE.

24 THE COURT: SIR, LET ME STOP RIGHT THERE AND EXPLAIN TO
25 THE JURY. THE QUESTIONS OF ANY CHARGE, IN THE DEFENDANT'S

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1 PAST IS NOT OFFERED AS EVIDENCE AS TO WHETHER HE COMMITTED
2 THE CRIME FOR WHICH HE WAS PRESENTLY ON TRIAL. PLEASE
3 UNDERSTAND, IT CANNOT BE OFFERED FOR THAT PURPOSE. IT IS
4 OFFERED FOR THE PURPOSE OF GAUGING THE CREDIBILITY AND
5 BELIEVABILITY OF THE DEFENDANT AS A WITNESS AND ONLY FOR
6 THAT PURPOSE. ALL RIGHT, GO AHEAD, COUNSEL.

7 Q. (BY MR. MODICA) THANK YOU. DO YOU HAVE A CONVICTION
8 FOR AN ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
9 NATURE NOVEMBER 30, 1995?

10 A. YES, SIR, AND I WOULD LIKE TO EXPLAIN THAT CHARGE.

11 Q. DO YOU HAVE A CONVICTION FOR ASSAULT OF A HIGH AND
12 AGGRAVATED NATURE ON APRIL 22, 2004?

13 A. YES, SIR. IT WAS A VERBAL ASSAULT OF A HIGH AND
14 AGGRAVATED NATURE, YES, SIR AND I WOULD LIKE TO EXPLAIN
15 THAT CHARGE.

16 Q. AND THE VERBAL ASSAULT WAS THAT YOU THREATENED A PERSON
17 THAT IF THE LAW WAS CALLED YOU WOULD PUT THEM IN BURLAP
18 BAG?

19 A. NO, SIR, I DID NOT THREATENED -- I DID NOT
20 THREATENED IF THE LAW WAS CALLED I WOULD THEM IN BURLAP
21 SACK. I TOLD THEM IF SHE DIDN'T SHUT UP I WOULD PUT
22 THEM IN A POTATO SACK.

23 Q. OKAY. MEANING THAT YOU WOULD KILL THEM?

24 A. NO, SIR, NOT MEANING I WOULD KILL THEM JUST MEANING TO
25 SHUT UP. I WAS DRUNK.

1 Q. AND DO YOU HAVE A CONVICTION FOR ASSAULT AND BATTERY OF
2 A HIGH AND AGGRAVATED NATURE IN DECEMBER OF 2004?

3 A. YES, SIR. THERE ARE TWO ASSAULT BATTERIES HIGH AND
4 AGGRAVATED NATURES AGAINST MY RECORD.

5 Q. YOU WERE DRINKING THAT DAY?

6 A. WHICH DAY?

7 Q. DECEMBER 10?

8 A. NO, SIR.

9 Q. YOU AND JASON WEREN'T DRINKING --

10 A. -- YES, SIR, I WASN'T DRINKING ON THE HIGHWAY I DRANK
11 BEER AT MY HOUSE. NO, SIR, I WASN'T DRINKING ON
12 DECEMBER THE 10.

13 Q. FROM NOON OF DECEMBER 10 TIL WHEN YOU TOOK JASON HOME
14 AND APPROXIMATELY GOT HIM HOME, AT APPROXIMATELY GOT
15 HIM AT 7:30 THAT NIGHT, IT IS YOUR TESTIMONY TO OUR
16 JURY THAT YOU WERE ONLY CONSUMED TWO ALCOHOLIC
17 BEVERAGES THAT WHOLE DAY?

18 A. THAT'S RIGHT. AND THAT'S WHY I WENT TO THE HOSPITAL
19 AND I WAS THERE WAITED ON THE DEPUTY SHERIFF.

20 Q. FUNNY YOU SHOULD SAY THAT. YOU SAID THAT YOU WERE
21 GOING TO STAY THERE FOR THE DEPUTY SHERIFF SO THAT YOU
22 COULD TAKE A BREATHALYZER TEST?

23 A. FOR WHATEVER MEANS IF HE WANTED TO QUESTION ME AS TO
24 WHAT HAPPEN I WOULD BE THERE TO TELL HIM. HE COULD
25 GIVE ME A BREATHALYZER TEST OR WHATEVER HE WANTED TO DO

1 THAT NIGHT.

2 Q. SPEAKING ABOUT GOING TO THE HOSPITAL TOO, SINCE YOU
3 HADN'T BEEN DRINKING, SINCE YOU CAUSED THE INJURY TO
4 LISA POWELL --

5 A. -- NO, SIR, I DID NOT CAUSE THE INJURY. I NEVER
6 INTENDED --

7 Q. WHEN YOU SLAMMED ON THE BRAKES AND SHE GOT HURT, RIGHT?

8 A. I COULDN'T SEE THE ROAD WHAT WAS I SUPPOSE TO DO?

9 Q. MY QUESTION IS TO YOU, YOU SLAMMED ON THE BRAKES AND
10 YOU EITHER HIT HER OR HER FACE HIT THE DASHBOARD, YOUR
11 ACTION CAUSED HER INJURIES. WOULD YOU AGREE WITH THAT?

12 A. NO, SIR. SHE BLOCKED MY VIEW OF THE ROAD AND ALL I
13 WANTED TO DO WAS GET A VISUAL OF THE ROAD AND I WAS
14 SPEEDING DOING ABOUT SEVENTY MILES AN HOUR, BECAUSE I
15 WAS READY TO GET HER HOME.

16 Q. HAD YOU NOT SLAMMED ON THE BRAKES OR MOVED HER HAND,
17 SHE WOULD NOT HAVE BEEN INJURED; ISN'T THAT TRUE?

18 A. IF I HAD NOT SLAMMED ON BRAKES?

19 Q. RIGHT.

20 A. IT'S POSSIBLE SHE MAY NOT HAVE BEEN INJURED. IF SHE'D
21 OF HAD HER SEATBELT ON AND SHE HADN'T JUMPED OVER MY
22 SEAT AND SAT IN A SEAT LIKE A CIVILIZED PERSON I
23 WOULDN'T OF HAD TO SLAM ON BRAKES.

24 Q. SO I THINK THE ANSWER TO MY QUESTION IS YES, WOULD THAT
25 BE TRUE?

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1 THE COURT: ALL RIGHT, JUST A MOMENT. BACK AWAY FROM
2 THE MIKE JUST A LITTLE BIT IF YOU WILL. I THINK IT WILL BE
3 EASIER TO HEAR IN THE ACOUSTICS IN THIS ROOM.

4 Q. (BY MR. MODICA) THE ANSWER TO MY QUESTION WOULD BE YES.
5 WOULDN'T THAT BE TRUE?

6 A. ALL RIGHT, SIR, I WANT YOU TO RESTATE THAT QUESTION
7 BECAUSE THE JUDGE DISTRACTED ME.

8 Q. OKAY. HAD YOU NOT SLAMMED ON THE BRAKES, OR MAYBE HIT
9 HER WITH YOUR HAND, SHE WOULD NOT HAVE GOTTEN INJURED.
10 IS THAT TRUE, YES OR NO?

11 A. I CAN'T SAY BECAUSE THAT FATE RESTS IN TIME. I CANNOT
12 SAY. ALL I KNOW IS WHAT SHE DID AND SHE WAS NEGLIGENT.
13 SHE CAUSED THE ACCIDENT AND I TOLD HER THAT FROM SQUARE
14 ONE. YOU CAUSED THE ACCIDENT.

15 MR. MODICA: OBJECTION. NON RESPONSIVE.

16 MR. HOWARD: I'M SORRY, I'M SORRY, I'M SORRY, I'M
17 SORRY.

18 Q. ALL RIGHT, MR. HOWARD, HOW ABOUT WE GO THIS ROUTE. DID
19 YOU FEEL BAD THAT SHE GOT HURT?

20 A. YES, SIR. I MEAN --

21 Q. -- DID YOU WANT TO HELP HER?

22 A. I TOOK --- I TOOK HER --- I TOOK HER TO MEET MY MOM AND
23 DAD TO TAKE HER TO THE HOSPITAL, YES, SIR.

24 Q. ALL RIGHT, THEN WE FINALLY GOT THERE. WE FINALLY GOT
25 TO THE POINT THAT I AM TRYING TO MAKE. IT TOOK US A

1 WHILE BUT WE FINALLY GOT THERE. YOU COULD HAVE TAKEN
2 HER TO THE HOSPITAL YOURSELF, COULDN'T YOU?

3 A. AND, AND, AND, AND LOOK AT MY PRIOR RECORD. WHAT WOULD
4 THEY HAVE DONE, THEY WOULD ASSUMED THAT I'M THE ONE
5 THAT BEAT HER UP AND EVERYTHING ELSE AND THEY WOULD OF
6 PUT ALL KIND OF -- LIKE I'M STANDING HERE ON TRIAL
7 RIGHT NOW.

8 Q. OKAY. IT'S VERY SIMPLE.

9 A. I NEEDED WITNESSES.

10 Q. COULD YOU HAVE TAKEN HER TO THE HOSPITAL YOURSELF?

11 A. YES, SIR. AND JUST THINK HOW SHE STABBED ME WITH A
12 DAG-ON KNIFE IN MY HAND. I MEAN --

13 Q. YOU CHOOSE NOT TO. YOU CHOOSE TO GET YOUR PARENTS
14 INVOLVED. ISN'T THAT TRUE?

15 A. YES, SIR. CAUSE I NEEDED WITNESSES --

16 Q. -- ISN'T IT TRUE SIR, GREAT --

17 A. -- I NEED SOMEBODY ON MY SIDE.

18 Q. SPEAKING ABOUT PEOPLE ON YOUR SIDE, ISN'T IT TRUE --

19 A. -- BECAUSE WE HAD THIS COMMUNICATION BEFORE, YOU KNOW,
20 I NEEDED SOMEBODY ON MY SIDE.

21 Q. OKAY. HOW ABOUT IF WE TRY AND RESPECT EACH OTHER WHEN
22 WE'RE TALKING. WHEN I'M TALKING PLEASE DON'T TALK AND
23 I WILL TRY NOT TO TALK WHEN YOU'RE TALKING.

24 A. I'M SORRY.

25 Q. SPEAKING OF, ISN'T IT TRUE THAT YOUR PARENTS REPEATEDLY

1 BAIL YOU OUT OF SITUATIONS?

2 A. NO, SIR, THAT IS NOT THE CASE.

3 Q. YOUR PARENTS PAID FOR THE \$2,500.00 CAR STEREO DIDN'T
4 THEY?

5 A. NO, SIR, THEY DID NOT, I DID. I WORK FOR MY FATHER.

6 Q. RIGHT. SO BY WORKING FOR HIM AT THE FARM, RIGHT?

7 A. YES, SIR.

8 Q. WHICH REALLY YOU DON'T DO MUCH ISN'T THAT TRUE?

9 A. NO, SIR. I DO A LOT AROUND THE FARM.

10 Q. YOU MADE ENOUGH MONEY FROM YOUR FATHER WORKING AT THE
11 FARM TO AFFORD A \$2,500.00 STEREO EQUIPMENT FOR YOUR
12 TRUCK?

13 A. YES, SIR.

14 Q. AND YOUR FOLKS BOUGHT YOU THAT TRUCK DIDN'T THEY?

15 A. NO, SIR.

16 Q. YOU PAID FOR THAT?

17 A. I EARNED IT, AND I PAID FOR IT, YES, SIR. A 2500
18 SERIES SILVERADO.

19 Q. OKAY. IS THE TRUCK IN YOUR NAME?

20 A. NO, SIR, IT'S IN MY FATHER'S NAME.

21 Q. ALL RIGHT. INSTEAD OF YOU CARRYING HER TO THE HOSPITAL
22 YOU CALLED YOUR FOLKS AND HAD THEM DRIVE HER TO THE
23 HOSPITAL, ISN'T THAT TRUE?

24 A. YES, SIR.

25 Q. OKAY. AND WHILE YOU WERE TRAVELING TO THE HOSPITAL

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1 ISN'T IT TRUE THAT YOU PULLED UP NEXT TO THEM?

2 A. YES, SIR, I PULLED UP AT THE CROSSING, YES, SIR.

3 Q. WHILE YOU WERE DRIVING YOU PULLED UP NEXT TO THEM?

4 A. YES, SIR.

5 Q. YOU SAID TO YOUR PARENTS FIND OUT WHAT SHE SAYING?

6 A. NO, SIR, I DID NOT.

7 Q. YOU DID NOT SAY ANYTHING LIKE THAT?

8 A. NO, SIR, I DID NOT.

9 Q. WHAT DID YOU SAY THEN?

10 A. I TOLD MY DADDY, I TOLD MY DADDY TO MAKE ABSOLUTELY
11 SURE WHEN HE GOES TO THE HOSPITAL TO LET THEM KNOW THAT
12 SHE HAD BEEN DRINKING. THAT'S THE ONLY THING I TOLD MY
13 FATHER. AND I TELL YOU, MY FATHER HAD A PLAIN VIEW OF
14 HER AND HE KNOWS SHE WAS NOT BRUTALLY BEATEN.

15 Q. ISN'T IT TRUE THAT AS A RESULT OF WHAT HAPPENED IN THE
16 CAR SHE WAS BLEEDING BADLY ENOUGH THAT YOU HAD TO OPEN
17 THE DOOR TO THE HOUSE?

18 A. I HAD TO OPEN THE DOOR AND LET HER OUT?

19 Q. YOU HAD TO OPEN THE DOOR TO THE HOUSE?

20 A. YES, SIR. BECAUSE I TOOK THE KEYS. I OPENED THE DOOR
21 TO HER HOUSE.

22 Q. RIGHT. BECAUSE SHE WAS BLEEDING SO PROFUSELY?

23 A. NO, SIR, SHE WASN'T -- SHE WASN'T -- SHE WASN'T
24 BLEEDING LIKE BLEEDING LIKE A STUCK HOG, SHE WAS
25 BLEEDING THOUGH.

1 Q. BLEEDING ENOUGH THAT YOU HAD TO OPEN THE DOOR?

2 A. I OPENED THE DOOR, YES, SIR.

3 Q. ALL RIGHT.

4 A. THAT IS MY COURTESY. THAT IS MY COURTESY FOR SOMEBODY
5 THAT IS HURT, OPEN THE DOOR.

6 Q. THAT WAS YOUR COURTESY?

7 A. YES, SIR.

8 Q. OKAY. BECAUSE YOU CARED DEEPLY ABOUT THIS PERSON,
9 RIGHT?

10 A. IF I DIDN'T, I WOULDN'T OF STUCK AROUND FOR SEVEN
11 YEARS, ALL THE HELL SHE PUT ME THROUGH.

12 Q. OKAY. AND YOU CARED SO MUCH ABOUT HER, THAT YOU DIDN'T
13 WANT HER TO GO TO THE HOSPITAL RIGHT, BECAUSE YOU
14 DIDN'T WANT POLICE ENTANGLEMENT, ISN'T THAT TRUE?

15 A. NO, SIR, I WENT TO THE HOSPITAL TO FACE THE POLICE IF
16 THE POLICE HAPPENED TO QUESTION ME.

17 Q. ALL RIGHT.

18 A. THERE ARE TWO PEOPLE --- IF ANYTHING, THEY'RE TWO
19 PEOPLE WRONG. THEY'RE TWO PEOPLE WRONG IN THIS
20 INCIDENT.

21 Q. LET ME ASK YOU SOMETHING. ARE YOU TELLING OUR JURY
22 THAT NO POLICE OFFICER ARRIVED AT THAT HOSPITAL THAT
23 DAY?

24 A. OH, YEAH, OH, YEAH, A POLICE OFFICER ARRIVED. HE
25 DIDN'T QUESTION MY FATHER. HE DIDN'T QUESTION MY

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1 MOTHER. HE DIDN'T QUESTION ME.

2 Q. OKAY. YOU SAW THE POLICE OFFICER?

3 A. NO, SIR, I DID NOT SEE THE POLICE OFFICER. I WAS
4 WAITING IN THE PARKING LOT. I TOLD MY DADDY TO TELL
5 HIM TO WHERE I WAS AT.

6 Q. WEREN'T YOU HIDING?

7 A. NO, SIR, I WAS NOT. IF I WAS HIDING I WOULDN'T OF BEEN
8 IN GEORGETOWN.

9 Q. DIDN'T YOU HAVE IN YOUR MIND THAT THE POLICE WERE GOING
10 TO COME?

11 A. I DID NOT KNOW IF THE POLICE WERE GOING TO COME OR NOT.
12 THAT'S WHY I HAD MY FAMILY THERE, BECAUSE I WANTED
13 WITNESSES TO WHAT HAPPEN.

14 Q. ALL RIGHT, BUT THEY WEREN'T THERE WHEN THIS INCIDENT
15 HAPPENED IN THE TRUCK WERE THEY?

16 A. NO, SIR.

17 Q. OKAY.

18 A. THAT'S WHY I CALLED THEM.

19 Q. RIGHT. YOU CALLED THEM BECAUSE YOU WANTED TO GET THE
20 STORY STRAIGHT?

21 A. NO, SIR.

22 Q. YOU WANTED TO GET HER STRAIGHT, RIGHT, DIDN'T YOU?

23 A. OH, NO. OH, NO. YOU WRONG ABOUT THAT.

24 Q. OKAY.

25 A. YOU WRONG ABOUT THAT.

1 Q. ALL RIGHT.

2 A. THAT'S WHAT'S IN YOUR MIND. THAT'S WHAT'S IN YOUR
3 MIND.

4 Q. MR. HOWARD, YOU LIKE TO CONTROL SITUATIONS, DON'T YOU?

5 A. NO, SIR.

6 Q. YOU'RE EVEN TRYING TO CONTROL THIS SITUATION NOW AREN'T
7 YOU?

8 A. I WANT TO GET EVERYTHING OUT TO THIS JURY BECAUSE MY
9 LIFE IS ON THE LINE.

10 Q. YOU WANT PEOPLE TO BELIEVE EVERYTHING YOU GOT TO SAY.
11 YOU WANT TO CONTROL THE SITUATION, DON'T YOU, DON'T
12 YOU?

13 A. NO, SIR. THAT'S NOT THE MATTER. MY LIFE IS ON THE
14 LINE.

15 Q. SO EVERY TIME I OPEN MY MOUTH AND YOU INTERRUPT ME,
16 YOU'RE NOT TRYING TO CONTROL THE SITUATION?

17 A. I AM TRYING TO REBUT WHAT YOU'RE SAYING.

18 Q. OKAY.

19 A. AND I AM DOING THAT I MY DEFENSE.

20 Q. BECAUSE IT SUITS YOU BEST, DOESN'T IT?

21 A. BECAUSE IT IS TO MAKE ABSOLUTELY SURE THAT THIS JURY
22 CAN ASCERTAIN THE TRUTH OF THE MATTER --

23 Q. OKAY.

24 A. -- BECAUSE YOU'RE WITNESS IS UP HERE STUTTERING AND
25 LYING, NOT ME.

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1 Q. OKAY. MR. HOWARD, WOULD YOU AGREE WITH ME THAT LISA
2 POWELL IS AFRAID OF YOU?

3 A. NO, SIR, SHE'S NOT AFRAID OF ME BECAUSE YOU WANT TO YOU
4 WHY --

5 MR. MODICA: YOUR HONOR, YOUR HONOR OBJECTION. NON
6 RESPONSIVE.

7 A. -- BECAUSE FOR SEVEN YEARS SHE CAME TO MY HOUSE WITH
8 YOUR VEHICLE.

9 THE COURT: ALL RIGHT. HE ACTUALLY SAYS WHY AND I AM
10 GOING TO LET HIM ANSWER YOUR QUESTION.

11 MR. MODICA: OKAY.

12 A. FOR SEVEN YEARS SHE'S COME TO MY HOUSE IN HER VEHICLE,
13 SOMETIMES 2:00 OR 3:00 O'CLOCK IN THE MORNING. JUST
14 GET DRUNK IN THE BAR COME TO MY HOUSE BECAUSE SOME MAN
15 RUN HER OFF BECAUSE SHE'S ACTING TO SILLY AT THE BAR
16 AND STUPID ME TAKES HER IN EVERY TIME. YOU JUST DON'T
17 KNOW THE HISTORY OF THIS GIRL AND I WISH YOU DID. HUH,
18 I WISH YOU DID.

19 Q. I TAKE IT WHAT YOU JUST DID, WAS AN ATTEMPT TO CONTROL
20 THE SITUATION WASN'T IT?

21 A. NO, SIR.

22 Q. OKAY. YOU JUST WANT THE TRUTH OUT, RIGHT?

23 A. YES, SIR.

24 Q. OKAY. IT IS TRUE THAT YOU ADMIT TO HITTING HER?

25 A. I -- I -- I DID NOT INTEND TO HIT HER. I INTENDED TO

1 KNOCK HER ARM BACK FROM MY FACE. THAT IS ALL I WANTED
2 TO DO IS GET VIEW OF THE ROAD, MR. MODICA. HOW MANY
3 TIMES DO I HAVE TO TELL YOU THIS.

4 Q. HOW MANY TIMES DO I HAVE TO REPEAT A QUESTION. THE
5 QUESTIONS IS, YOU ADMIT TO HITTING HER?

6 A. NO, SIR, I DID NOT HIT HER. I DID NOT INTEND TO HIT
7 HER. IF I HIT HER, IT WAS NOT INTENDED IT WAS AN
8 ACCIDENT. THERE WAS NO EVIL DESIRE. THERE WAS EVIL
9 INTENT. I DID IT TO GET THE VIEW OF THE ROAD.

10 Q. ALL RIGHT.

11 A. NOT TO HURT HER.

12 Q. OKAY. AND WASN'T IT YOUR TESTIMONY DID YOU STRIKE HER,
13 NO, NOT INTENTIONALLY?

14 A. -- NOT INTENTIONALLY --

15 Q. -- WAS THAT YOUR TESTIMONY?

16 A. YES, SIR, THAT IS MY TESTIMONY.

17 Q. SO YOU DID STRIKE HER?

18 A. I STRUCK HER ARM. WHEN THE BRAKES HIT, HER FACE MIGHT
19 HAVE HIT MY HAND, I DO NOT KNOW. I HAD ON TWO RINGS.

20 Q. OKAY.

21 A. I DO NOT KNOW BUT SHE SAID --

22 Q. WASN'T IT YOUR TESTIMONY THAT YOU SLAPPED HER?

23 A. NO, SIR, IT WAS NOT MY TESTIMONY THAT I SLAPPED HER.

24 Q. ALL RIGHT. OKAY. BY THE WAY, YOU KNOW HOW TO PICK UP
25 A PHONE AND DIAL 911 DON'T YOU?

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1 A. I KNOW HOW TO CALL MY PARENTS AND YES, SIR, I COULD OF
2 CALLED 911.

3 Q. YEAH, YOU SURE DO KNOW HOW TO CALL YOUR PARENTS.

4 A. BUT I WANTED TO MAKE ABSOLUTELY SURE I CALLED MY FAMILY
5 BECAUSE MY FAMILY IS THE ONLY PERSON I TRUST IN THE
6 WORLD. YOU CAN'T EXPLAIN THINGS TO YOUR FAMILY TO
7 PEOPLE LIKE YOU CAN EXPLAIN TO YOUR FAMILY BECAUSE YOUR
8 FAMILY KNOWS ME, THEY KNOW ME, THEY RAISED ME, THEY
9 WIPED MY BEHIND, WHEN THERE WASN'T NOBODY ELSE AROUND
10 WHO CARED FOR ME AND THAT IS WHO I AM GOING TO GO TO
11 FIRST BEFORE I GO TO ANYBODY. SOMEBODY WHO RAISED ME.

12 Q. RIGHT. SPEAKING OF YOUR BEHIND, THEY COVER YOUR BEHIND
13 ALL THE TIME DON'T THEY?

14 A. NO, SIR. MY DADDY WILL NOT LIE AND MY MAMMA WILL NOT
15 LIE. MY MAMMA HAS PREACHED IN A PENOCOSTAL HOLINESS
16 CHURCH FOR TWENTY YEARS AND SHE WANTED ME TO BE
17 PREACHER.

18 Q. ISN'T IT TRUE THAT YOU TOLD YOUR MOTHER TO MAKE SURE
19 THAT SHE STAYED WITH LISA, ISN'T THAT RIGHT?

20 A. NO, SIR, I DID NOT.

21 Q. YOU KNOW THAT YOUR MOTHER STAYED WITH HER, RIGHT?

22 A. SHE PROBABLY --- BECAUSE SHE WAS CONCERNED. I WOULD
23 THINK THAT SHE WOULD, YES, SIR. SHE'S KNOWN LISA FOR A
24 LONG TIME.

25 Q. AND YOUR MOTHER, IN FACT, DOES WORK AT GEORGETOWN

1 EMERGENCY ROOM?

2 A. EMERGENCY ROOM REGISTRATION, YES, SIR.

3 Q. ALL RIGHT. SO YOU THOUGHT IT WOULD BE THE BEST IDEA TO
4 CALL YOUR MOTHER SO THAT BECAUSE PEOPLE KNEW HER THERE
5 SHE COULD GET ACCESS TO THE BACK AND FIND OUT WHAT WAS
6 LISA POWELL WAS SAYING, ISN'T THAT TRUE?

7 A. NO, SIR, ABSOLUTELY NOT.

8 Q. ALL RIGHT.

9 A. ABSOLUTELY NOT.

10 Q. ALL RIGHT. YOU THOUGHT IT WAS APPROPRIATE TO CALL YOUR
11 FOLKS IN THE MIDDLE OF THE NIGHT TO BAIL YOU OUT AGAIN?
12 IS THAT WHAT YOU ARE TELLING OUR JURY?

13 A. NO, SIR. NO, SIR. IT WAS NOT IN THE MIDDLE OF THE
14 NIGHT. IT WAS NOT IN THE MIDDLE OF THE NIGHT. IT
15 WASN'T LATE?

16 Q. 9:00, 10:00 O'CLOCK?

17 A. ABOUT 8:00 O'CLOCK.

18 Q. OKAY.

19 A. 9:00 O'CLOCK, MAYBE.

20 Q. YOU THOUGHT IT WAS APPROPRIATE ON A SUNDAY NIGHT TO
21 CALL YOUR FOLKS AT 8:00 OR 9:00 O'CLOCK AT NIGHT AND
22 GET EVEN THOUGH YOU CAUSED THE INJURY GET THEM TO DRIVE
23 LISA TO THE HOSPITAL AND YOU DIDN'T, ISN'T THAT WHAT
24 HAPPENED?

25 A. SIR, I CALLED THEM BECAUSE --

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1 Q. ISN'T THAT WHAT HAPPENED, YES OR NO?

2 A. -- BECAUSE SHE PULLED A KNIFE ON ME AND I WASN'T GOING
3 TO DRIVE HER TO THE HOSPITAL --

4 Q. SIR, YES OR NO, IS THAT WHAT HAPPENED?

5 A. I CALLED MY FAMILY TO MEET ME IN ANDREWS.

6 Q. YOU WERE SO AFRAID OF THE KNIFE THAT YOU DROVE HER FROM
7 THE HOUSE AND YOU MET HER PARENTS, ISN'T THAT TRUE?

8 A. I THREW THE KNIFE OVER THE TRAILER. SHE DIDN'T HAVE A
9 KNIFE SHE DIDN'T HAVE THE KNIFE.

10 Q. MR. HOWARD, ISN'T THAT TRUE?

11 A. YES, SIR.

12 Q. OKAY, THAT WASN'T SO HARD WAS IT?

13 A. NO, SIR, BUT I'M GONNA SAY THIS RIGHT HERE, IT WAS TRUE
14 THAT I THREW THE KNIFE OVER THE TRAILER.

15 Q. YEAH, OKAY. BY THE WAY, WHERE IS YOUR INJURY FROM
16 SLAMMING ON THE BRAKE?

17 A. I DIDN'T HAVE NONE.

18 Q. YOU DIDN'T HAVE ANY?

19 A. NO, SIR.

20 Q. SHE DID, YOU DIDN'T?

21 A. I'M SITTING DOWN IN MY SEAT. SHE'S STANDING OVER MY
22 CONSOLE.

23 Q. ALL RIGHT. YOU DIDN'T NEED TO GO TO THE HOSPITAL,
24 RIGHT?

25 A. YOU DIDN'T HAVE THOSE INJURIES. I HAD MY LEFT HAND ON

1 THE WHEEL. I KNOCKED HER BACK. THAT'S EXACTLY WHAT
2 HAPPENED. SHE WAS STANDING UP OVER MY CONSOLE, RIGHT.

3 Q. SO YOU KNOCKED HER?

4 A. SIR?

5 Q. YOU KNOCKED HER?

6 A. I KNOCKED HER HANDS OUT OF THE WAY OF MY FACE, YES,
7 SIR.

8 Q. OKAY. YOU KNOCKED HER HEAD OUT OF THE WAY OF HER FACE?

9 A. HER HAND OUT OF THE WAY OF MY FACE. SHE WAS STANDING
10 OVER MY CONSOLE ON MY SIDE OF THE VEHICLE.

11 Q. BY THE WAY, YOU DO WEAR A DIAMOND CLUSTER RING, DON'T
12 YOU?

13 A. YES, SIR, TWO OF THEM.

14 Q. AND YOU HAD YOUR FATHER COME AND PICK THAT UP, DIDN'T
15 YOU?

16 A. AT THE JAILHOUSE, YES, SIR. YOU WANT ME TO TELL YOU
17 WHY BECAUSE I PAID OVER CAME HERE WITH \$1,329.00 AND
18 THEY STOLE \$300.00 OF MY MONEY.

19 Q. EVERYBODY IS CONSPIRACY AGAINST YOU, AREN'T THEY?
20 EVERYBODY IS CONSPIRED --

21 A. -- I CAME TO THE JAIL WITH \$1,329.00.

22 Q. IS IT YOUR PERCEPTION THAT EVERYBODY CONSPIRES AGAINST
23 YOU?

24 A. NO, SIR, THAT IS NOT MY PERCEPTION.

25 Q. BUT --

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1 A. BUT THERE IS PEOPLE -- THERE IS PEOPLE IN THE WORLD
2 THAT WILL CONSPIRE AGAINST YOU.

3 Q. OKAY.

4 A. THAT IS CERTAIN.

5 Q. AND YOU FEEL THAT WAY, DON'T YOU?

6 A. I KNOW FOR A FACT.

7 Q. YOU FEEL THAT WAY?

8 A. I KNOW FOR A FACT.

9 Q. DO YOU FEEL THAT WAY?

10 A. DO YOU NOT HAVE A VENDETTA AGAINST ME?

11 Q. YOU THINK I AM CONSPIRING AGAINST YOU, DON'T YOU?

12 A. BUT DO YOU NOT AND THAT IS WHY YOU ARE PROSECUTING ME
13 ON THIS CHARGE CAUSE YOU KNOW THIS CHARGE ---- SHE
14 HASN'T EVEN SIGN THIS STATEMENT HERE THAT YOU SAYS IS A
15 SWORN TRUTH. SHE DIDN'T SIGN IT BECAUSE YOU KNOW SHE'S
16 LYING.

17 Q. MR. HOWARD, DO YOU THINK EVEN THE PROSECUTOR IS
18 CONSPIRING AGAINST YOU, DON'T YOU?

19 A. YOU'RE MAD AT ME.

20 Q. DON'T YOU, JUST SAY YES OR NO? DO YOU OR DON'T YOU?

21 A. NO, I DON'T THINK --

22 Q. LET ME ASK YOU, DO YOU THINK THE JUDGE IS CONSPIRING
23 AGAINST YOU?

24 A. NO, SIR. I THINK HE IS MAD AT ME THOUGH.

25 Q. DO YOU THINK THE JUDGE IS CONSPIRING AGAINST YOU, MR.

1 HOWARD?

2 A. NO, SIR. NOT AT THIS POINT, NO, SIR.

3 Q. NOT AT THIS POINT. BUT YOU DID THINK HE WAS CONSPIRING
4 AGAINST YOU, DIDN'T YOU?

5 A. WELL, I LOOK AT IT LIKE THIS, WHEN YOU GOT CHARGES ME,
6 WHEN YOU GOT CHARGES AGAINST ME THAT YOU KNOW THAT ARE
7 FABRICATED YOU ABSOLUTELY KNOW IT IS FABRICATED YOU
8 KNOW BY THE WAY SHE STOOD UP HERE AND TESTIFIED AND
9 THEN YOU STILL WANT TO PURSUE THAT MANNER, I WOULD SAY
10 THAT IS VINDICTIVE.

11 Q. OKAY.

12 A. I WOULD. I WOULD SAY THAT IS VINDICTIVE.

13 Q. OKAY. AND IS IT CLEAR NOW THAT YOU NOT TRYING TO
14 CONTROL THE SITUATION?

15 A. NO, SIR, I'M NOT.

16 Q. YOU'RE NOT TRYING TO CONTROL THE SITUATION IN FRONT OF
17 THIS JURY?

18 A. I AM TRYING TO DEFEND MYSELF FROM PRISON. DO YOU KNOW
19 WHAT IT'S LIKE IN THERE?

20 MR. MODICA: OBJECTION, YOUR HONOR. I DIDN'T ASK HIM
21 ANYTHING ABOUT PRISON.

22 THE COURT: ANYTHING FURTHER?

23 (PAUSE)

24 Q. (BY MR. MODICA) LET ME SEE THE LETTER -- THAT
25 STATEMENT THAT YOU ARE REFERRING TO?

STACEY W. HOWARD - CROSS EXAMINATION BY MR. MODICA

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1 A. I CAN ALSO SHOW YOU THE CONTRADICTORY STATEMENTS AND
2 THE INCIDENT REPORT. NOT NOTARIZED.

3 Q. YOU SAID SHE DIDN'T SIGN IT. THERE'S HER SIGNATURE
4 RIGHT THERE.

5 A. I SAID IT WAS NOT NOTARIZED. IT'S NOT AN AUTHENTICATED
6 DOCUMENT.

7 Q. CAN WE HAVE THE --

8 A. -- IT IS NOT A SWORN DOCUMENT. THE REASON WHY IT
9 HASN'T BEEN SWORN TO IS BECAUSE YOU KNOW IT WAS A LIE
10 AND YOU KNOW NOW THAT IT CONSTITUTES PERJURY. BECAUSE
11 NUMBER ONE, SHE MADE A INCONSISTENT STATEMENT. SHE
12 MADE A FABRICATED STATEMENT. THINK ABOUT NOW.

13 THE COURT: ALL RIGHT, MR. HOWARD, JUST WAIT UNTIL
14 YOU'RE ASKED A QUESTION, SIR, AND THEN RESPOND TO THE
15 QUESTION.

16 MR. HOWARD: AND I ALSO HAVE IT UNDERLINED.

17 THE COURT: MR. HOWARD, WAIT UNTIL YOU'RE ASKED
18 QUESTION AND THEN RESPOND TO THE QUESTION.

19 MR. HOWARD: YES, SIR.

20 Q. (BY MR. MODICA) THIS IS THE THREE PAGE STATEMENT YOU
21 ARE REFERRING TO?

22 A. YES, SIR.

23 Q. IN WHICH YOU TESTIFIED SHE DIDN'T SIGN IT, DIDN'T YOU
24 JUST TESTIFY THAT TO THIS JURY RIGHT HERE DIDN'T YOU
25 TESTIFY SHE DIDN'T SIGN IT?

- 1 A. IF I TESTIFIED THAT SHE DID NOT SIGN IT, I DID NOT MEAN
2 TO SAY THAT. I MEANT TO THE NOTARY PUBLIC DID NOT
3 NOTARIZE IT.
- 4 Q. THERE'S HER SIGNATURE THERE, RIGHT?
- 5 A. THERE'S HER SIGNATURE THERE BUT NO NOTARY PUBLIC
6 NOTARIZED -
- 7 Q. PAGE ONE, THAT'S HER SIGNATURE?
- 8 A. NO NOTARY PUBLIC DID NOT NOTARIZE IT. IT'S NOT A
9 NOTARIZED DOCUMENT.
- 10 Q. PAGE TWO, THAT'S HER SIGNATURE?
- 11 A. CORRECT, CORRECT.
- 12 Q. PAGE THREE, THAT'S HER SIGNATURE?
- 13 A. YES, SIR, BUT IT'S NOT NOTARIZED.
- 14 Q. YOU ARE JUST MISTAKEN YOU'RE NOT --
- 15 A. IT'S NOT SWORN TO. IT'S NOT NOTARIZED BY A NOTARY
16 PUBLIC. IT'S NOT SWORN TO AND THERE IS A REASON WHY
17 IT'S NOT SWORN TO BECAUSE A CHARGE CANNOT BE PRESSED
18 AGAINST HER AND AN ATTORNEY CAN TEAR THIS UP IN TRIAL
19 IF SHE WAS EVER PROSECUTED FOR PERJURY. AND THAT IS
20 THE REASON WHY IT IS HERE. AND THE INCIDENT REPORT IS
21 THE SAME WAY. SHE SAYS IN ONE PLACE SHE SAYS I HIT HER
22 TWO TIMES AND THAT SHOW'S WHAT THEY CALL REQUISITE MENS
23 RAE, EVIL INTENT, I HAVE STUDIED THAT AS WELL, AND THEN
24 AGAIN HERE SHE SAYS THAT I KNOCKED HER HAND BACK
25 BECAUSE I KNOCKED HER HAND BACK ONE TIME AND HIT THE

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1 DASHBOARD ONE, NOT TWO TIMES.

2 Q. MR. HOWARD -- IN THE PAST --

3 THE COURT: MR. HOWARD, AGAIN, WAIT UNTIL YOU HAVE A
4 QUESTION THEN RESPOND TO IT.

5 Q. IN THE PAST, YOU HAVE WRITTEN HER LETTERS
6 THREATENING HER?

7 A. NO, SIR.

8 Q. OKAY. AND ON THAT MONDAY YOU CAME OVER WITH MONEY IN
9 HAND THAT YOU GOT FROM YOUR DAD?

10 A. AND YOU WANT ME TO TELL YOU WHY BECAUSE SHE TRIED TO
11 SUE MY FATHER'S INSURANCE.

12 Q. YES OR NO, SIR?

13 A. AND SHE DEMANDED THE MONEY. SHE DEMANDED THE MONEY.

14 Q. YES OR NO?

15 A. YES, SIR.

16 Q. OKAY. \$300.00 CASH THAT YOU GOT FROM YOUR DADDY?

17 A. NO, SIR.

18 Q. THAT YOU GOT --

19 A. NO, SIR, OUT OF MY POCKET. MY DADDY SAID HE WAS NOT
20 GOING TO PAY FOR HER INJURY.

21 Q. ARE YOU TELLING ME, SIR, THAT YOUR FATHER DID NOT GIVE
22 YOU THAT \$300.00 CASH TO GIVE HER?

23 A. YES, FROM WORKING. I WORK FOR IT. THAT IS MY MONEY.
24 THAT'S MY HARD EARNED MONEY.

25 Q. HOW ABOUT IF YOU BREAK IT DOWN, DID YOUR FATHER GIVE

STACEY W. HOWARD - CROSS EXAMINATION BY MR. MODICA

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1 YOU THE \$300.00?

2 A. YES, SIR, HE PAID ME FOR A WEEK'S WORK, YES, SIR.

3 Q. DID HE GIVE YOU THE \$300.00 KNOWING THAT YOU WERE GOING
4 TO GIVE THAT MONEY LISA POWELL?

5 A. FOR HER DOCTOR BILLS. SHE CALLED FOR IT FOR HER DOCTOR
6 -- WHEN I GOT THERE SHE SAID SHE WANTED A THOUSAND
7 DOLLARS FOR CHRISTMAS AND I TOLD HER SHE WAS CRAZY. I
8 WOULD PAY THE DOCTOR BILL AS THE RECEIPTS CAME CAUSE I
9 FELT SORRY FOR HER. I FEEL SORRY FOR HER.

10 THE COURT: MR. HOWARD, EXCUSE ME SIR, I TRY NOT TO
11 LIMIT WITNESSES BECAUSE THIS IS FOR THE JURY TO OBSERVE BUT
12 I AM TELLING YOU AGAIN, DO NOT CONTINUE TO RUN ON AFTER A
13 QUESTION IS ANSWERED IN THE OTHER MATTERS. ANSWER THE
14 QUESTION. YOU WILL HAVE REDIRECT WITH YOUR ATTORNEY.
15 SIMPLE ANSWER THE QUESTION POSED TO YOU. ARE THERE FURTHER
16 QUESTIONS, MR. MODICA?

17 MR. MODICA: YES, SIR.

18 THE COURT: PLEASE ASK YOUR NEXT QUESTION.

19 MR. HOWARD: YOUR HONOR, I DON'T MEAN TO BRING THE
20 COURT INTO DISREPUTE AND I THANK YOU FOR INFORMING ME, YOUR
21 HONOR, BECAUSE A LOT OF TIMES WHEN I TESTIFY I DON'T REALIZE
22 THAT I AM GOING --

23 THE COURT: YES, SIR.

24 MR. HOWARD: -- I THINK WHAT YOU WOULD CALL EXTRANEIOUS
25 ISSUES.

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1 THE COURT: ALL RIGHT, SIR. THAT'S FIND, MR. HOWARD.
2 PLEASE RESPOND TO MR. MODICA'S QUESTIONS.

3 (PAUSE)

4 Q. (BY MR. MODICA) WHEN YOU WENT OVER THERE ON MONDAY
5 NIGHT IT WAS PART OF YOUR INTENTION TO GET HER NOT TO
6 FILE CHARGES AGAINST YOU, CORRECT?

7 A. NO, SIR, IT WAS NOT.

8 Q. ISN'T IT TRUE THAT YOU SAID WORDS TO THE EFFECT THAT I
9 CAN DO TEN YEARS. IF I TEN YEARS I'LL GET OUT WE'LL
10 HAVE A DATE YOU'LL HAVE A DATE WITH THE DEVIL, WORDS TO
11 THAT EFFECT?

12 A. NO, NO, SIR, I DID NOT.

13 Q. YOU DIDN'T SAY ANYTHING LIKE THAT?

14 A. NO, SIR, I DID NOT.

15 Q. ALL RIGHT. HAVE YOU WRITTEN HER A LETTER IN WHICH YOU
16 PUT, YOU CARE ABOUT ME AND YOU HAVE NEVER INVOLVED ME
17 WITH THE LAW, RIGHT, QUESTION MARK? ALSO YOU WOULDN'T
18 GIVE ME OVER TO LAW, WOULD YOU, QUESTION MARK?

19 A. THAT'S RIGHT. AND THAT'S ON A PREVIOUS CHARGE. ON
20 THAT POTATO SACK, ISSUE THAT YOU WAS TALKING ABOUT.

21 Q. RIGHT.

22 A. YES, SIR.

23 Q. AND THAT IS BECAUSE YOU THREATENED AND INTIMIDATE
24 PEOPLE INCLUDING LISA POWELL NOT TO STAND UP FOR
25 THEMSELVES, ISN'T THAT TRUE?

1 A. NO, SIR.

2 Q. YOU DO IT TO HER AND UNFORTUNATELY YOU DO IT TO YOUR
3 FOLKS, ISN'T THAT TRUE?

4 A. DO YOU WANT TO GO ON THE RECORD AS IT PERTAINS TO THAT
5 CHARGE?

6 Q. PLEASE ANSWER MY QUESTIONS, ISN'T THAT TRUE, ISN'T THAT
7 TRUE?

8 A. YES, SIR, I DIDN'T WANT TO BE INVOLVED WITH THE LAW
9 BECAUSE IT CAUSES PRISON TIME AND IT WAS JUST A SIMPLE
10 STATEMENT AND I WAS DRUNK. IT WAS A SIMPLE STATEMENT
11 THAT -- DO YOU REMEMBER WHEN SHE TESTIFIED THAT SHE
12 ATTACKED ME?

13 Q. SIMPLE STATEMENT?

14 A. SHE ATTACKED ME. YOU WANT TO SEE WHERE SHE STABBED ME
15 IN THE HEAD THREE TIMES. MY DADDY WITNESSED THAT.

16 Q. SIMPLE STATEMENTS CAN BE VERY INTIMIDATING TO PEOPLE
17 CAN'T THEY?

18 A. I GOT STABBED, YES, SIR.

19 Q. WOULD YOU AGREE WITH THAT?

20 A. YES, SIR.

21 Q. TELLING A PERSON THAT IF YOU CALL THE LAW YOU WILL FIND
22 THEM IN A POTATO SACK?

23 A. NO, SIR, I DID NOT TELL IF SHE CALLED THE LAW.

24 Q. LET ME FINISH MY QUESTION. SAYING TO A PERSON WORDS TO
25 THE EFFECT, IF YOU CALL THE LAW ON ME THEY WILL FIND

1 YOU IN A POTATO SACK WOULD, YOU AGREE WITH ME THAT
2 COULD BE VERY INTIMIDATING AND MAKE SOMEBODY FEARFUL,
3 WOULD YOU AGREE THAT SOMEBODY COULD PERCEIVE THAT AS
4 BEING A THREAT AND AFRAID, WOULD YOU AGREE WITH THAT?
5 WOULD YOU AGREE WITH THAT?

6 A. NUMBER ONE, I DID NOT THREATEN HER PERTAINING TO THE
7 LAW I WAS JUST THREATENED HER BECAUSE SHE WAS RUNNING
8 OFF AT THE MOUTH AND SHE HAD JUST ATTACKED ME AND I HAD
9 A EYE WITNESS TO THAT.

10 Q. FORGET ABOUT THE LAW. FORGET ABOUT THE LAW. IF YOU
11 TOLD A PERSON --

12 A. IF I WASN'T DRUNK AND I WAS IN MY SOBER MIND, YEAH.

13 Q. DIDN'T WE AGREE THAT I WOULD TALK AND YOU WOULDN'T?

14 A. YES, SIR.

15 Q. IF YOU TOLD A PERSON THAT IF THEY DID ANYTHING THAT YOU
16 DID NOT LIKE THAT THEY WOULD FIND YOU IN A POTATO SACK
17 WOULD YOU AGREE WITH ME THAT THAT MIGHT MAKE SOMEBODY
18 SCARED, WOULD YOU AGREE WITH THAT?

19 A. YES, SIR, BUT SHE TESTIFIED THAT IT DIDN'T.

20 MR. MODICA: THANK YOU, NOTHING FURTHER.

21 A. SHE TESTIFIED THAT IT DIDN'T.

22 MR. MODICA: THANK YOU. THANK YOU. THANK YOU.

23 THE COURT: IS THERE REDIRECT?

24 MR. RUNYAN: COME DOWN, MR. HOWARD.

25 THE COURT: ALL RIGHT, SIR. YOU MAY STEP DOWN.

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1 MR. HOWARD: YOUR HONOR I HAD A LOT MORE STUFF I WOULD
2 LIKE TO PRESENT BUT I AM SORRY.

3 THE COURT: YOU MAY STEP DOWN.

4 MR. RUNYAN: JUST FOR THE RECORD, YOUR HONOR, AND I
5 NOTICED THAT HE HAD A STATEMENT, AT LEAST IDENTIFIED WITH A
6 STICKER ON IT IN THE STACK OF MY CLIENTS.

7 THE COURT: RIGHT. HE MARKED IT AS AN EXHIBIT BUT DID
8 NOT OFFER IT INTO EVIDENCE.

9 MR. RUNYAN: THAT'S CORRECT, SIR.

10 MR. MODICA: IT STAYS WITH THE COURT REPORTER.

11 MR. RUNYAN: I JUST DIDN'T WANT IT TO DISAPPEAR ON US.

12 THE COURT: WELL, WE'LL LEAVE IT WITH THE COURT
13 REPORTER. THAT WILL BE FINE. BUT AGAIN, IT'S NOT IN
14 EVIDENCE --

15 MR. RUNYAN: YES, SIR.

16 THE COURT: -- FOR THE JURY. ALL RIGHT, ANY FURTHER
17 WITNESSES NOW FOR THE DEFENSE?

18 MR. RUNYAN: NO, YOUR HONOR, THE DEFENSE RESTS AT THIS
19 POINT.

20 THE COURT: DEFENSE REST. IS THERE REPLY TESTIMONY?

21 MR. MODICA: NO, SIR,

22 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, THAT MEANS
23 THAT THE TESTIMONIAL PHASE OF THIS CASE IS CONCLUDED AND
24 WHAT WE WILL NEED TO DO NOW IS TAKE A FEW MOMENTS AND
25 PREPARE FOR CLOSING ARGUMENTS AND GIVE YOU AN OPPORTUNITY TO

1 HAVE YOUR MORNING BREAK ALTHOUGH WE REALLY HAVEN'T BEEN IN
2 THE COURTROOM TO TERRIBLY LONG. WE'RE GOING TO GIVE YOU
3 ANOTHER BREAK. BUT I AM GOING TO ASK YOU TO DO THIS DURING
4 THE BREAK. JUST ONE MOMENT. MR. GOSS, YOU'RE OUR ALTERNATE
5 JUROR, AM I CORRECT SIR?

6 MR. GOSS: YES, SIR.

7 THE COURT: MR. GOSS, I AM GOING TO ASK YOU DO
8 SOMETHING. I AM GOING TO ASK YOU TO PRESIDE WHILE OUR JURY
9 CHOOSES THEIR FOREPERSON. IT SHOULD NOT BE YOU, SIR,
10 BECAUSE AS THE ALTERNATE YOU MAY NOT ACTUALLY DELIBERATE.
11 BUT I WOULD ASK YOU TO BEGIN THE DISCUSSIONS AMONG THE
12 JURORS AND LET YOU CHOOSE AMONG YOURSELVES WHOM YOU WISH TO
13 BE YOUR FOREPERSON WHETHER THAT BE A FORELADY OR A FOREMAN.
14 FOREWOMEN OR A FOREMAN. THIS WILL BE YOUR CHOICE.

15 MAY I SUGGEST TO YOU, I BELIEVE THE BEST FOREPERSON IS
16 ONE WHO IS NOT A DICTATOR OR A CONTROLLER OF OPINION BUT
17 SOMEONE WHO IS A FACILITATOR OF DISCUSSION, A MODERATOR OF
18 OPINION BECAUSE ULTIMATELY YOUR VERDICT IS GOING TO HAVE TO
19 BE UNANIMOUS MEANING THAT IT MUST BE A UNANIMOUS VERDICT
20 THAT IS AGREED UPON BY ALL MEMBERS OF THE JURY. SO KEEP
21 THAT IN MIND WHILE MR. GOSS ASSIST YOU IN CHOOSING YOUR
22 FOREPERSON. AND WE WILL SEND FOR YOU IN A FEW MOMENTS AS
23 SOON AS WE ARE READY FOR CLOSING ARGUMENTS.

24 PLEASE DO NOT BEGIN YOUR DELIBERATIONS OR DISCUSSIONS
25 OF THE CASE. THAT WOULD NOT YET BE APPROPRIATE. LET'S

1 EVERYONE ELSE REMAIN WHERE THEY ARE WHILE THEY JURY REPORTS
2 TO THE JURY ROOM.

3 (WHEREUPON, THE JURY EXITS THE COURTROOM AT 11:03 A.M.)

4 THE COURT: ALL RIGHT, LET ME STATE FOR OUR RECORD, AS
5 THIS IS AN APPROPRIATE POINT TO DO THIS IN DEFENSE OF OUR
6 COURT REPORTER. ANYONE REVIEWING THIS RECORD IS GOING TO
7 HAVE A VERY DIFFICULT TIME IN UNDERSTANDING MR. HOWARD'S
8 TESTIMONY. I WANT THE RECORD TO REFLECT THAT HE SPOKE
9 EXTREMELY RAPIDLY REGARDLESS OF THE COURT'S, IGNORING THE
10 COURT'S MULTIPLE REQUESTS THAT HE SLOW DOWN. HE SPOKE CLOSE
11 TO THE MICROPHONE. HE SPOKE VERY LOUDLY. THE ACOUSTICS IN
12 THIS COURTROOM ARE NOT GOOD. IT AS DIFFICULT TO UNDERSTAND
13 HIM. IT WILL BE DIFFICULT TO UNDERSTAND HIM ON THE TAPE.
14 IF THE JURY ASKS FOR SOME OF HIS TESTIMONY TO BE REPLAYED IT
15 WILL BE AN EXTREMELY DIFFICULT EXERCISE FOR EVERYONE. BUT I
16 WANT THE RECORD TO REFLECT THAT WHILE I AM ATTEMPTED TO SLOW
17 MR. HOWARD DOWN, THE COURT DID NOT THINK IT APPROPRIATE TO
18 CONSTANTLY ENGAGE, CUT IN WHEN COUNSEL AND MR. HOWARD WERE
19 TALKING OVER ONE ANOTHER, BECAUSE THAT GOES TO CREDIBILITY
20 AND BELIEVABILITY. IT IS FOR THE JURY TO SEE AND GIVE IT
21 WHATEVER WEIGHT OR APPROPRIATE MEANING IT SHOULD HAVE IN
22 THEIR EYES. FOR THAT REASON, THE COURT DID NOT ENGAGE TO
23 CONSTANTLY STOP THAT BECAUSE THE COURT WOULD HAVE BEEN
24 CONSTANTLY ENGAGING HAD THAT BEEN THE CASE. ALL RIGHT, AND
25 MS. CARTEE, I APPRECIATE WHAT YOU DO UNDER DIFFICULT

1 CIRCUMSTANCES, MA'AM.

2 NOW, IS THERE ANYTHING BEFORE WE HAVE A BRIEF
3 DISCUSSION ABOUT THE CHARGE UP HERE AT THE BENCH. ANY
4 MOTIONS AT THIS POINT IN THE CASE?

5 MR. RUNYAN: THE SUPREME COURT REQUIRES US TO MAKE THE
6 MOTION. WE WOULD RENEW OUR MOTION IN ESSENCE OF A DIRECTED
7 VERDICT OF NOT GUILTY FOR THE REASONS PREVIOUSLY STATED. WE
8 RENEW OUR MOTION FOR A MISTRIAL FOR REASONS PREVIOUSLY
9 STATED. AND ANTICIPATING THE RULING OF THE COURT AND WE ARE
10 PRETRIAL TO DISCUSS WITH THE COURT THE CHARGE?

11 THE COURT: ALL RIGHT, THE COURT RESPECTFULLY DENIES
12 YOUR MOTION FOR THE SAME REASON, BOTH MOTIONS FOR THE SAME
13 REASONS GIVEN PREVIOUSLY.

14 NOW COUNSEL, PLEASE APPROACH ON THE SIDE AND LET'S
15 DISCUSS BRIEFLY THE CHARGE. AND WHERE YOU ARE, LET'S JUST
16 PUT THIS PART OF THE CHARGE ON THE RECORD. DO YOU BELIEVE
17 THAT A SIMPLE ASSAULT AND BATTERY IS AN INCLUDED, A LESSER
18 INCLUDED OFFENSE, MR. RUNYAN?

19 MR. RUNYAN: I WAS GOING TO REQUEST IT WHEN WE GOT TO
20 THE SIDE, JUDGE.

21 THE COURT: TELL ME WHAT EVIDENCE AND I THINK WE SHOULD
22 HAVE THIS DISCUSSION ON THE RECORD, THIS PORTION OF IT.
23 WHAT EVIDENCE DO YOU BELIEVE WOULD SUPPORT A SIMPLE ASSAULT
24 AND BATTERY LESSER INCLUDED OFFENSE?

25 MR. RUNYAN: JUDGE, THE TESTIMONY OF THE DEFENDANT IS

1 THAT ANY CONTACT WITH THE VICTIM WAS UNINTENTIONAL PURELY TO
2 ALLOW HIM TO MAINTAIN CONTROL OF THE AUTOMOBILE, AND I
3 REALIZE THE SEVERITY OF THE INJURY AND WE HAVE HAD TESTIMONY
4 TO THAT EFFECT. WHEN I SAY SEVERITY, I MEAN, I HAD MY NOSE
5 BROKEN TRYING TO PLAY FOOTBALL IN HIGH SCHOOL AND IT IS NOT
6 A PLEASANT THING. BUT THE PRACTICAL MATTER IS, THAT IT WAS
7 NOT LIFE THREATENING INJURY. AND I JUST THINK AS A
8 PRACTICAL MATTER THIS IS BASICALLY ON ALL THE EVIDENCE IF
9 THE JURY CHOOSES TO BELIEVE MR. HOWARD EVEN UNDER HIS
10 INDICATION WHAT HE SAID OCCURRED TO HIM SLAMMING ON THE
11 BRAKES AND REMOVAL OF HER HAND THAT THEY MIGHT THINK THAT
12 WAS AN INAPPROPRIATE CONTACT BY HIM AND THEREFORE I THINK
13 THAT WOULD BE A BASIS FOR THE CHARGE OF SIMPLE ASSAULT. THE
14 OTHER THING, JUDGE, IS THAT SINCE WE ARE TALKING ABOUT IT, I
15 WOULD ALSO ASK THE COURT TO CHARGE ACCIDENT OFFENSE SINCE
16 THAT IS BASICALLY WHAT HE SAID OCCURRED IS AN ACCIDENT AND
17 SHE STRUCK HER FACE.

18 THE COURT: ALL RIGHT, AND NOW MR. MODICA, WHAT
19 RESPONSE DO YOU HAVE?

20 MR. MODICA: YOUR HONOR, I WOULD SUBMIT THAT THERE IS
21 NO REASONABLE VIEW OF THE EVIDENCE TO WARRANT THE CHARGE OF
22 SIMPLE ASSAULT AND BATTERY. THE DEFENSE IS CLEAR. I DIDN'T
23 DO IT. SHE STRUCK THE DASHBOARD AND IT WAS AN ACCIDENT, AND
24 THAT IF I DID SOMEHOW CAUSE THE INJURY IT WAS UNINTENTIONAL.
25 SO IT'S ALL OR NOTHING, IS WHAT THEY ARE ASKING SO BECAUSE

1 OF THAT THEY ARE NOT ENTITLED TO SIMPLE ASSAULT AND BATTERY.
2 AND CLEARLY THE INJURY ITSELF WOULD WARRANT THAT IT IS NOT A
3 SIMPLE ASSAULT AND BATTERY. YOU EITHER DIDN'T IT OR DIDN'T
4 DO IT. IT'S NOT LIKE, YOU KNOW, AND AS FAR AS THE ACCIDENT
5 GOES, THERE IS NO CHARGE FOR ACCIDENT HE CERTAINLY CAN ARGUE
6 THAT IN HIS SUMMATION. IF YOU WERE TO GIVE -- MY OPINION IS
7 IF YOU WERE TO GIVING A COMMENT ON THAT, GIVE IT A
8 DEFINITION ON ACCIDENT YOU WOULD BE ESSENTIALLY COMMENTING
9 ON THE FACTS. I WOULD EVEN SUBMIT BY GIVING SIMPLE ASSAULT
10 AND BATTERY THAT IS COMMENT ON THE FACTS BECAUSE THE
11 EVIDENCE DOES NOT WARRANT IT.

12 THE COURT: ALL RIGHT, MR. RUNYAN, THE COURT DECLINES
13 TO GIVE A SIMPLE ASSAULT AND BATTERY LESSER INCLUDED OFFENSE
14 BECAUSE THERE IS NO EVIDENCE OF IT. THE EVIDENCE IS THE
15 DEFENSE IS THAT IT WAS AN UNINTENDED INCIDENT. IT WAS AN
16 ACCIDENT IN THE SLAMMING ON OF BRAKES THE VICTIM HIT THE
17 DASHBOARD. THERE WAS EVEN AS DISCUSSION BY THE DEFENDANT
18 THAT HE DIDN'T HAVE THE REQUISITE MENS RAE, AND HE USED
19 THOSE TERMS, WHICH MEANS HE SAYS THAT THERE WAS, THERE IS NO
20 CRIME HERE. THERE IS NO LESSER INCLUDING DEFENSE. THE
21 DEFENSE THAT HE'S RAISED IS THAT HE IS NOT GUILTY AT ALL
22 BECAUSE HE HAD NO INTENT TO COMMIT ANY CRIME AND THEREFORE
23 THE COURT DECLINES TO GRANT A CHARGE ON A LESSER INCLUDING
24 OFFENSE BECAUSE I FIND THAT THERE IS NOT EVIDENCE OF A
25 SIMPLE ASSAULT AND BATTERY OR A LESSER INCLUDED OFFENSE IN

1 THIS RECORD.

2 IF YOU HAVE SOME CHARGE THAT YOU WISH THE COURT TO
3 CONSIDER ON ACCIDENT IT IS MY UNDERSTANDING THAT GENERALLY
4 WHEN YOU HAVE AN ACCIDENT THAT IS SIMPLE A DEFENSE THAT IS
5 ARGUED TO THE JURY THAT DOESN'T FIT WITHIN THE PARAMETERS OF
6 THE LAW OR A CONVICTION AND THUS ACCIDENT IS A DEFENSE IN
7 THAT WAY. I AM NOT AWARE THAT THE COURT HAS AN SPECIFIC
8 CHARGE ON ACCIDENT, BUT IF YOU HAVE ONE YOU WISH FOR ME TO
9 REVIEW I WILL BE GLAD TO.

10 MR. RUNYAN: I AM JUST ASKING FOR EVERYTHING I CAN
11 GET. YOU DECIDE?

12 THE COURT: ALL, RIGHT, VERY GOOD. COUNSEL, COME TO
13 THE SIDEBAR, IF YOU WILL. LADIES AND GENTLEMEN, IF YOU WANT
14 TO TAKE A BREAK, COURT PERSONNEL IF YOU WANT TO TAKE A BREAK
15 WE WILL JUST COME TO THE SIDEBAR HERE AND ACTUALLY WE'LL
16 STAND DOWN. LET'S TAKE ABOUT A TEN MINUTE BREAK OR SO, TEN
17 TO FIFTEEN MINUTE BREAK. COURT WILL BE IN RECESS DURING
18 THAT TIME.

19 MR. RUNYAN: JUDGE, JUST FOR THE RECORD BEFORE WE GO.
20 MR. HOWARD HAS SECURED SOME DOCUMENTS THAT ARE HIS DOCUMENTS
21 PUT IN A BINDER FOR ME AND HE'S ALSO HAS A PEN THERE, AND I
22 AM SAYING THAT I CAN GIVE THOSE TO HIS FAMILY. I DON'T KNOW
23 IF THE HONORABLE SHERIFF WANTS HIM TO HAVE THAT. WE DON'T
24 WANT TO TRY TO CIRCUMVENT ANY DIPLOMACY.

25 THE COURT: I AM GOING TO LET YOU KEEP -- THE

1 TESTIMONIAL PHASE OF THIS CASE IS OVER. THOSE DOCUMENTS
2 WILL JUST REMAIN RIGHT THERE WHEN MR. HOWARD GOES BACK. AND
3 IF YOU HAVE A PEN, MR. HOWARD, I AM GOING TO LET YOU LEAVE
4 THAT THERE TO, SIR. THANK YOU. THIS COURT IS IN RECESS
5 NOW.

6 (WHEREUPON, A RECESS WAS TAKEN FROM 11:13 A.M. UNTIL
7 11:30 A.M.)

8 THE COURT: ALL RIGHT, IS THE STATE, READY FOR FINAL
9 ARGUMENT?

10 MR. MODICA: YES, SIR.

11 THE COURT: AND IS DEFENSE READY?

12 MR. RUNYAN: WE'RE ALWAYS READY, JUDGE.

13 THE COURT: ALL RIGHT, BECAUSE THE DEFENSE HAS PUT UP
14 EVIDENCE, THE STATE HAS THE OPPORTUNITY TO OPEN AND CLOSE.
15 WHAT IS YOUR PREFERENCE, MR. MODICA?

16 MR. MODICA: TO OPENING AND CLOSE IN FULL AT THE END,
17 YOUR HONOR. TO CLOSE AT THE END IN TOTAL.

18 THE COURT: TO WAIVE THE OPENING?

19 MR. MODICA: YES, SIR.

20 THE COURT: ALL RIGHT. IS THERE ANY OBJECTION TO THAT,
21 MR. RUNYAN?

22 MR. RUNYAN: NO, OBJECTION, JUDGE.

23 THE COURT: ALL RIGHT, BY AGREEMENT THEN YOU WILL GO
24 FIRST MR. RUNYAN AND YOU WILL FOLLOW MR. RUNYAN, MR. MEDICA.
25 HOW MUCH TIME DO YOU THINK YOU WILL TAKE, MR. RUNYAN?

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1 MR. RUNYAN: EXCUSE, ME, I'M SORRY.

2 THE COURT: HOW MUCH TIME DO YOU THINK YOUR ARGUMENT
3 WILL BE?

4 MR. RUNYAN: FIFTEEN, TWENTY MINUTES, JUDGE.

5 THE COURT: AND HOW MUCH TIME YOU DO YOU BELIEVE YOUR'S
6 WILL BE?

7 MR. MODICA: ABOUT THE SAME.

8 THE COURT: ALL RIGHT, THEN LET'S TALK ABOUT WHETHER WE
9 NEED TO MAKE SOME PROVISION FOR LUNCH. I AM EXPECTING MINE
10 TO BE FIFTEEN MINUTES. IT'S GOING TO BE 12:30 ROUGHLY BY
11 THE TIME WE FINISH THIS. ALL RIGHT, COUNSEL, LET ME ASK YOU
12 THIS. WE WILL GIVE YOU AN OPTION HERE. WOULD YOU RATHER
13 ME, I WILL JUST LET YOU BOTH HAVE YOUR SAY AS TO WHAT YOUR
14 PREFERENCE IS. YOU CAN BOTH CAN ARGUE WE'LL BREAK FOR
15 LUNCH, I'LL COME BACK AND CHARGE AND THEN THE JURY
16 DELIBERATE. OR BOTH OF YOU CAN ARGUE, I CAN CHARGE AND WE
17 THEN WE WILL GIVE THE JURY THE OPTION, WHICH WE WOULD NEED
18 TO GIVE IT TO THEM IN ADVANCE I WOULD THINK OF WHETHER THEY
19 WANT TO GO OUT AND HAVE LUNCH AFTER WE ARGUE AND CHARGE,
20 THAT'S A LITTLE UNUSUAL, OR WHETHER WE WANT TO ORDER LUNCH
21 FOR THEM. OR, THIRDLY, WE CAN JUST GO AHEAD AND MAKE
22 PREPARATION TO ORDER LUNCH FOR THEM BECAUSE OF THE TIMING OF
23 WHAT WE HAVE HERE. WHAT IS YOUR PREFERENCE, MR. MODICA?

24 MR. MODICA: YOUR HONOR, MY PRESENCE WOULD BE
25 BASICALLY ALL THE ABOVE. THAT YOU ORDER THEM LUNCH, THAT WE

1 ARGUE AND CHARGE AND WHEN LUNCH ARRIVES THEY WILL STOP
2 DELIBERATING AND EAT LUNCH.

3 THE COURT: WHAT DO YOU SAY, MR. RUNYAN:

4 MR. RUNYAN: I HAVE NO PROBLEM WITH THAT ORDER EITHER,
5 JUDGE, IF WE ARGUE AND CHARGE THEY WILL STOP DELIBERATING
6 WHEN THEY EAT SO THERE'S NO PROBLEM WITH THAT, JUDGE.

7 THE COURT: ALL RIGHT, I AM ADVISE THAT CHARLTON GAMBLE
8 HAS BEEN SELECTED THAT IS JUROR NUMBER 45 AS THE JURY
9 FOREPERSON SO LET'S BRING IN THE JURY. AND PLEASE SEAT MR.
10 CHARLTON GAMBLE IN THE FOREPERSON SEAT.

11 COUNSEL, DO EITHER OF YOU NEED THE INDICTMENT IN YOUR
12 CLOSING. THE INDICTMENT IS ON THE BAR HERE. COUNSEL, HOW
13 ABOUT COME TO THE SIDE AND LOOK AT THE VERDICT FORM AND MAKE
14 SURE THAT IT IS SATISFACTORY TO YOU.

15 (WHEREUPON, THE JURY ENTERS THE COURTROOM AT 11:37
16 A.M.)

17 THE COURT: NOW, MR. GAMBLE, I NOTE THAT YOU HAVE BEEN
18 CHOSEN FOREPERSON AND I WILL SAY TO YOU IN ADVANCE, THANK
19 YOU FOR YOUR SERVICE AND CONGRATULATIONS TO YOU FOR THE
20 CONFIDENCE YOUR COLLEAGUES HAVE IN YOU AND PUTTING YOU IN
21 THAT POSITION AND THANK YOU FOR ACCEPTING THAT APPOINTMENT.
22 I WILL TALK TO YOU A LITTLE BIT FURTHER YOU AND ALL YOUR
23 COLLEAGUES ABOUT YOUR ROLE AS A FOREPERSON IN MY FINAL
24 CHARGE ON THE LAW.

25 NOW BEFORE WE GO INTO CLOSING ARGUMENTS, LET ME JUST

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1 GIVE YOU A LITTLE INFORMATION SO THAT YOU WILL BE AWARE OF
2 THIS. WHAT WE INTEND TO DO AT THIS POINT BECAUSE THESE
3 CLOSING ARGUMENTS AND THE COURT'S CHARGE MAY TAKE ROUGHLY
4 CLOSE TO AN HOUR. WE HAVE ORDERED LUNCH FOR YOU TODAY. THE
5 WAY WE DO THAT HERE IS WE ORDER PIZZA. IT WILL PROBABLY BE
6 HERE ABOUT THE TIME WE'RE FINISHED SO THAT YOU CAN HAVE YOUR
7 LUNCH HERE AT THE COURTHOUSE HERE TODAY AND THEN BEGIN YOUR
8 DELIBERATIONS AFTER YOU HAVE YOUR LUNCH.

9 LET ME ASK, IS THERE ANY MEMBER OF THE JURY PANEL WHO
10 HAD LUNCH PLANS TO MEET SOMEONE OR HAVE SOMEONE EXPECTED
11 THEM FOR LUNCH THAT NEEDS TO MAKE A TELEPHONE CALL TO AVERT
12 THAT CONFLICT. OKAY, THEN WE WILL BE PROVIDING LUNCH FOR
13 YOU, THE COUNTY WILL, YOUR ELECTED CLERK OF COURT, MS. ALMA
14 WHITE WILL BE DOING THAT.

15 NOW, THE WAY WE ARE GOING TO PROCEED IS AND BOTH SIDES
16 HAVE THE SAME AMOUNT OF TIME WHETHER THEY USE THE FULL TIME
17 IS UP TO THEM OR NOT BUT THE DEFENSE WILL ARGUE FIRST AND
18 THE STATE BECAUSE THEY HAVE THE BURDEN OF PROOF, IS GIVEN
19 THE FINAL ARGUMENT TO YOU. SO WE WILL HEAR FIRST FROM MR.
20 RUNYAN AND THEN MR. MODICA THEN I WILL GIVE YOU THE CHARGE
21 ON THE LAW AND THEN YOU WILL RETIRE TO LUNCH BECAUSE YOUR
22 LUNCH SHOULD BE HERE AT THAT TIME; AND THEREFORE TO
23 DELIBERATE. ALL RIGHT, NOW, FOR CLOSING ARGUMENTS THE COURT
24 RECOGNIZES MR. RUNYAN.

25 CLOSING ARGUMENTS BY MR. RUNYAN

1 MR. RUNYAN: MR. FOREMAN, LADIES AND GENTLEMEN OF THE
2 JURY THIS HAS BEEN NOT AN EXTENSIVE BY ANY MEANS IT LASTED
3 ROUGHLY A DAY. YOU HAVE HEARD A LOT OF TESTIMONY FROM A FEW
4 PEOPLE, AND A LOT OF TESTIMONY FROM INDIVIDUALS. NOW IT
5 WILL BECOME YOUR DUTY TO DECIDE WHETHER OR NOT MR. HOWARD IS
6 GUILTY OF A CHARGE. NOW THAT IS A HEAVY BURDEN AND IT IS A
7 BURDEN WHICH YOU HAVE BEEN SELECTED TO HANDLE. THE STATE
8 HAS THE BURDEN OF PROVING GUILT BEYOND A REASONABLE DOUBT
9 AND THE COURT IS GOING TO GIVE YOU THE DEFINITION OF A
10 REASONABLE DOUBT.

11 NOW I AM GOING TO TALK YOU ABOUT SOME THINGS IN THIS
12 CASE. MR. MODICA IS GOING TO TALK TO YOU ABOUT SOME THINGS
13 IN THIS CASE. AND MYSELF AND MR. MODICA SAYS ANYTHING ABOUT
14 THE LAW OF THE CASE, THAT DOES NOT AGREE WITH WHAT HIS HONOR
15 GIVES YOU, BY ALL MEANS YOU FOLLOW WHAT THE JUDGE SAYS.

16 AS OF SEPTEMBER OF THIS YEAR I HAVE ONLY BEEN AT THIS
17 FOR FORTY YEARS. I HAVEN'T GOTTEN IT RIGHT YET. AND THAT'S
18 WHY I AM STILL PRACTICING. NOW THE CHARGES ARE, AGGRAVATED
19 ASSAULT AND REQUIRES AN INTEND TO DO GREAT BODILY HARM AND
20 IT REQUIRES A BATTERY WHICH DOES GREAT BODILY HARM. I AM
21 NOT GOING TO STAND UP HERE AND TELL YOU THAT THE BREAKING OF
22 A NOSE IS NOT SUBSTANTIAL HARM, BECAUSE IF I DID THEN YOU
23 WOULD THINK I WAS TAKING LEAVE OF MY SENSES. WE HAVE A
24 SUBSTANTIAL INJURY AND THE REAL ISSUE HERE IS HOW DID IT
25 OCCUR. MS. POWELL SAYS THAT IT OCCURRED BECAUSE MR. HOWARD

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1 STRUCK HER AT LEAST TWICE AT LEAST THE SECOND TIME HITTING
2 HER WITH THE BACK OF FIST AS SHE SAT IN THE SEAT BESIDE HIM.
3 MR. HOWARD LATER TESTIFIED THAT IT OCCURRED WHEN SHE WAS
4 INTOXICATED, CAME OVER THE CONSOLE BECAUSE SHE WAS
5 AGGRAVATED WITH HIM AND HE WAS TRYING TO PUSH HER OFF. HE
6 SLAMMED ON BRAKES AT ONE POINT IN TIME, HER FACE HIT THE
7 DASHBOARD AND SHE INJURED HERSELF. NOW THE COURT IS GOING
8 TELL YOU ABOUT ACCIDENT, AND WHATEVER INJURY SHE HAD IS AN
9 ACCIDENT DID NOT INTEND TO HURT HER, I WAS JUST TRYING TO
10 KEEP CONTROL. NOW YOU KNOW I KIND OF THINK THAT IS IF YOU
11 STOP AND THINK ABOUT IT, IT IS KIND OF REASONABLE TO
12 UNDERSTAND WE ALL DRIVE TO FAST AND PARTICULARLY ON RURAL
13 ROADS. HE'S DRIVING DOWN THE ROAD, 50, 60, 70 MILES AN
14 HOUR. I KNOW I GET TO GEORGETOWN COUNTY ON AN INFREQUENT
15 BASIS BUT OUT OF THE ONE ROAD THAT I AM FAMILIAR WITH I
16 WOULD NOT SPEED ON AND THAT IS BRICKHOUSE ROAD OVER HERE
17 BECAUSE IT STOPS BEING PAVED GOES TO A DIRT ROAD AND GET A
18 LITTLE BIT DIFFICULT IF YOU GO TO FAST. NOW MS. POWELL
19 SAYS, NO, HE STRUCK ME AND THE INFERENCE IS AND THE
20 SUPPOSITION IS THAT THE TWO LITTLE ABRASIONS CAME FROM A
21 RING THAT HE WAS WEARING. NOW LET'S UNDERSTAND WHAT WE
22 DON'T HAVE HERE. THE RINGS WERE NOT PUT INTO EVIDENCE. THE
23 GOOD DOCTOR WHO IS AN EXPERT GAVE HIS EXPERT OPINION, SAYS I
24 DID NOT THINK IT HAPPENED AS A RESULT OF QUOTE, "AUTO
25 ACCIDENT." BUT THEN AGAIN I WAS NOT ASKED TO COMPARE THE

1 INJURY TO THE INTERIOR OF ANYTHING OR THAT SORT OF THING, SO
2 I CANNOT SAY IT DID NOT HAPPEN THAT WAY.

3 IN ADDITION TO THAT, THERE WAS ALL OF THE TESTIMONY
4 ABOUT PROFUSE BLEEDING. NOW I ASKED THE DOCTOR IF THERE
5 WOULD OF BEEN PROFUSE BLEEDING WITH AN INJURY AND HE SAID NO
6 THERE WOULD BE SOME BUT THERE WOULD NOT BE PROFUSE. AS WE
7 HAVE NO EVIDENCE THERE WAS ANY PROFUSE BLEEDING OR BLOOD ALL
8 OVER THIS PICKUP TRUCK. IT HAPPENED. THERE'S NOT BLEEDING,
9 THERE'S NOT BLOOD ALL OVER THE PICKUP TRUCK, THERE'S NO
10 INVESTIGATION THAT INDICATES THAT, THERE'S NO EVIDENCE
11 WITHHELD OR ANYTHING OF THAT SORT AND WHAT YOU HAVE TO SEE
12 IS WHAT YOU'VE GOT.

13 NOW, IF YOU REMEMBER WE STARTED THIS CASE IN A VERY, I
14 DON'T WANT TO SAY UNUSUAL WAY BUT I THINK A VERY ETHICAL WAY
15 ON BEHALF OF THE STATE WHEN MR. MODICA CAME UP AND TOLD YOU
16 THAT HIS PRIMARY WITNESS HAD BEEN LYING. OKAY. AND I THINK
17 KNOWING THIS GENTLEMEN, ALMOST TWENTY OF MY FORTY YEARS
18 PRACTICING LAW BECAUSE HE'S YOUNGER THAN I AM, OR AT LEAST A
19 GOOD PORTION OF TWENTY YEARS, THAT IS NOT SURPRISING TO ME
20 THAT HE WOULD BE FORTHRIGHT WITH THE COURT AND WITH THE
21 JURY, SO OUR CHIEF COMPLAINING WITNESS HAS LIED. SHE LIED,
22 IT HAPPENED AND EVEN AFTER MR. HOWARD WAS ARRESTED SHE
23 CONTINUED TO LIE IN ALL SORTS OF INTERROGATIONS AND
24 QUESTIONS BY THE SHERIFF'S OFFICE. SHE CONTINUED TO SAY I
25 HIT MY FACE ON THE DASHBOARD, AND HE HIT ME. AND ONLY WHEN

1 WE GOT TO POINT OF DOING THIS TRIAL THAT APPARENTLY SHE
2 SAID, YOU KNOW, I HAVE GOT TO TELL THE TRUTH NOW, AND THE
3 TRUTH IS OH, I DIDN'T HIT MY FACE HE JUST HIT ME. I WOULD
4 SUGGEST TO YOU THAT WAS NOT VERY -- I WILL SUGGEST TO YOU
5 THAT -- AND I CAN'T GET ON THE STAND AND CARRY THE DAY WITH
6 TELLING THEM THAT I HIT MY FACE. SHE IS NOW GOING TO CHANGE
7 HER STORY, HER POSITION AND TRY TO MAKE IT ABSOLUTELY
8 CERTAIN THAT MR. HOWARD IS LOCKED DOWN AS BEING THE ONE THAT
9 HIT HER. AS A MATTER OF FACT, IN THE INDICTMENT IN THIS
10 CASE IT IS NOT EVIDENCE AND THE COURT WILL TELL YOU IT'S NOT
11 EVIDENCE IT'S MERELY THE FACTS UPON WHICH THE STATE RELIES
12 TO BRING THIS CHARGE TO COURT. THE BASIC POSITION THE STATE
13 HAS IS ONE, IN ADDITION TO HITTING HER THAT HE STOPPED
14 SHORT, INTENTIONALLY STOPPED SHORT AND SHE STRUCK HER FACE
15 ON THE DASHBOARD AND, FRANKLY, IF YOU CAN USE AN
16 INSTRUMENTALITY, AGGRAVATED ASSAULT IS NOT JUST PUNCHING
17 SOMEBODY WITH A FIST. IF YOU CAN USE AN INSTRUMENTALITY IF
18 YOU CAN HIT SOMEBODY WITH AN AUTOMOBILE, OR CAUSE SOMEBODY
19 TO GO INTO SOME OBJECT AND THEY GET HURT THAT CAN IN FACT BE
20 AGGRAVATED ASSAULT. IT SURE CAN. BUT YESTERDAY, NO, NO,
21 WE'RE NOT EVEN GOING TO TRY TO PROVE THAT BECAUSE MS. POWELL
22 LIED ABOUT THAT.

23 NOW HERE ARE THE CIRCUMSTANCES. MR. HOWARD GOT UP AND
24 TESTIFIED AND HE IS NOT PRESIDENT OF THE GEORGETOWN COUNTY
25 CHAMBER OF COMMERCE HERE AS YOU CAN TELL. HE SAID SHE WAS

1 INTOXICATED. I WAS DRIVING DOWN THE ROAD FAST, AND THEY GET
2 IN A ARGUMENT SHE COMES OVER THE CONSOLE AT ME AND YES I DID
3 PUSH HER BACK, AND YES, I DID HIT BACK AT HER AND AT SOME
4 POINT IN TIME I SLAMMED ON THE BRAKES AND SHE HIT HER FACE
5 ON THE DASHBOARD. THE WHOLE INSANITY OF THE THING IS
6 POINTING ABOUT BY THE FACT THAT EVEN MS. POWELL SAYS I THREW
7 MY BEER AND MY GLOVE OUT THE SIDE WINDOW AND ALL OF THAT
8 SORT OF STUFF. THIS WAS NOT YOUR AVERAGE SOMEBODY PUSHING
9 SOMEBODY OUT PUNCHING.

10 NOW, LET'S TALK ABOUT THE DOCTOR'S TESTIMONY. THE
11 DOCTOR IS A DISPASSIONATE PERSON. THE DOCTOR SAYS WHEN I
12 SEE THIS INJURY I HAD A REASONABLE SUSPICION THAT IT WAS
13 CAUSED BY SOMEONE STRIKING HER. SO, I DID THE APPROPRIATE
14 THING. I PASSED THE WORD ALONG. I CALLED THE POLICE, WHAT
15 HAVE YOU, SO THEY COULD DO THE APPROPRIATE INVESTIGATION.
16 BUT HIS EXPERT OPINION THAT IT COULD HAVE BEEN CAUSED BY
17 THAT WAS TEMPERED WHEN I ASKED HIM WELL, DEPARTMENT OF
18 CORRECTIONS, WERE YOU ASKED TO TAKE THE PICTURES AND THE X-
19 RAYS AND COMPARE IT ANY STRUCTURES IN THE DASHBOARD OR
20 ANYTHING, NO. I COULD DO THAT BUT NO ONE ASKED ME TO DO
21 THAT. OKAY, NOW REMEMBER, THE STATE BEARS THE BURDEN OF
22 PROVING BEYOND A REASONABLE DOUBT.

23 NOW DID THEY TAKE MR. HOWARD'S RING, DIAMOND CLUSTER-
24 RING, HE WEARS, AND SAY COULD THIS HAVE CAUSED THESE
25 ABRASIONS, NO. AND AS A MATTER OF FACT, MS. POWELL EVEN

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1 SAID THAT HE DID NOT STRIKE HER WITH HER FIST LIKE THAT THAT
2 HE STRUCK HER WITH HIS FIST LIKE THIS. MEANING THE BACK OF
3 THE FIST. NOW SHE IS ON HIS RIGHT AND SHE HAS AN INJURY TO
4 THE RIGHT-HAND SIDE OF HER FACE. NOW IF SHE, IS SITTING IN
5 HER SEATBELT HOW WILL GET THAT AROUND. SHE IS OUT OF THE
6 SEATBELT LIKE MR. HOWARD SAYS, AND SHE IS INTOXICATED AND
7 YES, HE COULD HAVE PUSHED HER BACK AND HIT AT HER AND CAUSED
8 THE INJURY. HE COULD HAVE. THE INJURY COULD HAVE BEEN
9 CAUSED BY HER SLAMMING AGAINST THE DASHBOARD WHEN HE SLAMMED
10 ON THE BRAKES. THE COURT IS GOING TO TELL YOU, INSTRUCT
11 YOU, NOT TELL YOU BUT INSTRUCT YOU ABOUT THE LAW OF
12 ACCIDENT. IF YOU CONCLUDE -- LOOK, WE ARE NOT SURE THAT
13 EVERYTHING THAT HAPPENED HERE IS AT LEAST PART OR ALL OF
14 THESE INJURIES WERE OCCASIONED BY AN ACCIDENT SLAMMING ON
15 THE BRAKES, SHOULD HAVE SLAMMED ON BRAKES, SHOULD NOT HAVE
16 BEEN DRIVING THAT FAST, SHE SHOULD HAVE BEEN WEARING HER
17 SEATBELT. IF THEY ARE ELEMENTS OF AN ACCIDENT PURSUANT TO
18 THE COURT'S INSTRUCTIONS THEN YOU MUST FIND FOR THE
19 DEFENDANT NOT GUILTY.

20 WE ARE NOT GOING TO STAND UP HERE AND TAKE THIS THING
21 APART BIT BY BIT BECAUSE THIS HAS BEEN A SHORT CASE. SOME
22 OF YOU HAVE EVEN TAKEN NOTES AND IF SOMETHING I SAY
23 DISAGREES WITH WHAT YOUR RECOLLECTION IS YOU TAKE YOUR
24 RECOLLECTION OR YOUR NOTES. CERTAINLY, IF SOMETHING I SAY
25 DOES NOT JOG WITH YOUR RECOLLECTION, WE HAVE THE COURT

1 REPORTER THAT CAN CLARIFY THINGS IF YOU HAVE SOME REASON
2 THAT YOU NEED CLARIFICATION. WHAT WE ARE SAYING HERE IS
3 THAT MS. POWELL HAD AN INJURY. MS. POWELL HAD AN INJURY
4 THAT OCCURRED IN THE PICKUP TRUCK. MS. POWELL HIT HER FACE
5 ON THE DASHBOARD. AND IT WASN'T UNTIL THIS CASE CAME TO
6 TRIAL THAT SHE DECIDED TO CHANGE HER POSITION AND THEN ALL
7 OF SUDDEN SAY I HAVE JUST BEEN LYING ABOUT ALL OF THIS
8 STUFF. I'VE BEEN LYING. I LIED TO THE HOSPITAL. I LIED TO
9 THE DEPUTY. I LIED TO THREE DEPUTIES SHE WAS INTERVIEWED
10 BY. I LIED TO THEM ALL THIS TIME AND SAYING THAT I HIT MY
11 FACE ON THE DASHBOARD. WHY IS THAT? YOU IN JUDGING
12 CREDIBILITY OF FOLKS HAVE TO, HIS HONOR, WILL GIVE YOU
13 SEVERAL CRITERIA THAT YOU CAN USE TO JUDGE CREDIBILITY AND
14 CREDIBILITY DOES NOT NECESSARILY MEAN LYING, IT MEANS
15 BELIEVABILITY BUT IT CAN GO TO SOMEONE VERACITY. NOW
16 OBVIOUSLY THESE FOLKS ARE NOT ON THE BEST OF TERMS. THE
17 TESTIMONY HAS TOLD YOU THAT THEY HAVE BEEN TOGETHER ON AND
18 OFF FOR SEVEN YEARS AND THEY HAVE HAD THEIR STORY TIMES AND
19 GOOD TIMES AND BAD TIMES. THE SIMPLE FACT HERE IS THAT THIS
20 IS ONE OF THOSE BAD TIMES. NOW, MS. POWELL, AND I AM NOT
21 SUGGESTING TO YOU THAT SHE, IS A BAD PERSON. THIS IS NOT
22 ABOUT SOMEONE BEING A BAD PERSON. I HAVE BEEN PRACTICING
23 LAW THIS SEPTEMBER FORTY YEARS AND MOST LAWSUITS AND MOST
24 COURT CASES ARE NOT REALLY ABOUT PEOPLE LYING. PEOPLE SEE
25 THINGS DIFFERENTLY. PEOPLE SAY AND REMEMBER THIS WAY,

1 REMEMBER THAT WAY. WELL THIS IS ONE OF THE FEW CASES QUITE
2 FRANKLY WHICH I HAVE HAD PEOPLE COME UP TO A JURY AND SAY
3 SOMEONE IS LYING AND IN THIS CASE THE STATE TOLD YOU RIGHT
4 FROM THE GET GO, OUR CHIEF COMPLAINING WITNESS IS LYING.
5 AND I JUST FIND THAT STRANGELY REFRESHING FROM THE VIEW
6 POINT OF BEING ABLE TO TALK ABOUT SOMEONE NOT HAVING TOLD
7 THE TRUTH ALL OF THIS TIME. MS. POWELL IS NOT A BAD PERSON.
8 SHE LIED TO THE POLICE. SHE LIED TO THE HOSPITAL. AND THE
9 QUESTION IS, WHEN DID YOU STOP LYING, MS. POWELL. AND HER
10 ANSWER, TO THAT AND THE STATE'S POSITION ON THAT IS WHEN SHE
11 GOT ON THE STAND AND GOT UNDER OATH AND THAT MAY MEAN
12 SOMETHING TO YOU. AND SAY IT'S REAL EASY FOR HER TO TELL
13 LIES FOR WHATEVER REASON, BUT WHEN YOU GET ON THE STAND TO
14 TAKE THAT OATH YOU WANT TO TELL THE TRUTH. YOU HAVE TO TELL
15 THE TRUTH. AND IF YOU WANT TO ACCEPT THAT YOU CAN ACCEPT
16 THAT. AND YOU CAN DISREGARD ALL OF THAT. BUT IN THIS CASE,
17 THE TOTAL ABSOLUTE CREDIBILITY OF MS. POWELL IS THE CASE
18 HERE. THE ABSENCE OF EVIDENCE THAT IT COULD NOT HAVE
19 HAPPENED THE WAY EVEN MS. POWELL SAID, IS SOMETHING FOR YOU
20 TO CONSIDER. THAT IS NOT TO BE CRITICAL OF THE POLICE
21 DEPARTMENT, THE SHERIFF'S OFFICE, THE SHERIFF INVOLVED IN
22 THIS CASE ARE GOOD HARDWORKING POLICE OFFICERS. BUT THE
23 SIMPLE FACT IS THAT WE DO NOT HAVE THE RING. WE DON'T HAVE
24 THE RING. MR. HOWARD SAID I HAD MY DADDY PICK IT UP FROM
25 THE JAIL. NOBODY EVEN LOOKED IN THE CAR TO SEE IF THERE WAS

1 ALL THIS BLOOD AROUND OR EVEN IF THERE WAS EVEN CLOTHE
2 SEATS. THEY TOOK HER WORD FOR THE FACT HE HIT HER IN THE
3 FACE AND HE ALSO HIT HER. NOW, SHE WANTS YOU TO TAKE HER
4 WORD THAT NO, SHE DIDN'T HIT HER FACE ON THE DASHBOARD AND
5 HE HIT ME WITH THE BACK OF HIS HAND ON THE RIGHT-HAND SIDE
6 OF THE FACE.

7 NOW, THIS HAS BEEN A SHORT TRIAL. IF I HAVE SAID OR
8 DONE ANYTHING DURING THE COURSE OF THIS TRIAL THAT HAS
9 OFFENDED YOU OR YOU DON'T LIKE, BY ALL MEANS, CALL ME UP IN
10 CHARLESTON AND GIVE ME DOWN THE ROAD FOR IT. AS I SAID,
11 THAT'S WHY THEY CALL IT PRACTICING LAW BECAUSE WE NEVER GET
12 IT RIGHT AND WE ARE ALWAYS TRYING TO. I HAVE NEVER HAD A
13 JURY OR JURY HOLD A VERDICT, OR GET MAD AT ME FOR SOMETHING.
14 AND I DON'T THINK IT STARTED IN THIS CASE BUT IF I HAVE SAID
15 OR DONE SOMETHING AND I DON'T LIKE THAT GUY FROM CHARLESTON,
16 AND HOW HE SAID THAT OR WHAT HE SAID, THEN I APOLOGIZE FOR
17 IT.

18 I AM GOING TO SIT DOWN, MR. MODICA IS GOING TO GIVE YOU
19 HIS POSITION ON THE FACTS AND THEN THE JUDGE IS GOING TO
20 GIVE YOU INSTRUCTIONS ON THE LAW AND TELL YOU ABOUT THE
21 DIFFERENT KINDS OF EVIDENCE, CIRCUMSTANTIAL EVIDENCE, DIRECT
22 EVIDENCE AND HE WILL TELL YOU ABOUT THE LAW ON ACCIDENT.
23 AND I AM GOING TO ASK YOU NOT BECAUSE NOTHING HAPPENED HERE
24 SOMETHING OBVIOUSLY HAPPENED AND I AM GOING TO ASK YOU TO
25 FIND MR. HOWARD NOT GUILTY, BECAUSE THE STATE HAS NOT BORNE

1 THEIR BURDEN OF PROOF BEYOND A REASONABLE DOUBT THAT THERE
2 WAS A CRIMINAL ACT THAT OCCURRED HERE. OBVIOUSLY, MS.
3 POWELL WAS INJURED AND YOU JUST TAKE THIS DID NOT OCCUR AS A
4 RESULT OF ANY CRIMINAL ACTIVITY OR CRIMINAL ACTION ON THE
5 PART OF MR. HOWARD. THANK YOU VERY MUCH.

6 THE COURT: PROSECUTION.

7 CLOSING ARGUMENTS BY MR. MODICA

8 MR. MODICA: FEAR IS A POWERFUL WEAPON. I DO NOT
9 KNOW YOUR PERSONAL LIVES. I DON'T KNOW IF YOU HAVE TRULY
10 FACED FEAR. I DON'T KNOW IF SOME OF YOU GENTLEMEN HAVE
11 SERVED IN ARMED SERVICES. I KNOW WE HAVE ALL BEEN AFRAID IN
12 OUR LIVES. MAYBE AT THE MOVIE THEATER DURING A SCARY MOVIE
13 OR MAYBE WHEN WE WERE YOUNG WHEN OUR BROTHER OR SISTER
14 JUMPED BEHIND FROM A DOOR AND THAT'S NOT REAL FEAR. THAT IS
15 A FLEETING MOMENT WHEN YOU WERE WATCHING A MOVIE KNOW IT IS
16 FACT EVEN THOUGH YOU GET AFRAID. FEAR HAS CAUSED THE MOST
17 BRAVE MEN AND WOMEN TO DO THINGS THAT THEY WOULD NOT
18 NORMALLY DO. WE CAN ONLY IMAGINE TRULY WHAT IT IS LIKE TO
19 LIVE IN FEAR. I TALKED ABOUT IN MY OPENING ABOUT WALKING IN
20 THE SHOES OF THE VICTIM AND REALLY AT BEST YOU HAVE BEEN
21 ABLE TO MAYBE UNDERSTAND A BABY STEP OF HER LIFE IN RELATION
22 TO FEAR. I THINK THAT HAVING SEEN HOW THE DEFENDANT ACTED
23 ON THE WITNESS STAND, HOW STRANGE, BAZAAR, CONTROLLING THAT
24 HE WAS THAT YOU JUST MIGHT GET A FLAVOR FOR THE FEAR THAT
25 THIS PERSON CAN GENERATE IN ANOTHER PERSON. SO IN THIS

1 CASE, THE FEAR OF HAVING TO DEAL WITH STACEY HOWARD, AND I
2 WOULD ARGUE THE ENABLING ASPECT OF HIS PARENTS GOT HER INTO
3 A POSITION WHERE SHE WAS SAFE YET ALIVE. SHE CLEARLY LIED
4 ABOUT WHAT HAPPENED. AND SHE CONTINUED TO LIE AND WHEN SHE
5 TRIED TO EXPLAIN WHY SHE DID THAT SHE SAID YOU KNOW I FELT
6 SILLY, I LIED. I DID NOT KNOW WHAT TO DO. I LIED AGAIN. I
7 WAS AFRAID. AND I WANT YOU TO THINK ABOUT SOMETHING. I
8 THINK THAT GIVES MORE CREDIBILITY TO HER AND LET ME GIVE YOU
9 AN EXAMPLE WHY AND ACTUALLY MR. RUNYAN TOUCHED ON IT. IF
10 STACEY HOWARD SET INTO MOTION HER JAMMING ON THE BRAKES AND
11 HER SLAMMING THE DASHBOARD HE WOULD BE GUILTY FOR DOING THAT
12 BECAUSE HE INTENTIONALLY SLAMMED ON THE BRAKES AND AS A
13 RESULT OF THAT SHE SUFFERED A SERIOUS INJURY. SO THAT WOULD
14 HAVE BEEN ENOUGH. WHAT SHE COULD HAVE DONE REALLY IS COME
15 HERE AND SAY, YEAH, THAT'S WHAT HAPPENED AND I AM NOT SURE
16 WHEN I GOT MY NOSE BROKEN BUT IT WAS ONE OF THOSE TWO ACTS.
17 SHE DID NOT DO THAT. SHE SAID I NEVER SLAMMED ON THE
18 BRAKES. NOW YOU ALL MIGHT BE FOCUSING ON THAT, I DON'T
19 KNOW. AND THAT IS OKAY. BUT LET ME HELP YOU A LITTLE BIT
20 MORE ABOUT THAT. THE FIRST THING IS THAT IT DOES NOT JELL
21 WITH WHAT THE DOCTOR TOLD YOU AND I WILL TOUCH MORE ON THAT
22 IN A LITTLE WHILE. IT DOES NOT JELL WITH WHAT THE POLICE
23 OFFICER, DEPUTY CRABTREE TOLD YOU. AND MOST IMPORTANTLY IF
24 YOU NEED TO GO BACK WHEN LISA POWELL AND HIM HAD A
25 CONVERSATION ON THE PHONE, DEPUTY CRABTREE TESTIFIED SHE

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1 TOLD HIM THAT SHE NEVER HIT THE DASHBOARD AND HE STRUCK HER
2 TWO TIMES. IF YOU NEED TO HAVE THAT READ BACK I HATE TO DO
3 THAT TO THE COURT REPORTED BUT THAT IS WHAT HE TESTIFIED TO.
4 IN THAT PHONE CALL SHE SAID SHE NEVER HIT THE DASHBOARD.
5 BUT IT IS CLEAR EVEN AFTER THAT SHE WENT WITH THE DASHBOARD
6 STORY AGAIN. BUT AT THE MOMENT SHE IS REACHING OUT AND
7 TALKING TO THE POLICE OFFICER SHE IS TELLING, HEY, I DID NOT
8 HIT THAT DASHBOARD HE STRUCK ME TWO TIMES. FEAR IS A
9 POWERFUL THING.

10 I WANT TO TAKE A MOMENT AND DISCUSS A FEW THINGS THAT
11 THE DEFENSE ATTORNEY BROUGHT US IN HIS SUMMATION. FOR
12 EXAMPLE, WHEN THE FACTS ARE AGAINST YOU I WOULD SUBMIT THAT
13 YOU TRY TO GET THE JURY TO FOCUS AWAY FROM THE FACTS AND
14 TALK ABOUT THE DEFENSE. WOULD BE NICE TO HAVE THE RING?
15 SURE. DOES THE DEFENDANT DESERVE TO BE ACQUITTED OF THE
16 CHARGES BECAUSE YOU DON'T HAVE THE RING, ABSOLUTELY NOT.
17 BECAUSE IN HIS OWN TESTIMONY HE TESTIFIED THAT HE HAD THE
18 RING ON, IT'S A DIAMOND CLUSTER RING SO I SAY TO YOU AND TO
19 THE DEFENSE THAT IS A BIG SO WHAT. NOW HE DOESN'T WANT TO
20 CAST DISPERSIONS ON LAW ENFORCEMENT, HE SAYS LAW
21 ENFORCEMENT, HE SAYS WHERE IS THE EVIDENCE OF THE BLOOD IN
22 THE CAR? WELL, WHAT DIFFERENCE DOES IT MAKE WHETHER OR NOT
23 THERE IS BLOOD IN OR OUT THE CAR. DID THE DEFENDANT NOT SAY
24 SHE WAS BLEEDING SO WHO CARES? IT HAS A BIG OH, WHO CARES.
25 DOES ANYBODY CARE HOW MUCH BLOOD IT WAS? THE DOCTOR SAID

1 THE TYPE OF THE INJURY, THE TYPE FRACTURES THAT IT WAS THAT
2 IT COULD POTENTIALLY CAUSE MORE BLEEDING. YOU SEE FROM
3 THESE PICTURES THERE IS DRY BLOOD IN THE NOSE. THE DOCTOR
4 SAID YOU COULD SEE BLOOD. IS THERE ANY QUESTION THAT SHE IS
5 BLEEDING? THE DEFENDANT SEEMS TO THINK SO. IF YOU FIND
6 BLOOD IN THE CAR THAT IS A BIG OLE WHO CARES, REALLY. IT'S
7 A BIG OLE WHO CARES BUT THEY WANT TO BRING IT UP BECAUSE
8 THEY WANT TO DIVERT YOUR ATTENTION AWAY FROM WHAT IS REALLY
9 GOING HERE.

10 HE SAID ABOUT THE DOCTOR, I DON'T THINK THE DOCTOR WAS
11 ASKED THE QUESTION ABOUT COMPARING THE INJURIES THAT THE
12 VICTIM HAD JUST LOOKING AT THE CAR. I DON'T THINK HE ASKED
13 THAT BUT I DON'T THINK THAT CHANGES ANYTHING. I THINK THAT
14 IS ANOTHER ATTEMPT TO DIVERT YOUR ATTENTION AWAY FROM THE
15 REAL EVIDENCE IN THIS CASE. WE TALKED ABOUT ACCIDENT AND HE
16 KEPT COMMENTING ON ACCIDENT. ACCIDENT AND THE JUDGE WILL
17 GIVE YOU INSTRUCTIONS ON ACCIDENT BUT THINK ABOUT IT, AN
18 ACCIDENT IS THE OPPOSITE OF AN INTENTIONAL ACT. IF IT IS AN
19 INTENTIONAL ACT IT IS NOT AN ACCIDENT. AND OBVIOUSLY THE
20 STATE NEEDS TO PROVE IT WAS AN INTENTIONAL ACT. WE ARE NOT
21 HIDING BEHIND THAT. SO THE MERE FACT THAT THE DEFENSE IS
22 TRYING TO DOVETAIL HIS ARGUMENT WITH THE JUDGE'S
23 INSTRUCTIONS I WILL TELL YOU IT IS AN INTENTIONAL ACT NOT AN
24 ACCIDENT. IF IT IS AN ACCIDENT NON INTENTIONAL, THAT'S IT.

25 I WANT TO TALK A LITTLE BIT ABOUT LISA POWELL'S

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1 TESTIMONY, AND I WOULD SUBMIT TO YOU THAT IN REGARD TO THESE
2 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE THAT WE
3 ARE TALKING ABOUT AND WE HAVE TALKING ABOUT, THE INFLECTION
4 OF SERIOUS BODILY INJURY AND THAT IS NOT THE ONLY THING THE
5 JUDGE IS GOING TO TELL YOU. HE IS GOING TO GIVE YOU A
6 LITANY OF EXAMPLES OF AGGRAVATED CIRCUMSTANCES OF
7 AGGRAVATION THOSE ARE JUST EXAMPLES. AND I WOULD SUBMIT TO
8 YOU THAT OBVIOUSLY THE CAUSING OF SERIOUS BODILY INJURY IS
9 SOMETHING I WANT YOU TO CONSIDER AND ARGUABLY THAT IS
10 ENOUGH. AND I DON'T THINK THERE IS A ONE OF YOU WHO DO NOT
11 BELIEVE THAT IF YOU BREAK SOMEBODY'S NOSE OR ANYBODY THAT IS
12 JUST AS SERIOUS. IF THAT IS NOT ENOUGH THE DESCRIPTION BY
13 THE VICTIM AS BEING NEVER FELT PAIN LIKE THAT BEFORE. SAW
14 STARS. NEARLY BLACKED OUT. PASSED OUT. WENT UNCONSCIOUS.
15 AND THE FACT THAT SHE HAD SURGERY, THERE SHOULD BE NO
16 QUESTION IN YOUR MIND THAT IT CERTAINLY SERIOUS PHYSICAL
17 INJURY. BUT THE JUDGE WILL TALK ABOUT DISPARAGING, ENGAGING
18 AND PHYSICAL FITNESS OF INDIVIDUALS. HE IS GOING TO TELL
19 YOU THE MERE FACT THAT IT IS A MAN AS OPPOSED TO A WOMEN IS
20 ENOUGH. THAT IN AND OF ITSELF IS ENOUGH. SO THE INFLECTION
21 OF SHAME AND DISGRACE IS FOR YOUR CONSIDERATION. SO YOU'VE
22 GOT IT HERE AND BY THE WAY THIS IS ONLY EXAMPLES BUT CLEARLY
23 THIS IS AN AGGRAVATED CIRCUMSTANCES OF AGGRAVATION.

24 I ALSO WANT TO TALK BRIEFLY ABOUT THE JUDGE'S
25 INSTRUCTIONS ON REASONABLE DOUBT. AND HE IS GOING TO USE

1 THE WORDS, HESITATE TO ACT. I WILL SUBMIT TO YOU THAT IF
2 YOU VIEW THOSE WORDS LITERALLY THAT YOU SHOULD NEVER FIND
3 SOMEBODY GUILTY BECAUSE ALL ALONG WE HAVE BEEN TELLING YOU
4 THAT. SO BEFORE YOU CAN FIND HIM GUILTY, YOU ARE PRESUMING
5 HE IS INNOCENT SO, OF COURSE, YOU ARE GOING TO HESITATE TO
6 ACT. YOU ARE GOING TO HESITATE TO ACT BECAUSE YOU ARE GOING
7 TO SIT BACK AND TALK ABOUT IT. SO I AM SUBMITTING EVEN
8 THOUGH YOU WILL HEAR THOSE WORDS IT DOES NOT LITERALLY MEAN
9 THAT BUT THE JUDGE IS ALSO GOING TO TELL YOU THAT REASONABLE
10 DOUBT IS EVIDENCE THAT LEAVES YOU FIRMLY CONVINCED AS TO THE
11 DEFENDANT'S GUILT. I OR ANY PROSECUTOR, IN THE UNITED
12 STATES WHETHER IT BE ON THE STATE OR FEDERAL LEVEL CANNOT
13 PROVE GUILT BEYOND ALL DOUBT. YOU CAN'T DO IT. AND GUESS
14 WHAT, THE LAW DOES NOT REQUIRE ME TO MEET THAT. THE LAW
15 REQUIRES THAT I LEAVE YOU FIRMLY CONVINCED AS TO THE
16 DEFENDANT'S GUILT AND I THINK WE HAVE ACCOMPLISHED THAT.

17 GOING BACK TO HER TESTIMONY, YOU NOTICE THE DEFENDANT'S
18 TESTIMONY IS INTERESTING THAT HE KNOW CERTAIN THINGS DON'T
19 HELP, AND HE TRIES HE EXCUSES. AND HE COULD NOT EVEN BE
20 HONEST ENOUGH WITH YOU ALL TO SAY THAT HE WAS ATTEMPTING TO
21 CONTROL THE SITUATION. HE WOULDN'T LET ME FINISH MY
22 QUESTIONS. HE WOULD NOT ANSWER MY QUESTIONS. AND RATTLE
23 OFF WHENEVER HE WANTED. AND IT THAT NOT AN ATTEMPT TO
24 CONTROL THE SITUATION?

25 ABOUT HER GOING TO THE HOSPITAL. THERE IS ABSOLUTELY

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1 NO REASON IN THE WORLD WHY THE DEFENDANT COULD NOT TAKE HER
2 TO THE HOSPITAL UNLESS HE DOES NOT WANT TO BE HEARD OR SEEN
3 FROM SO HE GETS HIS PARENTS TO DO HIS DIRTY WORK AND DRIVE
4 HER TO THE HOSPITAL. AND THEN HE IS NO WHERE TO BE SEEN.
5 IF HE WANTED, IF HE REALLY WAS CONCERNED AND IT WAS AN
6 ACCIDENT WHY WOULDN'T HE FEEL EVEN REMOTELY GUILTY ABOUT IT.
7 AND SUPPOSABLE THIS IS A PERSON HE CARED FOR. WHY WOULDN'T
8 HE BE THERE BY HER SIDE? BUT FOR HE HAS EVERY REASON IN THE
9 WORLD NOT TO BE THERE. HE HAS EVERY REASON THE WORLD NOT TO
10 BE QUESTIONED BY THE POLICE. HE COMES UP WITH THESE WEIRD
11 LAME EXCUSES ABOUT BREATHALYZES AND ALTHOUGH HE SAID HE ONLY
12 HAD TWO BEERS, VERY STRANGE BEHAVIOR ON THE WITNESS STAND.
13 HE ADMITTED THAT HE DROVE ALONG BESIDE HIS PARENTS WHEN THEY
14 WERE DRIVING TO THE HOSPITAL AND THAT IS HOW CONCERN AND
15 UPSET HE WAS. OF COURSE, HE SAYS STAY WITH HER, DON'T LET
16 HER SAY ANYTHING AND MAKE SURE WE KNOW WHAT SHE IS SAYING
17 BECAUSE HE NEED TO KNOW, HE NEEDS TO KNOW WHETHER OR NOT HE
18 IS GOING TO TAKE OFF. THIS IS A GUY, WHO IS APPROACHED BY
19 THREE LAW ENFORCEMENT OFFICERS. THERE'S HIS HANDS IN HIS
20 POCKETS AND HE HAS MACE AND A STUN GUN IN HIS POCKET. THAT
21 IS THE KIND OF LUNATIC THAT WE ARE DEALING WITH HERE. WHEN
22 SHE LIED SHE FELT LIKE SHE WAS A FOOL. SHE WAS WEARING A
23 SEATBELT. SHE DIDN'T HIT THE DASH. AND SHE TOLD YOU ON
24 CROSS EXAMINATION BY MR. RUNYAN ABOUT WHY SHE LIED WHEN SHE
25 SAID I LIED, I WAS EMBARRASSED, I WAS SCARED AND I WAS ASKED

1 TO LIE. I AM SORRY. I DID LIE ABOUT HITTING THE DASHBOARD.
2 SHE COULD OF CAME IN HERE AND ATTEMPTED TO FOOL YOU AND THE
3 JUDGE AND ALL OF YOU THAT STACEY INTENTIONALLY JAMMED ON THE
4 BRAKES SO SHE WAS CRASHED INTO THE -- SHE DID NOT DO IT.
5 AND WE HAVE THIS WHOLE ISSUE ABOUT HOW THE INJURY INCURRED.
6 SHE'S SITTING NEXT TO HIM AND SHE TURNS, AND HE STRIKES.
7 SHE'S TURNING TOWARD HIM AND HE STRIKES. JUST LIKE THAT.
8 CERTAINLY CONSISTENT. ABSOLUTELY POSITIVELY CONSISTENT.
9 SHE TESTIFIED THAT IT WAS IN THIS AREA THAT GOT HIT AND HE
10 WAS WEARING THE RING IT COULD HAVE CAUSED THOSE CUTS ON HER
11 FACE.

12 DR. RICHMOND, HE HAD NO STAKE IN THIS. THE MAN, THE
13 DOCTOR, IS LIKE A SUPER WITNESS. HE HAS A DEGREE OF
14 EXPERIENCE THAT NONE OF US WILL EVER HAVE, TWENTY THREE
15 YEARS OF EXPERIENCE IN EMERGENCY ROOM TREATMENT. AND WHAT
16 DID HE TELL YOU? THE DEFENSE USED THE WORD REASONABLE
17 SUSPICION. IF YOU WILL RECALL HIS TESTIMONY ON DIRECT, I
18 DID NOT ASK HIM HE SAID I WAS CONVINCED, IT WAS HIS WORDS
19 NOT MINE. THE DEFENSE SAYS REASONABLE SUSPICION AND I SAID,
20 DOCTOR, REDIRECT. DOCTOR, WAS IT REASONABLE SUSPICION OR
21 WERE YOU CONVINCED THAT IT WAS PHYSICAL ASSAULT. OH, NO, I
22 WAS CONVINCED. HE WAS CONVINCED BECAUSE HE HAD BEEN
23 INVOLVED WITH THOUSANDS OF ACCIDENTS, MOTOR VEHICLES
24 ACCIDENTS, AND I DARE SAY THOUSANDS OF CRIMINAL DOMESTIC
25 VIOLENCE OR ASSAULT SITUATIONS. AND HE KNEW FROM THE GET GO

1 WHAT SHE TOLD HIM HAPPENED. THAT IS JUST COULD NOT HAVE
2 HAPPENED THAT WAY. AND THAT THE REASON BEING THE
3 LOCALIZATION OF THE INJURY. IF YOU ARE GOING TO SMASH INTO
4 A DASHBOARD IT AIN'T GOING TO GO JUST RIGHT HERE. YOU ARE
5 GOING TO HIT, YOUR SHOULDER MIGHT HIT. THE SIDE OF YOUR
6 FACE MAY HIT. OTHER PARTS OF YOUR BODY, YOUR HANDS, OTHER
7 PARTS OF YOUR BODY ARE GOING TO GO INTO THE DASHBOARD.
8 SOMETHING ELSE IS GOING TO GO INTO THE DASHBOARD TO CAUSE
9 YOU TO BE INJURED. SOME OTHER LITTLE PART OF YOUR BODY WILL
10 HAVE ACHES AND PAINS. IT AIN'T GOING RIGHT HERE. IT AIN'T
11 STAYING RIGHT HERE. AND YOU DIDN'T NEED THE DOCTOR TO TELL
12 YOU THAT BECAUSE YOU ALL GOT COMMON SENSE. YOU ALL KNOW
13 BETTER. BUT HE DID NOT STOP THERE. HE SAID IT WAS A
14 COMBINATION BECAUSE OF THE FEAR. THE FEAR THAT SHE WAS
15 DISPLAYING. I WON'T BEAT A DEAD HORSE WITH THE DOCTOR BUT
16 DEPUTY CRABTREE COMES IN AND HE RIGHT FROM THE GET GO, HE
17 HAD ONLY BEEN A POLICE OFFICER TWO YEARS, AND HE KNEW. HE
18 KNEW THAT SHE WAS NOT TELLING THE TRUTH. THE DOCTOR WAS SO
19 CONCERNED AND UPSET ABOUT IT THAT HE CALLED LAW ENFORCEMENT.
20 HE WAS SO UPSET AND CONCERNED ABOUT IT THAT HE DID TALK TO
21 HER ONCE, TWICE, AT LEAST THREE TIMES HE SPOKE TO HER. HE
22 TOLD HER THEN RIGHT THEN AND THERE HE ASKED DID SOMETHING
23 HAPPENED TO YOU OTHER THAN STRIKING THE DASHBOARD. NO.
24 WERE YOU WEARING YOUR SEATBELT? YES. DING, DING, DING,
25 DING. BELLS. HE ALREADY SUSPECTED IT ANYWAY BUT BELLS WILL

1 GO OFF IN YOUR HEAD. YOU CAN'T HIT THE DASHBOARD AND BREAK
2 YOUR NOSE WHEN YOU'RE WEARING A SEATBELT LIKE THAT AND ONLY
3 HAVE THOSE ISOLATED INJURIES.

4 YOU KNOW I TAKE OFF MY PROVERBIAL HAT TO THE SHERIFF'S
5 OFFICE MORE SPECIFICALLY TO DEPUTY CRABTREE BECAUSE NOBODY
6 FORCED HIM TO WRITE THAT REPORT. NOBODY FORCED HIM.
7 REMEMBER, HE WAS SO CONCERNED ABOUT WHAT HE OBSERVED AND
8 WHAT HE HEARD FROM THAT LADY ON HER INJURIES THAT HE WROTE A
9 REPORT. HE DID NOT HAVE TO WRITE A REPORT BUT HE WROTE IT.
10 WHEN HE GOT THAT CALL THE FOLLOWING DAY YOU, HE DID NOT HAVE
11 TO CALL HER BACK BUT HE DID. HE CALLED HER BACK AND HE DID
12 NOT CALL HER BACK ONCE HE CALLED HER BACK TWICE, THREE
13 TIMES. AND WHEN HE COULD GET TOGETHER WITH HER AT 11:00
14 O'CLOCK HE GOT SO CONCERNED AND UPSET THAT HE TOOK HIMSELF
15 AND TWO OTHER DEPUTIES OUT THERE FOR A WELFARE CHECK BECAUSE
16 HE WAS SO CONCERNED FOR HER SAFETY. HE ONLY HAS TWO YEAR
17 LAW ENFORCEMENT BUT HE THOUGHT ENOUGH ABOUT WHAT HE HAD SEEN
18 AND HEARD THE DAY BEFORE THAT HE AND TWO OTHER OFFICERS WENT
19 OUT THERE.

20 I WANT TO KEEP GOING ON BUT THERE ARE ALWAYS OTHER
21 LITTLE SUBTLETIES. SHE INSISTED AND WAS CORROBORATE BY LISA
22 POWELL, IT WAS CORROBORATE BY DEPUTY CRABTREE, INSISTED YOU
23 ALL DRIVE OFF, DRIVE OFF. I DON'T WANT HIM TO THINK --- I
24 DON'T WANT HIM TO THINK THAT I AM HAVING ANYTHING TO DO WITH
25 YOU. FEAR. THERE HAD TO BE A TREMENDOUS AMOUNT OF FEAR TO

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1 GET HER TO DO THAT. AND WE HAVE ONLY TOUCHED A TIP OF THE
2 ICEBERG.

3 FINALLY, TODAY SHE IS STILL UPSET AND CRYING, TEARFUL.
4 THIS IS WHAT OUR BOY DID. THIS IS WHAT OUR BOY DID. THIS
5 IS INTOLERABLE. THIS BEHAVIOR IS INTOLERABLE.

6 BRIEFLY, I AM GOING TO TALK ABOUT THE DEFENDANT'S
7 TESTIMONY AND I AM GOING TO STOP. RIGHT OUT OF THE BOX,
8 VERY STRANGE, ERRATIC, SCARY BEHAVIOR. THAT IS WHAT HE IS
9 ALL ABOUT. HE DOES NOT LISTEN TO ANYBODY. THE JUDGE WOULD
10 TELL HIM TO SLOW DOWN. HE DOESN'T LISTEN TO HIM. I
11 POLITELY ASKED HIM NOT TO TALK WHEN I TALK. HE KEPT ON
12 GOING. IT IS ALL ABOUT HIM. HIS COUNSEL ASKED RIGHT AT THE
13 BEGINNING ABOUT WHAT HAPPENED AND THE DEFENDANT SAID DID YOU
14 STRIKE HER AND HE SAID NO. AND THEN HE SAID NOT
15 INTENTIONALLY. WELL YOU EITHER DID OR YOU DIDN'T. BUT YOU
16 KNOW HE IS TRYING TO PLAY GAMES WITH YOU ALL. YOU KNOW HE
17 ADMITTED THAT HE HAD SAID PREVIOUSLY, I ASKED IF YOU CALLED
18 LAW DID YOU THREATEN HER WITH A POTATO SACK AND NO, NO, NO,
19 I TOLD THEM IF THEY DIDN'T SHUT UP I WOULD PUT THEM IN A
20 POTATO SHACK. AND I SAID, YOU KNOW, WOULDN'T YOU AGREE WITH
21 ME THAT WOULD MAKE SOMEBODY BE AFRAID. NAH. THAT'S JUST
22 THE TALK. OKAY. I TRIED TO ASK HIM DO YOU AGREE WHAT YOU
23 DID CAUSE HER, OH, NO, NO, NO, NO, NO. WHY DID YOU GET YOUR
24 PARENTS INVOLVED? NEEDED SOMEBODY ON MY SIDE. THAT IS WHAT
25 HE SAID. THOSE ARE INTERESTING WORDS.

1 WHY DID YOU CALL YOUR DAD? NOT THAT, WHAT HIS ANSWER
2 WAS. OH, I'M SORRY, I ASKED HIM WHY HE PULLED UP NEXT TO
3 HIS DAD AND I SAID WASN'T IT BECAUSE YOU ALL WERE GETTING
4 TOGETHER TO MAKE SURE SHE WASN'T GOING TO SAY ANYTHING THAT
5 YOU WERE PRESENT FOR AND WHAT WAS HIS ANSWER. NO, NO, NO,
6 NO, NO, I DIDN'T PULL UP WITH HIM DRIVING THE ROAD TO THE
7 HOSPITAL TO TELL HIM. I PULLED UP NEXT THEM TO LET THEM
8 KNOW AT THE HOSPITAL THAT THE VICTIM WAS DRINKING. WELL, IF
9 THE DEFENDANT WAS RIGHT ABOUT HOW MUCH SHE WAS DRINKING, HOW
10 DRUNK SHE WAS, I THINK WE WOULD KNOW ABOUT IT. AND IF SHE
11 WAS AS DRUNK AS HE SAID SHE WAS WE WOULD HAVE HEARD IT FROM
12 THE DOCTOR BUT WE DIDN'T.

13 YOU KNOW, IT'S THE LITTLE THINGS. THE STATEMENT, HE
14 SAID THE STATEMENT WAS NOT SIGNED BY LISA POWELL. THE FACT
15 IS HE'S LYING. YOU SAW THE STATEMENT. YOU SAW THE
16 SIGNATURES. HE ADMITTED HER SIGNATURES WERE ON THERE. YOU
17 KNOW WHEN YOU THINK ABOUT IT IF ARE WILLING TO LIE ABOUT
18 LITTLE THINGS YOU'RE CERTAINLY WILLING TO LIE ABOUT BIG
19 THINGS. AND I WILL TELL YOU THIS, AT THE END OF THE DAY WHO
20 HAS EVERYTHING TO GAIN AND LOSE BY LYING. WHO HAS
21 EVERYTHING TO GAIN AND LOSE BY YOUR VERDICT? THAT MAN.
22 THAT MAN RIGHT THERE. BECAUSE IF YOU BELIEVE HIS LIES IF
23 YOU BELIEVE HIS LIES THAT GUY WALKS. THAT IS WHY HE IS
24 WILLING TO DO IT HE HAS NOTHING TO LOOSE. HE CAN LIE UNTIL
25 THE COWS COME HOME. AND IF HE CONVINCES YOU THAT IS GREAT

1 FOR HIM. BUT THIS CASE IS ABOUT FEAR.

2 LISA POWELL STOOD UP FOR HERSELF YESTERDAY AND TODAY,
3 AND HOPEFULLY FOR THE REST OF HER LIFE. I ASK YOU NOW TO
4 STAND UP FOR HER. I ASK YOU NOW TO END HER NIGHTMARE. I
5 ASK YOU NOW TO FINISH OFF HER FEAR. THANK YOU.

6 CHARGE ON THE LAW

7 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN OF THE
8 JURY, ARE YOU COMFORTABLE AND CAN YOU HEAR ME. ALL RIGHT, WE
9 ARE NOW AT THE POINT IN THE CASE WHICH I TOLD YOU AT THE
10 BEGINNING OF THE CASE THE LAST PERSON YOU WILL HEAR FROM
11 BEFORE YOU RETIRE TO DELIBERATE WOULD BE THE COURT GIVING YOU
12 THE CHARGE ON THE LAW. AND THIS IS WHERE WE FIND OURSELVES
13 NOW. I WANT TO THANK YOU FOR YOUR -- WELL AS I DISCUSSED
14 WITH YOU MONDAY, JUST FOR OUR COMMITMENT THAT YOU HAVE GIVEN
15 BY COMING FORWARD AS JURORS, BUT BEYOND THAT I SIT HERE IN
16 THE COURTROOM WHERE LOGISTICALLY I CAN LOOK BEYOND THE WITNESS
17 OR BEYOND COUNSEL AND I CAN OBSERVE THE JURY AS YOU HAVE
18 NOTED THROUGHOUT THE TRIAL. I DO THAT TO MAKE SURE TO MAKE
19 SURE YOU ARE COMFORTABLE. I DO THAT JUST TO BE AWARE OF THE
20 PROCEEDINGS. AND EVERY TIME I HAVE LOOKED UP AT YOU EVEN AS
21 I LOOK NOW, YOU SAT WITH WRAPPED ATTENTION AND FOCUS. YOU'VE
22 LISTENED CLOSELY TO THE EVIDENCE BEFORE YOU, AND I AM
23 COMFORTABLE THAT WHEN YOU RETIRE TO DELIBERATE YOU ARE GOING
24 TO BE IN A GOOD POSITION TO DO THAT BECAUSE YOU HAVE GIVEN OF
25 YOURSELVES. YOU'VE MADE THE COMMITMENT TO BE THE GOOD JURORS

1 THAT YOU ARE. I THANK YOU FOR THE LEVEL OF FOCUS THAT YOU
2 HAVE GIVEN THROUGHOUT THIS CASE.

3 NOW AS YOU KNOW THE STATE, THE PROSECUTION, SEATED
4 CLOSEST TO YOU CHARGES THE DEFENDANT HERE, STACEY W. HOWARD,
5 SEATED AT THE TABLE FURTHEST FROM YOU, WITH ONE COUNT OF
6 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE AND I
7 WANT TO TELL YOU AS I SAID BEFORE, AND I DON'T MEAN TO SOUND
8 LIKE A BROKEN RECORD, BUT PLEASE BEAR IN MIND AND YOU HEARD
9 IT IN FACT THE DEFENDANT PLEADS NOT GUILTY TO THAT CHARGE AND
10 DENIED THE ALLEGATIONS THAT WERE CONTAINED IN THAT
11 INDICTMENT. AND THE INDICTMENT AS I EXPLAINED IT TO YOU WHEN
12 WE BEGAN IS JUST SIMPLY A PIECE OF PAPER. IT IS A DOCUMENT
13 BY WHICH THE PROSECUTION COMMENCES AGAINST A PERSON. AND IT
14 IS NOT EVIDENCE. THE EVIDENCE IN THE CASE THAT YOU ARE TO
15 CONSIDER IS THE TESTIMONY OF THE VARIOUS WITNESSES RIGHT HERE
16 ON THIS WITNESS STAND IN YOUR PRESENCE. AS WELL AS SUCH AS
17 EXHIBITS ADMITTED INTO THE RECORD DURING THE TRIAL OF THIS
18 CASE WHICH YOU WILL HAVE BACK WITH YOU IN THE JURY ROOM WHEN
19 RETIRE DELIBERATE. I TELL YOU AGAIN, THE DEFENDANT COMES
20 INTO THIS COURTROOM CLOTHED WITH A PRESUMPTION OF INNOCENCE.
21 AND THAT PRESUMPTION OF INNOCENCE ENTITLES THE DEFENDANT TO A
22 VERDICT OF NOT GUILTY, UNLESS AND UNTIL IT IS DISPELLED BY
23 EVIDENCE WHICH SATISFIES YOU THE JURY BEYOND A REASONABLE
24 DOUBT THAT THE DEFENDANT IS GUILTY OF THE OFFENSE CHARGED AND
25 THE STATE HAS PROVED EACH AND EVERY ELEMENT OF THAT EVENT

1 BEYOND A REASONABLE DOUBT.

2 NOW WHEN WE BEGAN THIS CASE, I DISCUSSED WITH YOU THE
3 FACT THAT YOU ARE THE JUDGE'S OF THE FACTS. YOU ARE THE
4 JUDGE'S OF THE CREDIBILITY AND BELIEVABILITY OF THE WITNESSES
5 AND I WILL NOT -- THERE IS NO NEED TO BE DUPLICATIVE AND GO
6 OVER THE INFORMATION AGAIN I GAVE YOU ABOUT THAT. BUT I WILL
7 SIMPLY SAY THIS TO YOU IN DETERMINING THE FACTS OF THIS CASE
8 YOU MAY BELIEVE AS MUCH OR AS LITTLE OF ANY WITNESS'S
9 TESTIMONY YOU THINK PROPER. I CAN BELIEVE ONE WITNESS
10 AGAINST A WHOLE GROUP OF WITNESSES OR YOU CAN DO JUST THE
11 OPPOSITE. YOU CAN BELIEVE PART OF WHAT A WITNESS SAYS AND
12 COMPLETELY DISBELIEVE THE REST. I WOULD ALSO SAY TO YOU THAT
13 THE FACT THE TESTIMONY, CERTAIN TESTIMONY MAY NOT BE DIRECTLY
14 CONTROVERTED. IT DOESN'T MEAN YOU HAVE TO ACCEPT IT AS TRUE
15 AND UNDISPUTED. YOU MUST FIRST GAGE THE CREDIBILITY OF THE
16 WITNESS TO WHICH, THAT INFORMATION COMES BEFORE YOU CAN USE
17 IT IN YOUR DETERMINATIONS. I WILL TELL YOU THAT YOU SHOULD
18 KEEP IN MIND THROUGHOUT THIS PROCESS YOU HAVE BUT ONE
19 OBJECTIVE AND THAT IS TO SEEK THE TRUTH REGARDLESS FROM WHICH
20 WITNESS OR FROM WHICH SIDE OF THE CASE IT MAY COME.

21 NOW THERE ARE TWO TYPES OF EVIDENCE WHICH ARE PRESENTED
22 IN CASES SUCH AS THESE. I WANT TO DISCUSS THAT WITH YOU.
23 THERE IS DIRECT EVIDENCE AND THERE IS CIRCUMSTANTIAL
24 EVIDENCE. DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO
25 IS SEARCHED OR CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT SUCH

1 AS AN EYE WITNESS. THAT IS A DIRECT EVIDENCE.
2 CIRCUMSTANTIAL EVIDENCE ON THE OTHER HAND IS INDIRECT
3 EVIDENCE. CIRCUMSTANTIAL EVIDENCE IS PROOF OF A SET OR CHAIN
4 OF FACTS THAT INDICATES THE EXISTENCE OF YET ANOTHER FACT. I
5 WILL TELL YOU THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN
6 THE WEIGHT OR VALUE TO BE GIVEN EITHER DIRECT OR
7 CIRCUMSTANTIAL EVIDENCE, NOR IS A GREATER DEGREE OF CERTAINTY
8 REQUIRED OF ONE OR THE OTHER. YOU SHOULD WEIGH ALL THE
9 EVIDENCE IN THE CASE. AND AFTER WEIGHING ALL THE EVIDENCE,
10 IF YOU ARE NOT CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND
11 A REASONABLE DOUBT THAN YOU MUST FIND THE DEFENDANT NOT
12 GUILTY.

13 NOW, YOU ALSO HEARD TESTIMONY, I TOUCHED ON THIS BRIEFLY
14 YESTERDAY BUT I WANT TO SAY IT AGAIN; FROM A WITNESS WHO
15 SPECIAL KNOWLEDGE, SKILL OR EXPERIENCE OR TRAINING OR
16 EDUCATION OF A PARTICULAR FIELD WHO CAME IN AND GAVE AN
17 OPINION AS TO MATTERS IN WHICH THEY HAD SOME EXPERTISE. I
18 WILL TELL YOU THAT IN DETERMINING THE WEIGHT TO BE GIVING
19 SUCH AN OPINION YOU SHOULD CONSIDER THE QUALIFICATIONS AND
20 THE CREDIBILITY OF THE EXPERT, AND THE REASONS GIVEN FOR HIS
21 OR HER OPINION. YOU ARE NOT BOND BY THAT OPINION. YOU GIVE
22 IT WHAT WEIGHT, IF ANY, YOU DEEM IT TO BE ENTITLED TO. THE
23 VALUE AND EFFECT OF EXPERT TESTIMONY IS MATTER TO BE SOLELY
24 ESTIMATED BY YOU THE JURY. AND I WILL YOU THAT NO MERE
25 OPINION OF AN EXPERT CAN BE ACCEPTED IN AND OF ITSELF AS

1 TRUTHFUL AND RELIABLE BUT MUST BE WEIGHED BY YOU. AND
2 CONVINCED YOU IN YOUR JUDGMENT BEYOND A REASONABLE DOUBT WITH
3 THE SAME FORCE AND EFFECT AS ANY OTHER FACT PROVEN IN THIS
4 CASE BEFORE YOU CAN RELY UPON IT AS A BASIS FOR CONVICTION.
5 YOU MUST CONSIDER EXPERT TESTIMONY IN THE SAME MANNER THAT
6 YOU WOULD CONSIDER LAY TESTIMONY AND GIVE IT SUCH WEIGHT THAT
7 YOU BELIEVE IT IS ENTITLED TO WHEN CONSIDERED ALONG WITH ALL
8 THE OTHER EVIDENCE IN THE CASE. AND FINALLY I SAY TO YOU
9 AGAIN, SUCH EVIDENCE IS NEVER GIVEN FOR THE PURPOSE OF
10 CONTROLLING YOUR JUDGMENT BUT FOR ASSISTING YOU IN MATTERS OF
11 FACT THAT ARE BEFORE YOU WITHIN THE EXPERTS AREA OF KNOWLEDGE
12 OR TRAINING.

13 NOW I TALKED TO YOU A MOMENT AGO ABOUT WEIGHING THE
14 EVIDENCE. BUT NOT WHILE YOU HAVE BEEN IN THERE BUT I'VE BEEN
15 BACK IN YOUR JURY ROOM BEFORE AND THERE IS NOT SOME SET OF
16 SCALES TO GO BACK THERE TO WEIGHT THE EVIDENCE ON.
17 OBVIOUSLY, I KNOW YOU KNOW THAT. AND THAT THE REASON FOR
18 THAT IS THAT IN WEIGHING EVIDENCE IS ENTIRELY A MENTAL
19 PROCESS. BUT I WOULD SAY TO YOU, THAT EVIDENCE WHICH WEIGHS
20 WITH YOU IS EVIDENCE THAT CONVINCES YOU OF ITS TRUTH. AGAIN,
21 REGARDLESS FROM WHICH WITNESS OR SOME WHICH SIDE OF THE CASE
22 IT MAY COME.

23 NOW THE SAME CONSTITUTION THAT MAKES YOU THE JUDGES OF
24 THE FACTS MAKES ME THE JUDGE OF THE LAW HERE IN THE
25 COURTROOM. AND I TELL YOU NOW THAT YOU SHOULD ACCEPT THE LAW

1 AS I GIVE TO YOU HERE IN THE PROCEEDING AND APPLY IT TO THE
2 FACTS AS YOU FIND IT. NOW THERE IS A LOT OF INFORMATION OUT
3 OF THE STREET ABOUT THE LAW WHICH IS GENERALLY NOT GOOD
4 INFORMATION. SO PLEASE DON'T APPLY WHAT YOU MAY HAVE HEARD
5 ON THE STREET WAS THE LAW, OR WHAT YOU MAY BELIEVE MIGHT BE A
6 BETTER IDEA, OR WHAT JUST SEEMS TO BE A BETTER STATE OF THE
7 LAW THAN WHAT THE COURT IS GIVING YOU NOW. BECAUSE I AM
8 GIVING THE LAW ACCURATELY AND APPLY IT TO THE FACTS AS YOU
9 FIND THEM. AND I TELL YOU HONESTLY, IF I MAKE A MISTAKE
10 WHICH I AM NOT DOING IN GIVING YOU THIS LAW BUT IF I DID
11 WELL, WELL THAT ERROR WOULD BE PRESERVED. THIS PROCEEDING IS
12 BEING TAKEN DOWN, AND THERE WOULD BE A DAY AND A TIME IN
13 ANOTHER COURT WHERE THAT ISSUE CAN BE REVISITED BUT I AM
14 TELLING YOU I AM GIVING THE LAW CORRECTLY. PLEASE ACCEPT IT
15 AS I GIVE TO YOU AND APPLY IT TO THE FACTS AS YOU FIND THEM.

16 NOW IN A CRIMINAL PROSECUTION OF THIS TYPE, AS I HAVE
17 ALREADY STATED TO YOU THE STATE SEATED CLOSES TO YOU HAS THE
18 BURDEN OF PROOF AT ALL TIMES. THE DEFENSE HAS NO BURDEN OF
19 PROOF. THE DEFENDANT IS PRESUMED INNOCENT. AND IN THE STATE
20 ACCORDING TO OUR CONSTITUTION THE PROSECUTION MUST PROVE THIS
21 CASE TO THE STANDARD OF PROOF WE CALL BEYOND A REASONABLE
22 DOUBT BEFORE A FINDING OF GUILT MAY OCCUR. AND IF THE STATE
23 FAILS TO MEET THAT HIGH BURDEN THEN THE DEFENDANT IS ENTITLED
24 TO A ACQUITTAL.

25 WELL THEN YOU SAY, WELL, OKAY, WHAT IS A REASONABLE

1 DOUBT. AND I AM DOING TO START BY TELLING YOU WHAT IT'S NOT.
2 IT'S NOT AN IMAGINARY OR A FANCIFUL DOUBT OR A WEAK DOUBT.
3 IT IS SUBSTANTIAL DOUBT. IT'S A DOUBT THAT THE WORDS IMPLY.
4 A DOUBT THAT WHICH YOU CAN GIVE OR ASSIGN A REASON BASED ON
5 THE TESTIMONY AND EVIDENCE IN THE CASE. A REASONABLE DOUBT
6 IS NOT ANY SORT OF A DOUBT. YOU AND I KNOW THAT WE MAY HAVE
7 ANY SORT OF DOUBT ABOUT ANY MATTER IN OUR EVERY DAY LIVES NO
8 MATTER HOW TRIVIAL IT MAY BE SUCH AS WHAT TIE TO WEAR TO SOME
9 EVENT OR WHAT PAIR OF SHOES TO WEAR TO HERE OR THERE, WELL
10 THAT IS NOT A REASONABLE DOUBT. A REASONABLE DOUBT IS A
11 DOUBT THAT MAKES A HONEST, SINCERE CONSCIOUS JUROR IN SEARCH
12 OF THE TRUTH HESITATES TO ACT. PROOF BEYOND A REASONABLE
13 DOUBT, IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE
14 DEFENDANT'S GUILT. IF YOU HAVE A DOUBT FOR WHICH YOU CAN GIVE
15 OR ASSIGN A REASON BASED ON THE EVIDENCE IN THIS CASE AS TO
16 THE GUILT OF THE DEFENDANT THAN HE'S ENTITLED TO A VERDICT OF
17 NOT GUILTY.

18 I TELL YOU THAT REASONABLE DOUBT MAY ARISE FROM THE
19 EVIDENCE WHICH IS IN THE CASE OR FROM THE LACK OR ABSENCE OF
20 THE EVIDENCE IN THE CASE. YOU, THE JURY, MUST MAKE THE
21 DETERMINATION OF WHETHER OR NOT REASONABLE DOUBT EXISTS IN
22 THIS CASE. I WILL TELL YOU THOUGH THE VERY FACT THAT THE
23 JURY GOES BACK IN THE JURY ROOM AND ENGAGES IN A FULL AND
24 FREE DISCUSSION ON THE ISSUE OF GUILT OR NON GUILT IN THIS
25 CASE WITH CONVERSATIONAL EBB AND FLOW ON THAT ISSUE DOES NOT

1 AUTOMATICALLY MEAN THAT REASONABLE DOUBT EXIST IN THIS CASE
2 OR IN ANY OTHER CASE FOR THAT MATTER.

3 NOW CRIMINAL INTENT IS SOMETHING I WANT TO CHARGE YOU
4 ABOUT AND I TELL YOU THAT IS A NECESSARY ELEMENT OF EACH
5 CRIME THAT MUST BE PROVED BY THE STATE BEYOND A REASONABLE
6 DOUBT. CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE
7 DETERMINED BY THE JURY FROM THE CIRCUMSTANCES SHOWN TO
8 SURROUND A SITUATION. THERE IS NO WAY THAT YOU PROVE INTENT
9 TO SOME MATHEMATICAL CERTAINTY. I WILL TELL THAT YOU THAT
10 MEDICAL SCIENCE AS YOU WILL KNOW DOES NOT ALLOW THE PERSON TO
11 DISSECT SOMEONE'S MIND LOOK IN AND DETERMINE WHAT THEY HAD IN
12 MIND AT THE PARTICULAR TIME. SO THE LAW STATES THE CRIMINAL
13 INTENT MAY BE INFERRED FROM THE CIRCUMSTANCES SHOWN TO EXIST
14 BOTH BEFORE AND AFTER THE FACT. THIS IS HOW YOU THE JURY
15 MAKE THE DETERMINE OF WHETHER OR NOT THE ELEMENT REQUIRING
16 INTENT IS PRESENT.

17 I TELL YOU CRIMINAL INTENT IS A STATE OF MIND THAT
18 OPERATES JOINTLY WITH AN ACT OR AN OMISSION IN THE COMMISSION
19 OF A CRIME. CRIMINAL INTENT IS A MENTAL STATE OF CONSCIOUS
20 WRONG DOING. SO IT'S UP TO THE JURY TO DETERMINE WHAT THE
21 DEFENDANT INTENDED TO DO BASED ON THE CIRCUMSTANCES SHOWN
22 HAVING EXISTED IN THIS CASE. I TELL YOU THE STATE MUST PROVE
23 CRIMINAL INTENT BEYOND A REASONABLE DOUBT JUST AS THE STATE
24 MUST PROVE EVERY ELEMENT BEYOND A REASONABLE DOUBT AS I
25 PREVIOUSLY EXPLAINED TO YOU.

1 NOW I FURTHER WANT TO SAY TO YOU AGAIN, THE DEFENDANT
2 WHO HAS A PRIOR CRIMINAL RECORD IS COMPETENT TO TESTIFY
3 DURING A TRIAL AND THAT HAPPENED HERE IN THIS TRIAL. I TELL
4 YOU THAT A PAST RECORD DOES NOT AFFECT THAT ABILITY OF A
5 WITNESS TO TESTIFY. A PAST RECORD MAY BE ONLY CONSIDERED BY
6 YOU, I AM TALKING ABOUT THE PAST CRIMINAL RECORD, IF AT ALL
7 IN DETERMINING THAT WITNESS'S CREDIBILITY AND BELIEVABILITY
8 AND NOT ON THE PROPENSITY TO COMMIT THE OFFENSE THAT IS BEING
9 TRIED HERE TODAY. PLEASE UNDERSTAND THAT DISTINCTION. YOU
10 ARE THE SOLE JUDGE OF THE FACTS IN THE CASE AND OF THE
11 BELIEVABILITY AND CREDIBILITY OF ANY AND ALL THE WITNESSES
12 WHO APPEARED BEFORE YOU. AND I FURTHER SAY TO YOU THAT
13 DURING THE COURSE OF THIS TRIAL THE DEFENDANT TESTIFIED, TOOK
14 THE STAND RIGHT HERE, YOU OBSERVED THAT, AND MADE CERTAIN
15 EXPLANATIONS. BUT I CHARGE YOU THAT IT IS NOT INCUMBENT UPON
16 THE DEFENDANT TO PROVE HIS EXPLANATIONS OR ANYTHING ELSE IN
17 THAT MATTER. THE DEFENDANT'S PLEA OF NOT GUILTY PLACES THE
18 BURDEN OF PROOF ON THE STATE TO PROVE HIS GUILT BEYOND A
19 REASONABLE DOUBT BEFORE THE DEFENDANT CAN BE FOUND GUILTY.
20 YOU SHOULD GAGE YOUR CREDIBILITY AND BELIEVABILITY OF THE
21 DEFENDANT AS YOU WOULD ANY OTHER WITNESS.

22 NOW I WANT TO DEFINE FOR YOU THE CHARGE OF ASSAULT AND
23 BATTERY WITH A HIGH AND AGGRAVATED NATURE. THE DEFENDANT IS
24 CHARGED WITH THAT CRIME. TO PROVE ASSAULT AND BATTERY OF A
25 HIGH AND AGGRAVATED NATURE THE STATE MUST PROVE BEYOND A

1 REASONABLE DOUBT THE ELEMENTS OF THE CRIME. ASSAULT AND
2 BATTERY OF A HIGH AND AGGRAVATED NATURE IS AN UNLAWFUL ACT OF
3 VIOLENT INJURY TO THE PERSON OF ANOTHER, ACCOMPANIED BY
4 CIRCUMSTANCES OF AGGRAVATION. LET ME GIVE IT TO YOU AGAIN.
5 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE IS AN
6 UNLAWFUL ACT OF VIOLENT INJURY TO ANOTHER PERSON, ACCOMPANIED
7 BY CIRCUMSTANCES OF AGGRAVATION.

8 AN ASSAULT OCCURS WHEN A PERSON LAWFULLY ATTEMPTS OR
9 OFFERS TO COMMIT A VIOLENT INJURY ON ANOTHER PERSON AND HAS
10 THE PRESENT ABILITY TO COMPLETE THAT ATTEMPTED INJURY. AN
11 ASSAULT IS THE INTENTIONAL CREATION OF A REASONABLE FEAR OF
12 IMMEDIATE BODILY HARM. IT'S NOT NECESSARY THAT THE ATTEMPTED
13 INJURY OR HARM ACTUALLY TAKE PLACE FOR AN ASSAULT TO OCCUR.
14 FOR EXAMPLE, IF I WALK UP TO SOMEONE IN A SOCIAL SETTING AND
15 WHEN I COME CLOSE TO THAT PERSON WHEN I AM WITHIN ARMS REACH
16 IF I DRAW BACK TO HIT THAT PERSON WELL THEN THAT IS AN
17 ASSAULT.

18 NOW A BATTERY IS THE UNLAWFUL TOUCHING OF ANOTHER PERSON
19 BY THE PERSON WHO HAS COMMITTED THE ASSAULT. AND UNLAWFUL
20 TOUCHING CAN BE CAUSED BY THE PART OF THE ACCUSED BODY OR ANY
21 OBJECT THAT THE ACCUSED PUTS IN MOTION. A BATTERY IS THE
22 COMPLETION OF THE ASSAULT BY USING OR APPLYING FORCE TO
23 ANOTHER PERSON IN A RUDE, ANGRY OR RESENTFUL MANNER WITHOUT
24 LEGAL JUSTIFICATION FOR DOING SO. IN USING MY EARLY EXAMPLE,
25 IF I WALK UP TO A PERSON COMMITTED AN ASSAULT BY PULLING MY

1 ARM BACK IF I CARRY THROUGH BY HITTING THE PERSON WELL THEN
2 THAT IS A BATTERY.

3 THE STATE MUST ALSO PROVE IN AN ASSAULT AND BATTERY OF A
4 HIGH AND AGGRAVATED NATURE A CIRCUMSTANCE OF AGGRAVATION.
5 THE CIRCUMSTANCES OF AGGRAVATION INCLUDE THE FOLLOWING, AND
6 THESE ARE ALL EXAMPLES THIS IS NOT AN EXHAUSTED LIST BUT
7 INCLUDED BY NOT LIMITED TO. THE USE OF A DEADLY WEAPON, THE
8 INTENT TO COMMIT A FELONY, THE INFLECTION OF A SERIOUS BODILY
9 INJURY, A GREAT DISPARITY BETWEEN THE AGES OR PHYSICAL
10 CONDITIONS OF THE PARTIES, A DIFFERENCE IN THE GENDERS OR SEX
11 OF THE PARTIES, AND THE PURPOSE FOR INFLECTION OF SHAME AND
12 DISGRACE. AGAIN, THESE ARE ONLY SOME EXAMPLES OF
13 CIRCUMSTANCES OF AGGRAVATION.

14 I FURTHER CHARGE YOU THAT THE DEFENDANT HAS RAISED THE
15 DEFENSE OF ACCIDENT. AN ACT MAY BE EXCUSED ON THE GROUND OF
16 ACCIDENT IF SHOWN THE ACT IS UNINTENTIONAL AND THAT THE
17 DEFENDANT WAS ACTING LAWFULLY. THE BURDEN IS ON THE STATE TO
18 PROVE BEYOND A REASONABLE DOUBT THAT THE ACT WAS NOT AN
19 ACCIDENT BUT WAS CAUSED BY THE UNLAWFUL ACTIVITY OF THE
20 DEFENDANT.

21 NOW I FURTHER CHARGE YOU THE MERE PRESENCE AT THE SCENE
22 OF A CRIME OR THE SCENE OF A CRIME IS INSUFFICIENT TO PROVE
23 SOMEBODY GUILTY OF A PARTICULAR CRIME. THE BURDEN IS ON THE
24 STATE TO PROVE EVERY ELEMENT OF THE CRIME CHARGED. AND IF
25 YOU FIND AFTER REVIEWING ALL THE EVIDENCE THAT THE STATE HAS

1 ONLY PROVED THAT THE DEFENDANT WAS PRESENT AT THE INCIDENT OR
2 PRESENT AT THE SCENE AND THEY HAVE NOT PROVED BEYOND A
3 REASONABLE DOUBT THE COMMISSION OF A CRIME OR OTHER
4 PARTICIPATION IN A CRIME BY THE DEFENDANT THEN YOU MUST FIND
5 THE DEFENDANT NOT GUILTY. THE LAW IS THAT THE PROOF OF MERE
6 PRESENCE AT THE SCENE IS NOT SUFFICIENT TO FIND SOMEONE
7 GUILTY OF A CRIME.

8 NOW, IN CONCLUSION, LADIES AND GENTLEMEN, IN JUST A FEW
9 MOMENTS AFTER YOU RETIRE AND BEGIN YOUR LUNCH OR FINISH YOUR
10 LUNCH YOU WILL BEGIN YOUR DELIBERATIONS. AND I WANT TO
11 EXPRESS THE HOPE THAT YOU ARE MINDFUL OF THE IMPORTANCE OF
12 YOUR RESPONSIBILITY AND I KNOW YOU ARE. YOU MAY RECALL WHEN
13 WE TALKED YESTERDAY DURING QUALIFICATIONS WE DISCUSSED THE
14 FACT WITH YOU THAT YOU CANNOT BE REQUIRES TO SERVE AS A JUROR
15 IN THE SAME COURT MORE THAN ONCE IN A THREE YEAR PERIOD.
16 WELL THERE IS A REASON FOR THAT. THE REASON IS IT IS A
17 DIFFICULT TASKS. IT REQUIRES YOU TO REACH THE HEIGHT OF
18 FREEING YOUR MIND FROM ALL OUTSIDE AND IMPROPER INFLUENCES,
19 BECAUSE YOU AND I ACTING FOR THE COMMUNITY AND SEEING TO IT
20 THAT EVERY TRIAL HERE IS FAIR AND THAT EVERY VERDICT IS JUST.
21 AND I KNOW YOU HAVE OBSERVED THROUGHOUT THE TRIAL THE
22 PRESIDING OFFICER WHICH IS ME, IS REFERRED TO AS YOUR HONOR.
23 AND I KNOW YOU KNOW THAT IS NOT SOME TITLE GIVEN TO ME FOR
24 ANY PARTICULAR REASON. IT'S ACTUALLY A TITLE THAT IS
25 ASSIGNED TO THE POSITION THAT I AM PRIVILEGED TO HOLD. AND

1 THAT IS BECAUSE THIS COURT IS ENTRUSTED WITH THE HONOR OF
2 THIS COMMUNITY, THIS COUNTY, THIS STATE AND INDEED THIS
3 NATION IN SEEING TO IT THAT EVERY TRIAL HERE IS FAIR AND THAT
4 EVERY PERSON TRIED HERE RECEIVED FAIR AND IMPARTIAL JUSTICE.
5 NOW YOU THE JURY, TAKE INTO YOUR CARE AND PRESERVATION THE
6 HONOR OF THE COMMUNITY, THE COUNTY, STATE AND NATION WHEN YOU
7 GO BACK IN YOUR JURY ROOM TO DECIDE THIS CASE. NOW WHEN I
8 SAY THAT, PLEASE DON'T THINK I'M TELLING YOU HOW TO DECIDE
9 THIS CASE. THAT IS NOT MY POINT. THAT IS NOT WHAT I'M
10 SAYING. THAT WOULD BE INAPPROPRIATE. WHAT I AM SIMPLY
11 SAYING TO YOU IS THIS. AS A PRESIDING OFFICER OF THE COURT I
12 AM VITALLY CONCERNED THAT WHATEVER VERDICT YOU FIND WILL BE
13 THE RESULT OF YOU GOING INTO THE JURY ROOM, CONFINING YOUR
14 DELIBERATIONS AND CONSIDERATIONS TO THE EVIDENCE IN THIS
15 CASE, WEIGHING THAT EVIDENCE FAIRLY AND IMPARTIALLY AND
16 APPLYING IT TO THE LAW THAT I HAVE GIVEN YOU I THIS CHARGE.
17 AND I HAVE EVERY CONFIDENCE THAT THIS, IN FACT, WHAT YOU WILL
18 DO. EVERYONE IN THIS CASE IS ENTITLED TO JUSTICE, BOTH THE
19 STATE, THE VICTIM AND THE DEFENDANT. ALL ARE ENTITLED TO
20 JUSTICE. NOTHING MORE AND NOTHING LESS. WE OWE NO SUPPORT
21 TO ANY PARTY. WE OWE NO SYMPATHY TO ANY PARTY. AND AGAIN, I
22 AM OF THE CONFIRMED OPINION THAT WHATEVER VERDICT YOU REACH
23 WILL REPRESENT TRUTH FOR ALL THE PARTIES INVOLVED.

24 NOW, MR. FOREMAN, MR. GAMBLE, LADIES AND GENTLEMEN OF
25 THE JURY, YOU CANNOT REALLY READ IT FROM HERE BUT I HAVE IN

1 MY HAND THE VERDICT FORM. AND THE VERDICT FORM BASICALLY
2 GIVES YOU TWO CHOICES IN THIS CASE AND I AM GOING TO READ IT
3 TO YOU. IT SAYS ON THE CHARGE OF ASSAULT AND BATTERY OF A
4 HIGH AND AGGRAVATED MANNER WHICH IS THE SAME THING AS HIGH
5 AND AGGRAVATED NATURE, IT SAYS, WE, THE JURY, BY UNANIMOUS
6 CONSENT FIND THE DEFENDANT, STACEY HOWARD, AND THEN THERE IS
7 TWO CHOICES. NOW LET ME JUST SAY THIS TO YOU. WHEN I HAVE
8 TWO CHOICES TO GIVE YOU ON A PIECE OF PAPER I CAN'T GIVE THEM
9 BOTH TO YOU AT THE SAME TIME. ONE MUST COME BEFORE THE
10 OTHER. NOT BECAUSE THERE IS A PRIORITY OR A PREFERENCE BUT
11 SIMPLY ON THE PAPER ONE MUST BE PRESENT TO YOU BEFORE THE
12 OTHER. THE FIRST CHOICE IS GUILTY. AND IF THERE IS A
13 UNANIMOUS DECISION OF GUILTY THEN MR. FOREMAN, YOU MARK THAT
14 BLOCK AND YOU MOVE DOWN HERE AND SIGN. IF IT'S NOT GUILTY,
15 WHICH IS THE SECOND CHOICE, IS THE UNANIMOUS DECISION OF THE
16 JURY THEN YOU MARK THAT BLOCK AND COME DOWN HERE AND SIGN.
17 AND I WANT TO SAY TO YOU, MR. GAMBLE, WHEN YOU SIGN YOU ARE
18 AFFIRMING TO ME THAT THIS IS THE UNANIMOUS DECISION OF THE
19 JURY AND NOT A SPLIT DECISION BUT IT IS THE UNANIMOUS
20 DECISION, WHICHEVER THE CHOICE MAY BE.

21 NOW I WOULD SAY TO YOU, I HAVE BEEN, AS I SAID EARLIER
22 BACK IN THE JURY ROOM BEFORE, IT HAS SOME SIZE TO IT. SOME
23 PEOPLE MAY BE STANDING BESIDE THE WALL, SOME BY THE TABLE,
24 JUST PLEASE MAKE SURE THAT EVERYONE WHO WISHES TO HEARD ON A
25 PARTICULAR POINT HAS THE OPPORTUNITY TO BE HEARD ON THAT

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1 PARTICULAR POINT.

2 NOW WHILE WE'RE ALL TOGETHER, AND JUST ONE MOMENT, LET
3 ME CHECK ON ONE THING. WE'RE GOING TO CHECK ON THE STATUS OF
4 YOUR LUNCH SO WE CAN GIVE YOU A LITTLE BIT MORE SPECIFICS ON
5 THAT.

6 MR. GOSS, I WANT TO SAY ONE THING TO YOU BEFORE WE
7 DEPART HERE. FIRST OF ALL, I WANT TO THANK YOU FOR YOUR
8 SERVICE. I WANT TO TELL YOU THAT UNDER OUR SYSTEM ONLY THE
9 TWELVE ORIGINAL JURORS DELIBERATE. AND I SUSPECT THESE
10 TWELVE ARE GOING TO HOLD THEIR HEALTH HERE FOR THE NEXT FEW
11 MINUTES UNTIL WE BEGIN DELIBERATIONS WHICH MEANS YOU WILL NOT
12 DELIBERATE. BUT I DON'T WANT YOU TO THINK AND I KNOW
13 SOMETIMES AN ALTERNATE JUROR MAY THINK, MAN, I HAVE WASTED MY
14 TIME TODAY WITH THIS BUSINESS. UNDER OUR SYSTEM WE MUST HAVE
15 TWELVE JURORS IN A GENERAL SESSIONS' CASE. IF I HAD NO
16 ALTERNATE AND IF EVEN NOW AT THE END OF THIS CASE, RIGHT
17 BEFORE IT WENT TO THE JURY OR EVEN DURING JURY DELIBERATIONS
18 IF SOMEONE BECOMES ILL AND WE'RE DOWN TO ELEVEN I WOULD HAVE
19 TO DECLARE MISTRIAL. AND YOUR PRESENCE HERE HAS PREVENTED
20 THAT IN EVENT IT DID OCCUR, AND IT DID NOT OCCUR. BUT I AM
21 GOING TO ASK YOU IF YOU WILL, WHAT I AM GOING TO LET YOU DO
22 IS GO HAVE LUNCH WITH YOUR COLLEAGUES SO THAT YOU WILL HAVE
23 AN OPPORTUNITY TO SAY GOODBYE AND RECEIVE THE BENEFIT OF LUNCH
24 BEING PROVIDED TO YOU. I AM GOING TO ASK THE JURY TO WAIT ON
25 DELIBERATIONS UNTIL YOU HAVE LUNCH, NOT BEING IN DELIBERATIVE

1 POSTURE WHILE YOU'RE TRYING TO HAVE YOUR LUNCH AT THE SAME
2 TIME WHICH IS DIFFICULT TO DO. AND AFTER LUNCH IS FINISHED,
3 WELL, WE MAY REVISIT THAT IN JUST A MOMENT. AFTER LUNCH IS
4 FINISHED THEN IT WOULD BE MY INTENTION THAT YOU ALL START
5 DELIBERATING.

6 I AM TOLD THAT LUNCH WILL NOT ACTUALLY BE READY FOR
7 ABOUT THIRTY MINUTES SO THIS WHAT I AM GOING TO DO. WE ARE
8 GOING TO LET YOU GO ON BACK AND BEGIN YOUR DELIBERATIONS AND
9 THEN WHEN LUNCH ARRIVES I AM GOING TO ASK YOU IF YOU WOULD
10 KIND OF STOP YOUR DELIBERATIONS, JUST ENJOY YOUR LUNCH, AND
11 THEN WHEN YOU'RE FINISHED WITH LUNCH IF YOU WILL KNOCK ON THE
12 DOOR WE WILL RETRIEVE LUNCH AND GET THAT OUT OF YOUR WAY SO
13 YOU CAN JUST HAVE WHATEVER IS NECESSARY FOR YOUR
14 DELIBERATIONS.

15 LET'S DO THIS, MR. GOSS, I AM STILL GOING TO LET YOU GO
16 BACK AND SAY YOUR GOODBY'S TO YOUR COLLEAGUES. I AM GOING TO
17 ASK YOU TO REMAIN WITH US FOR TWO REASONS THOUGH. NUMBER
18 ONE, YOU HAVE LUNCH COMING AND WE WANT YOU TO ENJOY THAT IN A
19 FEW MINUTES. BUT SECONDLY, IN THE EVENT ONE OF OUR JURORS
20 BECOMES ILL AND HAS TO LEAVE, OR THERE IS SOME EMERGENCY, I
21 AM GOING TO ASK YOU TO REMAIN WITH US. WE ARE GOING TO PUT
22 YOU IN A DIFFERENT PLACE SO THAT YOU WILL NOT BE OUT HERE
23 AMONGST THE PARTIES BUT YOU WILL THEN BE ABLE TO FILL IN, IN
24 THE EVENT THAT SHOULD OCCUR. THANK YOU AGAIN FOR THIS
25 SERVICE, MR. GOSS.

1 ALL RIGHT, I AM ADVISED THAT LUNCH WILL BE HERE IN ABOUT
2 THIRTY MINUTES SO LET'S DO THIS. MR. FOREMAN, LADIES AND
3 GENTLEMEN, I WILL ASK YOU TO GO BACK TO THE JURY ROOM.
4 PLEASE DON'T BEGIN YOUR DELIBERATIONS. I NEED TO TALK WITH
5 THE ATTORNEYS. WE WILL GATHER THE EVIDENCE AND THEN SEND IT
6 TO YOU.

7 ONE FINAL COMMENT. PLEASE REMEMBER MY SUGGESTION, OR MY
8 INSTRUCTION TO YOU ABOUT NOTES USED AT THE BEGINNING WHICH IS
9 SIMPLE THIS. IF YOU HAVE TAKEN NOTES, THEY SHOULD BE USED
10 ONLY FOR THE RECOLLECTION TO REFRESH YOUR PERSONAL
11 RECOLLECTION AND FOR NO OTHER PURPOSE DURING DELIBERATIONS.

12 ALL RIGHT, LET'S EVERYONE ONE REMAIN WHERE THEY ARE
13 WHILE I JURY REPORTS TO THE JURY ROOM. PLEASE DON'T BEGIN
14 DELIBERATIONS. WE'LL SEND IN SOME INFORMATION TO YOU SHORTLY
15 AND THEN WE'LL BRING OUT MR. GOSS, AND YOU CAN BEGIN
16 DELIBERATIONS.

17 (WHEREUPON, THE JURY EXISTS THE COURTROOM AT 12:45
18 P.M.)

19 THE COURT: ARE THERE ANY EXCEPTIONS OR OBJECTIONS TO
20 THE CHARGE GIVEN BY THE COURT. FIRST FROM THE DEFENSE?

21 MR. RUNYAN: NO ACCEPTANCE, OR ADDITION TO YOUR
22 QUESTION, JUDGE.

23 THE COURT: ALL RIGHT, AND NOW FROM THE PROSECUTION?

24 MR. MODICA: YOUR HONOR, WHEN YOU READ THE ASSAULT AND
25 BATTERY OF A HIGH AND AGGRAVATED NATURE AND YOU DEFINED

1 BATTERY YOU LEFT OUT TWO WORDS HOWEVER SLIGHT.

2 THE COURT: YES, SIR, I DID.

3 MR. MODICA: IF THE JURY COMES BACK AND ASKS FOR THE
4 DEFINITION I WOULD ASK YOU TO INCLUDE THOSE TWO WORDS BUT I
5 AM NOT ASKING FOR IT NOW.

6 THE COURT: I DID NOT USE THE WORDS HOWEVER SLIGHT
7 BECAUSE THIS IS OF A HIGH AND AGGRAVATED NATURE. I FELT THAT
8 WAS INCONSISTENT WITH THE CHARGE AND ALSO INCONSISTENT WITH
9 THE TESTIMONY THAT WE HAVE HERE GIVEN THE INJURY, EITHER IT
10 HAPPENED OR DIDN'T SO I ELIMINATED THAT AS I WAS READING AND
11 I DID THAT INTENTIONALLY. IF THE JURY COMES BACK AND HAS
12 THAT QUESTION FOR US THEN I WILL GIVE YOU AN OPPORTUNITY TO
13 BY HEARD ON THE RECORD AND WE WILL DISCUSS IT FURTHER.
14 ANYTHING ELSE THAT YOU WISH TO STATE ABOUT THE CHARGE FOR OUR
15 RECORDS, MR. MODICA?

16 MR. MODICA: NO, SIR.

17 THE COURT: ALL RIGHT, THEN LET'S DO THIS. WE ARE GOING
18 TO DO THE FOLLOWING. LET'S COME FORWARD LOOK AT THE EVIDENCE
19 MAKE SURE WE HAVE EVERYTHING IN ORDER LET'S TAKE IT INTO THE
20 JURY, AND WHICHEVER OF OUR BAILIFF'S IS GOING TO GO THE JURY
21 PLEASE BRING THE, MR. GOSS, THE ALTERNATE OUT AND SEQUESTER
22 HIM SOMEONE WHERE HE IS COMFORTABLE, IF THAT'S THE LIBRARY OR
23 SOME OTHER ROOM, WHERE HE WON'T FEEL LIKE HE'S BEING
24 IMPRISONED BUT HE WILL NOT BE ABLE TO HAVE ACCIDENTAL CONTACT
25 WITH ANYONE ELSE AND JUST MAKE SURE HE IS COMFORTABLE.

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1 WHEN LUNCH ARRIVES, IT WOULD BE MY INTENTION TO PUT HIM
2 BACK IN TO EAT THE JURORS. NOT TO DISCUSS THE CASE AND I
3 WILL STRICTLY INSTRUCT HIM OF THAT AND THEN TAKE HIM BACK OUT
4 AGAIN. IS THERE OBJECTION TO THAT FROM THE STATE?

5 MR. MODICA: NO, SIR.

6 THE COURT: DEFENSE?

7 MR. RUNYAN: NONE, WHATSOEVER, JUDGE.

8 THE COURT: VERY GOOD, THAT'S HOW WE WILL PROCEED THEN.
9 IN MY CLOSING CHARGE. WHAT'S YOUR PREFERENCE AS TO THE
10 INDICTMENT OF BEING BACK IN THE ROOM WITH THE JURY? WHAT
11 SAYS THE STATE?

12 MR. MODICA: YOUR HONOR, AS I INDICATED IN CHAMBERS I
13 REQUESTED A VERDICT FORM RATHER THEN THE INDICTMENT AS TO THE
14 BASIS THE INDICTMENT DOES INCLUDE ASPECTS OF THE STATE DID
15 NOT PROVE.

16 THE COURT: ALL RIGHT. DOES THE INDICTMENT NOTE ON
17 IT'S BACK A TRUE BILL?

18 MR. MODICA: YES, SIR

19 THE COURT: ALL RIGHT, NOW WHAT IS YOUR POSITION, MR.
20 RUNYAN?

21 MR. RUNYAN: MY POSITION, JUDGE, IS THEY HAVE A TRUE
22 BILL AND IT IS NOT EVIDENCE BUT IT IS PART OF THE CASE THE
23 JURY CAN LOOK AT IT AND SEE IF IT'S TRUE BILLED AND WHATEVER,
24 GO FORWARD AND MAKE A DECISION ON THE CASE.

25 THE COURT: WELL --

1 MR. RUNYAN: THE VERDICT FORM IS SIMPLY WHAT THEY
2 WRITE IN.

3 THE COURT: I HAVE HAD SOME DEFENSE COUNSEL TAKE THE
4 POSITION THAT WITH A TRUE BILL MARK ON IT AND SIGNATURE BY
5 THE GRAND JURY FOREPERSON IT LENDS AN INDICIA OF CORRECTNESS
6 AND AUTHENTICITY. DO YOU HAVE A POSITION ON THAT?

7 MR. RUNYAN: NO, SIR. I DON'T TAKE THAT POSITION.
8 BESIDES, JUDGE, TO BE CANDID FOR THE RECORD AND CANDID FOR
9 THE COURT, BECAUSE I MAY HAVE TO COME BACK BEFORE YOU. I
10 WANTED TO BE ABLE TO READ ABOUT SOMETHING THAT THEY CHOSE NOT
11 TO OR UNABLE TO PROVE.

12 MR. MODICA: RIGHT, WHICH IS -- WHICH IS QUIET FRANKLY
13 NOT EVIDENCE IN THE CASE.

14 THE COURT: MAY I SEE THE INDICTMENT? I HAVE GIVEN THE
15 JURY THE CHARGE. I BELIEVE THEY WILL BE ABLE TO UNDERSTAND
16 THE LAW REGARDLESS OF WHETHER THE INDICTMENT IS FULLY
17 CONSISTENT WITH SOME OF THE ALLEGATIONS AND FACTS. WELL
18 THAT'S THE INDICTMENT IS SIMPLY THE INDICTMENT. I AM GOING
19 TO SEND IT BACK INTO THE JURY.

20 MR. RUNYAN: THANK YOU, YOUR HONOR.

21 THE COURT: AND YOUR OBJECTION HAS BEEN NOTED, MR.
22 MODICA. ALL RIGHT, ANYTHING FURTHER NOW BEFORE WE TAKE THIS
23 IN AND SEQUESTER OUR ALTERNATE. IS THE EVIDENCE AGREED UPON
24 BY THE STATE?

25 MR. MODICA: YES.

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1 THE COURT: DEFENSE?

2 MR. RUNYAN: ABSOLUTELY, YOUR HONOR.

3 THE COURT: ALL RIGHT, PLEASE TAKE THAT IN THEN AND ASK
4 THE JURY TO BEGIN DELIBERATIONS AND TELL THEM THAT WE WILL
5 BRING IN THEIR LUNCH AS SOON AS IT ARRIVES.

6 ALL RIGHT, COURT WILL NOW BE IN RECESS. MR. HOWARD, I
7 WANT TO TURN YOU BACK TO LOCKUP, SIR. WE WILL AWAIT CALL OF
8 THE JURY.

9 MR. RUNYAN: JUDGE, JUST FOR HOUSEKEEPING PURPOSES I
10 WAS THINKING ABOUT GOING TO FRONT STREET AND EATING LUNCH,
11 THIRTY MINUTES?

12 THE COURT: LEAVE US A CELL PHONE NUMBER IF YOU DO THAT
13 AND WHERE YOU WILL BE, BECAUSE WE DON'T THE JURY MAY NOT,
14 THEY MAY HAVE A QUESTION. YOU ARE WELCOME TO DO THAT. I
15 WOULD NOT TAKE YOUR LUNCH AWAY FROM YOU. SO JUST LEAVE US
16 WHERE COULD GET TO YOU IMMEDIATELY. AND ALSO, DID YOU WANT
17 TO PUT SOME RESPONSE ON OUR DISCUSSION WE HAD THIS MORNING.
18 MR. HOWARD'S COMMENTS ABOUT THE INTERACTION THAT YOU HAD OR
19 HAVE NOT HAD WITH HIM. I WILL GIVE YOU THAT OPPORTUNITY
20 SIMPLE FOR COMPLETION OF THE RECORD, IF YOU WISH.

21 MR. RUNYAN: WELL, JUDGE, I THINK I DID PUT ON THE
22 RECORD ABOUT THE SHERIFF'S RECORDS SPEAKS FOR THEMSELVES AS
23 TO MY PRESENCE IN THE GEORGETOWN COUNTY REGARDING
24 INTERVIEWING AND WHAT HAVE YOU. I DID NOT DISCUSS HOW MUCH
25 TIME WE SPENT TOGETHER YESTERDAY GOING OVER THESE THINGS. AS

1 A PRACTICAL MATTER, JUDGE, MR. HOWARD INSISTED ON TESTIFYING.
2 HE TESTIFIED OVER MY OBJECTIONS BETWEEN US. MUCH OF THE
3 CALLING THE WITNESSES, NOT CALLING WITNESSES THERE HAS BEEN
4 SOME DIFFERENCE OF OPINION BUT AS A PRACTICAL MATTER IT WAS
5 ALL FOR THE PURPOSE OF TRYING TO INSURE HIM OFF WHAT I
6 PERCEIVE THE DUE PROCESS OF THE LAW. OF COURSE, AS WE ALL
7 KNOW, I GUESS LITIGANTS CAN SOMETIMES ASSERT THEMSELVES EVEN
8 IF IT IS TO THE DETRIMENT.

9 THE COURT: ALL RIGHT.

10 MR. HOWARD: YOUR HONOR --

11 THE COURT: MR. HOWARD, I HAVE ALREADY GIVEN AN
12 OPPORTUNITY TO SPEAK. YOU HAD THAT OPPORTUNITY PREVIOUSLY
13 AND THAT WILL END THIS MATTER FOR THE PURPOSES OF THE RECORD.
14 I AM GOING TO TURN YOU BACK TO THE LOCK UP. THIS COURT WILL
15 BE IN RECESS NOW PENDING FURTHER CALL OF THE JURY.

16 (THE JURY BEGIN DELIBERATIONS AT 12:52 P.M.)

17 (WHEREUPON, COURT IS IN RECESS AWAITING THE VERDICT,
18 FROM 12:55 P.M. UNTIL 2:11 P.M.)

19 THE COURT: THE JURY AS NOTIFIED US THEY HAVE A VERDICT
20 IN THE STATE VERSES HOWARD. SO LET'S WAIT A MOMENT WHILE
21 EVERYONE COMES IN AND WE WILL TAKE THE VERDICT. AND DO WE
22 HAVE MR. RUNYAN IN THE COURTHOUSE.

23 MR. MODICA: JUDGE, HE TOLD ME HE RAN DOWN STAIRS TO
24 HIS CAR AND HE IS COMING RIGHT BACK.

25 THE COURT: I DIDN'T KEEP HIS CELL NUMBER.

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1 MR. MODICA: HE WAS NOT GOING AWAY HE WAS JUST GOING
2 TO HIS CAR.

3 THE COURT: PLEASE ASK ONE OF OUR BAILIFF'S TO STEP AND
4 RETRIEVE MR. RUNYAN.

5 MR. MODICA: I'M SORRY.

6 THE COURT: THAT'S ALL RIGHT. THANK YOU. ALL RIGHT,
7 MR. RUNYAN, WELCOME BACK TO THE COURTROOM. AND I AM ADVISED
8 THAT THE JURY HAS REACHED A VERDICT. NOW, MR. MOORE, YOU
9 WILL READ, YOU WILL PUBLISH THE VERDICT.

10 CLERK OF COURT: YES, SIR.

11 THE COURT: ALL RIGHT. AND WHAT I WILL DO IS ASK OUR
12 BAILIFF TO RECEIVE THE VERDICT FORM GIVE IT TO ME I'LL GIVE
13 IT YOU AND YOU WILL PUBLISH IT. VERY GOOD. ALL RIGHT,
14 PLEASE BRING IN THE JURY.

15 (WHEREUPON, THE JURY ENTERS THE COURTROOM AT 2:17 P.M.)

16 THE COURT: MA'AM, BAILIFF, WOULD YOU ASK MR. GOSS, IF
17 HE'S STILL HERE, OUR ALTERNATE JUROR MAY BE SEQUESTERED
18 STILL. PLEASE, BRING HIM IN THE COURTROOM IF YOU WILL.

19 BAILIFF: YES, SIR.

20 THE COURT: WELCOME BACK. PLEASE BE SEATED. WE'LL BE
21 WITH YOU IN JUST ONE MOMENT. WELCOME BACK TO THE COURTROOM,
22 LADIES AND GENTLEMEN. WE ARE GOING TO WAIT A MOMENT SO THAT
23 MR. GOSS, IF HE REMAINS AND HE WISHES TO COME INTO THE
24 COURTROOM WILL BE ABLE TO DO SO.

25 I TRUST YOU HAD A NICE LUNCH, LADIES AND GENTLEMEN.

1 GOOD. ALL RIGHT, MR. GOSS, JUST COME AND HAVE A SEAT RIGHT
2 THERE ON THE BENCH IF YOU WISH WILL BE FINE. JUST WHEREVER
3 YOU WISH TO BE SEATED. WELCOME BACK TO THE COURTROOM,
4 MEMBERS OF THE JURY. MR. FOREMAN, I AM ADVISED THAT THE JURY
5 HAS REACHED A VERDICT, IS THAT CORRECT, SIR?

6 MR. FOREMAN: THIS IS CORRECT.

7 THE COURT: PLEASE GIVE YOUR VERDICT FORM TO OUR
8 BAILIFF. THANK YOU. AND LET'S LET THE RECORD REFLECT THAT
9 THE VERDICT FORM IS FILLED OUT APPROPRIATELY. IT IS DATED
10 AND SIGNED BY OUR FOREPERSON. AND DEFENDANT, PLEASE RISE AND
11 THE CLERK WILL PUBLISH THE VERDICT.

12 VERDICT

13 CLERK OF COURT: IN THE CASE OF STATE OF SOUTH
14 CAROLINA VERSES STACEY WALTER HOWARD, INDICTMENT #2007-GC-22-
15 0129 ON THE CHARGE OF ASSAULT AND BATTERY OF A HIGH AND
16 AGGRAVATED NATURE, WE THE JURY, FIND UNANIMOUS CONSENT STACEY
17 HOWARD, GUILTY.

18 THE COURT: ALL RIGHT. ARE THERE --- WELL LET ME FIRST
19 ASK, LADIES AND GENTLEMEN OF THE JURY IS THIS YOUR VERDICT.
20 IF IT IS, PLEASE RAISE YOUR HAND. IF THIS IS YOUR VERDICT,
21 PLEASE RAISE YOUR HAND. ALL RIGHT. SO SAY ALL THE JURY.
22 YOU MAY PUT YOUR HAND DOWN.

23 NOW WHILE WE ARE IN THE PRESENCE OF THE JURY, MR.
24 RUNYAN, ARE THERE ANY MOTIONS OR REQUESTS FOR REACH A JURY
25 RESPONSE MAY BE NECESSARY.

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1 MR. RUNYAN: JUDGE, I REALIZE FOR THE RECORD THAT THE
2 COURT HAS JUST DONE WHAT IS NECESSARY POLLING THE JURY. WE
3 ASK THE CLERK FOR THE FORMALLY POLL THE JURY.

4 THE COURT: ALL RIGHT, THE DEFENDANT HAS ASKED THAT THE
5 JURY BE POLLED. AND WHAT THAT MEANS IS THAT EACH OF THE YOU
6 JURORS INDIVIDUALLY WILL BE ASKED TWO QUESTIONS. WHEN YOUR
7 NAME IS CALLED I WILL ASK YOU TO STAND. IT WILL BE CALLED BY
8 OUR CLERK. AND YOU WILL BE ASKED TWO QUESTIONS. THE FIRST
9 IS WAS THIS YOUR VERDICT AND THEN YOU WILL ANSWER AND THEN
10 THE NEXT QUESTION WILL BE IS IT STILL YOUR VERDICT. AND
11 PLEASE RESPOND APPROPRIATELY TO THE CLERK.

12 CLERK OF COURT: MR. CHARLTON H. GAMBLE, JR. WAS THIS
13 YOUR VERDICT?

14 THE COURT: YES, SIR, PLEASE STAND.

15 CLERK OF COURT: IS THIS YOUR VERDICT?

16 MR. GAMBLE: IT WAS.

17 CLERK OF COURT: IS IT STILL YOUR VERDICT?

18 MR. GAMBLE: IT IS.

19 CLERK OF COURT: THANK YOU. MR. JOHN H. BOGAN. WAS
20 THIS YOUR VERDICT?

21 MR. BOGAN: IT WAS.

22 CLERK OF COURT: IS IT STILL YOUR VERDICT?

23 MR. BOGAN: IT IS.

24 CLERK OF COURT: THANK YOU. MR. DAVID M. ATKINSON. WAS
25 THIS YOUR VERDICT?

1 MR. ATKINSON: IT WAS.

2 CLERK OF COURT: IS IT STILL YOUR VERDICT?

3 MR. ATKINSON: IT IS.

4 CLERK OF COURT: THANK YOU. MRS. BELUAH M. TOMLIN. WAS
5 THIS YOUR VERDICT?

6 MS. TOMLIN: YES.

7 CLERK OF COURT: IS IT STILL YOUR VERDICT?

8 MS. TOMLIN: YES.

9 CLERK OF COURT: THANK YOU. MS. LARINA CARR. WAS THIS
10 YOUR VERDICT?

11 MS. CARR: YES.

12 CLERK OF COURT: IS IT STILL YOUR VERDICT?

13 MS. CARR: YES.

14 CLERK OF COURT: THANK YOU. MS. PATRICIA BILLIARD. WAS
15 THIS YOUR VERDICT?

16 MS. GILLIARD: YES.

17 CLERK OF COURT: IS IT STILL YOUR VERDICT?

18 MS. GILLIARD: YES.

19 CLERK OF COURT: THANK YOU. MR. GEORGE SWINDOLL. WAS
20 THIS YOUR VERDICT?

21 MR. SWINDOLL: YES.

22 CLERK OF COURT: IS IT STILL YOUR VERDICT?

23 MR. SWINDOLL: YES.

24 CLERK OF COURT: THANK YOU. MR. ROOSEVELT GILES. IS
25 THIS YOUR VERDICT?

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1 MS. GOSS: YES.

2 CLERK OF COURT: IS IT STILL YOUR VERDICT?

3 MS. GOSS: YES.

4 CLERK OF COURT: THANK YOU. MS. REBECCA SINGLETON. WAS
5 THIS YOUR VERDICT?

6 MS. SINGLETON: YES.

7 CLERK OF COURT: IS IT STILL YOUR VERDICT?

8 MS. SINGLETON: YES.

9 CLERK OF COURT: THANK YOU. MRS. PAUL ALMOND. WAS
10 THIS YOUR VERDICT?

11 MS. ALMOND: YES, SIR.

12 CLERK OF COURT: IS IT STILL YOUR VERDICT?

13 MS. ALMOND: YES, SIR.

14 CLERK OF COURT: THANK YOU. MRS. LISA GIPPLE. WAS
15 THIS YOUR VERDICT?

16 MS. GIPPLE: YES, SIR.

17 CLERK OF COURT: IS IT STILL YOUR VERDICT?

18 MS. GIPPLE: YES, SIR.

19 CLERK OF COURT: THANK YOU. MRS. DENISE DUNNING. WAS
20 THIS YOUR VERDICT?

21 MS. DUNNING: YES, SIR.

22 CLERK OF COURT: IS IT STILL YOUR VERDICT?

23 MS. DUNNING: YES, SIR.

24 CLERK OF COURT: THANK YOU. YOUR HONOR, THE JURY HAS
25 BEEN POLLED.

1 THE COURT: ALL RIGHT, ARE THERE ANY MEMBERS OF THE JURY
2 THAT WERE NOT POLLED. AND LET THE RECORD REFLECT NO ONE
3 RAISED THERE HAND. ALL TWELVE JURORS HAVE BEEN POLLED. ALL
4 TWELVE JURORS HAVE ANSWERED TWICE IN THE AFFIRMATIVE. THE
5 JURY HAS BEEN POLLED AND THE VERDICT STANDS. ARE THERE ANY
6 MOTIONS NOW STILL IN THE JURY'S PRESENCE FOR WHICH A JURY
7 RESPONSE MAY BE NECESSARY, FROM DEFENSE?

8 MR. RUNYAN: NONE FROM THE DEFENSE.

9 THE COURT: FROM THE STATE?

10 MR. MODICA: NO, YOUR HONOR.

11 THE COURT: ALL RIGHT, THEN LET'S TAKE THE DEFENDANT
12 INTO CUSTODY AT THIS TIME. PLEASE COOPERATIVE WITH THE
13 OFFICERS. AND YOU MAY REMAIN IN THE COURTROOM BECAUSE WE
14 HAVE FURTHER PROCEEDINGS. PLEASE JUST STEP TO THE SIDE. THE
15 DEFENDANT WILL BE BACK IN JUST A MOMENT.

16 LADIES AND GENTLEMEN, THIS CONCLUDES THE JURY'S PORTION
17 OF THIS CASE. AND WHAT WE ARE GOING TO DO NOW IS WE ARE
18 GOING TO HAVE A SENTENCING PROCEEDING. I WANT TO TELL YOU
19 THAT YOU ARE WELCOME TO REMAIN IN THE COURTROOM FOR THE
20 SENTENCING PROCEEDING. BUT WHAT I WOULD ASK YOU TO DO RATHER
21 THAN SIT IN THE JURY BOX SO THAT YOU WOULD BE FREE TO LEAVE
22 AT ANY TIME, IS I AM GOING TO ALLOW YOU TO ACTUALLY STEP FROM
23 THE JURY BOX AND GO BACK INTO THE PEWS INTO THE SEATS OF THE
24 COURTROOM SO THAT YOU WILL BE FREE TO GO IF YOU WISH, AND YOU
25 MAY DEPART WHEN YOU LEAVE THE JURY BOX YOU CAN LEAVE

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1 IMMEDIATELY, OR YOU MAY GO BACK AND BE SEATED. THE COURT
2 ACTUALLY UNDERSTANDS, ACTUALLY THE COURTROOM HAS BEEN DIVIDED
3 JUST BY THE WAY THE PARTIES HAVE SAT. THERE IS NO CHOICE FOR
4 ONE SIDE OR THE OTHER WHEN YOU SIT ON EITHER SIDE OF THE
5 COURTROOM. BUT IF YOU WISH TO SIT IN THE BACK OF THE
6 COURTROOM, PLEASE DO SO.

7 I AM PLEASED TO TELL YOU THAT THERE ARE NOT GOING TO BE
8 ANY FURTHER JURY DRAWS THIS WEEK WHICH MEANS THAT YOUR JURY
9 SERVICE HAS ENDED. AND IN A FEW DAYS THE COUNTY IS GOING TO
10 SEND YOU A SMALL CHECK. IT IS NOT GOING TO BE ENOUGH TO
11 RETIRE ON, FOR THE COUNTY'S EXPRESSION OF GRATITUDE. BUT I
12 AM GOING TO COME DOWN AS YOU LEAVE THE JURY BOX, I AM GOING
13 TO STEP AWAY SO AS TO NOT TO CALL YOUR ATTENTION TO THE FACT
14 THAT YOU WILL BE STEPPING DOWN AND SHAKE YOUR HAND AS MY
15 EXPRESSION OF GRATITUDE. I WANT TO THANK YOU AGAIN FOR YOUR
16 FOCUS AND ATTENTION TO THIS CASE. AND FOR THE VERDICT WHICH
17 YOU HAVE RENDERED WHICH IS TRUE AND JUST AS YOU HAVE
18 DETERMINED JUSTICE TO BE.

19 NOW, AGAIN, IF YOU WISH YOU MAY DEPART STRAIGHT THROUGH
20 THE DOOR OR IF YOU WISH YOU MAY COME AROUND THE BOX AND BE
21 SEATED IN THE BACK OF THE COURTROOM. I SUSPECT THE
22 SENTENCING PROCEEDING WILL TAKE APPROXIMATELY FIFTEEN
23 MINUTES.

24 (WHEREUPON, THE JURY DEPARTS AT 2:20 P.M.)

25 THE COURT: ALL RIGHT, THE JURY IS NO LONGER IN PANEL

1 AND ARE THERE ANY MOTIONS FOR THE COURT THAT DO NOT REQUIRE A
2 JURY RESPONSE BUT REQUIRES A COURT RESPONSE AT THIS TIME FROM
3 THE DEFENSE?

4 MR. RUNYAN: YOUR HONOR, WE WOULD MAKE A MOTION FOR A
5 NEW TRIAL BASED UPON THE MOTIONS MADE AT CLOSE OF ALL OF THE
6 EVIDENCE AND FOR THE SAME REASONS WHICH WE HAVE, I THINK,
7 LABORIOUSLY PLACED UPON THE RECORD BEFORE, AND THAT IS WITH
8 REGARD TO FAILURE TO PROVE THE CASE, AS WELL AS THE ISSUE
9 WITH REGARDS TO THE MISTRIAL.

10 THE COURT: ALL RIGHT. MR. MODICA, DO YOU WISH TO BE
11 HEARD ON THOSE ISSUES?

12 MR. MODICA: NO, OTHER THAN WHAT I PREVIOUSLY INDICATED
13 ON THE RECORD.

14 THE COURT: ALL RIGHT, I AM GOING TO DENY YOUR MOTIONS
15 AGAIN, COUNSEL. FIRST OF ALL THE COURT BELIEVES THERE WAS
16 AMPLE EVIDENCE FOR WHICH THE JURY COULD MAKE THE FINDING THAT
17 IT DID, AND AMPLE EVIDENCE IN THIS RECORD THAT SUPPORTED THIS
18 RECORD THAT SUPPORTED THE JURY FINDING OF GUILT. AND,
19 FURTHERMORE, WITH REGARD TO YOUR REQUEST FOR A MISTRIAL, THE
20 COURT IS NOT UNDER THE IMPRESSION THAT THE REFERENCE TO DRUG
21 ACTIVITY ON THE PART OF THE DEFENDANT WHICH ALSO CAME INTO
22 EVIDENCE THROUGH THE DEFENDANT ON THE PART OF THE VICTIM, NOR
23 ANY OTHER TESTIMONY GIVEN WAS SO PREJUDICIAL THAT THE COURT
24 SHOULD GRANT A MISTRIAL OR ANY FURTHER RELIEF OR ANY RELIEF
25 AT ALL AND COURT DECLINES TO DO THAT. NOW, IS THERE ANYTHING

1 FURTHER FROM THE DEFENSE?

2 MR. RUNYAN: NO, YOUR HONOR. I THINK AT THIS POINT AND
3 TIME IT IS THE APPROPRIATE TIME, OF COURSE, CONTINGENT ON THE
4 COURT, THAT WE APPROACH THE QUESTION OF SENTENCING.

5 THE COURT: ALL RIGHT, WE'LL HAVE A SENTENCING HEARING
6 AT THIS TIME. ANYTHING FURTHER FROM THE STATE BEFORE WE GO
7 INTO THE SENTENCING HEARING WITH REGARD TO VERDICT OR THE
8 DECISION OF THE COURT DENYING THE MOTIONS?

9 MR. MODICA: NO, SIR.

10 SENTENCING HEARING

11 THE COURT: ALL RIGHT, VERY GOOD. THEN THE JURY VERDICT
12 STANDS. COUNSEL I WILL JUST LET YOU IF YOU WISH JUST REMAIN
13 AT YOUR TABLE WHERE YOU ARE. I WILL BE GLAD TO HEAR FROM THE
14 STATE WITH REGARD TO SENTENCING.

15 MR. MODICA: YOUR HONOR, I WOULD LIKE TO START WITH
16 PUTTING ON THE RECORD THE DEFENDANT'S COMPLETES CRIMINAL
17 HISTORY. I WOULD INDICATE THAT IN 1992 MORE SPECIFICALLY
18 JULY 31, 1992 THE DEFENDANT WAS CONVICTED OF BURGLARY IN THE
19 THIRD DEGREE, RECEIVING STOLEN GOOD, AND RESISTING ARREST.

20 THEN, OF COURSE, AS YOU KNOW IN DECEMBER OF 1992 HE WAS
21 CONVICTED OF CRIMINAL SEXUAL CONDUCT WITH A MINOR SECOND
22 DEGREE, IN WHICH HE RECEIVED A SPLIT SENTENCE.

23 HE WAS THEN CONVICTED IN 1995 FOR ASSAULT AND BATTER OF
24 AN HIGH AND AGGRAVATED NATURE AND RECEIVED A FOUR YEAR
25 SENTENCE. HE THEN WAS FOUND GUILTY AT TRIAL FOR ASSAULT OF A

1 AGGRAVATED NATURE AND SENTENCED TO FIVE YEARS SUSPENDED UPON
2 FIVE AND A HALF MONTHS THAT HE SERVED, WITH TWO YEARS
3 PROBATION. IT IS MY UNDERSTANDING THE DEFENDANT IS PRESENTLY
4 ON THAT PROBATION.

5 THEN HE WAS CONVICTED OF ASSAULT AND BATTER OF AN HIGH
6 AND AGGRAVATED NATURE AS A LESSER INCLUDED OFFENSE OF ASSAULT
7 AND BATTER WITH INTENT TO KILL ON DECEMBER 28, 2004, IN WHICH
8 HE RECEIVED A SENTENCE OF TEN YEARS UPON THE SERVICE OF TWO
9 AN TWO-YEARS PROBATION.

10 JUDGE, I WANT TO COMMENT IF I MIGHT FOR A MOMENT ON TWO
11 OF THOSE CONDITIONS OF WHICH I AM FAMILIAR WITH. ONE IS THE
12 ASSAULT OF AN HIGH AND AGGRAVATED NATURE. I WOULD INDICATE
13 TO YOU THAT THE VICTIM IN THAT CASE IS THE SAME VICTIM, LISA
14 POWELL AS IN THIS CASE. I WILL YOU THAT THE INCIDENT
15 INVOLVED THE DEFENDANT STRIKING AND THREATENING THE VICTIM
16 INCLUDING THE ALLEGATION THAT IF LAW ENFORCEMENT COMES YOU
17 WILL END UP IN A POTATO BURLAP SACK. THAT CASE WENT TO
18 TRIAL. AT THAT TIME, THE BEST WAY TO CHARACTERIZE LISA
19 POWELL, WOULD BE THAT SHE WAS STILL UNDER THE FEAR AND SPELL
20 OF THE DEFENDANT. I HAD TO PUT HER ON AS HOSTILE WITNESS.
21 SHE DENIED THAT THE INCIDENT OCCURRED. DESPITE THAT FACT, I
22 HAD LAW ENFORCEMENT TESTIFY ABOUT WHAT HAD HAPPENED AND WHAT
23 SHE HAD SAID, IMMEDIATELY THEREAFTER AND STILL UNDER THE
24 EXPERIENCE OF THE EVENTS. DESPITE THE FACT, THAT AT THAT
25 TIME SHE WAS STILL UNDER A SPELL, HE WAS CONVICTED AND

1 SENTENCED ACCORDINGLY BY JUDGE THOMAS.

2 I WILL TELL YOU THAT DURING THE PENDENCY OF THAT CASE
3 THERE WAS A BENCH WARRANT ISSUED FOR THE DEFENDANT'S ARREST.
4 AND THAT BENCH WARRANT, THE DEFENDANT'S PARENTS HAD PUT UP A
5 CASH BOND. I CAN'T REMEMBER THE DOLLAR AMOUNT BUT IT WAS A
6 SIGNIFICANT CASH BOND. THAT DURING THE PENDENCY OF THAT CASE
7 AND IN THE PRESENCE AGAIN OF LISA POWELL, AT THE DEFENDANT'S
8 RESIDENCE HE GOT INTO AN ARGUMENT WITH HIS PARENTS OR HIS MOM
9 AND MS. POWELL, HE TOOK A KNIFE THAT HE FASHIONED THAT HE
10 MADE HIMSELF, AND SLASHED HIS MOTHER ACROSS THE FACE,
11 RESULTING IN THE CHARGE OF ASSAULT AND BATTER WITH INTENT TO
12 KILL.

13 I WAS PRESENT IN COURT WHEN HIS FATHER, MR. HOWARD, WAS
14 PRESENT IN COURT, CAME BEFORE THIS COURT WHILE HIS MOTHER SAT
15 IN THE BACK WITH HER FACE BANDAGED UP AND DELINEATE SOME OF
16 WHAT HAD OCCURRED AND HAD REQUESTED I BELIEVE OF JUDGE
17 THOMAS, THEY BE ALLOWED TO COME OFF OF THE BOND AND THAT THE
18 DEFENDANT BE ARRESTED. I WILL TELL YOU THAT THAT OCCURRED
19 AND AT THAT TIME THE DEFENDANT AS AT LARGE. THAT IT TOOK A
20 DECENT AMOUNT OF TIME TO, I DON'T REMEMBER EXACTLY HOW LONG
21 IT WAS BUT I KNOW IT WAS MONTHS, OVER THREE MONTHS, BUT I
22 DON'T REMEMBER EXACTLY HOW LONG IT WAS. I HAD INDICATED AND
23 REQUESTED THAT THE SHERIFF'S DEPARTMENT TO STEP UP FINDING
24 THE DEFENDANT, AND I BELIEVE THEY DID SO, AND THEY WERE
25 FINALLY ABLE TO APPREHEND HIM. EVEN THOUGH AS THE TIME OF

1 THE ATTEMPTED TO APPREHEND HIM HE STILL ATTEMPTED TO FLEE.

2 I THINK TO SOME DEGREE THE FACT THAT HE HAD MACE, AND A
3 STUN GUN ON HIS PERSON AT THE TIME THE POLICE CAME TO ARREST
4 HIM ON AN UNRELATED CHARGE, THE CHARGE OF PRACTICING LAW
5 WITHOUT A LICENSE THAT STILL REMAINS. THAT THE DEFENDANT HAS
6 ON HIS PERSON THE STUN GUN AND THE MACE KNOWING THAT SOONER
7 OR LATER THE POLICE WOULD COME LOOKING FOR HIM. AND I WOULD
8 SUBMIT THAT HE WAS READY IN A SENSE TO DO BATTLE WITH THEM.

9 I HAVE BEEN A PROSECUTOR IN TWO STATES AND IN THREE
10 COUNTY FOR TWENTY-TWO YEARS AND THIS DEFENDANT IS ONE OF THE
11 WORST CRIMINALS I HAVE EVER COME ACROSS IN TERMS OF VIOLENCE
12 TOWARDS PEOPLE. IN TERMS OF PLACING FEAR IN PEOPLE'S LIVES.
13 I CAN TELL WHEN I TRIED MY FIRST CASE WITH LISA POWELL YOU
14 KNOW SHE DIDN'T COOPERATE. I KNEW THAT THERE WAS UNDENIABLE
15 FEAR AND OBVIOUSLY FROM PREPARATION OF THIS CASE, IN WHICH
16 APPARENTLY MS. POWELL WHO HAS BEEN A VICTIM OF MANY TIMES OF
17 ABUSE AT THE HANDS OF DEFENDANT FINALLY SAID ENOUGH IS
18 ENOUGH. AND QUITE FRANKLY I THANK GOD FOR THAT.

19 I THINK THAT THE DEFENDANT SHOULD BE PUNISHED
20 ACCORDINGLY. I THINK HE SHOULD GET EVERY SECOND OF THE TEN
21 YEARS WITHOUT THIS COURT BATTING AN EYE. THANK YOU VERY
22 MUCH.

23 THE COURT: NOW, MR. MODICA, ONE FURTHER THING I WANT TO
24 ASK OF YOU. WAS THERE A NEGOTIATION PRIOR TO THIS TRIAL FOR
25 A PROPOSED PLEA AGREEMENT OR RESOLUTION, TO THIS CASE, AND IF

1 SO, WHAT WAS IT?

2 MR. MODICA: YES, YOUR HONOR, I HAD INDICATED THAT I
3 WAS WILLING TO ALLOW THE DEFENDANT TO PLEAD GUILTY TO EIGHT
4 YEARS RUN IT CONCURRENT, ASK THE COURT TO RUN IT CONCURRENT
5 WITH ANY OF THE PROBATION AND PAROLE MATTERS PENDING AGAINST
6 THE DEFENDANT. I DID STATE, VERY CLEARLY BEFORE THIS TRIAL
7 STARTED THAT THE DEFENDANT HAD REJECTED THAT PLEA AND
8 THEREFORE THE STATE HAD WITHDRAWN IT.

9 THE COURT: ALL RIGHT, THANK YOU. AND, LADIES AND
10 GENTLEMEN, BEFORE I HEAR FROM YOU MR. RUNYAN, THERE ARE SOME
11 THINGS I WANT TO EXPLAIN TO OUR JURORS SOME OF WHOM HAVE
12 REMAINED IN THE COURTROOM. YOU HEARD IN THE PRIOR CRIMINAL
13 HISTORY OF THE DEFENDANT AT LEAST TWO CHARGES WHICH HAD NOT
14 BEEN TOLD TO YOU DURING TESTIMONY. THEY WERE FROM 1992.
15 THEY WERE A BURGLARY THIRD CHARGE AND RECEIVING STOLEN GOODS.
16 I WILL TELL YOU THAT UNDER OUR COURT RULES FOR ALLOWING
17 EVIDENCE OF PRIOR CONVICTIONS IN ON THE CREDIBILITY OR
18 BELIEVABILITY OF A WITNESS OR DEFENDANT THERE IS A TEN YEAR
19 LIMITATION, IN THE BELIEF THAT A PERSON WHO MAKES A MISTAKE
20 CAN PAY FOR THAT MISTAKE AND MOVE ON WITH THEIR LIVES AND NOT
21 BE FOREVER PENALIZED. THE TEN YEARS RUNS FROM EITHER THE
22 DATE OF THE CONDITION OF THE DATE RELEASE OR CONFINEMENT FOR
23 THAT CONVICTION. BOTH OF THOSE CONVICTIONS WERE BEYOND THE
24 TEN YEARS AND WERE EXCLUDED BY THE COURT. I ALSO WILL TELL
25 YOU THAT ALTHOUGH EVIDENCE OF THE ASSAULT AND BATTERIES CAME

1 INTO THE TESTIMONY AT TRIAL THERE WAS NO EVIDENCE GIVEN OF
2 WHO THE VICTIMS WERE. THAT WAS NOT AN EFFORT TO TRICK THE
3 JURY BUT THE COURT AFTER A FULL HEARING ON THAT MATTER, IN
4 FACT, PART OF THE TIME YOU WERE IN THE JURY ROOM THIS MORNING
5 WE HAD SUBSTANTIAL AND HOTLY DEBATED DISCUSSION ABOUT WHETHER
6 OR NOT THOSE CHARGES SHOULD COME IN AT ALL ON THE ISSUE OF
7 CREDIBILITY OR BELIEVABILITY. THE DEFENDANT'S POSITION WAS
8 THAT THE JURY MAY USE THE FACT THAT THERE HAD BEEN PREVIOUS
9 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED CHARGES TO
10 CONVICT ON THIS ONE CHARGE. THE COURT DETERMINED TO LET THEM
11 IN BUT NOT TO LET IN WHO THE VICTIMS WERE. IT WAS THE
12 COURT'S DECISION BECAUSE OF THE PREJUDICIAL EFFECT AGAINST
13 THE DEFENDANT. IN AN ORDER TO PROTECT THE DEFENDANT'S RIGHTS
14 THAT HE HAD PREVIOUSLY COMMITTED AN ABHAN AGAINST THE SAME
15 VICTIM AND BEEN CONVICTED FOR IT. AND ALSO HAVE ANOTHER
16 INTER FAMILY ABHAN AGAINST HIS MOTHER. AND THAT IS WHY YOU
17 WERE NOT GIVEN THAT INFORMATION. THIS WAS THE DECISION OF
18 THE COURT NOT OF THE LAWYERS WHO APPEARED BEFORE YOU.

19 NOW ALSO I ADVISED THAT THERE ARE TWO PROBATION CASES
20 THAT ARE PENDING. THE COURT WILL ALSO BEFORE I HEAR FROM MR.
21 RUNYAN WISH TO HEAR FROM PROBATION. I WILL TELL YOU THE WAY
22 PROBATION WORKS IS WHEN YOU ARE PLACED ON PROBATION YOU ARE
23 GIVEN A SENTENCE IN CORRECTION WHICH HAS BEEN SUSPENDED UPON
24 COMPLETION OF PROBATION. IF YOU DO NOT SUCCESSFULLY COMPLETE
25 PROBATION THAN YOU HAVE A REVOCATION OF ALL OR PART OF THE

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1 PROBATION AND MAY THEREFORE SERVE ALL OR PART OF THE ORIGINAL
2 SENTENCE. THE DEPARTMENT OF PROBATION'S POSITION IS THE
3 DEFENDANT, AS YOU HEARD MR. MODICA'S SAY, WAS ON PROBATION
4 FOR TWO SEPARATE CASES WHEN THIS EVENT FOR WHICH HE HAS JUST
5 BEEN CONVICTED OCCURRED. AND IS THERE ANYTHING FURTHER THAT
6 PROBATION WOULD STATE FOR THE RECORD ABOUT MR. HOWARD'S
7 PROBATIONARY STATUS.

8 AGENT BROWN: I WOULD MAKE THE COURT AWARE OF THE TEN-
9 YEAR SENTENCE THAT HE RECEIVED. HE SERVICED TWO YEARS AND
10 HAS EIGHT YEARS REMAINING ON THAT SENTENCE. ON THE SENTENCE
11 FOR ABHAN HE WAS SENTENCED TO FIVE YEARS. HE WAS GIVEN
12 CREDIT FOR FIVE AND A HALF MONTHS SO HE WOULD HAVE FOUR
13 YEARS, SIX AND A HALF MONTH REMAINING ON THAT SENTENCE, YOUR
14 HONOR.

15 THE COURT: ALL RIGHT. SO HIS EXPOSURE ON PROBATION
16 FOR THE TWO CASES IS EIGHT YEARS ON ONE AND FOUR YEARS AND
17 SIX AND A HALF MONTHS ON THE OTHER?

18 AGENT BROWN: THAT IS CORRECT.

19 THE COURT: ALL RIGHT, IS THERE ANYTHING FURTHER THAT
20 PROBATION WOULD REPORT?

21 AGENT BROWN: OBVIOUSLY, THE JURY VERDICT ON 07-GS-22-
22 0129 WOULD VIOLATE BOTH OF THESE CASES; HOWEVER, HE HAD
23 WARRANTS PENDING FOR VIOLATION OF THESE CASES ANYWAY.

24 THE COURT: ALL RIGHT, LET ME STOP YOU THERE. LET'S
25 PLACE YOU UNDER OATH, BECAUSE WHAT YOU ARE GIVING ME NOW IS

1 IN THE NATURE OF TESTIMONY. PLEASE FOLLOW OUR CLERK'S
2 INSTRUCTION.

3 PROBATION AGENT BOBBY JONES,

4 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS:

5 THE COURT: ALL RIGHT. IN WHAT OTHER WAYS DO YOU
6 ALLEGE THAT MR. HOWARD HAD VIOLATED HIS PROBATION OTHER THAN
7 CLEAR VIOLATION BY CONVICTION TODAY?

8 AGENT JONES: I BEG THE COURT'S INDULGENCE, YOUR HONOR.
9 I HAVE TWO WARRANTS FROM WILLIAMSBURG COUNTY ON THE TWO CASES
10 IN QUESTION. THEY ALLEGE THAT HE FAILED TO REPORT. FAIL TO
11 NOTIFY HIM OF THE ARREST. FAILED TO FOLLOW THE ADVICE AND
12 INSTRUCTIONS OF THE AGENT. AND THAT IS ALL, YOUR HONOR.

13 THE COURT: ALL RIGHT, VERY GOOD. THANK YOU. ANYTHING
14 FROM THE STATE BEFORE I HEAR FROM MR. RUNYAN?

15 MR. MODICA: YES, YOUR HONOR, VERY QUICKLY. THE ONLY
16 LAST THING I WOULD ADD IS THE DEFENDANT HAS BEEN CONVICTED A
17 NUMBER OF TIMES IN WHICH HE RECEIVED SOME JAIL TIME. THAT
18 HAS NOT MODIFIED HIS BEHAVIOR. SO WE ARE AT THE POINT WHERE
19 WE, SOCIETY, NEEDS TO BE PROTECTED AGAINST HIM AND I WOULD
20 ADD THAT AS ONE OF THE REASON WHY HE SHOULD GET EVERY BIT OF
21 HIS SENTENCE.

22 THE COURT: ALL RIGHT, THANK YOU. NOW MR. RUNYAN, DO
23 YOU HAVE SOMETHING YOU WISH TO SAY?

24 MR. RUNYAN: YES, SIR, JUDGE. I ALWAYS HAVE TO
25 SOMETHING TO SAY. AS IT RELATES TO THE DEFENDANT, AND LET ME

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1 BACK UP AND GO BACKWARDS HERE AS IT RELATES THE TWO PROBATION
2 MATTER. OBVIOUSLY, WE ABSOLUTELY CONCEDE THAT THIS
3 CONCLUSION VIOLATES BOTH OF THE PROBATIONS.

4 THE COURT: LET ME ASK YOU, COUNSEL, IS THERE ANY
5 OBJECTION TO THE JURISDICTION OR VENUE OF THIS COURT TODAY TO
6 HEAR THESE PROBATION VIOLATIONS HEARINGS?

7 MR. RUNYAN: NO, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9 MR. RUNYAN: IN ADDITION TO THAT, JUDGE, WE COULD
10 SUGGEST THAT FOR THE PRIOR REASONS FOR EXAMPLE THE FAILURE TO
11 REPORT. MY CLIENT INDICATES ON ONE OCCASION HE WAS THREE
12 DAYS LATE. ON THE OTHER FACT THE REASON HE FAILED TO REPORT
13 HIS ARREST WAS BECAUSE HE WAS IN JAIL. I THINK TO CONSIDER
14 THIS CONVICTION AS THE VIOLATION RATHER THAN ENCUMBER
15 OURSELVES WITH THE DISPUTE OVER WHETHER OR NOT THIS OR THAT
16 MIGHT CONSTITUTE A VIOLATION. WE CONCEDE THAT THIS
17 CONVICTION CONSTITUTES A VIOLATION OF THOSE REPORTS, BOTH OF
18 THOSE CHARGES OF PROBATION VIOLATION.

19 THE COURT: YES, SIR.

20 AGENT BROWN: YOUR HONOR, PROBATION WOULD BE WILLING TO
21 WITHDRAW THE TWO WARRANTS ISSUE A CITATION CHARGING HIM ONLY
22 WITH THE NEW CONVICTION, AND DISREGARD THE OTHER CHARGES.

23 THE COURT: ANY OBJECTION TO THAT, MR. RUNYAN?

24 MR. RUNYAN: NONE, WHATSOEVER, JUDGE. I WASN'T
25 NECESSARILY FISHING FOR THAT BUT I THINK AS A PRACTICAL

1 MANNER WE HAVE TO BE PRAGMATIC ABOUT WHERE WE ARE.

2 THE COURT: WELL, THE COURT WILL LIMIT ITS CONSIDERATION
3 ON PROBATION VIOLATION ONLY THEN TO THIS VIOLATION TODAY FOR
4 WHICH HE HAS BEEN CONVICTED TODAY AND THAT IS A VIOLATION OF
5 BOTH CASES.

6 MR. RUNYAN: NOW, YOUR HONOR, MR. HOWARD'S FATHER IS
7 IN COURT TODAY ALONG WITH OTHER MEMBERS OF HIS FAMILY, HIS
8 COUSIN. THEY MAY WANT TO SAY SOMETHING TO YOU IN A MOMENT.
9 MRS. HOWARD IS DOWN WITH BRONCHITIS AND, OF COURSE, THE
10 DOCTOR SAYS SHE HAS TO STAY IN BED.

11 I WOULD POINT OUT, JUDGE, THAT MR. HOWARD AND MRS.
12 HOWARD HAVE WORKED WITH THEIR SON OVER THE YEARS. THEY HAVE
13 BEEN SUPPORTIVE. AND YOU KNOW USUALLY WHEN YOU SEE PEOPLE
14 WHO HAVE SERIOUS PROBLEMS IN THEIR LIVES, IT IS EASY TO LOOK
15 AT SAY WELL THEY DID NOT HAVE ANY FAMILY SUPPORT. THEY HAD
16 THIS PROBLEM, THAT PROBLEM BECAUSE THEY DID NOT HAVE A
17 SUPPORT STRUCTURE. WE CAN'T TELL YOU THAT IN REGARDS TO MR.
18 HOWARD. HE HAS A SUPPORT STRUCTURE AND YOU HAVE HEARD SOME
19 ABOUT HIS FAMILY BEING INVOLVED IN TAKING THIS YOUNG LADY TO
20 THE HOSPITAL. MR. HOWARD HAD WORKED HARD AND AMONG OTHER
21 THINGS HE WORKED ON THE FARM AND ALSO WITH HIS COUSIN BACK
22 HERE, HAVE A TREE BUSINESS IN WHICH THEY, AND THAT IS A HARD
23 BUSINESS TO DO, HE WORKED PHYSICALLY A LONG TIME AND MANY
24 HOURS, AND IT IS HARD DIFFICULT WORK.

25 YOUR HONOR, MR. HOWARD IS BEFORE YOU TODAY AND I MIGHT

THE STATE -V STACEY HOWARD -- 2007-GS-22-0129

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1 GO BACK TO THE RECITATION OF THE PLEA OFFER. THE PLEA OFFER
2 WAS ORIGINALLY PUT ON THE RECORD ALSO INCLUDED THE DISMISSAL
3 OF THE PRACTICING LAW WITHOUT A LICENSE CHARGE WHICH, OF
4 COURSE, WAS WITHDRAWN AND AT THIS TIME CHOSE TO GO TO TRIAL.
5 I WOULD SUGGEST TO YOU, JUDGE, THAT WHEN THAT IS A BACKGROUND
6 AND YOU HAVING HEARD MR. HOWARD TESTIFY, AND I THINK EVEN
7 COMMENTED ON HIS USE OF HIS TERMINOLOGY MR. HOWARD IS A
8 PRETTY SMART YOUNG MAN, NOT FORMERLY EDUCATED AND IT IS A
9 SHAME HE DID NOT GET MORE FORMAL EDUCATION; BECAUSE CAN SIT
10 THERE AND DEBATE WITH YOU ISSUES OF LAW. HE'S NOT ALWAYS
11 RIGHT. HE DOES HAVE SOME CONCEPT OF LEGAL PRINCIPALS AND
12 DESPITE WHAT THE FOLKS SEE ON T.V. THE LAW IS A LITTLE BIT
13 MORE COMPLICATED THAN THE T.V. MAKES SIT SOUND.

14 MR. HOWARD IS BEFORE YOU AND AT THE MERCY OF THE COURT.
15 I KNOW THAT YOU HAVE YOU TRAVELED THE CIRCUIT AS IS
16 CONSTITUTIONALLY REQUIRED AND ASSIGNED BY THE COURT, AND WE
17 SEE EACH FROM TIME TO TIME AT VARIOUS COUNTIES, AND I HAVE
18 NEVER KNOWN THIS BENCH TO NOT TRY TO BE FAIR AND RENDER A
19 SENTENCE THAT WOULD BE DO JUSTICE BOTH TO SOCIETY AS WELL AS
20 TO THE DEFENDANT. I WOULD THEREFORE ASK YOU BE AS LENIENT AS
21 YOU POSSIBLY CAN, GIVEN ALL THE CIRCUMSTANCES. QUITE
22 FRANKLY, JUDGE, I THINK THAT REGARDS TO THESE TWO PROBATION
23 VIOLATIONS WE'RE LOOKING AT I THINK NINE AND A HALF YEARS. I
24 BEG YOUR PARDON?

25 AGENT BROWN: TWELVE AND A HALF YEARS.

1 MR. RUNYAN: EXCUSE ME, TWELVE AND A HALF YEARS AND
2 THEN TEN YEARS HERE. I DO THINK IN CONSIDERING THOSE TWO
3 CHARGES JUST POSITION, THEN TIME WISE AND HOW THEY ALL CAME
4 ABOUT THAT AN APPROPRIATE SENTENCE AND WOULD BE, AND I WOULD
5 ASK THE COURT TO CONSIDER RUNNING EVERYTHING CONCURRENT.
6 ALTERNATIVELY, I WOULD ASK THE COURT CONSIDER RUNNING THE
7 PROBATION VIOLATION SENTENCES CONCURRENT WITH WHATEVER YOU
8 ASSIGN HERE. IN OTHER WORDS, IF YOU CAN'T SEE FIT TO RUN
9 EVERYTHING CONCURRENT THEN AT LEAST RUN THOSE THINGS
10 CONCURRENT. AND IF YOU ARE GOING TO RUN A CONSECUTIVE TIME
11 MAKE THAT CONSECUTIVE AT THAT TIME. IT'S NOT TO COMPLETED.
12 IT SOUNDS THAT WAY BUT YOU'RE TALKING ABOUT TWELVE AND A
13 HALF. FIVE OR EIGHT AND FOUR AND A HALF CONCURRENT AND THAT
14 YOU AT LEAST CONSIDER RUNNING THOSE CONCURRENT. AND AGAIN,
15 IF THERE IS CONSECUTIVE TIME MAKING IT CONSECUTIVE FOR WHAT
16 YOU AWARD AT THIS CASE.

17 THE COURT: THANK YOU, COUNSEL. AND, MR. HOWARD, YOU
18 SIR, I AM SPEAKING TO THE DEFENDANT, MR. HOWARD, IF YOU HAVE
19 SOMETHING YOU WISH TO SAY, SIR, REGARDING TO SENTENCING YOU
20 REMAIN UNDER OATH. I WOULD BE GLAD TO HEAR FROM YOU.

21 MR. HOWARD: YES, SIR. I APOLOGIZE TO THIS COURT FOR
22 TAKING YOUR TIME, YOUR HONOR, I AM SORRY. I DID NOT INTEND
23 THE WAY IT HAPPENED. I THINK ON THE WITNESS STAND AND I AM
24 HONEST AND SINCERE ABOUT THAT, I DID NOT INTEND TO HURT HER.
25 AND STANDING BEFORE YOU, SHE WILL TELL YOU THE SAME THING.

1 PLEASE HAVE MERCY ON ME, YOUR HONOR.

2 THE COURT: THANK YOU. AND THEN, MR. HOWARD, SR., WISH
3 TO SPEAK, MR. RUNYAN. I WILL GIVE HIM THAT OPPORTUNITY.

4 MR. RUNYAN: HE RESPECTFULLY DECLINES, YOUR HONOR.

5 THE COURT: ALL RIGHT. JUST A MOMENT, PLEASE.

6 MR. RUNYAN: NOT THAT IT HE IS NOT SUPPORTIVE OF HIS
7 SON, HE JUST RESPECTFULLY DECLINES.

8 THE COURT: PLEASE PASS THE SENTENCING SHEET. THANK
9 YOU. MR. HOWARD, I WANT TO TELL YOU SIR, THAT YOU ARE IN MY
10 OPINION YOUR OWN WORST ENEMY. I WANT THE JURY TO KNOW THAT I
11 DO NOT LET PEOPLE CARRY ON AND RESPONSE AND TALK OVER COUNSEL
12 THE WAY YOU DID TODAY, GENERALLY. BUT I THOUGHT IS WAS
13 IMPORTANT FOR THE JURY TO HAVE A SENSE FOR DETERMINATION OF
14 CREDIBILITY AND BELIEVABILITY. OTHERWISE, I WOULD HAVE BEEN
15 STOPPING YOU CONSISTENTLY FOR TALKING OVER COUNSEL. YOU
16 CHALLENGED THE COURT AT ONE TIME. THE WAY YOU CONDUCTED
17 YOURSELF, SIR, IN THIS COURTROOM I WILL TELL YOU WAS NOT, IN
18 AN APPROPRIATE FASHION. AND THAT IS NOT ONLY IN THIS
19 COURTROOM, IT CARRIES OVER IN YOUR PERSONAL LIFE. WHAT I SEE
20 IS A HISTORY OF VIOLENCE, ASSAULTIVE BEHAVIOR ON PEOPLE WHO
21 ARE CLOSE TO YOU BUT MORE IMPORTANTLY PEOPLE WHO ARE WEAKER
22 THAN YOU. I DON'T SEE YOU PICKING ON ANYBODY THAT IS A BIG
23 STRONG BULLY, SIR. WHAT I SEE IS PEOPLE WHO ARE, YOUR MOTHER
24 AN AGED PERSON, SLASHING HER WITH A KNIFE AND FURTHERMORE
25 VIOLENT ASSAULTIVE EVENT ON YOUR GIRLFRIEND UNDER

1 CIRCUMSTANCES FOR WHICH YOU CAME IN TODAY AND SHOWED
2 ABSOLUTELY ZERO REMORSE ABOUT WHAT'S HAPPENED HERE. AND WHAT
3 CONCERNS ME THAT THERE IS NO LEARNING CURVE FOR YOU IN WHAT'S
4 HAPPENED PREVIOUSLY IN YOUR LIFE. IT'S COMPLETE REPETITIVE
5 BEHAVIOR THAT PUTS EVERYONE AROUND YOU AT RISK, SIR. YOU
6 HAVE NO ABILITY TO CONTROL YOUR BEHAVIOR, YOUR TEMPER, OR
7 YOUR VIOLENCE AGAINST OTHERS. AGAIN, PARTICULARLY THOSE WHO
8 ARE WEAKER THAN YOU. FOR THAT REASON WITH REGARD TO THE
9 SENTENCE BEFORE ME AND I WILL YOU TELL AS MR. HOWARD WAS
10 AWARE IT IS NOT ADMISSIBLE WHAT THE PENALTY IS FOR A
11 PARTICULAR CHARGE TO THE JURY, BECAUSE YOU NEVER WANT THE
12 JURY TO BE UNCOMFORTABLE. THE COURT HANDLES SENTENCING ALL
13 THE TIME. THE JURORS ARE NOT NORMALLY USE TO THAT. THE
14 EIGHTEEN YEAR COMMENT BY MR. HOWARD WAS REALLY NOT CORRECT.
15 ASSAULT AND BATTERY OF AN HIGH AND AGGRAVATED NATURE CARRIES
16 UP TO TEN YEARS. NOW HE HAD SOME OTHER COLLATERAL ISSUES OF
17 HIS OWN DOINGS PREVIOUSLY WHICH WOULD ADD TO THAT, BUT THE
18 MAXIMUM PENALTY IS TEN YEARS. BUT I NEVER WANT IT TO BE
19 SAID, MR. HOWARD, THAT SOMEONE CAME IN AND SOME HOW WERE
20 PUNISHED FOR INVOKING THEIR TRIAL RIGHTS. I WILL TELL YOU
21 THOUGH THAT WHAT HAPPENS QUITE OFTEN WHEN INDIVIDUALS DO GO
22 TO TRIAL IS THAT THINGS COME OUT ABOUT THEM AND THEY DISPLAY
23 CERTAIN CHARACTER TRAITS AND PERSONALITY TRAITS THAT ONLY
24 SIGNIFICANTLY DAMAGES THEM. BUT OUT OF THE COMPLETE SENSE OF
25 FAIRNESS ON THE UNDERLYING CHARGE OF ASSAULT AND BATTER OF AN

1 HIGH AND AGGRAVATED NATURE I SENTENCE YOU TO EIGHT YEARS IN
2 THE DEPARTMENT OF CORRECTION; HOWEVER, WITH REGARD TO YOUR
3 PROBATION CASE I WILL REVOKE YOUR FIRST PROBATION CASE
4 CONSECUTIVELY FOR AN ADDITIONAL EIGHTS. I REVOKE YOUR SECOND
5 PROBATION CASE CONSECUTIVELY FOR AN ADDITIONAL FOUR AND A
6 HALF YEARS FOR AN AGGREGATE OF TWENTY AND ONE HALF YEARS
7 INCARCERATION. THAT IS THE SENTENCE OF THE COURT, SIR. WE
8 WILL CREDIT YOU FOR THE TIME YOU SERVED. I AM GOING TO
9 REMAND YOU NOW TO THE CUSTODY OF THE DEPARTMENT OF
10 CORRECTIONS. GOOD LUCK TO YOU, SIR.

11 MR. RUNYAN: THANK YOU VERY MUCH, YOUR HONOR.

12 THE COURT: THANK YOU. NOW, LADIES AND GENTLEMEN, THAT
13 CONCLUDES THIS MATTER AND THOSE OF YOU WHO ARE HERE FOR THIS
14 MATTER YOU ARE FREE TO GO. TO THE HOWARD FAMILY, I AM SORRY
15 FOR WHAT HAS HAPPENED HERE. I WISH YOU WELL. TO THE MEMBERS
16 OF THE JURY, THANK YOU FOR YOUR WORK WITH US THIS WEEK DURING
17 OUR TERM OF COURT.

18 (WHEREUPON, THIS HEARING WAS CONCLUDED AT 2:50 P.M. ON
19 FEBRUARY 28, 2007.)

20 -- END OF TRANSCRIPT --

CERTIFICATE

I, THE UNDERSIGNED, PAMELA OZMENT-CARTEE, OFFICIAL COURT REPORTER FOR THE FOURTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS, GEORGETOWN COUNTY, SOUTH CAROLINA, ON THE 28TH DAY OF FEBRUARY 2007.

I DO FURTHER CERTIFY THAT I AM NEITHER, OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

AUGUST 6, 2007


PAMELA OZMENT-CARTEE
CIRCUIT COURT REPORTER

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Stacy Walter Howard, Appellant.

Appeal From Georgetown County
J. Michael Baxley, Circuit Court Judge

Opinion No. 4579
Heard March 4, 2009 – Filed July 1, 2009

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Appellate Defender M. Celia
Robinson, of Columbia, for
Appellant.

Attorney General Henry Dargan
McMaster, Chief Deputy Attorney
General John W. McIntosh,
Assistant Deputy Attorney
General Salley W. Elliott, Asst.
Deputy Atty. Gen. Christina J.
Catoe, all of Columbia; and
Solicitor John G. Hembree, of
Conway, for Respondent.

LOCKEMY, J.: Stacy Howard appeals his conviction for assault and battery of a high and aggravated nature (ABHAN). Howard argues the trial court erred in: 1) declining to grant his motion for a mistrial; 2) refusing to recuse himself and interfering with Howard's presentation of a defense by wrongfully removing relevant testimony; 3) admitting irrelevant evidence; 4) admitting Howard's prior convictions into evidence; and 5) holding a probation revocation hearing and revoking Howard's probation without a warrant. We affirm in part, reverse in part, and remand.

FACTS

A Georgetown County grand jury indicted Stacy Howard for ABHAN. During trial, Howard's former girlfriend testified he struck her during an argument in his truck. The

victim's nose was broken in three places, and she underwent surgery for her injury.

The victim initially lied to the hospital staff and to the police about how she was injured. She told the emergency room doctor she hit the dashboard when Howard slammed on the brakes. Howard was arrested after the victim felt safe enough to tell the police what really occurred the night of the incident. She testified Howard struck her twice with his fists. Howard testified the victim was out of control, and he unintentionally hit her while attempting to get a clear view of the road. He stated he was unsure whether his blow broke her nose or whether she hit the dashboard.

Howard testified he and the victim had been drinking the day of the incident.

Howard was impeached with three prior ABHAN convictions. The trial court ruled Howard's convictions for ABHAN from November 1995, April 2004, and December 2004 were within the ten year rule and the probative value of their admission outweighed the prejudicial effect to Howard. Howard objected to the admission of his prior convictions on the ground the prejudicial nature of the convictions outweighed the probative value. At the conclusion of trial, the jury found Howard guilty of ABHAN and the trial court sentenced Howard to eight years imprisonment. The trial court also found Howard's ABHAN conviction violated the terms of two probationary sentences. Howard consented to have the two probation revocation hearings held at the same time immediately following the ABHAN sentencing. There, the trial court revoked Howard's first probation case consecutively for eight years and his second probation case consecutively for four and a half years. This appeal follows.

STANDARD OF REVIEW

"A judge must exercise sound judicial discretion in determining whether his impartiality might reasonably be questioned." State v. Cheatham, 349 S.C. 101, 111, 561 S.E.2d 618, 624 (Ct. App. 2002). "Absent evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal." Id. "It is not enough for a party seeking disqualification to simply allege bias. The party must show some evidence of bias." Id. "Furthermore, the alleged bias must be personal, as distinguished from judicial, in nature." Id.

"The admission or exclusion of evidence is left to the sound discretion of the trial [court], whose decision will not be reversed on appeal absent an abuse of discretion." State v. Swafford, 375 S.C. 637, 640, 654 S.E.2d 297, 299 (Ct. App. 2007) (citation omitted). "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support." State v. Rice, 375 S.C. 302, 315, 652 S.E.2d 409, 415 (Ct. App. 2007). "To warrant reversal based on the admission or exclusion of evidence, the complaining party must prove both the error of the ruling and the resulting prejudice." State v. Douglas, 367 S.C. 498, 508, 626 S.E.2d 59, 64 (Ct. App. 2006).

LAW/ANALYSIS

I. Motion for mistrial

Howard argues the trial court erred in declining to grant his motion for a mistrial. We find this issue abandoned on appeal. An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority. Glasscock, Inc. v. U.S. Fidelity & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct.

App. 2001). Howard failed to cite any authority in support of his assertion that the trial court erred in denying his motion for a mistrial. Therefore, Howard abandoned this issue on appeal, and we decline to consider the argument.

II. Trial judge's failure to recuse himself

Howard argues the trial judge erred in failing to recuse himself. We disagree.

"A judge must exercise sound judicial discretion in determining whether his impartiality might reasonably be questioned." *State v. Cheatham*, 349 S.C. 101, 111, 561 S.E.2d 618, 624 (Ct. App. 2002). "Absent evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal." *Id.* "It is not enough for a party seeking disqualification to simply allege bias. The party must show some evidence of bias." *Id.* "Furthermore, the alleged bias must be personal, as distinguished from judicial, in nature." *Id.* In addition, "a judge is not disqualified in a criminal action because of an adverse decision in a former case involving entirely different and unrelated criminal charges against the same party." *State v. Cabiness*, 273 S.C. 56, 57, 254 S.E.2d 291, 292 (1979).

The alleged bias in this case stems from a previous trial where the trial judge found Howard in contempt and gave him a six month sentence. The trial judge indicated he had no animosity toward Howard and was not aware Howard had filed a complaint with the clerk of court. Moreover, the trial judge noted the incident in question occurred three years earlier and that he had not seen or heard from Howard since that time.

There is no evidence the trial judge had any personal bias toward Howard. The alleged bias in this case stems from a previous judicial proceeding where the trial judge was obligated to handle Howard's contempt. Accordingly, the trial judge had no proper basis to recuse himself and did not abuse his discretion in declining to recuse himself from the trial.

III. Interference with the presentation of a defense

Howard argues the trial court erred in interfering with his presentation of a defense.

We believe this issue is not properly preserved for review.

During Howard's testimony, the State asked "how much had [the victim] had as it relates to drinking anything non-alcoholic or alcoholic, what was that?" In response, Howard testified the victim used cocaine the night before the incident. The State objected on the ground the testimony was non-responsive and asked that the testimony be stricken from the record. The trial court asked the jury to disregard Howard's testimony. The State again objected when Howard testified the victim used Oxycontin in response to the State's question as to whether or not the victim had consumed beer or alcohol the day of the injury. The trial court sustained the objection and asked the jurors to "disregard the comments that you just heard that refer to illegal drug use on the part of anyone else in this case."

Howard made no objection to the trial court's instruction that any testimony regarding illegal drug use was not to be considered. Therefore, Howard's argument that the trial court interfered with his presentation of a defense is not preserved for review.^[1] See *State v. Lee*, 350 S.C. 125, 130, 564 S.E.2d 372, 375 (Ct. App. 2002) ("An issue must be raised to and ruled upon by the trial judge to be preserved for appellate review."):

IV. Admission of stun gun and pepper spray

Howard argues the trial court erred in admitting evidence of the stun gun and pepper spray found in his pockets when he was arrested. However, Howard failed to contemporaneously object to the testimony regarding these items. Therefore, we find this issue is not properly preserved for review. See State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) ("[M]aking a motion in limine to exclude evidence at the beginning of trial does not preserve an issue for review because a motion in limine is not a final determination. The moving party, therefore, must make a contemporaneous objection when the evidence is introduced.").

At the start of trial, defense counsel made a motion in limine to exclude the admission of the stun gun and pepper spray, arguing those items were not relevant. The trial court reminded defense counsel to make a contemporaneous objection and asked the State to inform defense counsel in advance when the testimony concerning the stun gun and pepper spray would be offered. The State informed defense counsel it planned to illicit testimony regarding the stun gun and pepper spray from arresting officer Ron Crabtree. Officer Crabtree later testified that at the time he placed Howard under arrest a check of his pockets revealed a stun gun and a can of pepper spray. Defense counsel made no objections during Officer Crabtree's testimony and waited until after the testimony of the next witness to place his objection to the admission of the stun gun and pepper spray on the record. The trial court noted the objection was not contemporaneous and explained that the testimony was permitted because it was relevant and probative on the issue of the victim's fear of Howard.

Although defense counsel made an in limine motion to suppress the introduction of the stun gun and pepper spray into evidence, counsel did not renew his objection at trial when the testimony regarding these items was entered into evidence. Because no objection was renewed at the time the evidence was offered, the matter is not preserved for appeal. See id.

V. Admission of prior convictions

Howard argues the trial court erred in admitting his prior ABHAN convictions. We find the trial court erred by not conducting an on-the-record balancing test weighing the probative value of Howard's prior convictions against their prejudicial effect.

Accordingly, we reverse the trial court's admission of Howard's prior ABHAN convictions and we remand this issue to the trial court for a proper balancing test.

"The admission or exclusion of evidence is left to the sound discretion of the trial [court], whose decision will not be reversed on appeal absent an abuse of discretion."

State v. Swafford, 375 S.C. 637, 640, 654 S.E.2d 297, 299 (Ct. App. 2007) (citation omitted). "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support." State v. Rice, 375 S.C. 302, 315, 652 S.E.2d 409, 415 (Ct. App. 2007). "To warrant reversal based on the admission or exclusion of evidence, the complaining party must prove both the error of the ruling and the resulting prejudice." State v. Douglas, 367 S.C. 498, 508, 626 S.E.2d 59, 64 (Ct. App. 2006).

According to Rule 609(a)(1), SCRE, prior convictions punishable by more than one year imprisonment are admissible for impeaching the credibility of a defendant who testifies when "the court determines that the probative value of admitting this evidence

outweighs its prejudicial effect to the accused." Our Supreme Court has approved the five-factor analysis generally employed by the federal courts for weighing the probative value for impeachment of prior convictions against the prejudice to the accused. State v. Colf, 337 S.C. 622, 627, 525 S.E.2d 246, 248 (2000). The following factors, along with any other relevant factors, should be considered by the trial court: (1) the impeachment value of the prior crime; (2) the point in time of the conviction and the witness's subsequent history; (3) the similarity between the past crime and the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the credibility issue. Id.

In State v. Martin, this court noted a preference for an on-the-record Colf balancing test by the trial court:

While Colf involved the admission of prior convictions more than ten years old under Rule 609(b), SCRE, this court has implicitly recognized the value of these factors in making such a determination under Rule 609(a)(1), and urged the trial bench to not only articulate its ruling, but also provide the basis for it, thereby clearly and easily informing the appellate courts that a meaningful balancing of the probative value and the prejudicial effect has taken place as required by Rule 609(a)(1).

347 S.C. 522, 530, 556 S.E.2d 706, 710 (Ct. App. 2001) (citations omitted). An on-the-record balancing test is particularly important for prior similar convictions under Rule 609(a)(1) because the "similarity of a prior crime to the crime charged heightens the prejudicial value of the crime." State v. Elmore, 368 S.C. 230, 239, 628 S.E.2d 271, 275 (Ct. App. 2006).

The trial court ruled Howard's convictions for ABHAN from November 1995, April 2004, and December 2004 were within the ten-year rule and the probative value of their admission outweighed the prejudicial effect to Howard. While the trial court found this case was one of credibility, the court further found Howard's previous ABHANS were probative on the issue of whether he was capable of committing such an act. The trial court ruled it would limit the prejudicial effect by not allowing testimony that the victims in two of the prior ABHANS were Howard's mother and the victim in this case. The trial court also noted that a contemporaneous instruction would be given to the jurors advising them that Howard's prior convictions were not to be used to determine his guilt or innocence. During Howard's testimony regarding the convictions and during final jury instructions, the trial court informed the jury that Howard's prior convictions could be used to weigh Howard's credibility but not his propensity to commit the offense.

Howard argues that while the trial court indicated his prior convictions were admitted for the purpose of determining his credibility, the trial court further stated the convictions were admitted because they were probative of whether he was capable of committing the ABHAN. He argues the trial court's basis for admitting the prior convictions constituted an error as a matter of law. However, Howard did not object to the trial court's basis for admitting his prior convictions, therefore we find this issue is

not properly preserved for review. See State v. Lee, 350 S.C. 125, 130, 564 S.E.2d 372, 375 (Ct. App. 2002) ("An issue must be raised to and ruled upon by the trial judge to be preserved for appellate review.").

Howard also argues the prejudicial effect of admitting his prior convictions outweighs the probative value. We remand this issue to the trial court for an on the record balancing test weighing the probative value of Howard's prior convictions against their prejudicial effect.

Given the similarity between the prior convictions and the crime charged we cannot conclude Howard was not prejudiced by the admission of his prior convictions.

Although evidence of the prior convictions may be probative of Howard's credibility, they were highly prejudicial because they involved the same conduct for which Howard was on trial. See State v. Bryant, 369 S.C. 511, 517-18, 633 S.E.2d 152, 156 (2006) (holding that when a prior offense is similar to the charged offense the "danger of unfair prejudice to the defendant from impeachment by that prior offense weighs against its admission."); State v. Scriven, 339 S.C. 333, 343, 529 S.E.2d 71, 76 (Ct. App. 2000) (holding that when prior convictions are "similar or identical to charged offenses . . . the likelihood of a high degree of prejudice to the accused is inescapable."). While the trial court articulated that Howard's prior convictions were probative of his credibility, the trial court provided no analysis of the prejudicial impact of admitting these prior convictions. Therefore, we find the trial court erred by not conducting the proper on-the-record balancing test when weighing the probative value and prejudicial impact of Howard's prior convictions and we remand this issue to the trial court.

On remand the trial court should conduct a hearing on the admissibility of Howard's prior convictions and carefully weigh the probative value of the prior convictions for impeachment purposes against their prejudicial effect. See Colf, 337 S.C. at 629, 525 S.E.2d at 249; Scriven, 339 S.C. at 344, 529 S.E.2d at 77 (finding the appellate court should not undertake a Rule 609 balancing test, but should remand the issue to the trial court). If upon remand the trial court determines the prejudicial impact to Howard outweighs the probative value of impeachment, the court should order a new trial. See Scriven, 339 S.C. at 344, 529 S.E.2d at 77. Otherwise, the conviction and sentence should be affirmed subject to appellate review. Id. Therefore, we reverse the trial court's admission of Howard's prior convictions, and we remand this issue to the trial court for an on-the-record Colf balancing test.

VI. Probation revocation

Howard argues the trial court erred in holding a probation revocation hearing and revoking his probation without a probation violation warrant. We disagree.

During sentencing after Howard's ABHAN trial, the court heard from Agent Brown, Howard's probation officer. Agent Brown informed the court Howard had pending warrants in two probation cases for failure to report, failure to notify of arrest, and failure to follow instructions of probation agent. Defense counsel conceded his client's ABHAN conviction constituted a violation of his probation cases, and indicated he had no objection to the "jurisdiction or venue of this court today to hear these probation violation hearings." Additionally, defense counsel suggested the court only consider

Howard's ABHAN conviction as the violation. In response, the Department of Probation agreed to withdraw the prior two warrants and "issue a new citation charging [Howard] only with the new conviction, and disregard the other charges." The court asked defense counsel if he had any objection to this procedure and he indicated that he had "none whatsoever."

Pursuant to section 24-21-450 of the South Carolina Code (2007) a warrant must be issued and the probationer must be served with the warrant before probation can be revoked. However, section 24-21-300 of the South Carolina Code (2007) permits the use of a citation and affidavit in lieu of a warrant. The probation citation in the record indicates Howard was served with the citation during sentencing following his ABHAN conviction. Accordingly, because Howard was served with the citation the trial court did not err in holding a probation revocation hearing and revoking Howard's probation. Therefore, the ruling of the circuit court is

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

HEARN, C.J., and PIEPER, J., concur.

[1] We note the jury heard testimony that the victim had been drinking for seven hours on the day in question. Therefore, Howard's defense that the victim was intoxicated was before the jury even without the illegal drug use testimony.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of GEORGETOWN)STACY W. HOWARD)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina.)

2010 CP 2201879

APPLICATION FOR

POST-CONVICTION RELIEF

ALMA WHITE
CLERK OF COURT

2010 DEC -2 AM 10:47

FILED
GEORGETOWN COUNTY, S.C.INSTRUCTIONS B 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 the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention KERSHAW CORRECTIONAL INSTITUTION, 4848
GOLDMINE HIGHWAY, KERSHAW, SOUTH CAROLINA 29067
2. Name and location of Court which imposed sentence GEORGETOWN COUNTY
COURT OF GENERAL SESSIONS, FIFTEENTH JUDICIAL CIRCUIT
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 03-GS-22-246, AHAN

- (b) 04-GS-45-131, ABHAN
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 2-28-07, 4 AND 1/2 YEARS
- (b) 2-28-07, 8 YEARS
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty TO 04-GS-45-131
- (b) after a plea of not guilty TO 04-GS-22-246
- (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 Ayes@ 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. AFFIRMED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. JULY 1, 2009
- ii. JANUARY 19, 2010
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. STATE V. HOWARD, 384 S.C. 212, 682 S.E.2d 42 (2009)
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) _____

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) CONSTITUTIONAL AND STATUTORY DEPRIVATIONS; INEFFECTIVE
- (b) ASSISTANCE OF TRIAL AND APPELLATE COUNSEL; LACK OF SUBJECT
- (c) MATTER JURISDICTION, UNLAWFUL SENTENCING, SENTENCE HAS
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHMENT
- (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 Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

- iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

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. _____
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. _____
 - 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) ACCORDING TO RULE 71.1 (b), SCRPC, DIRECT REVIEW HAD
 - (b) TO BE CONSIDERED.
 - (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? YES
 - (b) your trial, if any? YES
 - (c) your sentencing? YES
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. WILLIAM L. RUNYON, JR.
 - ii. MARY CELZA ROBINSON
 - iii. LEGRAND CARRAWAY
 - (b) the proceedings at which each such attorney represented you:
 - i. TRIAL AND PROBATION REVOCATION PROCEEDING
 - ii. APPEAL
 - iii. PROBATION HEARING

19. State clearly the relief you seek in filing this application:

VACATON OF THE CONVICTION AND SENTENCES OR,
ALTERNATIVELY, VACATON OF THE SENTENCES

20. Are you now under sentence from any other court that you have not challenged?

NO

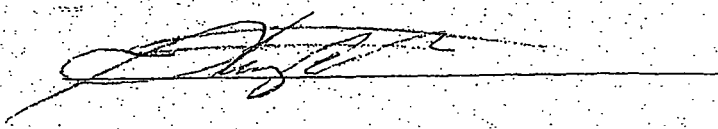
Revised 3/2003

STATE OF SOUTH CAROLINA)

County of GEORGETOWN)

VERIFICATION

I, STACY W. HOWARD, 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.



SWORN to and subscribed before me this 22nd
day of November, 2010.

Ymocha Michel (L.S.)
Notary Public

My Commission Expires: 9-3-2014

FILED
GEORGETOWN COUNTY, S.C.
2010 DEC -2 AM 10:55
ALMA Y. WHITE
CLERK OF COURT

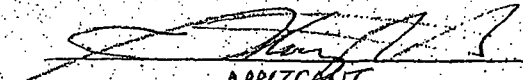
2010CP2201879

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT IN SUPPORT
THEREOF

I, STACY N. HOWARD, 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 PROCEEDINGS OR GIVE SECURITY THEREOF.


APPLICANT

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 22nd DAY OF November, 2010

Wm. Michael
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 9-3-2014

FILED
GEORGETOWN COUNTY, S.C.
2010 DEC -2 AM 10:48
ALMA Y. WHITE
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

STACY W. HOWARD,

APPLICANT,

Vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2010CP2201879

ATTACHMENT TO APPLICATION

FOR POST-CONVICTION REVIEW

FILED
GEORGETOWN COUNTY, S.C.
MAY 2 2010
CLERK OF COURT
JAMES WHITE

COMES NOW, THE APPLICANT, AND FOR HIS GROUNDS
FOR RELIEF, WILL SHOW AS FOLLOWS:

PROCEDURAL HISTORY

THE APPLICANT IS SEEKING COLLATERAL REVIEW OF HIS
PROBATION SENTENCES IN 03-GS-22-246 AND 04-GS-45-131.
PROBATION WAS REVOKED, AND THE SENTENCES WERE IMPOSED, BY
THE HONORABLE JOHN MICHAEL BAXLEY ON FEBRUARY 28, 2007,
IN THE GEORGETOWN COUNTY COURT OF GENERAL SESSIONS.

THE APPLICANT APPEALED FROM THE PROBATION REVOCATION
AND SENTENCES ON MARCH 7, 2007. THE APPEAL WAS DECIDED
ON JULY 1, 2009, AND AN OPINION WAS ISSUED IN STATE
V. HOWARD, 384 S.C. 212, 682 S.E.2d 42 (2009), WHICH
AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

A REMAND HEARING WAS HELD ON JANUARY 19, 2010, BEFORE THE HONORABLE JOHN MICHAEL BAXLEY. JUDGE BAXLEY ISSUED AN ORAL RULING FROM THE BENCH AFFIRMING THE CONVICTION AND PROBATION SENTENCES, AND A NOTICE OF APPEAL WAS FILED ON JANUARY 21, 2010. HOWEVER, FOR THE PURPOSE OF EQUITABLE TOLLING UNDER 28 U.S.C. 2244 (d)(1) AND THE TIME CONSTRAINT OF S.C. CODE ANN. 17-27-45 (A), COLLATERAL REVIEW OF THE PROBATION SENTENCES WAS PREMATURE UNTIL SEPTEMBER 16, 2010, WHEN THE INITIAL BRIEF OF APPELLANT DID NOT RAISE THE ISSUE OF SUBJECT MATTER JURISDICTION. THEREFORE, THIS APPLICATION FOLLOWS.

S.C. CODE ANN. 17-27-20 (a) (SUPP. 2009) PROVIDES A REMEDY WHEN AN APPLICANT CLAIMS:

(1) THAT THE CONVICTION OR THE SENTENCE IS IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES OR THE CONSTITUTION OR LAWS OF THIS STATE;

(2) THAT THE COURT WAS WITHOUT JURISDICTION TO IMPOSE SENTENCE;

(3) THAT THE SENTENCE EXCEEDS THE MAXIMUM

AUTHORIZED BY LAW,

(4) THAT THERE EXISTS EVIDENCE OF MATERIAL FACTS, NOT PREVIOUSLY PRESENTED AND HEARD, THAT REQUIRES VACATION OF THE CONVICTION OR SENTENCE IN THE INTEREST OF JUSTICE,

(5) THAT HIS SENTENCE HAS EXPIRED, HIS PROBATION, PAROLE OR CONDITIONAL RELEASE UNLAWFULLY REVOKED, OR HE IS OTHERWISE UNLAWFULLY HELD IN CUSTODY OR OTHER RESTRAINT, OR

(6) THAT THE CONVICTION OR SENTENCE IS OTHERWISE SUBJECT TO COLLATERAL ATTACK UPON ANY GROUND OF ALLEGED ERROR HERETOFORE AVAILABLE UNDER ANY COMMON LAW, STATUTORY OR OTHER WRIT, MOTION, PETITION, PROCEEDING OR REMEDY.

(GROUND ONE)

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

TRIAL COUNSEL WAS INEFFECTIVE, WHICH PREJUDICED THE APPLICANT, FOR FAILING TO OBJECT AND RAISE THE FOLLOWING ISSUES IN THE FEBRUARY 28, 2007 PROBATION REVOCATION PROCEEDING:

(1) THAT PROBATION IN 03-GS-22-246 EXPIRED ON NOVEMBER 10, 2005, AND PRIOR TO THE JANUARY 11, 2006 PROBATION CITATION AND FEBRUARY 28, 2007 REVOCATION;

(2) THAT THE 03-GS-22-246 AND 04-GS-45-131 PROBATION SENTENCES ARE CONCURRENT, NOT CONSECUTIVE;

(3) THAT THE FEBRUARY 28, 2007 TRIAL COURT WAS WITHOUT SUBJECT MATTER JURISDICTION AND VENUE TO REVOKE PROBATION IN 03-GS-22-246 AND 04-GS-45-131;

(4) THAT THE PROBATION CITATION PROCESS IS IN VIOLATION OF S.C. CODE ANN. 24-21-300 (2007), ARTICLE I, SECTION 3 OF THE SOUTH CAROLINA CONSTITUTION, AND THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

SUPPORTING FACTS:

A PROBATIONER IS ENTITLED TO WRITTEN NOTICE OF CLAIMED VIOLATIONS OF HIS PROBATION, DISCLOSURE OF EVIDENCE AGAINST HIM, OPPORTUNITY TO BE HEARD IN PERSON AND TO PRESENT WITNESSES AND DOCUMENTARY EVIDENCE, A NEUTRAL HEARING BODY, AND WRITTEN STATEMENT BY THE

FACT FINDER AS TO EVIDENCE RELIED ON AND REASONS FOR REVOKING PROBATION. BLACK V. ROMANO, 471 U.S. 606, 85 L.Ed.2d 636, 105 S.Ct. 2254 (1985).

A PROBATIONER CHARGED WITH A PROBATION VIOLATION MUST BE AFFORDED MINIMAL DUE PROCESS. STATE V. HILL, 630 S.E.2d 274 (2006). CORE OF DUE PROCESS IS RIGHT TO NOTICE AND A MEANINGFUL OPPORTUNITY TO BE HEARD. LACHANCE V. ERIKSSON, 522 U.S. 262, 139 L.Ed.2d 695 (1998). A PROBATION AGENT MUST REPORT ANY ARREST TO THE TRIAL COURT AND SUBMIT A WRITTEN REPORT DETAILING HOW THE PROBATIONER HAS VIOLATED HIS PROBATION. STATE V. BARLOW, 643 S.E.2d 682 (2007).

S.C. CODE ANN. SECTIONS 24-21-450 AND 24-21-300 (2007) REQUIRES SERVICE OF A PROBATION WARRANT OR CITATION IN LIEU OF A WARRANT BEFORE PROBATION CAN BE REVOKED. WHETHER A PROBATIONER IS SERVED WITH A PROBATION WARRANT OR CITATION AND AFFIDAVIT IN LIEU OF A WARRANT, IT HAS TO BE DONE PRIOR TO THE REVOCATION HEARING TO GIVE THE TRIAL COURT SUBJECT MATTER JURISDICTION.

SUBJECT MATTER JURISDICTION TO REVOKE PROBATION

IS CONFERRED ON THE GENERAL SESSIONS COURT BY EITHER THE ISSUANCE OF A PROBATION VIOLATION WARRANT OR THE ISSUANCE OF A PROBATION VIOLATION CITATION AND AFFIDAVIT IN LIEU OF A WARRANT. STATE V. LEE, 564 S.E.2d 372 (2002). THE REQUIREMENT OF SUBJECT MATTER JURISDICTION CANNOT BE WAIVED, EVEN BY CONSENT OF THE PROBATIONER, BECAUSE SUBJECT MATTER JURISDICTION, WHICH IS THE COURT'S POWER TO HEAR A CASE, CAN NEVER BE FORFEITED OR WAIVED. ARBAUGH V. Y+H CORP., 126 S.Ct. 1235 (2006); STATE V. BRUNSON, 262 S.E.2d 44 (1980); STATE V. RICHBURG, 403 S.E.2d 315 (1991). SUBJECT MATTER JURISDICTION MAY BE RAISED AT ANYTIME. KNOX V. STATE, 530 S.E.2d 887 (2000); STATE V. PARKER, 543 S.E.2d 255 (2001); CAMPBELL V. STATE, 535 S.E.2d 928 (2000); STATE V. GUTHRIE, 572 S.E.2d 309 (2002).

SIXTH AMENDMENT RIGHT TO COUNSEL ATTACHES TO PROBATION REVOCATION PROCEEDINGS. STEVENSON V. STATE, 522 S.E.2d 343 (1999). ATTORNEYS' PERFORMANCE IS DEFICIENT WHEN IT IS NOT REASONABLE UNDER PREVAILING PROFESSIONAL NORMS. SHIRLEY V. STATE, 411

S.E.2d 215 (1991). PREJUDICE FROM ATTORNEYS DEFICIENT PERFORMANCE IS PRESUMED WHEN (1) THE DEFENDANT IS COMPLETELY DENIED COUNSEL AT A CRITICAL STAGE OF HIS TRIAL; (2) THERE HAS BEEN A CONSTRUCTIVE DENIAL OF COUNSEL AS RESULT OF LAWYER ENTIRELY FAILING TO SUBJECT THE PROSECUTION'S CASE TO MEANINGFUL ADVERSARIAL TESTING; OR (3) THE LIKELIHOOD THAT ANY LAWYER, EVEN A FULLY COMPETENT ONE, COULD PROVIDE EFFECTIVE ASSISTANCE IS SO SMALL THAT A PRESUMPTION OF PREJUDICE IS APPROPRIATE. NANCE V. OZMENT, 626 S.E.2d 878 (2006).

(GROUND TWO)

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

APPELLATE COUNSEL WAS INEFFECTIVE, WHICH PREJUDICED THE APPLICANT ON APPEAL, FOR FAILING TO RAISE THE FOLLOWING ISSUES IN SUPPORT OF ARGUMENT FIVE ON APPEAL:

(1) THAT PROBATION IN OS-GS-22-246 EXPIRED ON NOVEMBER 10, 2005, AND PRIOR TO THE JANUARY 11, 2006 PROBATION CITATION AND FEBRUARY 28, 2007 REVOCATION,

UNDER SUBJECT MATTER JURISDICTION;

(2) THAT THE 03-GS-22-246 AND 04-GS-45-131 PROBATION SENTENCES ARE CONCURRENT; NOT CONSECUTIVE, AND THAT THE TRIAL COURT DID NOT HAVE SUBJECT MATTER OR APPELLATE JURISDICTION TO REVERSE CONCURRENT SENTENCES AND REINSTATE THEM AS CONSECUTIVE;

(3) THAT THE FEBRUARY 28, 2007 TRIAL COURT WAS WITHOUT SUBJECT MATTER JURISDICTION TO REVOKE PROBATION IN 03-GS-22-246 AND 04-GS-45-131;

(4) THAT THE PROBATION CITATION PROCESS IS IN VIOLATION OF S.C. CODE ANN. 24-21-300 (2007) AND, THEREFORE, THE PROBATION SENTENCES ARE NULL;

(5) THAT THE SUPPLEMENTATION OF THE CITATION INTO THE RECORD ON APPEAL AFTER THE FINAL BRIEFS AND ORAL ARGUMENT IS A DENIAL OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW, WHERE IT CLEARLY DENIED THE APPLICANT A MEANINGFUL OPPORTUNITY TO BE HEARD ON THE ISSUE OF SUBJECT MATTER JURISDICTION.

SUPPORTING FACTS:

A DEFENDANT IS CONSTITUTIONALLY ENTITLED TO THE EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL. ANDERSON V. STATE, 581 S.E.2d 834 (2003); SOUTHERLAND V. STATE, 524 S.E.2d 833 (1999). A DEFENDANT IS CONSTITUTIONALLY ENTITLED TO EFFECTIVE ASSISTANCE OF COUNSEL ON DIRECT APPEAL, AND THE STANDARDS GOVERNING EFFECTIVENESS AT TRIAL ARE EQUALLY APPLICABLE TO REPRESENTATION ON DIRECT APPEAL. TUCKER V. CATOE, 221 F.3d 600 (C.A. 4 2000).

ATTORNEYS' PERFORMANCE IS DEFICIENT WHEN IT IS NOT REASONABLE UNDER PREVAILING PROFESSIONAL NORMS. SHIRLY V. STATE, 411 S.E.2d 215 (1991). MAGNITUDE OF DEPRIVATION OF RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL DETERMINES WHETHER DEFENDANT MUST SHOW ACTUAL PREJUDICE OR WHETHER PREJUDICE WILL BE PRESUMED. ROE V. FLORES-ORTEGA, 528 U.S. 470, 145 L.Ed.2d 985, 120 S.Ct. 1029 (2000).

(GROUND THREE)

03-GS-22-246 IS EXPIRED

THE PROBATION SENTENCE IN THE ABOVE CASE, WHICH

THE HONORABLE PAULA H. THOMAS IMPOSED ON APRIL 22, 2004, EXPIRED BEFORE THE ISSUANCE OF THE JANUARY 11, 2006 PROBATION CITATION BY AGENT ADAM SMITH, AND BEFORE THE FEBRUARY 28, 2007 REVOCATION OF PROBATION BY THE HONORABLE JOHN MICHAEL BAXLEY. THE WRITTEN ORDER OF JUDGE THOMAS INDICATES THAT THE APPLICANT IS TO BE GIVEN CREDIT FOR TIME SERVED PURSUANT TO S.C. CODE ANN. 24-13-40 (SUPP. 2004). THEREFORE, THE SENTENCE COMMENCED TO RUN ON NOVEMBER 10, 2003, AND WAS COMPLETED ON NOVEMBER 10, 2005.

SUPPORTING FACTS:

THE SENTENCE START DATE IS THE DATE OF ARREST. BLAKENEY V. STATE, 529 S.E.2d 9 (2000): A SUSPENDED SENTENCE BEGINS TO RUN AT THE TIME IT IS IMPOSED AND, IF THERE IS NO MISBEHAVIOR DURING TERM OF SENTENCE, THE JUDGEMENT IS SATISFIED. RICHARDS V. CRUMP, 194 S.E.2d 575 (1973).

THE APPLICANT WAS CONFINED IN THE GEORGETOWN COUNTY DETENTION CENTER FROM NOVEMBER 10, 2003

UP TO APRIL 22, 2004, AT WHICH TIME HE WAS SENTENCED BY JUDGE THOMAS TO 5 YEARS SUSPENDED TO 5 AND 1/2 MONTHS CREDIT AND TWO (2) YEARS PROBATION. PURSUANT TO S.C. CODE ANN. 24-13-40 (SUPP. 2004), THE 4 AND 1/2 YEAR SENTENCE IS EXPIRED AND THE APPLICANT IS CURRENTLY SERVING TIME TWICE FOR THE SAME OFFENSE, WHICH IS PRESENTLY AFFECTING HIS LIBERTY INTEREST IN REACHING THE PAROLE BOARD AND HIS MAXOUT DATE. THIS CONSTITUTES A FIFTH, EIGHTH, AND FOURTEENTH AMENDMENT VIOLATION OF THE APPLICANT'S RIGHTS PROTECTED BY THE UNITED STATES CONSTITUTION, AND A VIOLATION OF HIS RIGHTS PROTECTED BY ARTICLE I SECTIONS 3, 12 AND 15 OF THE SOUTH CAROLINA CONSTITUTION.

LANGUAGE OF DOUBLE JEOPARDY CLAUSE PROTECTS AGAINST MORE THAN ACTUAL IMPOSITION OF TWO PUNISHMENTS FOR SAME OFFENSE, BY ALSO PROTECTING DEFENDANT FROM BEING TWICE PUT IN JEOPARDY FOR SUCH PUNISHMENT. WHITTE V. U.S., 115 S.C.T. 2199, 515 U.S. 389, 132 L.Ed.2d 351 (1995).

UNDER DOUBLE JEOPARDY CLAUSE, ONCE DEFENDANT

IS PLACED IN JEOPARDY FOR OFFENSE, AND JEOPARDY
TERMINATES WITH RESPECT TO THAT OFFENSE, DEFENDANT
MAY NEITHER BE TRIED NOR PUNISHED A SECOND TIME
FOR THE SAME OFFENSE. SATTAZAHN V. PENNSYLVANIA,
123 S. CT. 732 (2003).

(GROUND FOUR)

03-GS-22-246 AND 04-GS-45-131 ARE CONCURRENT, NOT CONSECUTIVE

JUDGE BAXLEY REINSTATED THE ABOVE CONCURRENT
SENTENCES ON FEBRUARY 28, 2007, AND MADE THEM
CONSECUTIVE IN VIOLATION OF STATE LAW. THIS IS
ALSO A VIOLATION OF THE APPLICANTS' RIGHTS PROTECTED
BY THE FOURTEENTH AMENDMENT OF THE UNITED STATES
CONSTITUTION AND ARTICLE 1 SECTION 3 OF THE
SOUTH CAROLINA CONSTITUTION.

SUPPORTING FACTS:

ON APRIL 22, 2004, JUDGE THOMAS SENTENCED
THE APPLICANT TO FIVE (5) YEARS SUSPENDED WITH CREDIT
FOR 5 AND 1/2 MONTHS AND TWO (2) YEARS PROBATION.
AS EVIDENCED BY THE RECORD, JUDGE THOMAS DID NOT

DESIGNATE HER SENTENCE TO RUN CONSECUTIVE TO A FUTURE SENTENCE, OR SENTENCE OF PROBATION,

ON DECEMBER 6, 2004, THE HONORABLE CLIFTON NEWMAN SENTENCED THE APPLICANT TO TEN (10) YEARS SUSPENDED UPON THE SERVICE OF TWO (2) YEARS WITH TWO (2) YEARS PROBATION. JUDGE NEWMAN DID NOT DESIGNATE HIS ORIGINAL, SUSPENDED PORTION, OR PROBATION SENTENCE IN 04-GS-45-131 TO RUN CONSECUTIVE TO THE 03-GS-22-246 ORIGINAL, SUSPENDED PORTION, OR PROBATION IMPOSED BY JUDGE THOMAS. THEREFORE, AMBIGUITY OR DOUBTS RELATIVE TO THE SENTENCES SHOULD BE RESOLVED IN FAVOR OF THE APPLICANT. STATE V. DEANGELIS, 183 S.E. 2d 906 (1971); POLK V. MANNING, 79 S.E. 2d 875 (1954).

SENTENCES RUN CONCURRENTLY UNLESS THE SENTENCING JUDGE STATES OTHERWISE. FINLEY V. STATE, 64 S.E. 2d 881 (1951). WHERE SEVERAL SENTENCES ARE IMPOSED FOR SEPARATE AND DISTINCT OFFENSES AFTER CONVICTION THEREOF ON SEPARATE INDICTMENTS, OR ON SEVERAL COUNTS IN THE SAME INDICTMENT, THE SENTENCES

RUN CONCURRENTLY, UNLESS THE INTENTION THAT ONE SHOULD BEGIN AT THE EXPIRATION OF THE OTHER IS EXPRESSED. STATE V. MCKELLAR, 67 S.E. 214 (1910).

WHEN SENTENCES ARE VAGUE AND INDEFINITE, THE TERMS WILL RUN CONCURRENTLY. STATE V. DEANGELIS, 183 S.E.2d 906 (1971). SUSPENDED SENTENCES THAT ARE REINSTATED ARE NOT SUBJECT TO MODIFICATIONS,

NONCONSECUTIVELY IMPOSED SENTENCES MAY NOT BE REINSTATED AS CONSECUTIVE TO EACH OTHER. USURY V. STATE, 441 S.E.2d 633 (1994). AS A RESULT OF THE CONSECUTIVE STRUCTURE, THE APPLICANTS' LIBERTY INTEREST IN REACHING THE PAROLE BOARD AND MAXOUT DATE IS AFFECTED.

(GROUND FIVE)

THE COURT WAS WITHOUT SUBJECT MATTER JURISDICTION

THE HONORABLE HOWARD P. KING DID NOT HAVE SUBJECT MATTER JURISDICTION TO EXTEND APPLICANTS' PROBATION IN 03-GS-22-246. JUDGE BAXLEY DID NOT HAVE SUBJECT MATTER JURISDICTION TO REVOKE PROBATION IN 03-GS-22-246 AND 04-GS-45-131.

SUPPORTING FACTS:

THE PROBATION CITATION OF ADAM SMITH, WHICH HE USED TO ACQUIRE JURISDICTION, WAS NOT SERVED UNTIL JANUARY 11, 2006, WHICH IS SIXTY-TWO (62) DAYS AFTER THE EXPIRATION OF PROBATION IN 03-GS-22-246, THAT ENDED ON NOVEMBER 10, 2005. THEREFORE, JUDGE KING DID NOT HAVE JURISDICTION TO EXTEND APPLICANT'S PROBATION BECAUSE IT WAS EXPIRED BEFORE THE CITATION WAS ISSUED. SEE STATE V. HUTTO, 74 S.E.2d 570 (1953) AND STATE V. CROUCH, 585 S.E.2d 288 (2003).

JUDGE BAXLEY DID NOT HAVE SUBJECT MATTER JURISDICTION TO REVOKE 03-GS-22-246 AND 04-GS-45-131 PROBATION CASES, BECAUSE THERE WAS NO WARRANTS OR A CITATION SERVED ON THE APPLICANT.

THE AFFZANT OF THE CITATION SWORE THAT HE SERVED THE APPLICANT IN THE PROBATION OFFICE AT 2:30 P.M. ON FEBRUARY 28, 2007. HOWEVER, THE APPLICANT WAS IN THE COURTROOM FROM 2:20 P.M.

UNTIL 2:50 P.M. IN A SENTENCING PROCEEDING FOR HIS PROBATION CASES. THEREFORE, THE APPLICANT COULD NOT BE IN THE PROBATION OFFICE AND THE COURTROOM AS ONE PERSON AT THE SAME TIME.

THE CITATION AND AFFIDAVIT, ON ITS FACE, ESTABLISHES THAT THE FEBRUARY 28, 2007 TRIAL COURT DID NOT HAVE SUBJECT MATTER JURISDICTION. THE AFFIDAVIT OF BOBBY JONES, WHO IS NOT THE APPLICANT'S PROBATION OFFICER, STATES: "DEFENDANT HAS FAILED TO FOLLOW THE ADVICE AND INSTRUCTIONS OF THE SUPERVISING AGENT BY BEING CONVICTED OF ARJAN ON INDICTMENT DT-GS-22-129 AND RECEIVING A SENTENCE OF EIGHT (8) YEARS CONSECUTIVE TO A FULL REVOCATION OF HIS CURRENT CASES."

IT IS APPARENT THAT THE APPLICANT COULD NOT HAVE BEEN SERVED WITH THE CITATION IN THE PROBATION OFFICE PRIOR TO SENTENCING, BECAUSE AGENT JONES WOULD NOT HAVE KNOWN AT THAT TIME THAT THE APPLICANT RECEIVED "A CONSECUTIVE FULL

REVOCATION OF HIS CURRENT CASES."

THE CITATION WAS NOT SERVED PRIOR TO THE PROBATION REVOCATION HEARING, OR SENTENCING, THEREFORE, THE TRIAL COURT WAS WITHOUT SUBJECT MATTER JURISDICTION TO REVOKE PROBATION. IT IS EVIDENT BY THE FACE OF THE CITATION THAT IT WAS WRITTEN AFTER THE PROBATION HEARING AND SENTENCING, WHERE THE ONLY POINT IN TIME IN WHICH AGENT JONES COULD HAVE KNOWN THAT THE APPLICANT RECEIVED A FULL REVOCATION OF HIS PROBATION WOULD HAVE BEEN AFTER SENTENCING. THEREFORE, JUDGE BAXLEY DID NOT HAVE SUBJECT MATTER JURISDICTION TO REVOKE PROBATION AND IMPOSE UNLAWFUL CONSECUTIVE SENTENCES OF 12 AND $1\frac{1}{2}$ YEARS, WHERE THE CITATION CAME AFTER SENTENCING.

ACCORDING TO SECTION 24-21-300 AND 24-21-450, A CITATION OR A WARRANT HAD TO BE SERVED ON THE APPLICANT PRIOR TO HIS PROBATION HEARING, AND OBVIOUSLY BEFORE SENTENCING, BECAUSE THAT

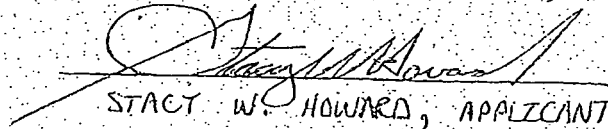
IS THE JURISDICTIONAL REQUIREMENT. ALSO, WRITING THE CITATION AFTER SENTENCING DEPRIVED THE APPLICANT OF NOTICE, DISCLOSURE OF EVIDENCE, AND A MEANINGFUL OPPORTUNITY TO BE HEARD, WHERE WHAT IS ACCUSED IN THE CITATION WAS NOT WRITTEN UNTIL AFTER THE HEARING. THIS IS A VIOLATION OF THE APPLICANT'S RIGHTS PROTECTED BY AMENDMENT 14 OF THE UNITED STATES CONSTITUTION AND ARTICLE 1 SECTION 3 OF THE SOUTH CAROLINA CONSTITUTION.

IF, ACCORDING TO LAW, THE PROBATION SENTENCES ARE NULL, WHERE THE COURT WAS WITHOUT JURISDICTION, THEN THE APPLICANT HAS BEEN DEPRIVED OF HIS LIBERTY INTEREST IN REACHING THE PAROLE BOARD, AND HIS MAXOUT DATE FOR THE ONLY SENTENCE REMAINING IS NEAR EXPIRATION.

BASED UPON THE FOREGOING, THE PROBATION SENTENCES IN 03-GS-22-246 AND 04-GS-45-131 SHOULD BE VACATED.

NOVEMBER 22, 2010

RESPECTFULLY SUBMITTED,


STACY W. HOWARD, APPLICANT

KERSHAW CORR. INST.

4848 GOLDMINE HIGHWAY

KERSHAW, S.C. 29067

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Stacy W. Howard, # 191458,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2010-CP-22-1879

**RETURN AND MOTION TO DISMISS
WITHOUT PREJUDICE**

The Respondent, making its Return to the Application for post-conviction relief filed December 2, 2010, by Stacy W. Howard, would respectfully show this Court:

I. – Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to convictions from Georgetown and Williamsburg counties. The Applicant had a trial in Georgetown County in February 2007 regarding a charge of assault and battery of a high and aggravated nature ("ABHAN") (2007-GS-22-0129). He was represented by William L. Runyon, Jr., Esquire. He was convicted on February 28, 2007, and the Honorable J. Michael Baxley imposed a sentence of eight years. At the same sentencing proceeding, the Applicant also submitted to judgment and sentencing for violations of two probationary sentences. One of these probationary sentences was imposed pursuant to a Georgetown conviction for assault of a high and aggravated nature ("AHAN") (2003-GS-22-0246), and the other was imposed pursuant to a Williamsburg conviction for ABHAN (2004-GS-45-0131). The basis for the violation of both probation cases was the Georgetown ABHAN conviction, indictment 2007-GS-22-0129.¹ Judge Baxley revoked eight years for the Georgetown AHAN probation violation, and revoked four

¹ Although the probation officer had pending warrants for other violations, the parties agreed that the 2007-GS-22-0129 conviction would serve as the only stated violation in both cases. The other warrants were withdrawn.

and a half years for the Williamsburg ABHAN probation violation. All three sentences were to run consecutively.

A timely Notice of Appeal was filed, and an appeal was perfected on the Applicant's behalf by M. Celia Robinson, Esquire. On July 1, 2009, the South Carolina Court of Appeals issued an opinion affirming in part, reversing in part, and remanding the case. See State v. Howard, 384 S.C. 212, 682 S.E.2d 42 (2009). Specifically, the Court of Appeals reversed the trial court's admission of the Applicant's prior convictions for impeachment purposes, and remanded the case for the court to conduct an on-the-record balancing test weighing the probative value of the prior convictions against their prejudicial effect. The Court of Appeals stated: "If upon remand the trial court determines the prejudicial impact to Howard outweighs the probative value of impeachment, the court should order a new trial. Otherwise, the conviction and sentence should be affirmed *subject to appellate review*." (See Court of Appeals Opinion at pages 8-9) (emphasis added). The Court of Appeals affirmed as to the other issues raised, including an issue raised regarding the validity of the probation revocations. The case was remitted to the circuit court on September 29, 2009, so that the remand hearing could be held.

The remand hearing was held before Judge Baxley on January 19, 2010. The Applicant was represented by Stuart M. Axelrod, Esquire. After hearing argument from both sides, Judge Baxley issued a ruling from the bench concluding that Appellant's prior convictions were properly admitted for impeachment purposes at trial. A notice of appeal was timely served and filed. The Applicant is currently represented by Tristan M. Shaffer, Appellate Defender.² Initial Briefs have been submitted in the South Carolina Court of Appeals, and the Record on Appeal was served on December 20, 2010. Final Briefs have not yet been submitted.

² His previous appellate counsel, M. Celia Robinson, Esquire, is no longer with the Office of Appellate Defense.

Incorporated herein by reference are the records of the Georgetown County and Williamsburg County Clerks of Court regarding the convictions, as well as the Applicant's direct appeal records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. – Allegations

In his Application, Mr. Howard challenges only the probation violation convictions under 2003-GS-22-0246 and 2004-GS-45-0131.³ He raises the following allegations:

1. Constitutional and statutory violations;
2. Ineffective assistance of trial and appellate counsel;
3. Lack of subject matter jurisdiction;
4. Unlawful sentencing - sentence has expired; and
5. Unlawful revocation of probation.

The Applicant states he is seeking vacation of the convictions and sentences, or, alternatively, vacation of the sentences.

III. – MOTION TO DISMISS WITHOUT PREJUDICE The PCR Application is Premature

Respondent submits that this Application is premature because the convictions being challenged are not yet finalized. The direct appeal regarding all three of the sentences imposed on February 28, 2007, is still ongoing. All three sentences could be vacated upon appellate review of Judge Baxley's ruling at the remand hearing.⁴ Thus, the appeal may completely obviate the need for a PCR. Accordingly, because the probation violation sentences that are the subject of this PCR are still subject to being vacated, collateral attack of these sentences is premature.⁵ Therefore, this Application should be dismissed without prejudice. Of course, a

³ A previous PCR application (2009-CP-22-1456) regarding the probationary sentences was dismissed without prejudice in an Order filed on October 20, 2009. At that time, the remand hearing had not yet been conducted.

⁴ Because the *sole basis* for each probation revocation was the 2007-GS-22-0129 conviction that was remanded and is now (once again) pending in the Court of Appeals, the probation revocation sentences are inextricably linked to the 2007-GS-22-0129 conviction.

⁵ Stated another way, the "direct attack" must be complete before "collateral attack" is commenced. For example, if this Application were maintained while the remand appeal is still ongoing, the PCR court could ultimately uphold

dismissal of this Application without prejudice would not preclude the Applicant from filing a timely PCR Application if/when the probation revocation sentences become final. See S.C. Code Ann. § 17-27-45(A) (allowing a PCR applicant to file within one year of the "final decision" on direct appeal); see also Rule 71.1(b), SCRCP (a person cannot file a PCR while a direct appeal affecting the conviction is pending).

IV.

All allegations, statements, and claims contained within the Application and any attachments which are not expressly admitted, qualified, or explained are hereby denied.

V.

WHEREFORE, Respondent requests that this Application be summarily dismissed without prejudice.

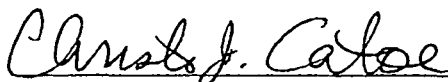
Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

CHRISTINA J. CATOE
Assistant Attorney General



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
803-734-3737

December 31, 2010

the probation violation sentences, but the appellate court could then vacate these sentences by granting a new trial on the 2007-GS-22-0129 ABHAN conviction. Therefore, the remand appeal must be completed before collateral attack is appropriate so as to avoid simultaneous litigation affecting the same convictions.

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

STACY W. HOWARD,

APPLICANT,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-22-1879

REPLY TO RESPONDENTS' RETURN

AND MOTION TO DISMISS

WITHOUT PREJUDICE

CLERK OF COURT
MAY 18 2011

2011 JAN 18 PM 3:19

FILED
GEORGETOWN COUNTY S.C.

PURSUANT TO RULE 8 (C), SCRCP, THE APPLICANT MAKES
REPLY TO RESPONDENTS' RETURN AND MOTION TO DISMISS WITHOUT
PREJUDICE AS FOLLOWS:

THE PCR APPLICATION IS NOT PREMATURE. THE S.C.
COURT OF APPEALS AFFIRMED THE PROBATION SENTENCES IN 03-GS-22-
246 AND 04-GS-45-131 ON JULY 1, 2009. APPELLATE DEFENDER, MARY
CELIA ROBINSON, PETITIONED FOR REHEARING ON JULY 15, 2009, BUT
SHE ABANDONED THE PROBATION ARGUMENT. AFTERWARD, THE HONORABLE
JUDGE JOHN MICHAEL BAXLEY AFFIRMED THE CONVICTIONS AND SENTENCES
ON REMAND ON JANUARY 19, 2010, AND THE CURRENT APPEAL AND
ARGUMENT IS ONLY AGAINST THE REMAND ISSUE IN 07-GS-22-129.
THEREFORE, DIRECT REVIEW IS FOREVER CONCLUDED ON THE PROBATION
ISSUE, WHICH IS NOW SUBJECT TO COLLATERAL ATTACK.

THE APPLICANT IS CURRENTLY PREJUDICED BY THE PROBATION

SENTENCES. FIRST, THE 03-GS-22-246 PROBATION SENTENCE OF 4 AND $\frac{1}{2}$ YEARS IS EXPIRED, AND HAS BEEN EXPIRED SINCE NOVEMBER 10, 2005. AS A RESULT, THE APPLICANT IS BEING PUNISHED TWICE FOR THE SAME OFFENSE, WHICH CONSTITUTES DOUBLE JEOPARDY. FURTHERMORE, THE EXPIRED SENTENCE IS CURRENTLY DEPRIVING THE APPLICANT OF HIS LIBERTY INTEREST IN REACHING THE PAROLE BOARD, WHERE HIS PAROLE ELIGIBILITY DATE IS EXTENDED BY THE LENGTH OF HIS SENTENCE. SEE PCR APPLICATION, GROUND THREE, PP. 9-12.

SECONDLY, THE PROBATION SENTENCES ARE NOT CONSECUTIVE, AS INDICATED BY THE SENTENCING RECORD, 03-GS-22-246 AND 04-GS-45-131 ARE CONCURRENT. THEREFORE, THE REINSTATEMENT OF CONCURRENT SENTENCES AS CONSECUTIVE HAS INCREASED THE APPLICANT'S SENTENCE BY 4 AND $\frac{1}{2}$ YEARS, THIS ALSO DEPRIVES THE APPLICANT OF HIS LIBERTY INTEREST IN REACHING THE PAROLE BOARD, WHERE HIS PAROLE ELIGIBILITY DATE IS EXTENDED BY THE LENGTH OF HIS SENTENCE. SEE PCR APPLICATION, GROUND FOUR, PP. 12-14.

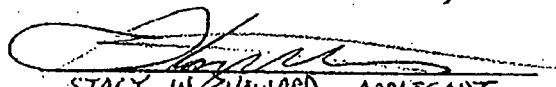
THIRDLY, THE PROBATION SENTENCES, ACCORDING TO STATE LAW, ARE NULL. AS FACTS ULTIMATELY REVEAL, THE

TRIAL COURT DID NOT HAVE SUBJECT MATTER JURISDICTION TO
REVOKE PROBATION. CONSIDERING THAT THE PROBATION SENTENCES ARE
NULL, AND THAT THE OT-GS-22-129 EIGHT (8) YEAR SENTENCE IS
THE ONLY SENTENCE REMAINING, THE APPLICANT WOULD BE NEAR
COMPLETION OF THAT SENTENCE. TO AWAIT THE OUTCOME OF AN
APPEAL, WHICH HAS NOTHING TO DO WITH THE PROBATION
SENTENCES, WOULD PREVENT THE APPLICANT FROM ESTABLISHING THAT
HIS SENTENCE IS NEAR EXPIRATION. THEREFORE, AN EVIDENTIARY
HEARING SHOULD BE HELD. SEE PCR APPLICATION, GROUND FIVE, PP. 14-18.

WHEREFORE, THE RESPONDENTS MOTION TO SUMMARILY
DISMISS THE PCR APPLICATION SHOULD BE DENIED.

JANUARY 10, 2011

RESPECTFULLY SUBMITTED,



STACY W. HOWARD, APPLICANT

KERSHAW CORR. INST.

4848 GOLDMENE HIGHWAY

KERSHAW, S.C. 29067

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

STACY W. HOWARD,

APPLICANT,

vs.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-22-1879

CERTIFICATE OF SERVICE

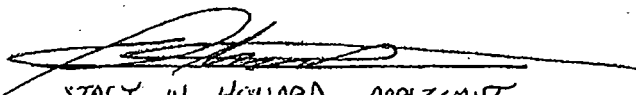
STATE OF SOUTH CAROLINA,

RESPONDENT.

THE UNDERSIGNED HAS SERVED RESPONDENT WITH
 NOTICE THAT A REPLY HAS BEEN FILED BY PLACING
 COPY OF SAME IN THE U.S. POSTAL MAIL ON JANUARY 10,
 2011, WITH POSTAGE, ADDRESSED TO:

CHRISTENA J. CATOE
 OFFICE OF THE ATTY. GENERAL
 POST OFFICE BOX 11549
 COLUMBIA, S.C. 29211

JANUARY 10, 2011



STACY W. HOWARD, APPLICANT
 KERSHAW CORR. INST.
 4848 GOLDMINE HIGHWAY
 KERSHAW, S.C. 29067

ALTA WHITE
 CLERK OF COURT

2011 JAN 18 PM 3:19

FILED
 GEORGETOWN COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Stacy W. Howard, # 191458,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2010-CP-22-1879

ORDER OF DISMISSAL WITHOUT PREJUDICE

This matter comes before the Court by way of an Application for post-conviction relief filed December 2, 2010, by Stacy W. Howard. Respondent made a Return and Motion to Dismiss Without Prejudice on December 31, 2010, requesting that the Application be summarily dismissed without prejudice. On January 18, 2011, the Applicant filed a Reply to Respondent's Return and Motion to Dismiss Without Prejudice. Incorporated herein by reference are the records of the county clerk of court regarding the underlying convictions and the relevant direct appeal records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to convictions from Georgetown and Williamsburg counties. The Applicant had a trial in Georgetown County in February 2007 regarding a charge of assault and battery of a high and aggravated nature ("ABHAN") (2007-GS-22-0129). He was represented by William L. Runyon, Jr., Esquire. He was convicted on February 28, 2007, and the Honorable J. Michael Baxley imposed a sentence of eight years. At the same sentencing proceeding, the Applicant also submitted to judgment and sentencing for violations of two probationary sentences. One of these probationary sentences was imposed pursuant to a Georgetown conviction for assault of a high and aggravated nature ("AHAN") (2003-GS-

FILED
2011 MAR 28 PM 3:30
ALMA Y. WHITE
CLERK OF COURT
GEORGETOWN COUNTY

22-0246), and the other was imposed pursuant to a Williamsburg conviction for ABHAN (2004-GS-45-0131). The basis for the violation in each probation case was the Georgetown ABHAN conviction, indictment 2007-GS-22-0129.¹ Judge Baxley revoked eight years for the Georgetown AHAN probation violation, and revoked four and a half years for the Williamsburg ABHAN probation violation. All three sentences were to run consecutively.

A timely notice of appeal was filed, and an appeal was perfected on the Applicant's behalf by M. Celia Robinson, Esquire. On July 1, 2009, the South Carolina Court of Appeals issued an opinion affirming in part, reversing in part, and remanding the case. See State v. Howard, 384 S.C. 212, 682 S.E.2d 42 (2009). Specifically, the Court of Appeals reversed the trial court's admission of the Applicant's prior convictions for impeachment purposes, and remanded the case for the court to conduct an on-the-record balancing test weighing the probative value of the prior convictions against their prejudicial effect. The Court of Appeals stated: "If upon remand the trial court determines the prejudicial impact to Howard outweighs the probative value of impeachment, the court should order a new trial. Otherwise, the conviction and sentence should be affirmed *subject to appellate review*." (See Court of Appeals Opinion at pages 8-9) (emphasis added). The Court of Appeals affirmed as to the other issues raised, including an issue raised regarding the validity of the probation revocations. The case was remitted to the circuit court on September 29, 2009, so that the remand hearing could be held.

The remand hearing was held before Judge Baxley on January 19, 2010. The Applicant was represented by Stuart M. Axelrod, Esquire. After hearing argument from both sides, Judge Baxley issued a ruling from the bench concluding that Appellant's prior convictions were properly admitted

¹ The parties agreed that the 2007-GS-22-0129 conviction would serve as the only stated violation in both cases. Other probation violation warrants were withdrawn.

for impeachment purposes at trial. A notice of appeal was timely served and filed. The Applicant is currently represented by Tristan M. Shaffer, Esquire. Final Briefs were submitted in January 2011, and the matter is currently pending before the South Carolina Court of Appeals.

In his Application, Mr. Howard challenges only the probation violation convictions under 2003-GS-22-0246 and 2004-GS-45-0131.² He raises the following allegations:

1. Constitutional and statutory violations;
2. Ineffective assistance of trial and appellate counsel;
3. Lack of subject matter jurisdiction;
4. Unlawful sentencing - sentence has expired; and
5. Unlawful revocation of probation.

The Applicant states he is seeking vacation of the convictions and sentences, or, alternatively, vacation of the sentences.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law:

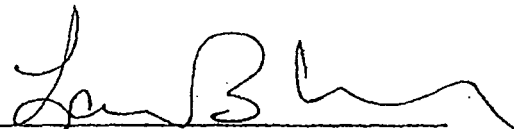
This Court finds that this Application is premature because the finality of the convictions being challenged is still being directly litigated. Because the sole basis for each probation revocation was the 2007-GS-22-0129 conviction that was remanded and is now pending in the South Carolina Court of Appeals, the probation revocation sentences are inextricably linked to the 2007-GS-22-0129 conviction. The direct appeal affecting all three of the sentences imposed on February 28, 2007 is still ongoing. All three sentences could be vacated upon appellate review of the remand hearing; thus, the direct appeal may completely obviate the need for this PCR. Accordingly, because the probation violation sentences that are being challenged in this PCR are still subject to being vacated on direct

² A previous PCR application (2009-CP-22-1456) regarding these probationary sentences was dismissed without prejudice in an Order filed on October 20, 2009. At that time, the remand hearing had not yet been conducted.

appeal, collateral attack of these sentences is premature. This Court finds that the remand appeal must be completed in its entirety before collateral attack so as to avoid simultaneous litigation affecting the same convictions. See S.C. Code Ann. § 17-27-45(A) (allowing a PCR applicant to file within one year of the "final decision" on direct appeal); see also Rule 71.1(b), SCRPC (a person cannot file a PCR while a direct appeal affecting the conviction is pending); Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) ("The applicant may not bring a PCR action while a direct appeal is pending.").

Therefore, this Application must be **DISMISSED WITHOUT PREJUDICE**. Dismissal of this Application without prejudice will not preclude the Applicant from filing a timely PCR Application when the direct appeal is concluded.

AND, IT IS SO ORDERED this 20 day of May, 2011.


Larry B. Hyman, Jr.
Chief Administrative Judge
Fifteenth Judicial Circuit

Cow, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Georgetown

VS.

Stacey Howard

AKA:

Race: W Sex: M Age: 29

DOB: S#:

Address:

City, State, Zip

DL# SID#

INDICTMENT/CASE#:

03 -GS- 22 - 246

A/W#:

G-574862

Date of Offense:

9-11-01

S.C. Code §:

Common Law

CDR Code #:

0101113

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: ASST. ST. High + Aggravated NATURE

in violation of S.C. Code of Laws, bearing CDR Code # 0101019

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand JuryThe plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Solidator

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of 5 1/2 days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 2 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 5 1/2 months

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:		\$
\$14-1-206 (Assessments 107.5%)		\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$35.13 (Public Def/Prob)	\$500	\$500.00
\$73.3, 1B TP (Law Enforce. Funding)	\$25	\$25.00
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$
\$50-21-114(BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$18.75
TOTAL		\$643.75

Clerk of Court/Deputy Clerk

Court Reporter:

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ 30.00 beginning 1mo. after release

\$ _____ paid to Public Defender Fund

Other: _____

☒ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

40

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Williamsburg
STATE VS. Therese Howard
AKA: _____
Race: W Sex: M Age: 30
DOB: _____ SS#: _____
Address: _____
City, State, Zip Kingstree, S.C.
DL# N/A SID# _____

INDICTMENT/CASE#: 2004 -GS- 45 - 131
A/W#: H 437029
Date of Offense: March 9, 2003
S.C. Code §: CPL 17-25-30
CDR Code #: 0101113
☐ CASE RESTORED
SENTENCE
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Annul and Batery of High and Approved Nature
in violation of § CPL 17-25-30 of the S.C. Code of Laws, bearing CDR Code # 0101113
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: _____

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of 2 days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 2
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions
of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied
by the State Department of Corrections. probation to commence upon completion of

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____

SPECIAL CONDITIONS:

PTUP Sentence for contempt as
imposed by Judge Bexley
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol _____
Testing _____
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 27 beginning 30 days after release
\$ _____ paid to Public Defender Fund
Other: Drug Abuse Treatment

☒ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Recipient: _____
*Fine: \$ _____
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211(A)(1) (Surcharge) \$ 100.00
§14-1-211(A)(2) (Surcharge) \$ _____
§56-5-2995 (DUI Assessment) \$ _____
§73.3, 1B TP (Law Enforce. Funding) \$ 25.00
§33.7, 1B TP (Drug Court Surcharge) \$ _____
§50-21-114(BUI Breath Test Fee) \$ _____
§56-5-2942(J) (Vehicle Assessment) \$ _____
3% to County (if paid in installments) \$ 18.75
TOTAL \$ 500.00

Carolyn F. Williams 643.75
Clerk of Court/ Deputy Clerk

Court
Reporter: Margaret Sullivan

White - Clerk Green - Corrections Canary - Probation

A CERTIFIED TRUE COPY
Judge Code: 11 12 17
Signature Date: Carolyn F. Williams December 6, 2004
CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY
SCCA/217 (6/2003)

PROBATION CITATION

No. C-45-06-0001

SOUTH CAROLINA

COUNTY:

Williamsburg

V.

SCDC #

SID #

Stacey Howard

191458

00840181

TO: Stacey Howard

YOU ARE HEREBY NOTIFIED to appear in the above named case at the time, date and place specified below.

Place

Room

Main Courtroom

Kingstree, SC

Date and Time 01/30/06 @ 9:30 am

YOU ARE HEREBY NOTIFIED that you are charged with violating the conditions of your supervision as stated below.

Violations Charged

Willful violation of the conditions of Probation pursuant to section 24-21-450.

YOU ARE HEREBY NOTIFIED that you have the rights listed below.

List of Rights:

You have the right at the hearing to question any person who appears as a witness against you and to have witnesses appear in your behalf. You may present evidence on your behalf. You may have an attorney represent you. If you cannot afford an attorney, an attorney will be appointed for you. You must advise the agent or the court in writing of your desire for an attorney. It is your responsibility to make arrangements for your witnesses and your attorney to appear at the hearing.

IF YOU FAIL TO APPEAR AT THE TIME, DATE AND PLACE SHOWN ABOVE, THE HEARING WILL BE HELD IN YOUR ABSENCE AND YOU MAY BE INCARCERATED.

Kingstree, South Carolina

Probation and Parole Agent

Date 01/10/06

Agent # 142

A copy of the citation was served by the undersigned and given to the individual named therein at the time, date, and place indicated below.

Place

Date and Time

Kingstree, SC

1-11-06 9:15

Serving Officer's Signature

Sworn to and subscribed before me this

11th

day of

January

2006

Signature of Notary Public

My Commission Expires

10/31/2006

38

PROBATION CITATION

No. C-45-06-0001

SOUTH CAROLINA V. Stacey Howard	COUNTY: Williamsburg	
	SCDC # 191458	SID # 00840181

TO: Stacey Howard

YOU ARE HEREBY NOTIFIED to appear in the above named case at the time, date and place specified below.

Place Kingstree, SC	Room Main Courtroom
Date and Time 01/30/06 @ 9:30 am	

YOU ARE HEREBY NOTIFIED that you are charged with violating the conditions of your supervision as stated below.

Violations Charged

Willful violation of the conditions of Probation pursuant to section 24-21-450.

YOU ARE HEREBY NOTIFIED that you have the rights listed below.

List of Rights:

You have the right at the hearing to question any person who appears as a witness against you and to have witnesses appear in your behalf. You may present evidence on your behalf. You may have an attorney represent you. If you cannot afford an attorney, an attorney will be appointed for you. You must advise the agent or the court in writing of your desire for an attorney. It is your responsibility to make arrangements for your witnesses and your attorney to appear at the hearing.

IF YOU FAIL TO APPEAR AT THE TIME, DATE AND PLACE SHOWN ABOVE, THE HEARING WILL BE HELD IN YOUR ABSENCE AND YOU MAY BE INCARCERATED.

Kingstree , South Carolina	Probation and Parole Agent
Date 01/10/06	<i>[Signature]</i> Agent # 142

A copy of the citation was served by the undersigned and given to the individual named therein at the time, date, and place indicated below.

Place Kingstree, SC	Date and Time 1-11-06 9:15
Serving Officer's Signature <i>[Signature]</i>	

Sworn to and subscribed before me this

11th

day of

January

2006

Katie L. Mack
Signature of Notary Public

My Commission Expires

10/31/2006

STATE OF SOUTH CAROLINA

AFFIDAVIT

County of Williamsburg

Personally appeared before me, Adam Smith, who first being duly sworn, deposes and says that Stacey Howard did within this County and State on the 10 day of January, 2006, violate certain conditions of release in the following particulars:

DESCRIPTION OF VIOLATION

Willful violation of Probation, specifically number 10 as ordered in cause number 03-GS-22-00246 in the Georgetown County Court of General Sessions.

The Affiant states that there is probable cause to believe the defendant named committed the violations set forth and that such probable cause is based on the following facts:

Failure to follow advice and instructions of Agent. The offender repeatedly questions, argues and complains about his supervision and disagrees with all instructions given. He attempts to tell this Agent what I can and cannot legally do and tries to control each situation. His demeanor and attitude forced me to remove him from the Probation office on 01/10/06 and reschedule as he would do nothing but disagree. The way he conducts himself in the Probation office is inappropriate for a supervised offender.

Sworn to and subscribed

before me this 10th day ofJanuary, 2006Katie L. Mack

Signature of Notary Public

Affiant

My Commission Expires:

10/31/2006

(42)

STATE OF SOUTH CAROLINA

AFFIDAVIT

County of Williamsburg

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Sworn to and subscribed:

before me this 10th day ofJanuary, 2006Katie L. Mack

Signature of Notary Public

Adam Smith

Affiant

My Commission Expires: 10/31/2006

35 SOUTH CAROLINA
 County of WILLIAMSBURG
 STATE VS.
STACEY HOWARD
 AKA: _____
 Race: WHITE Sex: MALE
 DOB: 06/30/1974
 SSN: 247-48-6473
 SID#: 00840181

IN THE COURT OF GENERAL SESSIONS

INDICTMENT#:

41

04 -GS- 45 - 131
 C/W#: C-45-06-0002
 Name of Original Offense: ABHAY
 Conviction S.C. Code §: 17-23-30
 Conviction CDR Code #: 0 1 0 1 1 3
 Date of Original Offense: 03/09/03
 Original Sentence: 10 YRS SS TO 2 YRS AND 2 YRS PROB

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 12/06/04 in the Court of General Sessions of WILLIAMSBURG County as set forth in the attached warrant or citation dated 01/10/06. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special condition as provided in the affidavit) 10

Therefore, IT IS ORDERED that:

- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years, the remainder of the original sentence, and/or pay \$ _____.
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☒ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.

☒ Additional Conditions ordered by the Court:

EXTEND CASE 03-GS-22-246 TO EXPIRE ON SAME DATE WITH CASE 04-GS-45-131
(2/19/07). ACCOUNTS CURRENT WITHIN 30 DAYS. INTENSIVE REPORTING NTE 6 MONTHS.
 DO NOT PAY INTENSIVE FEE.

☒ The defendant is given credit for pre-arrest detention time on current probation violation to be calculated and applied by the SC Department of Corrections.

☐ The defendant has previously served _____ months/years on this sentence.
 (split sentence time and/or prior partial revocation time)

is 30 day of JANUARY, 2006.

KINGSTREE, SC.

Howard P. King
 Presiding Judge
 JUDICIAL CIRCUIT

I hereby advise that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems appropriate; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any portion of the original sentence imposed.

I am hereby certifying that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of the attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Defendant's Signature

Witnessed by

Adam Smith

Read this 30 day of JANUARY, 2006, at KINGSTREE, SC.
 Day Month Year City

352

734 4113

10:13:11 a.m. 03-09-2009

10/12

GEORGETOWN COUNTY

PAGE 01

03-GS-22-246
04-GS-15-131

46

PROBATION CITATION

No. C-22-07-18

SOUTH CAROLINA	COUNTY:	
	Georgetown	
V.	SCDC #	SID #
STACEY WAITAR HOWARD	191458	840181

TO: STACEY WAITAR HOWARD

YOU ARE HEREBY NOTIFIED to appear in the above named case at the time, date and place specified below.

Place	Room	PROBATION OFFICE
GEORGETOWN COUNTY COURTHOUSE	Date and Time	TBD

YOU ARE HEREBY NOTIFIED that you are charged with violating the conditions of your supervision as stated below.

Violations Charged
VIOLATION OF PROBATION PURSUANT TO SECTION 24-21-450

YOU ARE HEREBY NOTIFIED that you have the rights listed below.

List of Rights: You have the right at the hearing to question any person who appears as a witness against you and to have witnesses appear in your behalf. You may present evidence on your behalf. You may have an attorney represent you. If you cannot afford an attorney, an attorney will be appointed for you. You must advise the agent or the court in writing of your desire for an attorney. It is your responsibility to make arrangements for your witnesses and your attorney to appear at the hearing.

IF YOU FAIL TO APPEAR AT THE TIME, DATE AND PLACE SHOWN ABOVE, THE HEARING WILL BE HELD IN YOUR ABSENCE AND YOU MAY BE INCARCERATED.

Georgetown, South Carolina	Probation and Parole Agent
Date Feb 28, 2007	BOBBY JONES Agent # 815

A copy of the citation was served by the undersigned and given to the individual named herein at the time, date, and place indicated below.

Place	Date and Time
Georgetown County Probation Office	2/28/07 1430
	Serving Officer's Signature
	Matthew Scott

Sworn to and subscribed before me this 28th day of February, 2007

Richard D. Lohr
Signature of Notary Public

My Commission Expires May 1, 2009

4

47

STATE OF SOUTH CAROLINA

AFFIDAVIT

County of Georgetown

Personally appeared before me, BOBBY JONES, who first being duly sworn, deposes and says that STACEY WILLIAM HOWARD did within this County and State on the 28th day of FEBRUARY, 2007, violate certain conditions of release in the following particulars:

DESCRIPTION OF VIOLATION

PROBATION VIOLATION CONCURRENT TO SECTION 24-21-430 IN THAT THE DEFENDANT HAS VIOLATED THE CONDITIONS OF HIS/HER PROBATION SENTENCE IMPOSED BY JUDGE THOMAS AT THE APRIL 22, 2004, TERM OF GENERAL SESSIONS COURT, HELDEN IN GEORGETOWN COUNTY, GEORGETOWN, S.C. AND THE PROBATION SENTENCE IMPOSED BY JUDGE NEWMAN AT THE DEC 6, 2004 TERM OF GENERAL SESSIONS COURT HELDEN IN WILLIAMSBURG COUNTY, KINGSTREE, S.C.

The Affiant states that there is probable cause to believe the defendant named committed the violations set forth and that such probable cause is based on the following facts:

Defendant has failed to follow the advice and instructions of the supervising agent by being CONVICTED OF ROBBERY ON INDICTMENT 07-BS-22-0129 AND RECEIVING A SENTENCE OF EIGHT YEARS CONSECUTIVE TO A FULL REVOCATION OF HIS CURRENT CASES.

Sworn to and subscribed

before me this 28th day ofFebruary, 2007Richard J. Lohr

Signature of Notary Public

Bobby Jones

Affiant

My Commission Expires:

May 28, 2007

354

7344113

10:12:30 a.m. 03-09-2009

355
44

STATE OF SOUTH CAROLINA
 County of GEORGETOWN
 STATE VS.
STACEY WALTER HOWARD
 AKA: _____
 Race: W Sex: M
 DOB: _____
 SSN: _____
 SIO: _____

2007

912

IN THE COURT OF GENERAL SESSIONS
 INDICTMENT#

03-03-22-246
 CWR#: 6-22-07-18
 Name of Original Offense: ASSAULT OF A HIGH &
CONVICTION S.C. CODE §: 16-9-20
 Conviction CDR Code #: 0101019
 Date of Original Offense: SEPT 11, 2001
 Original Sentence: 5 YRS 55 5/8 MONTHS & 25
PRISON

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 04/22/04 in the Court of General Sessions of GEORGETOWN County as set forth in the attached warrant or citation dated 02/26/07. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special condition as provided in the affidavit) 6 & 10

Therefore, IT IS ORDERED that:

- ☒ the suspended sentence be revoked and the above named defendant be required to serve 5 months/years, the remainder of the original sentence, and/or pay \$ _____
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ Additional Conditions ordered by the Court:

TIME Served SATISFIES FINANCIAL OBLIGATIONS
ALL SENTENCES FROM 2/28/07 ARE CONSECUTIVE. THIS SENTENCE
CONSECUTIVE TO GS CONVICTION FOR ABAND TODAY. A TOTAL OF
20 1/2 YR.

- ☐ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.
- ☒ The defendant has previously served 5 1/2 months/years on this sentence.
 (split sentence time and/or prior partial revocation time)

This 26th day of FEBRUARY, 2007.
GEORGETOWN SC.

[Signature]
 Presiding Judge
FIDELITY Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature _____ Witnessed by _____

Signed this _____ day of _____, _____ at _____, SC

Created by the South Carolina Department of Probation, Parole and Pardon Services

STATE OF SOUTH CAROLINA

County of GEORGETOWN
STATE VS.

STALEY WALTER HOWARD

AKA: _____

Recd: W Sec: M

DOB: 06/30/74

SSN: _____

SID# _____

IN THE COURT OF GENERAL SESSIONS
INDICTMENT

04 - GS - 45 - 131

CWS# C-22-07-18

Name of Original Offense: ARSON

Conviction S.C. Code §: COMMON LAW

Conviction CDR Code #: 0101113

Date of Original Offense: MARCH 9, 2003

Original Sentence: 10 YRS SS 2 YRS 2 YRS
PRB

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 12/06/04 in Court of General Sessions of Williamstburg County as set forth in the attached warrant or citation of 02/28/07. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special condition as provided in the statute) 6 & 10

Therefore, IT IS ORDERED that:

- ☒ the suspended sentence be revoked and the above named defendant be required to serve 10 months/years, remainder of the original sentence, and/or pay \$ _____.
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the condition set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☒ Additional Conditions ordered by the Court:

CONSECUTIVE TO 03-65-22-240 & 07-65-22-0129
TIME SAVED SATISFIES FINANCIAL OBLIGATIONS

- ☐ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.
- ☒ The defendant has previously served 2 months/years on this sentence.
(split sentence time and/or prior partial revocation time)

This 26th day of FEBRUARY, 2007

GEORGETOWN, SC.

[Signature]
Presiding Judge
E. F. [Signature] Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it dees proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve a part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature _____ Witnessed by _____

Signed this _____ day of _____, at _____, SC.

35175

WITNESSES:

GEORGETOWN SHERIFFS DEPARTMENT

ARREST WARRANT/TICKET NUMBER:

H-827930

0013 C/L, 17-25-0030

SID: SC00840181

DOI: 12-10-06

D/L

ACTION OF GRAND JURY
TRUE BILL

Date

01/22/07
Randall D. Brown
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

DOCKET NO. 07-GS22-129

The State of South
Carolina,

County of Georgetown

21881 001 MJM
COURT OF GENERAL
SESSIONS

January TERM 2007

THE STATE

vs.

STACY WALTER HOWARD

Rt. 4 box 208 Parker Road

Andrews, SC 29510

DOB: 6-30-70

SS#: 248-47-6473

J. GREGORY HEMBREE,
SOLICITOR

INDICTMENT FOR

Assault and Battery of a High and
Aggravated Nature

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

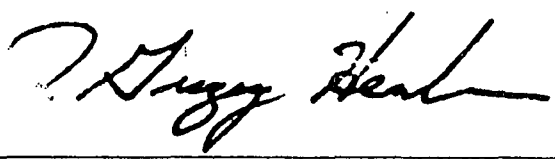
INDICTMENT FOR

Assault and Battery of a
High and Aggravated Nature

At a Court of General Sessions, convened on January 22, 2007 the Grand Jurors of Georgetown County present upon their oath:

That Stacy Walter Howard, did in Georgetown County on or about December 10, 2006, commit an assault upon the victim, Lisa Powell, accompanied by circumstances of aggravation, constituting an unlawful act of violent injury to the person of the said victim, accompanied with circumstances of aggravation, including but not limited to: slamming on brakes in the car causing the victim to hit the dash, also striking the victim in the face and the side of her head several times with a closed fist, in violation of the Common Law Crime of Assault and Battery of a High and Aggravated Nature.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Spartanburg
STATE VS.

INDICTMENT/CASE#:

AKA:

AW#:

Race:

Sex:

Age:

DOB:

SS#:

Date of Offense:

S.C. Code §:

CDR Code #:

Address:

City, State, Zip

DL#

SID#

☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Assault & Battery of a High & Aggravated Nature
in violation of § 16-23-20 of the S.C. Code of Laws, bearing CDR Code # 010111☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 15-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: Probation Revocation \$2500☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$25.00
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$2.75
TOTAL		\$129.75

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ 10.00 beginning 1/1/07

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Clerk of Court/Deputy Clerk

Court Reporter: