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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Fairfield County

J. Ernest Kinard, Jr., Circuit Court Judge

BILLY JAMES LUPO,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF FAIRFIELD
4 07-GS-20-289

5
6 STATE OF SOUTH CAROLINA
7 VS.
8 BILLY J. LUPO

9
10 WINNSBORO, SOUTH CAROLINA
11 APRIL 28-29, 2008
12 BEFORE THE HONORABLE BROOKS P. GOLDSMITH

13
14 APPEARANCES
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16 FOR THE DEFENDANT: PRO SE
17 REPORTED BY: MICHAEL C. WATKINS
18 OFFICIAL COURT REPORTER

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PRETRIAL MOTIONS

1 MR. MAXWELL: Your Honor, this is Billy Lupo, he's
2 charged with assault and battery of a high and aggravated
3 nature, it's indictment number 2008-GS-20-289, the State
4 is ready to call its case for trial. I believe the
5 defense has some pretrial motions.

6 THE COURT: Mr. Lee?

7 MR. LEE: Thank you, Your Honor. Your Honor,
8 Mr. Lupo would ask the Court to -- he would like to
9 represent himself in this matter and I guess relieve me as
10 his attorney on the matter. We would ask the Court to
11 inquire into this matter and make a determination whether
12 he can represent himself.

13 THE COURT: Mr. Lupo?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Tell me why you want to make such a
16 motion.

17 THE DEFENDANT: Well, sir, I just believe I could get
18 better results representing myself.

19 THE COURT: Well, let me ask you first of all if you
20 would remove whatever it is you have in your mouth.

21 THE DEFENDANT: I'm sorry, sir, I'm smoker and I
22 just --

23 THE COURT: And tell me why it is you think you could
24 obtain better results.

25 THE DEFENDANT: That's just the way I feel. I feel I

PRETRIAL MOTIONS

1 could represent myself better and get better results.

2 THE COURT: What are you charged with?

3 THE DEFENDANT: Assault and battery of a high and
4 aggravated nature.

5 THE COURT: Solicitor tells me the case is ready to
6 be called for trial, which I take means this afternoon,
7 the jury is coming in this afternoon.

8 THE DEFENDANT: That's correct.

9 THE COURT: In other words, you're prepared to go
10 forward this afternoon without an attorney?

11 THE DEFENDANT: Well sir, I had subpoenaed -- I gave
12 Mr. Lee the name of a certain officer, Quest Hallman, and
13 he told me that I needed to come up -- this was I think --
14 it was Tuesday and I was unable -- he said that I had to
15 be the one to subpoena him and I just got in contact with
16 him yesterday and he is like my main witness to this case
17 and he is not going to be able to make it today. So I
18 would ask if you could -- a motion for continuance maybe
19 two days because --

20 THE COURT: So you are not ready to go forward today?

21 THE DEFENDANT: Because he's like my main witness, he
22 is the -- as I feel the what's going on for the jury to
23 find me not guilty in this matter.

24 THE COURT: So in answer to my question you are not
25 ready to go forward today?

PRETRIAL MOTIONS

1 THE DEFENDANT: No, sir, but it wouldn't take but a
2 few days. But I mean, if all -- if you can't grant me
3 that then I guess I will have to do with what I have got
4 but it certainly would help me out and I certainly would
5 appreciate it if you grant me that, sir.

6 MR. MAXWELL: Your Honor, if I may? May I speak?

7 THE COURT: Yes, sir.

8 MR. MAXWELL: We did call this case for trial last
9 term of court in front of Judge Cooper, the defendant
10 moved for a continuance at that time and was ordered --
11 this was a date certain for trial basically today by Judge
12 Cooper. The issue of him representing himself was brought
13 up at that time and he was given the option to get a new
14 attorney during that time frame. And I think Judge
15 Cooper's -- I think he did say on the record that this
16 case will not be continued anymore, he probably meant more
17 towards a different term. But the defendant was given
18 ample notice that trial was going forward today over a
19 month ago.

20 THE DEFENDANT: May I say something, Your Honor?

21 THE COURT: Yes, sir. But one thing you have to
22 remember if you're going to represent yourself is you
23 can't interrupt the other party when they're speaking, you
24 have to wait until they've completed speaking.

25 THE DEFENDANT: Yes, sir.

7 7
PRETRIAL MOTIONS

1 THE COURT: Now go ahead.

2 THE DEFENDANT: The reason that it was Attorney Lee
3 filed the motion for a continuance was because he was --
4 he didn't -- we had only spoken for like maybe ten minutes
5 about my case and prior to the hearing and that was the
6 reason for the motion for continuance. And yeah, he did
7 grant me the motion for a continuance, however like I said
8 Tuesday I brought him the name of the officer of the
9 people I wanted to subpoena and I talked to the officer
10 yesterday and he said that he hadn't received any
11 subpoena, and he said he would be more than happy to -- if
12 he would -- just if he had the subpoena. And Attorney Lee
13 just drew up a subpoena for me and he said that it was --
14 from his understanding he was supposed to receive a
15 subpoena from Attorney Lee.

16 THE COURT: Mr. Lee, do you want to comment on that
17 at all?

18 MR. LEE: Your Honor, all I would say is that on
19 Tuesday he gave me the name of this individual, I said, "I
20 need more than just a name, I need to have some type of
21 address," and he was going to provide that on Friday. On
22 Friday he didn't give me the name or any address and sort
23 of indicated that he could get the officer here. He tells
24 me that the officer said he just wanted something in hand
25 which I can understand, he just wants something to say

PRETRIAL MOTIONS

1 that he could do it, that evidently told Mr. Lupo if we
2 faxed him something he could come. But that's where the
3 case -- where the --

4 THE COURT: Can you fax him something?

5 MR. LEE: I have it right here and he says he has the
6 fax number, I could fax it to him and we can get him up
7 here.

8 THE COURT: So the officer says he will come if he
9 gets a fax?

10 THE DEFENDANT: Yes, sir. I give him the name and
11 the number where he can be reached at. I myself didn't
12 know his address. Like I said I just received a phone
13 call from him yesterday and he said he would be more than
14 willing to come to this case.

15 THE COURT: In other words officer -- if we fax it
16 you think the officer will be here.

17 THE DEFENDANT: If not today maybe later on this week
18 sometime, he said that he should have received a subpoena
19 before then. Like I said, Tuesday I give him the name of
20 the officer and also the number where he worked at and I
21 was wasn't able to come up with the address. The order
22 pertains to --

23 THE COURT: Is there any reason that the subpoena
24 shouldn't be sent to the fax number you have?

25 MR. LEE: I did not get a fax number Friday, he says

PRETRIAL MOTIONS

1 he has a fax number.

2 THE DEFENDANT: I just obtained the fax number
3 yesterday, yes, sir. But as far as the address Mr. Lee
4 was talking about, I didn't have the address myself, I
5 just give him the name of the officer and the telephone
6 number is his work number.

7 THE COURT: Let me ask you this, Mr. Lupo: Up until
8 today you were fine with Mr. Lee representing you up until
9 Friday or up until when? When did you decide that you
10 were going to take on this obligation to represent
11 yourself?

12 THE DEFENDANT: Well, I just look at it from all
13 different angles and I just come to the point to where I
14 just figured I could do better results representing
15 myself, sir.

16 THE COURT: When did you decide that is my question?

17 THE DEFENDANT: It has kind of been bearing in the
18 back of my mind for awhile, but yesterday after I talked
19 with Mr. Hallman and he said that he hadn't received a
20 subpoena. I mean, it's just like --

21 THE COURT: Well, let me ask you a couple of
22 questions, Mr. Lupo, we don't know each other so I don't
23 know anything about you. How old are you?

24 THE DEFENDANT: I'm 36 years old.

25 THE COURT: How far did you go in school?

PRETRIAL MOTIONS

1 THE DEFENDANT: 10th grade.

2 THE COURT: What kind of work do you do?

3 THE DEFENDANT: I was a painting contractor before I
4 became disabled, I messed up my hands.

5 THE COURT: You're on disability?

6 THE DEFENDANT: No, sir. But I have represented
7 myself in magistrates court and I know this is a totally
8 different court than others, I have been pretty successful
9 in my 14 other cases and I have actually won.

10 THE COURT: You have been in jury trials in 14 cases
11 in magistrates court?

12 THE DEFENDANT: Magistrates court, yes, sir.

13 THE COURT: And you won all 14 of them?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Let me ask you this: Have you ever been
16 to law school?

17 THE DEFENDANT: No, sir.

18 THE COURT: Have you ever been to college?

19 THE DEFENDANT: No, sir, but I have studied law. Two
20 good things I think to know in this life is your rights
21 and the good book. I have read the Bible from Genesis to
22 Revelations. The law I know a lot about a little and a
23 little about a lot, I get by.

24 THE COURT: What books have you studied?

25 THE DEFENDANT: In the Bible or in the law?

PRETRIAL MOTIONS

1 THE COURT: Law.

2 THE DEFENDANT: Just pretty much hand laws is what
3 they call, just summary laws and just enough to get you
4 by.

5 THE COURT: If you were to go to trial if you were to
6 get convicted, how much time are you facing?

7 THE DEFENDANT: Ten years.

8 THE COURT: Do you know what the elements of assault
9 and battery of a high and aggravated nature are?

10 THE DEFENDANT: Basically whenever -- well sir, my
11 understanding in the past I thought that a weapon had to
12 be involved in the incident but if it's a significant
13 amount of damage done with hands or with a weapon, I mean
14 that's from my understanding. Really I'm not an attorney,
15 I don't plan to be one.

16 THE COURT: I know.

17 THE DEFENDANT: I just think I could get better
18 results, I trust myself.

19 THE COURT: You trust yourself but --

20 THE DEFENDANT: And the Good Lord, and the Good Lord
21 him first.

22 THE COURT: Well, you know, if the Court permits you
23 to do that -- and I'm not saying the Court is going to do
24 that --

25 THE DEFENDANT: Yes, sir.

PRETRIAL MOTIONS

1 THE COURT: -- I can't help you in trying your case.
2 I can't suggest to you that you should do something
3 differently, tell you not to do something or I can't -- I
4 have to treat you just like I would a lawyer, you aren't
5 entitled to any special consideration.

6 THE DEFENDANT: Yes, sir, I understand.

7 THE COURT: There are certain legal objections to the
8 evidence presented that people trained in the law
9 presumably --

10 THE DEFENDANT: It's pretty much like David and
11 Goliath, I understand.

12 THE COURT: Say that again.

13 THE DEFENDANT: I said it's pretty much like David
14 and Goliath, I understand.

15 THE COURT: No, sir. There are certain rules on how
16 trials are presented and how evidence is presented, but if
17 the State, for instance, attempted to introduce certain
18 evidence against you that would be objectionable but no
19 objection were made I can't object for you.

20 THE DEFENDANT: Right.

21 THE COURT: I can't say, "You need to object, the
22 State shouldn't be allowed to do this."

23 THE DEFENDANT: Well, I know enough to know when to
24 object.

25 THE COURT: No, sir. I doubt seriously if you are

PRETRIAL MOTIONS

1 even close to the amount of knowledge knowing when to
2 object to every piece of evidence that might be offered
3 against you. There are very many lawyers that have
4 trained years in the law that don't know all of the rules
5 to objections.

6 THE DEFENDANT: No, I don't know all of them.

7 THE COURT: Let me ask you this: You want to
8 represent yourself, you may --

9 THE DEFENDANT: I just want to tell the truth, I just
10 want to tell -- I just want to tell the story.

11 THE COURT: Do you think your lawyer won't let you
12 tell the story?

13 THE DEFENDANT: I think I could convince a jury, me
14 speaking myself and them looking in my eyes and me looking
15 them in their eyes and I think I can get better results,
16 sir. I don't have to throw a curve ball, the only way I
17 know is straight down the middle and that's pretty much
18 what I plan on doing today.

19 THE COURT: Have you ever been convicted of any
20 crime?

21 THE DEFENDANT: Yes, sir I have.

22 THE COURT: Let me ask you this question: Do you
23 know what crimes can be introduced against you and which
24 crimes cannot be introduced against you?

25 THE DEFENDANT: Well sir --

PRETRIAL MOTIONS

1 THE COURT: In other words, do you know which crimes
2 the jury can learn of and which crimes the jury cannot be
3 made aware of?

4 THE DEFENDANT: I was kind of hoping that Mr. Lee
5 would sit in my corner and kind of help me through it a
6 little bit.

7 THE COURT: Well, let me tell you the way it works.
8 If he were to be appointed stand-by counsel he can't
9 voluntarily give you any information. The only
10 information he can give you is information you ask for.
11 In other words, he can't on his own decide, "If I hit you
12 on the left arm that means you need to stand up and object
13 and lean over to me, I'll tell you what to say," he can't
14 do that.

15 THE DEFENDANT: But I can ask him.

16 THE COURT: If you know what to ask. Half the trick
17 is knowing when to ask a question.

18 THE DEFENDANT: Yes, sir. But like I said, my
19 witness --

20 THE COURT: Are you familiar with the terms
21 aggravating circumstances or circumstances of aggravation?

22 THE DEFENDANT: No, sir, I can't say I do.

23 THE COURT: Do you know what circumstances of
24 aggravation that the State must prove against you to be
25 able to convict you of the charge?

PRETRIAL MOTIONS

1 THE DEFENDANT: I guess it's just self explanatory,
2 just aggravated.

3 THE COURT: No, sir, that's not right. There are any
4 number of aggravating circumstances -- I don't know
5 anything about your case -- without one of those
6 aggravating circumstances though the State can't prove the
7 charge against you. But you need to know what they are.

8 THE DEFENDANT: I could ask Mr. Lee by him being
9 stand-by counsel, couldn't I?

10 THE COURT: If you knew when to ask him the right
11 questions.

12 THE DEFENDANT: Yes, sir. Like I say, I am just
13 going to pitch it straight down the middle to them and I'm
14 hoping that they will present their evidence and I'm going
15 to present mine and --

16 THE COURT: What if they present evidence that
17 normally would not be admissible in a court of law?

18 THE DEFENDANT: Well, I would object.

19 THE COURT: How do you know when to?

20 THE DEFENDANT: Well, if it doesn't obtain to this
21 case then I would object.

22 THE COURT: On what grounds would you object? You
23 have to state the ground when you object, you have to say
24 why.

25 THE DEFENDANT: It's inadmissible.

PRETRIAL MOTIONS

1 THE COURT: You would have to say why it's
2 inadmissible.

3 THE DEFENDANT: Because it doesn't pertain to this
4 case.

5 THE COURT: That's only ground you know of to object
6 to evidence?

7 THE DEFENDANT: Like I said, I don't know a whole lot
8 about the law, I know a lot about a little and a little
9 about a lot. And I know that magistrates court is a lot
10 different from general sessions court, it's like T-ball
11 compared to major league, but --

12 THE COURT: But you think you could play major league
13 ball even though you have never played?

14 THE DEFENDANT: Well, I'm going to try. But I really
15 would -- I have some valid questions and I do have a plan
16 and I definitely need this witness. He's a police officer
17 of Lexington County and he is like my -- what is that
18 phrase y'all use, smoking barrel or however y'all say it.
19 He's -- I just want the jury to hear my side of the story
20 and what exactly happened.

21 THE COURT: Wait a minute, you want the jury to know
22 your side of the story?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You think your lawyer wouldn't permit you
25 to tell your side of the story?

PRETRIAL MOTIONS

1 THE DEFENDANT: Yeah, but he would be telling it and
2 not me.

3 THE COURT: You have the right to take the witness
4 stand to testify if you want to, that's another story.

5 THE DEFENDANT: I'm aware of those witness stands
6 also, they'll tie you up up there.

7 THE COURT: But you can't tell your story -- well, I
8 don't want to tell you how to try your case -- but you
9 won't necessarily just get up and tell the story and say,
10 "I'm not going to take the witness stand but here is what
11 happened." You can't do it.

12 THE DEFENDANT: Yes, sir, I understand.

13 THE COURT: Do you know what you're limited in doing
14 when you make an opening statement?

15 THE DEFENDANT: Normally I just get up there and say
16 they're going to tell their side of the story, I'm going
17 to tell mine and look at the evidence and hope that y'all
18 come back with a not guilty verdict.

19 THE COURT: What's the difference between an opening
20 statement and closing statement?

21 THE DEFENDANT: Well, closing statement is pretty
22 much when you summarize up everything that's been said
23 during the course of the trial.

24 THE COURT: Let me ask you this: Do you know how to
25 select a jury?

PRETRIAL MOTIONS

1 THE DEFENDANT: Yes, sir, I do.

2 THE COURT: Tell me.

3 THE DEFENDANT: I get -- there's 12 jurors, I get
4 five strikes and they get five. If there's any conflict
5 of interest or whatever they're not allowed in.

6 THE COURT: Mr. Lupo, I don't want you to do this. I
7 think it would be a very, very bad mistake for you to
8 attempt to represent yourself on a charge for which you
9 could receive ten years in jail, a very bad mistake.

10 THE DEFENDANT: Yes, sir. He's all for it.

11 MR. MAXWELL: I have no position in terms of who is
12 representing him.

13 THE DEFENDANT: He's all for it.

14 THE COURT: You mean the solicitor is in favor of you
15 representing yourself?

16 THE DEFENDANT: Oh yeah, most definitely.

17 THE COURT: I don't know that.

18 THE DEFENDANT: I have got a pretty good judge of
19 character. I'm willing to go through with it if you will
20 and we will let the jury decide.

21 THE COURT: Well, the jury doesn't decide whether you
22 represent yourself, I decide whether you get to represent
23 yourself.

24 THE DEFENDANT: Yes, sir. I'm talking about as far
25 as the verdict.

PRETRIAL MOTIONS

1 THE COURT: Well, the jury is going to decide the
2 verdict regardless of the whether you represent yourself
3 or whether you have a lawyer represent you.

4 THE DEFENDANT: Yes, sir, I understand.

5 THE COURT: Now, tell me again why it is you want at
6 the last minute here to represent yourself and not have
7 your lawyer representing you?

8 THE DEFENDANT: I just feel like I could get through
9 to them better. I'm not knocking Mr. Lee, he has been
10 practicing law for 30 years, he's good at what he does,
11 but he's an appointed lawyer and plus he has his own
12 private practice. Me, I'm just a nobody who just wants to
13 represent himself, who just wants to get the truth out
14 there and maybe the jury will hear my side of the story
15 and maybe they'll find favor in me instead of my opponent.

16 THE COURT: All right. Anything else on that issue,
17 Mr. Lupo?

18 THE DEFENDANT: But I would appreciate it if I could
19 have my witness. Like I said, Tuesday I went to his
20 office and told him, I give him the name and the number of
21 where he could be reached at and --

22 THE COURT: Mr. Maxwell, just for the record, when
23 was the last term of court? You're saying this case was
24 noticed for today the last term of court?

25 MR. MAXWELL: Yes, sir.

PRETRIAL MOTIONS

1 THE COURT: How long ago was that?

2 THE DEFENDANT: Monday March 31st I believe we argued
3 the continuance motion on Wednesday, April 2nd.

4 THE COURT: Anything else on the request for a
5 continuance from either Mr. Lee or Mr. Lupo? As I
6 understand it Mr. Lupo wants a continuance for one or two
7 days or something like that.

8 THE DEFENDANT: Just two days, just long enough to
9 get my -- and also to have another subpoena that I wish
10 not to --

11 THE COURT: If I grant your motion then you've got to
12 handle all of these things yourself.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: But go ahead, you said what -- any other
15 matters you want to take up about the continuance?

16 THE DEFENDANT: Yes, sir. I just need to get these
17 subpoenas out.

18 THE COURT: Anything else, Mr. Lee?

19 MR. LEE: Your Honor, I think that's all. I don't
20 think -- if the Court decides to let him represent himself
21 I don't think I would be overstepping at least giving him
22 the subpoenas and showing him what he needed to do with
23 them and helping him along those lines. I wouldn't be
24 involving myself into the case but I would have no problem
25 doing that.

PRETRIAL MOTIONS

1 THE COURT: Mr. Lupo, I am going to grant your
2 motion, Mr. Lee will be stand-by counsel. If you have any
3 questions ask him a question, otherwise you're in charge.
4 Now, you are in charge but you are subject to the same
5 rules that govern the solicitor as far as the law is
6 concerned. In other words, you're going to have to know
7 yourself when it's time to object and when it's not time
8 to object, what you can say, what you can't say.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: How to pick a jury and how not to pick a
11 jury.

12 THE DEFENDANT: Yes, sir. I guess I have got a lot
13 of reading to do between now and Wednesday if you grant me
14 a motion for a continuance.

15 THE COURT: Well, the jury is coming in in an hour.

16 THE DEFENDANT: Yeah.

17 THE COURT: And I'm denying your motion for a
18 continuance. Court will be in recess until 2:00.

19 (A lunch break was taken.)

20 (A bench conference was held.)

21 THE COURT: Mr. Lee tells me that you now wish for
22 him to represent you; is that true?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: In other words you want me to change my
25 prior ruling which I am inclined to do if that's what you

PRETRIAL MOTIONS

1 want to do, certainly if that's what you want. There's no
2 question I want you to do that.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Are you sure that's what you want to do?

5 THE DEFENDANT: Will I be able to do the closing
6 argument?

7 THE COURT: No.

8 THE DEFENDANT: I can't do closing argument?

9 THE COURT: It can't be split. You can testify on
10 the witness stand but you can't get up and talk to the
11 jury, I told you that before. That's allowed in capital
12 cases but that's the only exception.

13 THE DEFENDANT: Why can't I do the closing argument,
14 why can't I?

15 THE COURT: That's the rules. The only way you can
16 do it is for you to represent yourself.

17 THE DEFENDANT: I'll represent myself.

18 THE COURT: You want to do that. He wishes to
19 represent himself.

20 (End of bench conference.)

21 THE COURT: Solicitor, are you ready in this case?

22 MR. MAXWELL: We are ready to proceed, Your Honor.

23 THE COURT: And Mr. Lupo, are you ready to proceed in
24 this case?

25 THE DEFENDANT: Yes, sir, I am.

VOIR DIRE

1 THE COURT: Ladies and gentlemen, we are about to
2 begin the trial in the case of the State of South Carolina
3 vs. Billy Lupo, L-u-p-o. In just a moment I am going to
4 ask the attorneys for the State and then ask the defendant
5 and the attorney for the defendant to stand and identify
6 themselves, then I'm going to ask you some questions about
7 your relationship, if any, with any of these individuals.
8 But first I also need to tell you about the indictments in
9 this case. The defendant, Billy Lupo, is charged in two
10 indictments. One of the indictments alleges that Billy
11 Lupo did in Fairfield --

12 MR. MAXWELL: Your Honor, the trial is just one
13 indictment.

14 THE COURT: I'm sorry, somebody gave me two
15 indictments.

16 MR. MAXWELL: 07-289.

17 THE COURT: Ladies and gentlemen, I was incorrect.
18 The defendant is charged in a single indictment that
19 alleges that Billy Lupo did in Fairfield County on or
20 about April 6th of 2007 commit an assault and battery upon
21 the victim, Shannon Trusedale, constituting an unlawful
22 act of violent injury to that person accompanied by
23 circumstances of aggravation, and therefore the indictment
24 charges Billy Lupo with the crime of assault and battery
25 of a high and aggravated nature. Now, I'm going to ask

VOIR DIRE

1 the attorneys for the State and the solicitor's office to
2 please stand and identify themselves as well as any
3 witnesses they believe may be called to testify in this
4 case, after which I will ask Mr. Lupo and Mr. Lee to stand
5 and do the same thing. Solicitor?

6 MR. MAXWELL: I'm Riley Maxwell, I'm the assistant
7 solicitor for the 6th circuit.

8 MR. BARFIELD: Doug Barfield, solicitor for the 6th
9 circuit.

10 THE COURT: And witnesses?

11 THE DEFENDANT: This is Captain Red Watkins from the
12 Winnsboro Public Safety, Major Kenny Talbert from the
13 Winnsboro Public Safety, Major Bill Simpson from the
14 Winnsboro Public Safety, and the victim of the crime
15 Shannon Trusedale.

16 THE COURT: Thank you. Now, ladies and gentlemen,
17 one thing I have failed to mention to you and that's this:
18 The defendant, Mr. Lupo, is exercising his constitutional
19 right to represent himself, he is not being actively
20 represented by an attorney. The Court has appointed an
21 attorney to sit with him who is referred to as a stand-by
22 attorney, that attorney is there for the purpose of
23 answering any legal questions that Mr. Lupo may have. And
24 now, if Mr. Lupo would stand and identify himself and any
25 witnesses that he knows that may be called in the case.

VOIR DIRE

1 Mr. Lupo?

2 THE DEFENDANT: My name is Billy, Lupo, I had a
3 witness, Quest Hallman, a police officer after the
4 incident --

5 THE COURT: Any witnesses going to be called in the
6 case? I couldn't hear you, Mr. Lupo.

7 THE DEFENDANT: But he wouldn't grant me this
8 witness --

9 MR. MAXWELL: I'm going to object, Your Honor.

10 THE COURT: Mr. Lupo, I asked you to name any
11 witnesses that you were aware of that might be called in
12 the case.

13 THE DEFENDANT: Quest Hallman but y'all wouldn't
14 grant me --

15 THE COURT: Mr. Lupo. Now, ladies and gentlemen, let
16 me ask you this: Is any member of the jury panel related
17 by blood or related by marriage to any of the attorneys,
18 to any of the witnesses or to the defendant himself? If
19 so, please stand. Does any member of the jury panel have
20 a close social or personal relationship with any of the
21 attorneys, with any of witnesses or with the defendant?
22 If so, please stand. Any member of the jury panel ever
23 been represented by any of the attorneys involved in this
24 case? If so, please stand. Has any member of the jury
25 panel expressed or formed an opinion about any issue in

VOIR DIRE

1 this case or any matter in this case? If so, please
2 stand. Is any member of the jury panel aware of any bias
3 or any prejudice they may have towards either the State or
4 towards this defendant? If so, please stand. Is there
5 any member of the jury panel that was a member of the
6 grand jury that issued the indictment in this case? If
7 so, please stand. Is any member of the jury panel aware
8 of any reason whatsoever why he or she should not serve as
9 a juror in this case with particular emphasis being placed
10 on your ability to be fair and impartial to both the State
11 and to the defense? If so, please stand. Any additional
12 questions from the State?

13 MR. MAXWELL: No, Your Honor.

14 THE COURT: From the defendant?

15 THE DEFENDANT: No, sir.

16 THE COURT: Madam Clerk, I believe we're ready to
17 select a jury, one alternate juror, five strikes for each.

18 THE CLERK: Number 126, John Taylor. What says the
19 State?

20 MR. MAXWELL: Please present the juror.

21 THE COURT: What says the defense?

22 THE DEFENDANT: Present.

23 THE COURT: Number 19, Lashana Neil. What says the
24 State?

25 MR. MAXWELL: Please present the juror.

VOIR DIRE

1 THE COURT: What says the defense?

2 THE DEFENDANT: Excuse.

3 THE COURT: Number 114, Steven Samuel. What says the

4 State?

5 MR. MAXWELL: Please present the juror.

6 THE COURT: What says the defense?

7 THE DEFENDANT: Swear the juror.

8 THE CLERK: Number 54, Marion Harkins. What says the

9 State?

10 MR. MAXWELL: Please present the juror.

11 THE CLERK: What says the defense?

12 THE DEFENDANT: Excuse.

13 THE COURT: 108, Bradley Robinson. What says the

14 State?

15 MR. MAXWELL: Please strike the juror.

16 THE CLERK: Number 64, Eddie Hopkins. What says the

17 State?

18 MR. MAXWELL: Please present the juror.

19 THE COURT: What says the defense?

20 THE DEFENDANT: Present.

21 THE CLERK: 127, Marsha Tien. What says the State?

22 MR. MAXWELL: Please present the juror.

23 THE CLERK: What says defense?

24 THE DEFENDANT: Excuse.

25 THE CLERK: Number 33, Frederick Davis. What says

VOIR DIRE

1 the State?

2 MR. MAXWELL: Please excuse the juror.

3 THE CLERK: Number six, Barry Belton. What says the
4 State?

5 MR. MAXWELL: Please excuse the juror.

6 THE CLERK: Number 112, Jeff Russell, Jr. What says
7 the State?

8 MR. MAXWELL: Please excuse the juror.

9 THE CLERK: Number 109, Carlton Rogers. What says
10 the State?

11 MR. MAXWELL: Please present the juror.

12 THE CLERK: What says the defense?

13 THE DEFENDANT: Okay.

14 THE CLERK: Fifteen, Paul Bridgeman, Jr. What says
15 the State?

16 MR. MAXWELL: Please present the juror.

17 THE CLERK: What says defense?

18 THE DEFENDANT: Swear him.

19 THE CLERK: 138, Martha Wicks. What says the State?

20 MR. MAXWELL: Please present the juror.

21 THE CLERK: What says defense?

22 THE DEFENDANT: Excuse.

23 THE CLERK: 103, Linda Qualls. What says the State?

24 MR. MAXWELL: Please present the juror.

25 THE CLERK: What says defense?

VOIR DIRE

1 THE DEFENDANT: Excuse.

2 THE CLERK: Number 70, Grover Johnson, Jr. What says
3 the State?

4 MR. MAXWELL: Please excuse the juror.

5 THE CLERK: Ninety-five, Jackie Moore. What says the
6 State? Any challenge by the State?

7 MR. MAXWELL: No, ma'am.

8 THE CLERK: Any challenge by defense?

9 THE DEFENDANT: No.

10 THE CLERK: Twenty-three, Douglas Cobb. What says
11 the State? Any challenge by the State?

12 MR. MAXWELL: No, Madam Clerk.

13 THE COURT: Any challenge by defense?

14 THE DEFENDANT: No.

15 THE CLERK: 106, June Rexrow. Any challenge by the
16 State?

17 MR. MAXWELL: No, Madam Clerk.

18 THE CLERK: Any challenge by defense.

19 THE DEFENDANT: (Inaudible.)

20 THE CLERK: Forty-six, William Goode. Any challenge
21 by the State?

22 MR. MAXWELL: No, no, ma'am.

23 THE CLERK: Any challenge by defense?

24 THE DEFENDANT: It's conflict of interest.

25 THE CLERK: Do you have a challenge is the question.

VOIR DIRE

1 THE COURT: Do you have a challenge?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: What is the challenge?

4 THE DEFENDANT: It's a conflict of interest, sir.

5 THE COURT: You have to explain it.

6 THE DEFENDANT: His dad runs -- he cutoff my water
7 and tapped into his water. I was on well water and he
8 tapped into it and it was kind of like it was -- not
9 verbally -- verbal altercation.

10 THE COURT: Solicitor?

11 MR. MAXWELL: We want him on the jury. We want him
12 on the jury, Your Honor.

13 THE COURT: Do you want to respond in any way at all
14 to the statements?

15 MR. MAXWELL: I don't have a response. I have no
16 knowledge of that.

17 THE COURT: I will grant the motion.

18 THE CLERK: 111, Patricia Roseboro. Any challenge by
19 the State?

20 MR. MAXWELL: No, ma'am.

21 THE CLERK: Any challenge by defense?

22 THE DEFENDANT: No, ma'am.

23 THE CLERK: Fifty-seven, Elizabeth Hartman. Any
24 challenge by the State?

25 MR. MAXWELL: No, ma'am.

VOIR DIRE

1 THE CLERK: Any challenge by defense?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: Thirty-eight, Jewel Ladove. Any
4 challenge by the State?

5 MR. MAXWELL: No, ma'am.

6 THE CLERK: Any challenge by defense?

7 THE DEFENDANT: No, ma'am.

8 THE CLERK: Forty-eight, James Graham. Any challenge
9 by the State?

10 MR. MAXWELL: No, ma'am.

11 THE CLERK: Any challenge by defense?

12 THE DEFENDANT: No, ma'am.

13 THE CLERK: This will be for the alternate. Number
14 18, Mavis Butler. What says the State?

15 MR. MAXWELL: Please present the juror.

16 THE CLERK: What says defense?

17 THE DEFENDANT: Strike.

18 THE CLERK: Ninety-eight, Cora Mullinax. What says
19 the State?

20 MR. MAXWELL: Please present the juror.

21 THE DEFENDANT: Strike.

22 THE CLERK: That's two for you, Mr. Lupo. Number
23 110, Sheila Roof. What says the State?

24 MR. MAXWELL: Please present the juror.

25 THE CLERK: Any challenge by the defense?

VOIR DIRE

1 THE DEFENDANT: No, ma'am.

2 THE COURT: At this time are there any matters of law
3 that needs to be considered by the Court concerning the
4 selection or composition of the jury from the State?

5 MR. MAXWELL: None, Your Honor.

6 THE COURT: From the defense?

7 THE DEFENDANT: No, sir.

8 (The remaining panel was excused.)

9 THE COURT: Madam Clerk, swear the jury.

10 (At this time the jury was sworn.)

11 THE COURT: Ladies and gentlemen, a few things before
12 we begin the trial of the case. As I indicated to you
13 earlier the defendant is charged by way of an indictment
14 that's been filed with this Court, he has been charged
15 with the crime of assault and battery of a high and
16 aggravated nature, the elements of this crime will be
17 explained to you at a later time. I do want to tell you
18 now, though, that the defendant has pled not guilty to
19 this charge. The burden therefore is upon the State to
20 prove to you the defendant's guilt beyond a reasonable
21 doubt. The indictment -- the fact that an indictment has
22 been issued in this case I tell you is not any evidence to
23 be considered by you. You will hear evidence in this case
24 from witnesses who take the witness stand and any other
25 evidence that might be allowed into the case. That's the

OPENING STATEMENTS

1 only evidence you are to consider. You will listen to the
2 evidence, consider the evidence and determine what
3 evidence is true. I ask you to be particularly attentive,
4 try not to let your mind wander because at the end of this
5 trial all of you will be sent to the jury room and will
6 most likely want to discuss the case and if you haven't
7 paid attention to everything that was said or everything
8 that was presented then when one of your fellow jurors
9 said, "Well, wait a minute, I remember this, don't y'all
10 remember this?" You are going to be at a loss if you
11 haven't paid attention. Your duty, ladies and gentlemen,
12 is to determine the facts of the case. You are the sole
13 judges of what the facts are in this case. What I think
14 about this case has no bearing whatsoever on your duties
15 and obligation. You determine what the facts are. My
16 obligation is to rule on the admissibility of evidence, to
17 preside over the trial and to finally at the end of all of
18 this tell you about the law that applies to the case. You
19 take the law as I will give it to you and tell you about
20 it, apply it to the facts as you find them to be,
21 deliberate and reach a just and fair verdict in this case.
22 Until it is time for you to begin deliberating, though, I
23 must tell you this: You are not to discuss the case even
24 among your fellow jurors even in the jury room. You're
25 also not to let anybody else discuss the case in your

OPENING STATEMENTS

1 presence outside of this courtroom, outside of the witness
2 testifying. You're not to talk about the case until it's
3 all over with anyone else particularly with your fellow
4 jurors and you can't let anybody else talk about the case
5 in your presence. You have been selected by both sides as
6 being fair and impartial jurors. It would not be fair to
7 either side if they were to later learn that they heard
8 you or heard that you were talking to or were listening to
9 somebody talk about this case or that you yourselves were
10 talking about this case. In just a few minutes you will
11 have opening statements given to you. First the State
12 will proceed, the defendant may or may not, he's not
13 required to do this, but the opening statements is when
14 they will tell you what they believe the testimony and
15 evidence will show. After that we will actually begin to
16 receive testimony and evidence in the case. At the end of
17 it, after all of that is done then you will hear closing
18 arguments from both sides where both sides will try to
19 convince you that their view of the facts are as they see
20 them. Then I will give you the law that applies to the
21 case and you will then begin your deliberations. A couple
22 of things, from time to time as you may have already
23 observed it may be necessary for me to call the parties to
24 a side bar, to the bench or there may be an objection and
25 somebody may say, "Can we approach?" And what you will

OPENING STATEMENTS

1 see happen then is a conversation outside of your
2 presence, it may be in front of you but it's designed not
3 for you to hear what's going on. And the reason for this
4 is not for us to try and keep secrets from you, the reason
5 is most likely that we're discussing a matter, a matter of
6 law that may require me to discuss the facts of the case.
7 As I've already told you, I'm prohibited from discussing
8 the facts of the case in your presence because you
9 determine what the facts are in this case, not me. Now,
10 we are now ready to have opening comments, opening
11 statements beginning with the State. Solicitor?

12 MR. MAXWELL: May it please the Court, Your Honor?
13 Ladies and gentlemen I'm Riley Maxwell, I'm and assistant
14 solicitor for the 6th circuit, which includes Lancaster,
15 Chester and Fairfield counties and I represent the
16 interest of the State of South Carolina in this matter.
17 Mr. Lupo is charged with assault and battery of a high and
18 aggravated nature. The victim of that crime is
19 Ms. Shannon Trusdale who you will hear from in just a few
20 moments. Ms. Trusdale will testify of what happened on
21 the night in early April of 2007 that Mr. Lupo attacked
22 her for little or no reason with little or no provocation
23 and she'll testify as to the injuries she suffered, the
24 problems it has caused her. She will testify it caused
25 her to miss her son's birthday party, which was -- she was

OPENING STATEMENTS

1 geared up, ready to go for, ready to go to the next day,
2 you will hear that testimony. You'll hear the testimony
3 from the officers from Winnsboro Public Safety that will
4 support that, her testimony. And I think once you hear
5 that evidence you'll come back with a verdict for the
6 State, a guilty verdict that will deliver justice to Ms.
7 Trusedale and the citizens of the State of South Carolina.
8 Again, I want to thank you for being here, I know it's as
9 the Judge said an inconvenience, but you are serving your
10 community and you're doing something that is worth while
11 in your community and serving your state well and I
12 appreciate that. Thank you.

13 THE COURT: Thank you, Mr. Maxwell. Mr. Lupo.

14 THE DEFENDANT: Hi. My name is Billy Lupo, I'm on
15 the level. The evidence that -- I hope you look at both
16 sides of the evidence and you come back with a not guilty
17 verdict. They will paint a picture of me being a monster
18 but I just want you all to look at the evidence and just
19 decide for yourselves, that's all I'm asking and you will
20 see the truth of it all. They can paint a picture to look
21 like whatever but the truth is the truth. Thank you.

22 THE COURT: Thank you, Mr. Lupo. Solicitor, you may
23 call your first witness.

24 MR. MAXWELL: The State calls Shannon Trusedale.

25 The witness, SHANNON TRUSEDAL, was first duly sworn

TESTIMONY OF SHANNON TRUSEDAL

1 and testified as follows, on:

2 DIRECT EXAMINATION

3 BY MR. MAXWELL:

4 THE CLERK: State your name, please.

5 THE WITNESS: My name is Shannon Trusdale.

6 Q. Ms. Trusdale, I know you're nervous.

7 A. Yes, sir.

8 Q. Try to remain calm. I'm going to ask you a few
9 personal questions to begin with. How old are you?

10 A. I will be 31.

11 Q. Where did you grow up?

12 A. Here in Winnsboro.

13 Q. In the city?

14 A. Uh-huh.

15 Q. Where do you live at now?

16 A. Blackstock.

17 Q. Where did you attend school?

18 A. Fairfield Central.

19 Q. What is your living situation at this point in time?

20 You said you live in Blackstock but who else lives with
21 you?

22 A. My boyfriend and three boys.

23 Q. How old are your three children?

24 A. My oldest one is ten and my middle one is nine and my
25 baby is seven.

TESTIMONY OF SHANNON TRUSEDAL

- 1 Q. When this incident occurred what were you doing back
2 in April of 2007?
- 3 A. I was working.
- 4 Q. Where were you working at at that point in time?
- 5 A. I was working at the Corner Store.
- 6 Q. Do you recall the night of April 6th of 2007?
- 7 A. Yes, sir.
- 8 Q. Were you working that night?
- 9 A. Yes, sir.
- 10 Q. And at that time, where were you living?
- 11 A. On .
- 12 Q. You don't have to give an exact --
- 13 A. Here in Winnsboro.
- 14 Q. What is the store you were working at?
- 15 A. The Corner Store over -- it's in Winnsboro, it's
16 right down the street from where I live.
- 17 Q. And to jump back a little bit, do you know the
18 defendant, Mr. Lupo? Do you know the defendant?
- 19 A. Yes, sir, I do.
- 20 Q. How did you meet the defendant?
- 21 A. I was at a friend's house and he came over there.
- 22 Q. When was that?
- 23 A. Maybe February of last year.
- 24 Q. Did you know of him at any time before that?
- 25 A. I knew his face but I didn't know much about him.

TESTIMONY OF SHANNON TRUSEDAL

- 1 Q. And when you met him in February, did y'all start a
2 relationship?
- 3 A. Yes, we did.
- 4 Q. Did y'all ever live together?
- 5 A. No.
- 6 Q. Do you have any children together?
- 7 A. No.
- 8 Q. How long had y'all been dating before this incident
9 happened?
- 10 A. February until April.
- 11 Q. What was the status of the relationship in early
12 April?
- 13 A. It was pretty good, I thought it was pretty good. We
14 talked on a regular basis and I would see him everyday.
- 15 Q. Did y'all have any arguments or anything prior to
16 that?
- 17 A. No.
- 18 Q. You said on April 6th of 2007 -- where were you at
19 that night? Where did you begin the night at?
- 20 A. Well, I was at work, I left work.
- 21 Q. What time did you get off work?
- 22 A. 10:00.
- 23 Q. What did you do as you were leaving work that night?
- 24 A. I went home and got some clothes together, Billy had
25 called me all night at work wanting to talk to me. I had

TESTIMONY OF SHANNON TRUSEDAL

1 not talked to him in two days because I was going to end
2 our relationship because it just wasn't going to work out.
3 But he called me all night, and so finally by the end of
4 the night I told my boss man I will talk to him, and so I
5 talked to him and he wanted to meet me after work and talk
6 to me. He was not allowed at my house because I lived
7 with my mom and so I got a motel room and I told him on
8 the phone. "I'll talk to you. I will have to get a room
9 because you're not allowed at my house and we will talk
10 there."

11 Q. So around what time was that?

12 A. Right after I got off of work.

13 Q. Did he come -- how did you meet up with him that
14 night?

15 A. He come down the street from my house and picked me
16 up.

17 Q. Did he drive a car?

18 A. I had a friend take me from work home and he picked
19 me up down the street from the house.

20 Q. Was he driving a car?

21 A. Yes.

22 Q. And where did y'all drive to?

23 A. We went to the Fairfield Motel.

24 Q. Did y'all get a room at the hotel?

25 A. I did, yes, sir.

TESTIMONY OF SHANNON TRUSEDAL

- 1 Q. Where was the room located in the hotel?
- 2 A. On the bottom, middle ways at the back maybe.
- 3 Q. First floor?
- 4 A. Yes.
- 5 Q. About what time did y'all check into the hotel?
- 6 A. I want to say around 11:00 because I didn't get off
- 7 until 10:00. I had to go home and get my clothes together
- 8 and then we went straight over there.
- 9 Q. You had plans for the next day?
- 10 A. Yes, I did.
- 11 Q. What were your plans the next day?
- 12 A. It was my baby's 6th -- he was going to be six years
- 13 old and I had to work and I was going to get up and have
- 14 his party and then go to work at 4:00.
- 15 Q. Once y'all got into the room, what were y'all doing
- 16 in the motel?
- 17 A. When I got off from work I got an 18 pack of Bud
- 18 Light and we took that and I drank three of the beers, and
- 19 by I would say about 1:00 I laid down because I was tired
- 20 and I knew I had to do the birthday party and go to work
- 21 the next day.
- 22 Q. Were you and Mr. Lupo just talking?
- 23 A. Yeah.
- 24 Q. Was Mr. Lupo, did he also drink some of the beer?
- 25 A. Yes.

TESTIMONY OF SHANNON TRUSEDAL

- 1 Q. Have you got any idea how much?
- 2 A. He drank -- I had 18, I drank three so he drank 15.
- 3 Q. There was no beer left?
- 4 A. No. When I got up that morning there was no beer.
- 5 Q. What time -- did you end up falling asleep at some
- 6 point?
- 7 A. Yes, around 1:00 or 1:30. I laid down around
- 8 1:00 and I went right to sleep.
- 9 Q. Was there anyone else ever present at any point in
- 10 time that night?
- 11 A. No, sir.
- 12 Q. When you went to sleep what was Billy doing?
- 13 A. Sitting in the chair drinking and watching TV.
- 14 Q. Up until that point had y'all had any disagreements
- 15 or arguments?
- 16 A. No, sir.
- 17 Q. Please explain to the jury what happened after that
- 18 or begin what happened after you fell asleep.
- 19 A. I was woke up about 5:30 in the morning and he wanted
- 20 to talk to me about our relationship. I had told him two
- 21 days prior to this that I didn't want a relationship with
- 22 him anymore, and I told him I didn't want to get up and
- 23 talk with him because I had to work the next day and I had
- 24 to have my baby's birthday party so I was going to sleep
- 25 until 10:00 or 10:30 in time to get out of the room and

TESTIMONY OF SHANNON TRUSEDAL

1 then I was going to go start my day. Well, he got angry,
2 he was good and drunk by this time, he was drinking --

3 Q. Ms. Trusdale, did the defendant wake you up?

4 A. Yes, he woke me up.

5 Q. What was his attitude or --

6 A. He was fine when he woke me up and wanted to talk to
7 me.

8 Q. After he indicated he wanted to talk about the
9 relationship, what happened next?

10 A. I didn't want to get up and I told him that we will
11 talk later, "I have said all I am going to say, I am going
12 back to sleep."

13 Q. What was his attitude at that point?

14 A. He said, "No, you're not, you're going to talk to me
15 now."

16 Q. What happened next?

17 A. I said, "No, I'm not. I paid for this room and if
18 you don't like it you can leave, I'm not getting up right
19 now."

20 Q. Did you get up at some point?

21 A. Yeah.

22 Q. Where did you go? You didn't leave the room.

23 A. When I said that he started tearing the room up.

24 Q. What did he do specifically?

25 A. He first kicked the lamp -- flipped out, kicked the

TESTIMONY OF SHANNON TRUSEDAL

1 lamp off the wall. And then I had nothing but a T-shirt
2 on so I said, I had better go get some clothes on because
3 I knew it wasn't going to be good. And I got up to go to
4 the bathroom and the sink and stuff to get my clothes on
5 and he came over to me and he choked me, hit me and he had
6 my feet off the ground.

7 Q. How did he first come at you? What position were you
8 in in terms of when he attacked you?

9 A. I was turned around facing the mirror in the sink, my
10 pants were laying right there on the floor and I was
11 trying to --

12 THE DEFENDANT: Put your hand on that Bible and swear
13 to that.

14 THE COURT: Mr. Lupo.

15 THE DEFENDANT: I'm sorry.

16 Q. After he grabbed you from behind, what happened next?

17 A. He held me there it seemed like five minutes, but it
18 was probably only a minute. He let me go and I took off
19 running and jumped in the middle of the bed and he come
20 after me and I went to try to cover up and he wouldn't let
21 me. He grabbed me by my ankles then and snatched me out
22 of the bed and my behind hit the floor. He had broken the
23 table beside the bed, when he kicked the lamp he kicked
24 the table too and he went over there and kicked it again
25 and he got a -- they said it was a 14-inch board off of

TESTIMONY OF SHANNON TRUSEDAL

1 that table.

2 THE DEFENDANT: I object, Your Honor.

3 THE COURT: What's your objection?

4 THE DEFENDANT: Is the board present in court today?

5 Is there any DNA on the board?

6 MR. MAXWELL: Your Honor, I'm going to object to that
7 question in front of the jury.

8 THE DEFENDANT: Is there any DNA -- I object to this.

9 THE COURT: What is the objection?

10 THE DEFENDANT: The board that she said supposing
11 that I used --

12 THE COURT: Is there an objection?

13 THE DEFENDANT: Yeah. Where is the -- is the actual
14 board in court today?

15 MR. MAXWELL: I'll present my evidence, Your Honor.

16 THE COURT: That's not a proper objection.

17 Overruled.

18 MR. MAXWELL: I'm going to present a picture of the
19 hotel room into evidence and ask the witness if she
20 notices it if I can approach.

21 A. That's it.

22 Q. Ms. Trusdale, is that the hotel room?

23 A. That's it.

24 Q. Can you please tell me what that is right there, or
25 what it was?

TESTIMONY OF SHANNON TRUSEDAL

1 A. That was the table that he had kicked and broke all
2 to pieces, and this is the part that the 14-inch board
3 come off of.

4 Q. No doubt about that?

5 A. No doubt about it.

6 MR. MAXWELL: I would like to offer this as State's
7 Exhibit 1, Your Honor.

8 THE COURT: Any objection? No objection.

9 (The photograph was received as State's 1.)

10 Q. You said he picked up a board from this table.

11 A. Yes, sir.

12 Q. Let me show you another picture. Do you recognize
13 that?

14 THE COURT: I'm sorry, Mr. Lupo, what was that? I
15 couldn't understand you.

16 THE DEFENDANT: He asked me if that picture is all
17 right to be shown.

18 THE COURT: And you had no objection.

19 THE DEFENDANT: No, sir.

20 THE COURT: All right.

21 Q. You have seen that board?

22 A. That's the board. That's my blood on that board.

23 Q. Where did the board come from?

24 A. Off of the table that he broke beside the bed.

25 MR. MAXWELL: I would like to offer this as State's

TESTIMONY OF SHANNON TRUSEDAL

1 Exhibit Number Two.

2 THE COURT: Any objection?

3 THE DEFENDANT: (Inaudible.)

4 THE COURT: No objection.

5 (The photograph was received as State's 2.)

6 MR. MAXWELL: I would also like to publish this to
7 the jury at this point in time.

8 THE COURT: Granted.

9 Q. What did he do with the board when he picked it up?

10 A. Well, I have three herniated discs in my back so when
11 I hit that floor I couldn't move and I was laid there
12 balled up and he just started beating me on the right side
13 of my head. I remember about three times, I don't
14 remember after that.

15 Q. Did you raise -- did you try to block any?

16 A. The second time I threw my right arm up to keep him
17 from messing my face up, because the first time he hit me
18 I could feel the blood coming and that's how my arm got
19 fractured in two places. And I was praying to God that I
20 would make it.

21 Q. What was the defendant saying to you at this point in
22 time?

23 A. That he was going to kill me.

24 Q. Did he say anything else or --

25 A. He was just cussing me. I don't remember but a few

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1 minutes -- after the third time I don't remember
2 anything -- I don't know how long it was, I assume he
3 knocked me out. He was just cussing and telling me he was
4 going to kill me, if I had him locked up he would kill me
5 or my kids.

6 Q. I apologize for asking, how tall are you, or what is
7 your roughly weight?

8 A. I weigh 120 and I'm five-three.

9 Q. And is the defendant bigger than you?

10 A. Yes, a lot bigger than me.

11 Q. What made the defendant stop, do you have any idea?

12 A. I don't know. When I come to he was sitting in a
13 chair in front of the door.

14 Q. Was he saying anything to you at that point in time?

15 A. Yeah.

16 Q. What was he saying?

17 A. He was telling me about his cousin, Bobby Ray Hill,
18 he was just like him. He was going to kill -- somebody in
19 my family would die if I pressed charges on him, and he
20 just kept going on and on and I didn't say nothing for
21 awhile. And finally I said I have got to do something to
22 make him think that this is okay so I can get out of here,
23 and I told him that if the maids came and seen him there
24 and seen me in the room he was going to go to jail because
25 they were going to know he had done something and so I

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1 think I had him talked into believing I wasn't going to
2 press charges. He snatched the phone out of the wall, the
3 whole phone where I couldn't call anybody before he left,
4 and he turned and looked at me before he went out the door
5 and said, "I promise you if you have me locked up one of
6 your children will die."

7 Q. Did he leave at that point?

8 A. He left at that point.

9 Q. How long was that before the incident began, the
10 altercation began?

11 A. He left about 2:00, this went on for hours.

12 Q. I'm going to show you some more pictures. Can you
13 identify what those pictures are?

14 A. That's the motel room that he -- and everything in it
15 that he tore up.

16 Q. Is that just the condition of what it was after all
17 of this happened?

18 A. That's it.

19 MR. MAXWELL: I would like to offer these pictures in
20 as State's Exhibits 3, 4 and 5.

21 THE COURT: Any objection, Mr. Lupo?

22 THE DEFENDANT: No, sir.

23 THE COURT: Admitted without objection.

24 (The photographs were received as State's 3, 4 and
25 5.)

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1 Q. When he left the room, what did you do next?

2 A. I didn't have a shirt on, I finally got my shirt and
3 I crawled out the door and crawled to the office.

4 Q. Did somebody from the front office call the police?

5 A. Yes. When I got in there she seen me and she said,
6 "I'm calling the police." And I said, "Call my mom, call
7 my mama." And she called the police and they came and
8 then she called my mom.

9 Q. Who arrived at the motel first?

10 A. Mr. Talbert, Officer Talbert, and I'm sorry, I don't
11 know his name.

12 Q. Captain Watkins?

13 A. Captain Watkins.

14 Q. Do you recall them talking to you about what had
15 happened?

16 A. Yes, sir.

17 Q. Do you recall them taking any pictures?

18 A. Yes, sir.

19 THE DEFENDANT: Your Honor, I object.

20 THE COURT: Grounds for the objection?

21 THE DEFENDANT: They're making me out to be a like a
22 monster, I might as well --

23 THE COURT: That's not an objection.

24 THE DEFENDANT: -- object to something. The original
25 pictures, where are they? Because those could have been

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1 tampered with or whatever and I'm just asking that the
2 original picture be shown if he has those.

3 THE COURT: Solicitor?

4 MR. MAXWELL: These are the originals. It's a
5 digital camera, it was a digital camera and these were
6 printed out from the original.

7 THE COURT: Any other objection?

8 THE DEFENDANT: No, sir.

9 THE COURT: I will admit them.

10 Q. Let me show you some other pictures, these are hard
11 to look at, I understand. Do you recall those pictures
12 being taken?

13 A. Yes, sir.

14 Q. Where were they taken at?

15 A. In the office -- in the motel in the office.

16 Q. How long after -- just after the police arrived?

17 A. Right, as soon as they got there.

18 Q. Who took these pictures, do you recall?

19 A. Captain Watson (sic).

20 Q. And that is you in these pictures?

21 A. That's me.

22 Q. And explain to me a little bit about what the
23 injuries -- what your injuries were and then what these
24 pictures reflect.

25 A. Do you want me to hold it up?

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1 Q. That's fine if you want to do that.

2 A. This is the right side of my face, that's what he
3 repeatedly hit me with, that board. That's my face. My
4 ear was cut, I had a big gash on my ear. They don't have
5 the picture of my arm? Those are the pictures of my face
6 and he -- my arm was messed up pretty bad, too, that's
7 where I threw it up to keep him from hitting my face, he
8 got my arm too. And I looked twice as bad the next day.

9 MR. MAXWELL: I would like to present these as
10 Exhibits 6 and 7, Your Honor.

11 THE COURT: Any additional objections? Indicating
12 no.

13 (The photographs were received as State's 6 and 7.)

14 A. I had more injuries too but they didn't get them over
15 here.

16 MR. MAXWELL: I would like to publish these to the
17 jury also, Your Honor.

18 THE COURT: Granted.

19 Q. To go back just a second, did he hit you with
20 anything else other than the board?

21 A. No, not that I can remember.

22 Q. Other than the choking?

23 A. Other than the choking me just the board that I can
24 remember.

25 Q. After these pictures were taken, did you give a

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1 statement to the Winnsboro Public Safety?

2 A. Excuse me?

3 Q. Did you give a statement to the responding officers
4 from Winnsboro Public Safety?

5 A. Yes, sir, I did.

6 Q. After the police arrived and took those pictures and
7 you got a statement from you of what had happened, what
8 happened next?

9 A. The ambulance came, I got -- they put me straight on
10 the stretcher and rushed me to Richland Memorial.

11 Q. Sirens on?

12 A. Siren was on.

13 Q. Another question to go back a little bit, at any
14 other point in time that this was going on, was there
15 anybody else there?

16 A. Never, didn't talk to nobody.

17 Q. When you got to Richland Memorial Hospital, what
18 happened at Richland Memorial Hospital?

19 A. They immediately gave me a shot and took me in for
20 head x-rays, they did a CAT scan on my head and they done
21 x-rays on my arm and I think that's it as far as I can
22 remember.

23 Q. What were the injuries you suffered?

24 A. I had fracture -- my arm was fractured in two places
25 and just concussion, bruises and I was sore. And then my

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1 back, he also hurt my back. I couldn't walk for two weeks
2 because I had three herniated discs to begin with.

3 Q. Did you make it to your plans you had the next day?

4 A. I sure didn't.

5 Q. Those plans were again?

6 A. My baby's 6th birthday at my sister-in-law's house,
7 which they had to have the party without me. They also
8 had to bathe me for two weeks because I couldn't bathe
9 myself, I wouldn't move my right arm. I couldn't wash my
10 hair, it was bruised and had so many knots in it.

11 Q. Do you see the man who did this to you in the room
12 today?

13 A. Yes, sir, and he is a monster.

14 Q. What is he wearing just for the record?

15 A. He's wearing a black suit and a yellow shirt.

16 Q. Would you please point him out to the jury?

17 A. Right there (indicating.)

18 MR. MAXWELL: Your Honor, I believe that's all of the
19 questions I have at this time.

20 THE COURT: Any cross examination?

21 THE DEFENDANT: Yes, sir.

22 CROSS EXAMINATION

23 BY THE DEFENDANT:

24 Q. Ms. Trusdale, how did me and you meet? How did we
25 meet?

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1 A. We met at Stephanie's house.

2 Q. Was drugs or alcohol involved?

3 MR. MAXWELL: I'm going to object, Your Honor.

4 THE COURT: Hold on just one second.

5 MR. MAXWELL: Relevance.

6 THE DEFENDANT: She says alcohol is what fueled the
7 incident.

8 MR. MAXWELL: I believe he's talking about another
9 incident.

10 THE COURT: I thought you were questioning the
11 other -- when you first met her.

12 THE DEFENDANT: Right. I'm doing a bridge, sir, I
13 am -- if you allow me to go on I will get to the point.

14 THE COURT: I'll let him pursue it, go ahead.

15 Q. Okay. Were we doing drugs or alcohol the night we
16 and you met.

17 A. No.

18 Q. We weren't?

19 A. I was with my mama over at a friend's house, you were
20 with a friend.

21 Q. How long did this relationship last prior to the
22 incident?

23 A. I met you in February, we ended it in April.

24 Q. Okay. How long did it last after the accident?

25 A. It didn't last.

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1 Q. So you didn't -- after the incident you don't have
2 outstanding warrants on you right now in Lexington County
3 where I --

4 THE COURT: Sustained. I sustain the objection.

5 Q. So we didn't get back together.

6 A. No.

7 Q. None at all?

8 A. No.

9 Q. What foundation was the relationship based on?

10 A. I thought it was pretty good.

11 Q. Drugs and alcohol?

12 A. No, I worked.

13 Q. How many times did we use drugs or alcohol after the
14 incident?

15 MR. MAXWELL: I'm going to object, Your Honor.

16 A. I didn't use drugs.

17 THE COURT: Overruled.

18 Q. You said alcohol is what fueled the incident, right?

19 A. I don't know what fueled it. You were drinking that
20 night, I don't know what happened, you just flipped out, I
21 don't know.

22 THE DEFENDANT: I have evidence --

23 MR. MAXWELL: I'm going to object, Your Honor, he
24 cannot testify.

25 THE DEFENDANT: I have evidence from a police officer

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1 in Lexington that pulled us over after the incident --

2 THE COURT: Mr. Lupo, have a seat. We're going to be
3 in recess for ten minutes, ladies and gentlemen, ask you
4 to step in the jury room. I remind you it is too early to
5 begin discussing the case.

6 (The jury left the courtroom.)

7 THE COURT: Ma'am --

8 DEFENDANT'S MOTHER: I'm sorry, sir, but she's
9 telling lies.

10 THE COURT: I said nobody speak. Nobody speak, does
11 anybody not understand that?

12 DEFENDANT'S MOTHER: Yes, sir.

13 THE COURT: Now, if anybody says another word until I
14 finish somebody is going to jail.

15 DEFENDANT'S MOTHER: Are we on a break right now?

16 THE COURT: Ma'am, I am going to cite you in contempt
17 of court if you open your mouth one more time. Now, let
18 me ask you a question, ma'am, are you related to Mr. Lupo?

19 DEFENDANT'S MOTHER: I am his mother.

20 THE COURT: I understand you're emotional about
21 what's going on, but let me tell you something else, I
22 don't care how emotional you are, you cannot speak in this
23 courtroom unless you are on the witness stand, unless you
24 are on the witness stand. An outburst from you again
25 during these proceedings I think will cause me to eject

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1 you at a minimum from the courtroom. Do you understand
2 me? Any questions about that?

3 DEFENDANT'S MOTHER: No, sir. But can he put me on
4 witness stand?

5 THE COURT: He certainly may do that, but you're
6 going to have a wait your turn.

7 DEFENDANT'S MOTHER: Okay, sir.

8 THE COURT: Mr. Lupo, let me talk to you.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Just because you have the right to
11 represent yourself does not mean that you can just speak
12 any time you want to speak.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Remember, I told you that you had to be
15 familiar with the rules if you're going to represent
16 yourself. Being familiar with the rules means
17 understanding the procedure in the court. The procedure
18 in the court means that you are held to the same standard
19 as a lawyer, and a lawyer is not permitted to start
20 commenting about the case and interrupting people while
21 they're on the witness stand, you cannot do that. If you
22 continue that I will cite you for contempt. If you have
23 an objection to testimony, if you have an objection to
24 evidence being introduced you say "Objection, Your Honor,"
25 and stand up, that's what an attorney would have to do.

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1 Then I will calm things down and let you tell me what your
2 objection is. So if you have an objection you say,
3 "Objection, Your Honor." Then we will take it in an
4 orderly manner so that everybody is not talking at the
5 same time and I don't want you talking to somebody else
6 while I am talking to you.

7 THE DEFENDANT: Can I have a small recess just for
8 one second?

9 THE COURT: Yes, sir.

10 THE DEFENDANT: I wasn't granted for my main witness
11 to come to court today to prove that she was with me
12 indeed after the incident. A police officer that would
13 have been a reliable source or outstanding citizen, a
14 police officer of Lexington County, she's sitting there
15 lying through the skin of her teeth. But can I just use
16 the phone for one minute and take probably ten minutes for
17 this person to get up here with the evidence to show --

18 THE COURT: Mr. Lupo, hasn't this case been pending
19 for a month? Hadn't this trial been scheduled to begin
20 today since the last term of court which is almost a month
21 ago, isn't that right? That's what I have been told.

22 THE DEFENDANT: I'm having to represent myself, I
23 don't understand why my subpoenas didn't go through.

24 THE COURT: You need to stand up if you're going to
25 address the Court.

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1 THE DEFENDANT: I'm just asking if I could use the
2 phone to prove that she just perjured herself.

3 THE COURT: You can use the phone, certainly. We
4 have got a five minute recess now.

5 THE DEFENDANT: Okay. Thank you, sir.

6 THE COURT: I don't know where the phones are but --
7 all right. We will be at ease for a few more minutes.

8 (A recess was taken.)

9 THE DEFENDANT: Can I show you evidence that Officer
10 Quest Hallman -- I can give you the number of traffic
11 court and the numbers are ticket Z435239 for a no license,
12 she used the name Chrystal Freeman, and ticket Z435420 no
13 seat belt.

14 THE COURT: Tell me why you're asking me this or
15 telling me this.

16 THE DEFENDANT: Because it was after the incident.

17 THE COURT: Why are you telling me?

18 THE DEFENDANT: And she has outstanding warrants for
19 her right now.

20 THE COURT: Why are you telling me this?

21 THE DEFENDANT: Because she perjured herself, she says
22 we weren't together after the incident and we were.

23 THE COURT: You have to bring that up when you cross
24 examine her.

25 THE DEFENDANT: But, I mean -- and Officer Quest

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1 Hallman was going to be my witness here today and he's --
2 you wouldn't allow him as my -- you wouldn't me give me a
3 continuance for him and he said he couldn't make it today.

4 THE COURT: Is he going to be here in the morning I
5 guess?

6 THE DEFENDANT: Yeah.

7 THE COURT: Aren't we going to still be here
8 tomorrow?

9 THE DEFENDANT: Are we?

10 THE COURT: I doubt we're going to finish this case,
11 I don't know.

12 THE DEFENDANT: Great. I could prove she just perjured
13 herself when she said we didn't get back together after
14 the incident.

15 THE COURT: I don't have any idea, I don't know.

16 THE DEFENDANT: Thank you, sir, that's all I wanted.

17 MR. BARFIELD: Your Honor, I have one thing I would
18 like to put on the record, it's not an issue to the State
19 but it's an issue I think we just need to disclose. Juror
20 number 106, June Rexrow, is an active juror, not an
21 alternate, it came to our attention during the break that
22 her father in the past or currently has had a relationship
23 with Ms. Lupo. That's not an issue for our office but we
24 are learned that and just wanted to bring it to the
25 Court's attention. I don't know if it's true but that's

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1 what we heard.

2 THE DEFENDANT: Who?

3 MR. BARFIELD: The father of June Rexrow has had a
4 relationship or is currently in a relationship with
5 Shirley Lupo, defendant's mother.

6 THE DEFENDANT: Is that Mr. Watson? I don't want her
7 on the jury, no, how --

8 MR. BARFIELD: She's on the jury.

9 THE DEFENDANT: That's fine with me.

10 MR. BARFIELD: We have no objection to that but we
11 wanted to point that out to the Court.

12 THE COURT: Are we ready for the jury to come back?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, remember, you cannot argue with the
15 witness but you can ask questions --

16 THE DEFENDANT: Right.

17 THE COURT: -- of the witness, you let the witness
18 answer the question and then you ask another question.

19 THE DEFENDANT: Okay. But there is going to be a
20 tomorrow?

21 THE COURT: I cannot -- nothing is guaranteed. I
22 can't guarantee you there's a tomorrow.

23 THE DEFENDANT: But if you can --

24 THE COURT: I can't -- you've got to stand up when
25 you address the Court.

TESTIMONY OF SHANNON TRUSEDAL

1 THE DEFENDANT: If you can I can produce evidence.

2 THE COURT: I heard you say that.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now, are we ready for the jury to come
5 back in?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Let's bring the jury back in.

8 (The jury returned to the courtroom.)

9 THE COURT: Welcome back, ladies and gentlemen. I
10 believe we are ready to resume cross examination of the
11 witness by Mr. Lupo. Mr. Lupo?

12 Q. Ms. Trusdale, in Lexington, South Carolina after the
13 incident was -- first of all after the incident was there
14 any restraining order taken out against me?

15 A. No.

16 Q. There wasn't? Okay. After the incident -- exactly
17 two weeks after the incident was a ticket given to you and
18 you used the name Crystal Freeman in the ticket being --

19 MR. MAXWELL: I'm going to object to that, Your
20 Honor.

21 THE COURT: And grounds for the objection?

22 MR. MAXWELL: Relevance.

23 THE COURT: Objection is grounds of relevance?

24 THE DEFENDANT: To show that -- she just said that we
25 weren't together after the incident and I wanted to

TESTIMONY OF SHANNON TRUSEDAL

1 prove --

2 A. I talked to you but --

3 THE COURT: Hold on just one minute, let me finish
4 ruling on the objection. I will go ahead and permit it,
5 overruled.

6 Q. Ticket Z435239, you don't recall that Officer Quest
7 Hallman or a no license ticket -- excuse me, that was no
8 license, ticket Z435240 for a seat belt that outstanding
9 warrants are against you right now, bench warrants?

10 A. No. I don't know what you're talking about.

11 Q. Okay. I will be able to prove this at a later time.
12 When did you hear that I had posted bond?

13 A. I don't remember.

14 Q. And are you saying that me and you had no contact
15 whatsoever?

16 A. No. I talked to you but we didn't have a
17 relationship.

18 Q. We were never together?

19 A. No.

20 Q. We didn't go up to Ocean Isle, North Carolina or --

21 A. No.

22 Q. You didn't live with me over in Great Falls?

23 A. No. What does that have to do with you beating me?
24 What has that got to do with it?

25 Q. I'm just saying --

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1 A. It don't matter what --

2 THE COURT: Hold on Ms. Trusdale, hold on, Mr. Lupo,
3 hang on. Ms. Trusdale, I tried to explain this to
4 Mr. Lupo a minute ago, here is the procedure we have to
5 follow and I said we have to follow this: He asks you
6 questions, you answer the questions and he asks you
7 another question and he lets you finish answering and then
8 he asks you another question. Go. Let's start all over
9 again, Mr. Lupo.

10 Q. I remind you of perjury. So you're saying that Quest
11 Hallman did not pull us over in Lexington right down
12 Hemmingways and you were the designated driver that night
13 and you did not receive any tickets?

14 A. No.

15 Q. We did not get back together after the incident?

16 A. No.

17 Q. And no restraining order was taken out against me?

18 A. No.

19 Q. Why?

20 A. Because I didn't take one out, I didn't feel the need
21 to at that time.

22 Q. But you were in fear of your life, you were scared of
23 me, I mean --

24 MR. MAXWELL: I'm going to object, Your Honor.

25 A. That's why I talked to you.

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1 THE COURT: Hold on, Ms. Trusedale. We have an
2 objection, I have to rule on that.

3 MR. MAXWELL: Mr. Lupo is trying to testify, he's
4 making statements to the jury on how she felt.

5 THE COURT: Hold on. The objection is that you're
6 testifying, so what I need for you to do is ask a question
7 of the witness.

8 THE DEFENDANT: Right. I just asked her if we didn't
9 get back involved in a relationship after this and my
10 point is --

11 THE COURT: And she said no, didn't she?

12 THE DEFENDANT: Right.

13 THE COURT: All right. Ask her another question.

14 THE DEFENDANT: Okay. Excuse me for a minute, Your
15 Honor.

16 Q. What connection did you have with Scott Arrington and
17 Jeff Trusedale, what relation --

18 MR. MAXWELL: I'm going to object to that, Your
19 Honor, relevance.

20 THE COURT: What is the relevance?

21 THE DEFENDANT: I'm getting to a point here, Your
22 Honor. I am just -- I'm crossing a bridge if you would
23 allow me to.

24 THE COURT: I'll let you pursue it for a few more
25 minutes.

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1 A. Jeff was my husband and Scott was my boyfriend.

2 Q. Have they ever been incarcerated?

3 MR. MAXWELL: Objection, Your Honor.

4 THE COURT: Now, I will sustain that objection.

5 THE DEFENDANT: I'm really building -- crossing a
6 bridge here, but my point is, was it before or after, you
7 know, their relationship, the incarceration --

8 MR. MAXWELL: I'm going to object to that, Your
9 Honor.

10 THE COURT: I sustain the objection.

11 Q. But you're saying that me and you had no contact? We
12 had contact but --

13 A. Right.

14 Q. But there was no -- nothing after?

15 A. Right.

16 Q. And you're standing by that?

17 A. Right.

18 THE DEFENDANT: Thank you.

19 THE COURT: Thank you, Mr. Lupo. Solicitor, any
20 redirect?

21 MR. MAXWELL: Just one minute, Your Honor. Just a
22 few questions, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. MAXWELL:

25 Q. Ms. Trusdale, do you go by any other names besides

TESTIMONY OF SHANNON TRUSEDAL

1 Shannon?

2 A. Missy.

3 Q. All right. At any point in time were you ever dating
4 Mr. Lupo after this happened on April 6th?

5 A. No.

6 Q. What kind of contact did y'all have?

7 A. He kept calling and calling and calling after this
8 happened for several weeks, my family kept hanging the
9 phone up or whatever. So finally I answered the phone one
10 day and didn't know it was him and it was him so I did
11 proceed to talk to him, because a few weeks before that I
12 was scared to come out of the house because I didn't know
13 what he was going to do. So I said, "Well, I'll make him
14 think everything is going to be okay and then I will feel
15 safe." That's what I did and I am here today.

16 Q. There was another solicitor working in Fairfield --
17 who was the solicitor in Fairfield at the time this
18 happened? Do you recall his name? There was somebody
19 else other than me?

20 A. Right.

21 Q. Did you talk with him about this case?

22 A. Yes, sir, I did.

23 Q. Did you and him have some type of understanding and
24 how y'all wanted to pursue these charges in terms of --
25 explain y'all's situation with -- your agreement with the

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1 solicitor at the time.

2 A. Billy had came to court that day and talked to the
3 solicitor and whatever, he told him a whole different
4 story than what happened -- than my story. And Billy
5 called me and wanted me to come tell the solicitor the
6 same story he did and I agreed to that. I went in the
7 room back there with the solicitor and it was just me and
8 him and I told him the truth and Billy thought that I
9 agreed with his story, and from then on I felt safe. I
10 knew that he thought I was on his side.

11 Q. That was -- were you ever on his side?

12 A. No.

13 Q. That was -- what was the reason for that -- to make
14 him think that?

15 A. Because I was afraid he was going to hurt me or one
16 of my kids.

17 MR. MAXWELL: Thank you.

18 THE COURT: Any recross, Mr. Lupo?

19 RECROSS EXAMINATION

20 BY THE DEFENDANT:

21 Q. If I didn't have any connection with you, if we
22 weren't together or anything why would you be in fear of
23 your life if I wasn't around you or if we weren't
24 continuously having a relationship with one another? What
25 was the story that was told?

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1 A. When you jumped on me I prayed to God laying in that
2 floor that I would make it to see my baby's birthday the
3 next day. I was --

4 Q. I jumped on you?

5 A. I was scared to come out of -- you did.

6 Q. I jumped on you?

7 A. I was scared to come out of my house.

8 MR. MAXWELL: Objection again, Your Honor.

9 A. I was scared to come out of my house and I thought
10 about it and I said, "Well, if I make him think I'm on his
11 side and if he thinks I'm going to go to court and be on
12 his side or not go to court at all then he will be okay."
13 Because you plainly looked at me at my eyes and said, "If
14 you testify against me I will kill you or somebody in your
15 family." So I did that to keep -- so I would feel safe
16 and it worked.

17 Q. Okay. And what was your story that I supposedly told
18 you?

19 A. That we were in the motel room and I was buying drugs
20 from a black guy, you were in the bathroom and when you
21 come out you didn't like it, y'all got into an argument
22 and that's how I got beat up. That's the story you wanted
23 me to agree to.

24 Q. And that's exactly what happened.

25 MR. MAXWELL: I'm going to object to that.

TESTIMONY OF ALAN WATKINS

- 1 THE COURT: Sustained.
- 2 Q. That's exactly what happened.
- 3 MR. MAXWELL: Objection.
- 4 THE COURT: I sustain that.
- 5 THE DEFENDANT: No more questions.
- 6 THE COURT: Any additional cross?
- 7 MR. MAXWELL: Nothing further of this witness.
- 8 THE COURT: Ms. Trusedale, you may step down.
- 9 The witness, ALAN WATKINS, was first duly sworn and
- 10 testified as follows, on:
- 11 DIRECT EXAMINATION
- 12 BY MR. MAXWELL:
- 13 THE WITNESS: My name is Alan Watkins.
- 14 Q. Officer Watkins, where are you employed?
- 15 A. With the Town of Winnsboro.
- 16 Q. And what is your rank?
- 17 A. I'm a captain with the Town of Winnsboro.
- 18 Q. How long have you been working with Winnsboro Public
- 19 Safety?
- 20 A. For 25 years.
- 21 Q. In that time you have seen a lot of cases; is that
- 22 correct?
- 23 A. Yes, I have.
- 24 Q. Were you working on April 6, 2007?
- 25 A. Yes, I was.

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1 Q. Was there a -- were you dispatched to an altercation
2 that took place on that day?

3 A. Yes, I was.

4 Q. Where was that at?

5 A. That was at Fairfield Motel at 321 Bypass.

6 Q. About what time was that, do you remember? Do you
7 recall?

8 A. Yes, sir. That was around 10:00 that night.

9 Q. Were other officers called?

10 A. Yes, sir, Major Talbert.

11 Q. When you arrived at the Fairfield Motel what did you
12 find out or what was the first thing you saw when you got
13 there?

14 A. Well, when I arrived on the scene at the Fairfield
15 Motel we came in contact in the front office there with
16 Ms. Trusdale and the employee that worked at the hotel
17 there.

18 Q. What was the state of Ms. Trusdale at that point in
19 time?

20 A. She was sitting in a chair there, she was crying and
21 bleeding -- bloody and she was in severe pain crying.

22 Q. Did she have visible injuries?

23 A. Yes. She had very noticeable visible injuries.

24 Q. What were those injuries?

25 A. She was bleeding from the head and facial area there,

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1 her ear -- she had a cut by the ear there. She had
2 scratch marks all about the forehead there. She was
3 complaining about her arm being hurt and she was in severe
4 pain from her arm.

5 Q. Did you or some other officer from Winnsboro Public
6 Safety take pictures of her injuries?

7 A. Yes. I was the officer that took the pictures.

8 MR. MAXWELL: May I approach the witness?

9 THE COURT: Certainly.

10 Q. Do those pictures look familiar?

11 A. Yes, they do.

12 Q. Where were those pictures taken at?

13 A. At the Fairfield Motel in the front office.

14 Q. Was it just a few minutes after you arrived or short
15 amount of time?

16 A. Yes, sir, just a few minutes after I arrived.

17 Q. Does that reflect the state of what Ms. Trusdale
18 looked like at that time?

19 A. That's correct.

20 Q. Okay.

21 THE COURT: Which exhibits are you referring to for
22 the record?

23 MR. MAXWELL: Your Honor, these are State's Exhibits
24 6 and 7.

25 Q. Did you talk to Ms. Trusdale?

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1 A. Yes, sir, I did.

2 Q. Did she tell you what happened?

3 A. Yes, sir. I asked her what happened and she told me
4 that she had rented a room there and the defendant there,
5 Billy Lupo, had did that to her.

6 Q. Are you familiar with Mr. Lupo?

7 A. Yes, I am.

8 Q. Is that Mr. Lupo as you know him?

9 A. Yes, that's Mr. Lupo.

10 Q. What is he wearing?

11 A. He's wearing a black suit there with a beige colored
12 shirt and black tie.

13 Q. What else did she say had happened in the motel room?

14 A. I asked Ms. Trusdale what happened and she stated
15 that she had rented a room there, she and Mr. Lupo there
16 and they had bought some beer, they had been drinking that
17 night. She said that she went to bed around 2:00 that
18 night and she left Mr. Lupo up and he continued drinking
19 beer, and she said that early that morning Mr. Lupo
20 awakened her and wanted to talk, and she told him that she
21 was tired and she wanted to get her sleep because she had
22 to go to work that day and she said that he kept insisting
23 he wanted to talk to her. And she got up to go to the
24 bathroom and he followed her to the bathroom an he caught
25 her from behind and started choking her. She said she

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1 hadn't did anything and she also said that Mr. Lupo just
2 flipped on her and took her -- then take her from the bed
3 there and tossed her up and smashed her in the floor and
4 took one of the legs from the end table there and started
5 beating her with the end -- or leg of the table.

6 Q. At that point in time after speaking with her did
7 y'all go anywhere else? Did you or --

8 A. Yes, we did. She told us what room number she was in
9 and we went to the room.

10 Q. What was the -- what did the room look like when you
11 walked in there?

12 A. The room was in disarray. It was a broken end table
13 and stuff tossed on the floor, it looked like several beer
14 cans and trash all about the room there.

15 Q. I'm going to show you some pictures. Do those
16 pictures reflect the state of the room when you found it
17 that morning?

18 A. Yes, it does.

19 Q. Did you also find this -- what is that picture first
20 of all, I'm sorry.

21 A. This is a picture of the leg of the table -- the end
22 table that the defendant, Mr. Lupo, used to strike Ms.
23 Trusedale.

24 MR. MAXWELL: I object.

25 THE COURT: What is the objection?

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1 THE DEFENDANT: He's saying that I did it and I
2 didn't do it, it was a drug dealer that come in and did
3 it.

4 MR. MAXWELL: I object to that.

5 THE COURT: Okay. But I'll sustain his objection to
6 that comment made by the officers.

7 MR. MAXWELL: To go back just one second, Your Honor,
8 the pictures that I showed Captain Watkins of the hotel
9 room are State's Exhibits 1, 4, 5, and 3.

10 Q. Was that board in the room when you found it?

11 A. Yes.

12 Q. Can you identify what that is when you found that
13 board?

14 A. Yes. It has got a blood stain on this board here.

15 Q. Where was it located in the hotel room, do you
16 recall?

17 A. Yes. We located it on the floor in the motel room
18 there.

19 MR. MAXWELL: Your Honor, that's Plaintiff's Exhibit
20 2.

21 Q. I show you another picture, Captain Watkins. Are you
22 familiar with what those pictures are or what they
23 reflect?

24 A. Yes.

25 Q. What's in that top picture? What's that a picture

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1 of?

2 A. The top picture is a picture of the bathroom sink.

3 Q. Is there anything significant about that picture?

4 A. Yes. It have blood stains on the sink there.

5 Q. All right.

6 MR. MAXWELL: Your Honor, I offer this as State's
7 Exhibit 8.

8 THE COURT: Any objection?

9 THE DEFENDANT: No, sir.

10 THE COURT: No objection.

11 (The photograph was received as State's 8.)

12 Q. Just to go back a second, was there any indication
13 from Ms. Trusdale or from the state of the hotel that a
14 third person was there to your knowledge?

15 A. No, not to my knowledge.

16 Q. Do you recall if a note was found in the room?

17 A. Yes. We did find a note in the room.

18 THE DEFENDANT: I object, Your Honor.

19 THE COURT: All right, sir.

20 THE DEFENDANT: This note was written months after --

21 THE COURT: Tell me the basis of your objection.

22 MR. MAXWELL: Your Honor, can we talk about this
23 outside of the presence of the jury?

24 THE DEFENDANT: The note was written after --

25 THE COURT: Ladies and gentlemen -- hold on, Mr.

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1 Lupo. Okay. All right. Ladies and gentlemen, it's one
2 of these times we're going to have to discuss some matters
3 without you being in the courtroom. If you will please
4 step in the jury room and I remind you it's too early to
5 begin discussing the case.

6 (The jury left the courtroom.)

7 THE COURT: Your objection now? Stand up, Mr. Lupo.

8 THE DEFENDANT: Sir, they make it look like -- see
9 room 65 and a note right there, well, if you were just
10 sitting there and you looked at that bed spread and looked
11 at the bed spread right here, it's two totally different
12 bed spreads. What they did was they tried to put it
13 together to make it look like it was in the room. That
14 note was written months later. We were together and
15 tomorrow I am going to prove this, we were together after
16 this.

17 THE COURT: Let me see if I understand where we are
18 in the testimony. The question that was objected to just
19 asked by the solicitor, I forgot, what was your question?

20 MR. MAXWELL: Whether there was a note found in the
21 room.

22 THE COURT: The solicitor's question is was there a
23 note found in the room.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: What is your objection to that question?

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1 THE DEFENDANT: My objection is there was no note
2 found in the room.

3 THE COURT: But that's not for you to say, that's for
4 this officer to answer. The question is posed to him.

5 THE DEFENDANT: Sir, Your Honor, with all due respect
6 if you look it's on the bed spread --

7 THE COURT: There's nothing for me to look at, Mr.
8 Lupo. There's a question, there's a question to this
9 witness did he find a note in the room, it is either yes
10 or no. Now, let's go ahead and save some time, are you
11 attempting to introduce a copy of something?

12 MR. MAXWELL: At some point I will introduce the
13 original note.

14 THE COURT: Through this witness?

15 MR. MAXWELL: I may do it with the next witness, Your
16 Honor. I think I will do it with the next witness, Your
17 Honor.

18 THE COURT: Which may be tomorrow.

19 MR. MAXWELL: Yes, sir.

20 THE COURT: Is this witness capable of identifying
21 that?

22 THE DEFENDANT: I believe so, Your Honor.

23 THE COURT: Let me hear you on that because that's
24 getting ready to happen. We aren't there yet, he's going
25 to answer the question first about did he find a note in

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1 the room.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: I assume his answer is going to be yes
4 but I don't know. The next thing that's going to happen
5 is either through this witness or another witness the
6 solicitor is going to attempt to introduce that piece of
7 paper y'all are both looking at.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now, tell me your objection to anybody
10 introducing that piece of paper into evidence and stand up
11 while you are doing it.

12 THE DEFENDANT: My objection was that they are making
13 it look like it was found in the motel room and as you can
14 clearly see it's on the comforter. I wish the jury was in
15 here so they could hear it.

16 THE COURT: That's the reason we're doing it outside
17 of the jury's presence.

18 THE DEFENDANT: Okay. It's on the comforter in the
19 room but if you look that's a totally different comforter
20 sir, then the one right there that the note is on.

21 THE COURT: I assume you will be able to point all of
22 this out to the jury even if it's introduced into
23 evidence, you will be able to point out to them what you
24 see the short comings being.

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: Any other objections to that -- I guess
2 it's a photograph being introduced?

3 THE DEFENDANT: No, sir.

4 THE COURT: Okay. Anything else we need to take up
5 while the jury is out of the room?

6 MR. MAXWELL: I don't think so, Your Honor.

7 THE COURT: I'll note your objection, I am going to
8 overrule it on that question. Where we are now is the
9 question is going to be re-asked of the witness about
10 whether he found the note or not, I'm overruling your
11 objection to that question. Are we ready for the jury to
12 come back in?

13 MR. MAXWELL: Yes, sir.

14 (The jury returned to the courtroom.)

15 THE COURT: Welcome back again. I think we are ready
16 to resume the examination of the witness by the State.
17 And for the record, the Court overrules the objection, you
18 may ask the question again.

19 MR. MAXWELL: May it please the Court?

20 Q. Captain Watkins, do you have knowledge if a note was
21 found in the room?

22 A. Yes. We did find a note in the room.

23 Q. Let me ask you -- show you a picture. Please
24 describe that picture to the jury.

25 A. Yes. It's a white piece of paper.

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1 Q. What is the top picture just for --

2 A. Room number 65.

3 Q. Maybe you don't recall the number, but is that the
4 same hotel -- the hotel room where Ms. Trusdale and
5 Mr. Lupo were staying?

6 A. Yes, that's correct.

7 Q. And again, the bottom picture, explain that to the
8 jury, please.

9 A. Yes. On the bottom picture you have a note on a
10 legal pad here on the bed here that we took a picture of.

11 Q. Did that look to be the same note?

12 A. Yes, it is.

13 MR. MAXWELL: Your Honor, I would like to mark these
14 for identification purposes as State's Exhibits 9 and 10.

15 Q. Will you please explain to the jury one more time
16 what the condition of the room was, what it looked like
17 when you walked in?

18 A. The room was in disarray. It had beer cans and trash
19 all over the floor, the table -- wood on the -- breaking
20 of the end tables was all smashed on the floor.

21 Q. Were any drugs found in the room that you recall?

22 A. Not that I recall.

23 Q. When you arrived at the motel -- when your presence
24 began at the motel I would say -- I would like to phrase
25 it better -- did Ms. Trusdale ever go back to the room

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1 while you were there?

2 A. No, she didn't.

3 Q. How did she leave the motel, do you recall?

4 A. Yes. Ms. Trusdale left in an ambulance.

5 MR. MAXWELL: That's all of the questions I have at
6 this time, Your Honor.

7 THE COURT: All right. Mr. Lupò, any cross
8 examination of the witness?

9 THE DEFENDANT: Yeah.

10 CROSS EXAMINATION

11 BY THE DEFENDANT:

12 Q. This right here, this letter, have you ever heard any
13 other story besides the one that she told you, any other
14 story, any other kind of hypothesis of what went on or --

15 A. No. When I arrived on the scene she just told us
16 what had happened.

17 Q. And so there was a significant amount of damage done
18 to the motel room, correct?

19 A. That's correct.

20 Q. Was any warrants taken out?

21 A. Yes, there was.

22 Q. Did anybody get locked up or anything for the
23 warrants?

24 A. Yes. There was warrant taken out for the property
25 damage but the Fairfield Motel people failed to prosecute,

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1 they did not want to prosecute the warrant.

2 Q. After me they found out the truth, right?

3 MR. MAXWELL: Objection, Your Honor.

4 THE COURT: Sustained.

5 THE DEFENDANT: That's all.

6 MR. MAXWELL: May it please the Court?

7 THE COURT: Yes, sir.

8 REDIRECT EXAMINATION

9 BY THE DEFENDANT:

10 Q. Captain Watkins, was there another warrant taken out
11 on the defendant?

12 A. Yes, there was.

13 MR. MAXWELL: That's all of the questions I have.

14 THE COURT: Any recross?

15 RECROSS EXAMINATION

16 BY THE DEFENDANT:

17 Q. And what warrant was what?

18 A. A warrant issued for you for assault and battery of a
19 high and aggravated nature.

20 Q. Is that relevant to this case?

21 THE DEFENDANT: I object, Your Honor.

22 THE COURT: Overruled.

23 Q. And can I ask, was it a male or female assault and
24 battery of a high and aggravated nature?

25 A. A warrant was taken out on you for assault and

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1 battery of a high and aggravated nature, I'm hoping you
2 are a male.

3 Q. No. I'm saying against who, a male or a female?

4 A. I don't understand your question.

5 Q. He said that another warrant was taken out on me
6 besides the damage to the motel room, is that what you're
7 saying?

8 A. No.

9 Q. Are you talking about the one --

10 MR. MAXWELL: Objection, Your Honor.

11 Q. Yeah. There's a second warrant against me for
12 assault and battery of a high and aggravated nature, but
13 it's a male.

14 MR. MAXWELL: Your Honor, may we approach?

15 THE DEFENDANT: And I ain't been tried for that one
16 yet, sir.

17 THE COURT: Hold on a minute, Mr. Lupo.

18 (A bench conference was held.)

19 THE COURT: Anything further from this witness?

20 MR. MAXWELL: No, Your Honor.

21 THE COURT: Thank you, you may step down. Now is
22 probably a good time for us to break, ladies and
23 gentlemen. You're getting ready to do something that's
24 real hard when you leave here, you're getting ready to see
25 people you know, family, friends, somebody and they're

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1 going to say, "What did you do today in court? I got
2 picked on a jury. With a kind of case? Who is involved?
3 What happened?" You can't talk about it. What I would
4 like for you to do is to tell them you have been picked on
5 a jury and you will tell them all about it when things
6 finish up tomorrow. As I said earlier it won't be fair if
7 somebody says -- if you tell them what it involves or who
8 it involves or the kind of case it is, if one side or the
9 other finds out later on that y'all talked to somebody
10 about it who said, "Well, let me tell you what I think
11 about those kinds of cases," or, "Let me tell you what I
12 heard about her or him or them," somebody is going to
13 think they're getting the short end of the stick. And
14 once it is all said and done y'all are going to vote,
15 somebody is going to be unhappy with your vote and if they
16 find out that y'all have been talking to somebody about
17 this case or cases like this they're going to think they
18 didn't get a fair shake, so I ask you to please don't do
19 that. I'm going to ask you if you want to come at 9:30 or
20 10:00, I'm getting ready to ask y'all what y'all want to
21 do. How many want to come at 10:00? 10:00 it is.
22 Everybody coming at 10:00. See you in the morning at
23 10:00.

24 (The jury left the courtroom.)

25 THE COURT: Now, let me take a couple of minutes here

1 to discuss with Mr. Lupo something. Mr. Lupo, up until
2 today you had an attorney who was actively representing
3 you and I presume giving you advice. One of the things I
4 am sure that he told you that you do, in fact, have the
5 right to testify and I'm sure he also told you you have a
6 right not to testify. Now, let me explain a few things to
7 you, I'm required to do this legally so bear with me just
8 a moment. Tomorrow morning -- I assume tomorrow morning
9 sometime -- we will reach the stage in the proceedings
10 where you have the right to present your defense. You can
11 call witnesses to testify for you, but I want you to
12 listen to me, you can call witnesses to testify for you,
13 present evidence for yourself. You also have the right to
14 testify but you further have the right to claim the
15 protections given to you by the 5th Amendment to the
16 Constitution of the United States of America which states
17 in part as follows; no person should be compelled in any
18 criminal proceeding to be a witness against himself.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: This means, of course, you cannot be
21 compelled to testify. You have the right to testify but
22 you can't be compelled to testify. This is a personal
23 right that you have and nobody can waive this right except
24 you. If you decide to testify, though, I need to tell you
25 that you will be subject to the same rules that govern

1 other witnesses. You may be examined and cross examined
2 on any relevant issues in this case. In addition, if you
3 have any convictions involving dishonesty or false
4 statements or for crimes punishable by more than one year
5 and the Court determines that the probative value of
6 admitting this evidence outweighs its prejudicial affect
7 to you, the State would be allowed to use this evidence to
8 attack your credibility. If you decide to testify this
9 decision on your part must be made freely, voluntarily and
10 intelligently. If you decide not to testify I will
11 instruct the jurors that they cannot give the fact that
12 you didn't testify any consideration whatsoever, in other
13 words there will be no prejudice to you if you don't
14 testify, I'll tell the jurors they can't even discuss that
15 fact in their jury room. But it's left entirely up to you
16 as to whether you testify or not. You can discuss this
17 with your stand-by attorney, Mr. Lee, or you can discuss
18 it with your mother or anybody else you want to, but the
19 final decision is left up to you. Do you understand so
20 far what I have said?

21 THE DEFENDANT: Yes, sir, I do.

22 THE COURT: Have you made a decision yet as to what
23 you want to do about testifying?

24 THE DEFENDANT: I'm going to have a few witnesses
25 brought in tomorrow and hopefully Officer Quest Hallman

1 which she has substantial warrants on her.

2 THE COURT: Mr. Lupo.

3 THE DEFENDANT: I'm just going to have witnesses
4 tomorrow --

5 THE COURT: Tomorrow I am going to ask you again when
6 it actually comes time and I am going to ask you again if
7 have you made up your mind as to what you want to do about
8 testifying.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Will this be a time to discuss prior
11 record? I don't know if it is or not.

12 MR. MAXWELL: We do intend to use the -- if he
13 decides to testify to use his prior record against him.

14 THE COURT: Let's talk about it. What record are we
15 talking about?

16 MR. MAXWELL: He has an armed robbery from 1998. He
17 also has some -- that's the main one. He also has a grand
18 larceny from 1992 and petty larceny from 1997.

19 THE COURT: All right. And tell me your position on
20 the petty larceny?

21 MR. MAXWELL: That -- I think I do have case law that
22 says that larceny is a crime of dishonesty under Rule 609
23 that would come in for impeachment purposes.

24 THE COURT: And the grand larceny?

25 MR. MAXWELL: Same argument on all of those, Your

1 Honor. And the robbery involves a larceny, stealing, and
2 it comes in under 609.

3 THE COURT: Your position on that, Mr. Lupo?

4 THE DEFENDANT: I understand that.

5 THE COURT: The State wants to put you on notice --

6 THE DEFENDANT: If they put me on the stand they're
7 going to bring up my past and everything and if I don't
8 take the stand they don't.

9 THE COURT: Do you have any objection to them using
10 those three crimes that they have mentioned? I want to go
11 ahead and hear it now if you knew what objection you might
12 have.

13 THE DEFENDANT: I think that I don't need to take the
14 stand at all. I think that tomorrow my witnesses will
15 come in to prove that she's --

16 THE COURT: That's up to you, but if you do --

17 THE DEFENDANT: She's perjured herself throughout the
18 whole testimony throughout the whole trial and they will
19 see what she is, a liar.

20 THE COURT: All right. If you do testify what
21 objection do you have to the State using those three
22 convictions they just referred to? Do you have any
23 objection?

24 THE DEFENDANT: No.

25 THE COURT: All right. I wanted to go ahead and get

1 that out of the way. All right.

2 MR. MAXWELL: I would just like to clarify on the
3 record the defendant's bond status and also add it to the
4 bond no contact with the victim or any of her family or
5 close friends by the defendant or an agent of the
6 defendant.

7 THE COURT: All right. I heard the first part, check
8 on the status of the bond, the second part I missed.

9 MR. MAXWELL: The original bond did not have a
10 no-contact order, I would ask that be added to the order
11 in terms of anybody in his family or friends contacting
12 her family or friends for purposes of this, regarding this
13 trial.

14 THE COURT: Let me do it one at time. Tell me, does
15 the State have any objection to the Court continuing
16 Mr. Lupo on his existing bond?

17 MR. MAXWELL: No, sir.

18 THE COURT: Until tomorrow morning at 10:00.

19 THE DEFENDANT: Correct.

20 THE COURT: You understand if you don't show up
21 tomorrow, Mr. Lupo, at 10:00 we will continue the trial in
22 your absence, do you understand that?

23 THE DEFENDANT: Yes, sir, I will be here.

24 THE COURT: Now, the second question, the State wants
25 the Court to add as a condition of your bond that you not

1 have any contact I guess until now and the finishing of
2 the trial with Ms. Trusdale or -- I can't say anybody she
3 knows.

4 MR. MAXWELL: I understand that, Your Honor.

5 THE DEFENDANT: I haven't had any contact with her
6 since I broke up with her.

7 THE COURT: Do you have any objection to that?

8 THE DEFENDANT: No, sir.

9 THE COURT: The Court will issue that order then.
10 Can I include in the bond order his mother as well by her
11 consent if she would consent not to have any contact with
12 the victim? I am not going to do that. I am not issuing
13 third party restraining orders.

14 (Court adjourned for the evening and resumed at 10:10
15 a.m., on Tuesday, April 29, 2008.)

16 THE COURT: I sent word a minute ago telling the
17 bailiff to stick her head in the jury room and ask the
18 jury if they could select a foreperson to represent the
19 jury. Any objection to that?

20 THE DEFENDANT: What now, sir? The foreperson of the
21 jury?

22 THE COURT: The jury has to have a foreperson,
23 somebody must be appointed to represent them to serve as
24 foreperson of the jury.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Any objection?

2 THE DEFENDANT: No, sir. But I do have one
3 objection. Yesterday you mentioned that one of them that
4 was conflict of interest because she was dating -- her dad
5 was dating my mother and I asked that if I could have
6 another juror -- alternate juror to fill in in her place.

7 THE COURT: You asked that yesterday?

8 THE DEFENDANT: No, I am asking today. Because
9 this -- you recently found out about it yesterday right
10 before you dismissed us and call -- that the person that
11 was a conflict of interest due to her dad dating my mom, I
12 forget her.

13 THE COURT: I'm not sure that I said it was a
14 conflict of interest. I think that the solicitor's office
15 said that they had just become aware of that fact and just
16 wanted to make a disclosure of that fact.

17 MR. MAXWELL: That's correct. We found out about
18 lunch time yesterday and right when we found out we
19 disclosed it.

20 THE COURT: And tell me why is that a conflict?

21 THE DEFENDANT: Because her dad like I said is dating
22 my mother and it's a conflict of interest and she -- I
23 wasn't aware that that was her, but we have had -- we
24 don't get along.

25 THE COURT: In other words you know that juror?

1 THE DEFENDANT: Yes, sir, I know -- yes, sir.

2 THE COURT: How do you know the juror?

3 THE DEFENDANT: Her dad dates my mom -- well they,
4 you know, friends with one another, they're more than
5 friends.

6 THE COURT: Solicitor?

7 MR. MAXWELL: Your Honor, I would ask you to inquire
8 of the juror. But I would also like to point out that
9 when we were picking the jury yesterday Mr. Lupo was in a
10 much better position than the State to disclose that to
11 the Court, he may have run out of strikes at the time but
12 he could have made a challenge at that point in time.

13 THE DEFENDANT: I wasn't aware of who the woman was
14 until today.

15 THE COURT: So you don't really know the woman then.

16 THE DEFENDANT: I wasn't aware of who the woman was
17 by just name and then my mother mentioned it.

18 THE COURT: Let me say see now if I have got this
19 straight. You don't know that woman by name and I am
20 assuming you don't know her by her appearance.

21 THE DEFENDANT: I have seen her before, yes, sir, and
22 she has made some accusations against me.

23 THE COURT: But you didn't recognize her? I'm asking
24 the question.

25 THE DEFENDANT: No, sir. But she has made some

1 accusations against me in the past to her father and I
2 would just ask if we could use the alternate juror because
3 I don't think I could get a fair trial if it comes down to
4 it with her being on the jury.

5 THE COURT: Let me ask you a question -- let me ask
6 both of y'all questions. The State indicates they have
7 one more witness.

8 MR. MAXWELL: As of right now, yes, sir, I believe
9 so.

10 THE COURT: Mr. Lupo, how many witnesses do you
11 believe that you have?

12 THE DEFENDANT: Two. I got in touch with Mr. Quest
13 Hallman, the police officer, and he is going over the
14 tickets that I asked about yesterday and that were pulled
15 after the incident that we were indeed back together and
16 he said that he didn't have enough time. If I would give
17 him enough time to subpoena him he could have been here
18 but --

19 THE COURT: I just needed to know how many witnesses
20 you had. Have you yourself made a decision about whether
21 you're going to testify or not?

22 THE DEFENDANT: No, sir. I'm not going to testify.

23 THE COURT: You are not going to testify?

24 THE DEFENDANT: No, sir.

25 THE COURT: Okay. Are all of the jurors including

1 the alternate present, does anybody know? In other words,
2 have we got 12 plus one? Defense is asking to disqualify
3 juror number -- does anybody know that number? Do you
4 know the juror's name?

5 THE CLERK: Rexrow, she's number 106.

6 THE COURT: Juror 106?

7 THE CLERK: Yes, sir.

8 THE COURT: And again, the State's position on juror
9 106?

10 MR. MAXWELL: We would like to leave her on the jury
11 panel, Your Honor.

12 THE DEFENDANT: Like I said, it is a conflict because
13 she has in the past made -- she don't like me, sir. I
14 don't think I could get a fair trial with her being on the
15 jury.

16 THE COURT: I'll come back to that in a minute. Let
17 me make a few comments. Mr. Lupo.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Yesterday we had some problems in the
20 courtroom.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: One of the problems we had in the
23 courtroom I did not specifically address in the courtroom
24 but I did look at you very glaringly and I think you saw
25 my look. The reason I was looking at you that way is

1 because you were commenting and talking while the
2 solicitor was asking questions of a witness. You can't do
3 that, Mr. Lupo. If you had been an attorney I would have
4 found you in contempt of court for doing that. You were
5 commenting during the process in which the questioning --
6 either questioning or cross examining, I've forgotten of
7 the witness by the solicitor, you were sitting in your
8 chair making comments, clear to me the purpose of those
9 comments was for the jury to hear what you were saying.
10 You cannot do that.

11 THE DEFENDANT: Yes, sir, I apologize.

12 THE COURT: I know, you did it several times. All
13 you can do is object.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You can't start making comments about the
16 testimony of a witness, which leads me to this -- if
17 you're going to continue to represent yourself one of the
18 things I do need to tell you is this: I assume that you
19 want to make your closing arguments, my recollection is
20 that was important to you to be able to do that.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: In your closing argument you will not be
23 able to testify.

24 THE DEFENDANT: Right.

25 THE COURT: In your closing argument you will not be

1 able to tell the jury your version of what occurred on
2 that day. If you do not testify you cannot tell the jury
3 about anything that was not testified to. You can, for
4 instance, not say, "I was there, ladies and gentlemen, and
5 it was 10:00 in the morning or it was raining that day."
6 You can't say anything about those issues or similar
7 issues unless somebody from this witness stand has already
8 said that.

9 THE DEFENDANT: Right.

10 THE COURT: Your attorney would not be able to do
11 that, you can't do any more than the attorney can do.

12 THE DEFENDANT: Question. Pretty much is to sum up
13 what had been said on the jury stand, right? If my
14 witnesses get up there and they -- let's say I bring those
15 questions out, then I can present that in my closing
16 argument, correct?

17 THE COURT: If your witness -- if you have a
18 witness -- again, my example is if you have a witness say
19 I was there on the day of the event and it was raining,
20 you certainly can bring that out.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Once again, you can't in your closing
23 argument say, I was there and here is what I saw or heard,
24 you can't do that, not unless somebody -- you or somebody
25 else testifies to that fact.

1 THE DEFENDANT: Right.

2 THE COURT: You understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: A couple of more things. This applies
5 both ways, though, the solicitor knows these rules so the
6 solicitor knows that the solicitor is prohibited from at
7 closing argument mentioning a fact that has not been
8 testified to or presented.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Correct, solicitor?

11 MR. MAXWELL: Yes, sir.

12 THE COURT: All right. Both sides are also
13 prohibited from making any comments about the other side's
14 failure to call a witness unless that witness is under
15 your control.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Any questions about that?

18 THE DEFENDANT: No, sir.

19 THE COURT: All right. Both sides are prohibited
20 from using any derogatory terms to refer to any of the
21 witnesses.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: -- or opposing counsel. Solicitor knows
24 that the solicitor can't make any closing arguments and
25 make derogatory remarks about you. You can't argue to the

1 jury about the amount of possible time that could be
2 imposed or sentence, that can't be done, the solicitor
3 knows that.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You cannot make references to Bible
6 versus, things such as that.

7 THE DEFENDANT: Okay.

8 THE COURT: There are a number of other things that
9 the solicitor knows that the solicitor is prohibited from
10 doing just because the solicitor has been in this business
11 for a number of years.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Additional comments or requests
14 concerning at this stage closing arguments? And I know
15 we're not there yet.

16 MR. MAXWELL: Not at this point.

17 THE COURT: And the reason I'm going over this with
18 you now, Mr. Lupo, instead of at the end is for this
19 reason: I wanted you to make sure that you understand
20 that by representing yourself you're not going to be able
21 to bring up all of those things.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Unless somebody else brings it up, yes,
24 sir, oh, yeah. I'll ask you one more time, are you sure
25 you want to continue to represent yourself as opposed to

1 having Mr. Lee represent you?

2 THE DEFENDANT: Yes, sir, I do. All right. Could I
3 approach the bench for a minute?

4 THE COURT: No, sir. You can tell me whatever you
5 need to say in open court.

6 THE DEFENDANT: I forgot to take my blood pressure
7 medicine this morning and I was wanting to know if maybe
8 my mother could go and get it for me.

9 THE COURT: Sure. She can leave any time and come
10 back any time. I'm going to think about it. Let's take
11 about ten minutes.

12 (A break was taken.)

13 THE COURT: Solicitor, are you ready to proceed?

14 MR. MAXWELL: Yes, sir.

15 THE COURT: Mr. Lupo?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: I am requesting to ask the bailiff if the
18 bailiff would have juror 106, Ms. Rexrow, brought in to
19 the courtroom because I am granting the defendant's motion
20 to excuse that juror.

21 THE DEFENDANT: Thank you, Your Honor.

22 THE COURT: Any objection to this procedure? I
23 understand that State doesn't agree with the decision but
24 any objection to the procedure?

25 MR. MAXWELL: No objection to the procedure.

1 THE COURT: Any objection from the defense?

2 THE DEFENDANT: (Inaudible.)

3 (Juror 106 entered the courtroom.)

4 THE COURT: All right. Hey, how are you doing. You
5 are Ms. Rexrow?

6 THE JUROR: Yes.

7 THE COURT: Ms. Rexrow, in your absence we had a
8 discussions about you and your knowledge of the defendant
9 and his family and so on, and we have been informed that
10 somebody in your family has had a relationship with
11 somebody in his family, Mr. Lupo's family.

12 THE JUROR: My daddy pays his mother for sex.

13 THE COURT: Okay. Therefore, I'm going to excuse you
14 for sitting on this jury.

15 THE JUROR: I appreciate that.

16 THE COURT: I thought you might.

17 (The jury left the courtroom.)

18 THE COURT: Now, my plan would be to bring the
19 remaining juror panel back in the courtroom, merely tell
20 them that we have excused juror 106 and that the alternate
21 juror, Ms. Roof, has taken her place. Any objection to
22 that from the solicitor?

23 MR. MAXWELL: No, sir, Your Honor.

24 THE COURT: From the defense?

25 THE DEFENDANT: Who was it, sir?

1 THE COURT: See, you're going to have to listen to
2 the Court when the Court speaks to you.

3 THE DEFENDANT: Who did you say the juror was?

4 THE COURT: Just listen to what I am saying. What I
5 propose to do is bring the entire jury panel back in, the
6 remaining members of this jury, excuse me and tell them
7 that Ms. Rexrow, juror 106, has been excused for reasons
8 that don't concern them and that Ms. Roof, juror 110, will
9 sit in her place. Any objection to that? State has
10 already said no objection. Any objection from the
11 defense?

12 THE DEFENDANT: No, sir:

13 THE COURT: Bring the jury back in.

14 (The jury returned to the courtroom.)

15 THE COURT: Did the jury have an opportunity to
16 select a foreperson to represent the jury? I have got
17 somebody raising their hand.

18 THE JUROR: I got railroaded, Your Honor.

19 THE COURT: All right. Well, I am going to confirm
20 that railroad. Now, what I would like for you to do is
21 swap seats with this lady sitting right in front of you,
22 she can sit beside you or in back either one. So that
23 will be your seat as foreperson of the jury but you have
24 to give me your number and your name.

25 THE JUROR: James Graham, I forgot my number.

1 THE COURT: I will find it in just one minute.

2 THE CLERK: Number 48, Judge.

3 THE COURT: Number 48, Mr. James Graham. And

4 Ms. Roof, you were our alternate juror, you are no longer

5 our alternate juror, you are a member of the 12.

6 Ms. Rexrow is no longer serving on the jury for reasons

7 that don't concern you. And I apologize for us -- we

8 really didn't waste 45 minutes of your time, I know we

9 asked you to be here at 10:00, we thought we were going to

10 be ready to go at 10:00, we have been doing things in the

11 courtroom. I think we're now ready to resume the

12 presentation of the State's case from the solicitor.

13 MR. MAXWELL: Your Honor, the State calls Kenny

14 Talbert.

15 The witness, KENNY TALBERT, was first duly sworn and

16 testified as follows, on:

17 DIRECT EXAMINATION

18 BY MR. MAXWELL:

19 Q. Officer Talbert, where do you work at?

20 A. Winnsboro Public Safety.

21 Q. What is your title?

22 A. Major over investigations.

23 Q. How long have you been working for Winnsboro Public

24 Safety?

25 A. Nineteen years.

TESTIMONY OF KENNY TALBERT

- 1 Q. Were you working on April 6th of 2007?
- 2 A. Yes, sir, I was.
- 3 Q. Were you dispatched to the Fairfield Motel that
- 4 morning?
- 5 A. Yes, sir.
- 6 Q. About what time that morning was that?
- 7 A. I'm not exactly sure of the time, it was early
- 8 morning, I don't have the paper with me.
- 9 Q. What was the scene like when you arrived?
- 10 A. When I got there I went in through the front office
- 11 to the left, there's like a little old break room for the
- 12 employees that work in the office. Ms. Trusdale was
- 13 there, EMS was coming in preparing to work on her, Captain
- 14 Watkins was already there. I asked what was going on and
- 15 he kind of briefed me that she had said that Billy had
- 16 jumped on her, and I actually didn't recognize her until
- 17 she spoke my name. By that time EMS was working on her,
- 18 they got her out, we went back to the room, took
- 19 photographs of the room and worked the crime scene.
- 20 Q. Did she say anything to you while she was on the
- 21 stretcher besides just calling out your name?
- 22 A. I had asked her, "What's going on?" And she said,
- 23 "Billy had jumped on me."
- 24 Q. Did you know who she was referring to?
- 25 A. She just said Billy.

TESTIMONY OF KENNY TALBERT

1 Q. Did she say anything else?

2 A. No, sir.

3 Q. You said after speaking with her you and Captain
4 Watkins went to the room?

5 A. Went to the room to take pictures.

6 Q. What was the condition of the room when you arrived?

7 A. It was tore up pretty good. Like Captain Watkins
8 said yesterday there was beer cans around, some blood on
9 different places, bed spreads tore up. You can tell some
10 kind of struggle or something had happened in there in
11 that time.

12 MR. MAXWELL: Your Honor, I am going to give Major
13 Talbert, if I may, State's Exhibits one, three, four, and
14 five.

15 THE COURT: All right sir.

16 Q. Let me ask you some questions about those. Major
17 Talbert, as you looked through those, what are all of
18 those pictures generally of?

19 A. This is the room that they actually took photographs
20 where they said the incident happened at.

21 Q. Do those pictures match the scene as you remember it
22 that morning?

23 A. Yes, sir.

24 Q. I'm going to show you two more photographs, State's
25 Exhibits 6 and 7. Would you please explain to the jury

TESTIMONY OF KENNY TALBERT

1 what those pictures are of?

2 A. Pictures that was taken of Mrs. Trusdale while she
3 was at the motel.

4 Q. Does that reflect the way you saw her that morning
5 roughly?

6 A. Yes, sir.

7 Q. Will you please explain to the Court what else was
8 found in the room?

9 A. We found a note that -- it was on the bed, it was
10 photographed. Like I said, we photograph everything
11 before we touch anything and we actually found a note left
12 explaining -- I'm not explaining exactly everything that
13 was in the note but kind of explaining a little bit of
14 things that went -- what actually went on that morning or
15 evening.

16 MR. MAXWELL: I'm going to show the witness State's
17 Exhibit 9.

18 Q. If you would explain the bottom picture.

19 A. That is the actual picture of the letter that was on
20 the bed.

21 MR. MAXWELL: I also want to show the witness State's
22 Exhibit 1.

23 Q. That to picture, if you would -- what is the top
24 picture? Does it show a bed spread in that picture?

25 A. Yes, it shows a bed spread.

TESTIMONY OF KENNY TALBERT

1 Q. And does State's Exhibit 9 show a bed spread with a
2 note on it? Does it appear to you to be the same bed
3 spread?

4 A. It appears to me to be the same bed spread.

5 MR. MAXWELL: Your Honor, at this time I'm going to
6 offer State's Exhibit 9 into evidence. Like I said, I
7 believe they identified it yesterday and I am going to
8 offer Exhibit Number 9 into evidence at this time.

9 THE COURT: Any objection to State's Exhibit Number
10 9?

11 THE DEFENDANT: No, sir.

12 THE COURT: Admitted without objection.

13 (The photograph was received as State's 9.)

14 MR. MAXWELL: I'm going to show the witness State's
15 Exhibit 10 which was offered yesterday just for
16 identification purposes.

17 Q. Is that the note that was found in the room on
18 April 6th?

19 A. It appears to be the one that was found.

20 Q. Does it match the picture in State's Exhibit 9?

21 A. Yes, sir, it does.

22 MR. MAXWELL: Your Honor, I'm going to offer the
23 letter as State's Exhibit 10 into evidence.

24 THE COURT: Any objection to Number 10?

25 THE DEFENDANT: No, sir.

TESTIMONY OF KENNY TALBERT

1 THE COURT: Admitted without objection.
2 (The letter was received as State's 10.)
3 Q. I just gave you a piece of paper. Does that appear
4 to be a copy of the letter?
5 A. Yes, sir, it does.
6 Q. Just a photocopy?
7 A. Photocopy of the original, yes.
8 Q. Who is the letter written to?
9 A. Missy.
10 Q. Do you know if Ms. Trusdale also goes by the name of
11 Missy?
12 A. Yes, sir. That's how I know her by Missy.
13 Q. And on the second page, who is the letter -- who is
14 the signature on the letter at the end of the letter?
15 A. It says, "Sincerely, Billy Lupo."
16 Q. Would you please at this time publish to the jury if
17 the Court would allow it the highlighted portions of the
18 letter?
19 A. "I want to apologize "-- first of all it says,
20 "Missy. I want to apologize for my ill-mannered behavior
21 last night and this morning. I was in the wrong, I'm
22 sorry. Threatening me nice and being good to me
23 regardless of what he said or done and I have no right to
24 act the way that I acted. I hope in due time that you
25 will one day find it in your heart to forgive me. I feel

TESTIMONY OF KENNY TALBERT

1 really bad about the things I did. If I said I was sorry
2 a million times it wouldn't be enough. Sincerely, Billy
3 Lupo."

4 Q. Thank you. Was anything else found in the room?

5 A. Not --

6 Q. Do you know what Mr. Lupo attacked Ms. Trusdale with?
7 Do you have knowledge of that?

8 A. Yeah. It was like a table leg, end table leg or
9 something.

10 Q. Do you recall finding that in the room?

11 A. Yes, sir, I recall the photographs of it.

12 Q. I'm going to show the witness State's Exhibit 2.
13 Does that roughly reflect --

14 A. The best of my knowledge, yes.

15 Q. But that was found in the room?

16 A. That was found in the room.

17 Q. Would you identify or explain to the jury what you
18 think that is?

19 A. On the end of it it appears to be what appears to be
20 blood stains.

21 THE DEFENDANT: Your Honor, may I object? That's
22 just a picture, that's isn't the actual evidence.

23 THE COURT: It's already been introduced into
24 evidence though, Mr. Lupo.

25 THE DEFENDANT: Okay.

TESTIMONY OF KENNY TALBERT

1 Q. Major Talbert, do you know what happened to the
2 original -- to the board that day?

3 A. No, sir, I don't. I know -- all I know is we placed
4 it into evidence and that's all I know.

5 Q. Was there any indication from the witness, the state
6 of the room, any reports about a third person other than
7 Mr. Lupo or Ms. Trusdale being there?

8 A. No. Ms. Trusdale said that Billy had did this to
9 her, that was the only name that was given.

10 Q. After you left the motel that day, what was the next
11 thing that you did?

12 A. Myself and Captain Watkins left -- after EMS had
13 transported her we left and went to Ms. Lupo's residence
14 which is in the city, knocked on the door and nobody got
15 to the door.

16 Q. Is that with Ms. Lupo?

17 A. That's his mother's residence looking for Billy to
18 find out what all was going on, he wasn't there. Later, I
19 want to say it was either later that day or the next day I
20 had got a report that he might have been staying with his
21 sister, which lives in Great Falls. Myself and Captain
22 Watkins did make a trip to his sister's house in Great
23 Falls, which nobody was there either.

24 Q. Just to go back just a little bit. Please explain to
25 the jury what Ms. Trusdale -- her state was, mental and

TESTIMONY OF KENNY TALBERT

1 physical state at the time you arrived. I believe you
2 touched on it a little bit but if you could go into
3 further detail.

4 A. When I got there she was moaning a lot and she was
5 bleeding, and I mean just seemed to be in a lot of pain
6 when we got there. Shortly after I got there EMS arrived
7 and they started working with her and she was crying, she
8 was bleeding, and just real hysterical.

9 Q. You mentioned earlier you hardly recognized her or
10 you didn't recognize her.

11 A. I didn't recognize her at first.

12 Q. That was why?

13 A. Because of the blood and all on the face. I just
14 didn't recognize her until she called my name and I
15 recognized who she was.

16 THE DEFENDANT: That's all of the questions I have at
17 this time.

18 THE COURT: Thank you, Solicitor. Cross examination,
19 Mr. Lupo?

20 CROSS EXAMINATION

21 BY THE DEFENDANT:

22 Q. Mr. Talbert, that letter, was there a date on that
23 letter?

24 A. I would have to see it again to see if there's a date
25 on it. No, I don't see a date on it.

TESTIMONY OF KENNY TALBERT

1 Q. Does it show anything pertaining to me beating her?

2 A. No. It just says you apologize for what had
3 happened.

4 Q. There's no date on it.

5 A. No, sir.

6 Q. Could you read the whole letter?

7 A. I'll try. "Missy. Hello, darling. You probably do
8 not want me to call you that, but regardless of what
9 happened you are a beautiful young lady and in the future
10 I hope to see you. I probably always will call you
11 Darling Missy. I want to apologize for my ill-mannered
12 behavior last night or this morning. I was in the wrong
13 and I'm sorry from the bottom of my heart. The other
14 stuff had a lot to do with that. I won't blame you if you
15 don't forgive me. I want to thank you for treating me
16 nice and being good to me. Regardless of what was said or
17 done I have no right to act the way that I acted. I just
18 got to the point that I was starting to have feelings for
19 you that scared me. I have been hurt so many times,
20 Missy. I'm not comparing you to other women but I am just
21 scared of getting hurt again. I can honestly say that if
22 felt good the way you felt for me."

23 Q. That it felt good.

24 A. "The feeling you had for me I hope in due time that
25 you will one day find in your heart to forgive me. I am

TESTIMONY OF KENNY TALBERT

1 going to miss spending time with you, the boys. I hope
2 that when you weigh out everything I hope that the good
3 times outweigh the bad. I love to still have you as a
4 friend, but if not I understand. I hope that you get all
5 out of life that's good and wish nothing but the best for
6 you. And I know that you will find someone one day that
7 will sweep you off of your feet to make you happy, you
8 deserve that. I wish that my heart hadn't been hurt so
9 much because maybe then things would have been different
10 anyway. You are on my mind. I think I write this letter,
11 I hope that it finds you in good spirits. I guess I will
12 close for now. I really feel bad about the thing I did.
13 If I say I was sorry a million times it wouldn't be
14 enough. I wish we wouldn't have messed with that
15 stuff --"

16 Q. The things I did, plural.

17 A. -- "with the stuff last night and started drinking.
18 I do care for you, Missy, probably more than you know. I
19 am just a mixed up person. Thanks again, darling, for
20 treating me nice. We had some pretty good times, didn't
21 we? I know we had our bad ones too but every one does
22 anyway. Thank you for everything and I wish you and your
23 family well. Sincerely, Billy Lupo."

24 Q. And again, it doesn't have a date. Does it have any
25 blood on the letter?

TESTIMONY OF KENNY TALBERT

1 A. No. I don't see any blood on the letter.

2 Q. Did you ever see me there at the motel?

3 A. No, sir. I did not see you at the motel.

4 Q. So that note could have been written at any time?

5 A. Well, it was at the motel when we got there to work
6 the crime scene it was there, so it couldn't have been
7 after we worked the crime scene. It was there when we
8 worked the crime scene.

9 Q. But it could have been --

10 A. Unless somebody -- the time she left the room and
11 come back and placed it before we got there. It was there
12 when we got there.

13 Q. But I mean it could have been written any time
14 because there is no date on it.

15 A. I agree with you on that.

16 THE DEFENDANT: Thank you.

17 MR. MAXWELL: Nothing further from this witness.

18 THE COURT: Thank you, sir, you may step down.

19 Anything further?

20 MR. MAXWELL: The State calls Shannon Trusdale.

21 The witness, SHANNON TRUSEDAL, remained under oath
22 and testified as follows, on:

23 DIRECT EXAMINATION

24 BY MR. MAXWELL:

25 THE COURT: Ms. Trusdale, I will remind you that you

TESTIMONY OF KENNY TALBERT

1 are still under oath.

2 Q. Ms. Trusdale, I show you State's Exhibit 10. Have
3 you ever seen that before?

4 A. No, sir.

5 Q. Did you see it in the hotel room that day?

6 A. No, sir.

7 Q. Who is the name at the top, who is the letter written
8 to?

9 A. It's written to Missy, me.

10 Q. You go by Missy sometimes?

11 A. Right.

12 Q. But you never saw that letter before?

13 A. Never saw it.

14 MR. MAXWELL: No further questions.

15 THE COURT: Any cross examination of the witness,
16 Mr. Lupo?

17 CROSS EXAMINATION

18 BY THE DEFENDANT:

19 Q. So you don't recall me giving you this letter at any
20 point in time?

21 A. No. I have never seen it until today.

22 Q. So as far as anybody knows I may not have written
23 that letter at all.

24 A. Well, it appears to me to be your handwriting.

25 Q. Yeah, it's my handwriting, it is, I'm not going to

TESTIMONY OF SHANNON TRUSEDALE

1 lie, it is my handwriting. But it could have been written
2 at any time. But you're saying that you have never seen
3 this letter?

4 A. No, I never seen the letter.

5 Q. A friend, do you know a Sonya Braswell?

6 A. Yes.

7 Q. Did you ever get a letter from her and a CD?

8 A. No, I didn't.

9 Q. After we split up in Great Falls?

10 A. No, I didn't.

11 MR. MAXWELL: I want to object, Your Honor, based on
12 relevance.

13 THE DEFENDANT: It was after the incident, I give a
14 letter -- I'm just asking her if she knows Sonya Brannum I
15 believe her name is.

16 THE COURT: And I think she said no, didn't she?

17 A. I know her. I never received anything from her.

18 THE DEFENDANT: Do I have to ask questions concerning
19 this letter or can I ask other questions?

20 THE COURT: I don't know if there's going to be an
21 objection or not. Go ahead. You can ask whatever you
22 want to unless it's objected to.

23 Q. And you said that after the incident that me and you
24 we weren't romantically involved --

25 MR. MAXWELL: I want to object, Your Honor, the

TESTIMONY OF SHANNON TRUSEDALÉ

1 direct examination was about the letter.

2 THE COURT: It's cross examination.

3 MR. MAXWELL: My direct examination to her was about
4 the letter and I believe on his cross examination he can
5 only can go into and rebut my cross examination.

6 THE COURT: No, overruled. Go ahead.

7 Q. So again yesterday you said that we weren't
8 romantically involved after the incident.

9 A. Correct.

10 Q. Are you sticking with that story?

11 A. Correct. I talked to you but -- you probably do
12 think we had a relationship, I let you think whatever you
13 wanted to think, so whatever you think.

14 Q. But we were never involved, no way, shape or form
15 were you ever -- I'm just asking.

16 A. Yeah, I talked to you.

17 Q. No. I'm talking about romantically involved.

18 A. No.

19 Q. You never stayed with me at any point in time after
20 that?

21 A. We talked, Billy. I visited you, I didn't stay with
22 you, I didn't live with you and you didn't live with me.

23 Q. And no restraining order was never taken out.

24 A. No. Because I had you right where I wanted you, you
25 thought I wasn't going to take you to court.

TESTIMONY OF SHANNON TRUSEDAL

1 Q. Let me ask you this question. If I had done
2 something this bad to you why wasn't a restraining order
3 taken out against me?

4 A. I didn't have to. All I had to do was make you think
5 I wasn't going to go to court, just what I did. All I had
6 to make you think that I was going to be okay with you
7 doing what you done to me and I was going to forgive you
8 and I did just that. But I didn't forgive you, I haven't
9 forgave you and I will never forgive you.

10 Q. So you are no longer involved as far as like
11 communication at this point, right, with me?

12 A. No, I'm not.

13 Q. Okay. Well, why then were you --

14 A. Because I started dating somebody else and I got away
15 from Winnsboro, I don't have to worry about you anymore.

16 Q. I'm saying why then didn't you cut yourself off from
17 me?

18 A. I don't understand what you're saying.

19 Q. You just said that you had me where you wanted me, no
20 restraining order was taken out. But now you don't no
21 way, shape or form are you involved with me.

22 A. No.

23 Q. Why not then after the incident?

24 A. Because I had you where I wanted you, I felt safe. I
25 knew you thought that I wasn't going dog to court. Just

TESTIMONY OF SHANNON TRUSEDAL

1 until a week ago your mom's -- y'all are trying to talk to
2 my mom to come and testify on your behalf.

3 THE DEFENDANT: I object, Your Honor.

4 Q. Wouldn't you have felt safer if you would have had
5 the police involved with a restraining order?

6 A. A restraining order is a piece of paper.

7 Q. Right.

8 A. It helps, but if you really wanted to kill me you
9 could kill me.

10 Q. No, that's not --

11 A. Oh yes, you can.

12 MR. MAXWELL: Your Honor, I think the questions he
13 has asked she has answered the questions sufficiently.

14 THE DEFENDANT: I'm trying to get my case across,
15 Your Honor.

16 THE COURT: Overruled, I will let you proceed.

17 Q. To me it makes more sense -- you don't have any -- no
18 relations with me, none whatsoever now at this point --

19 A. When somebody threatens to kill you and you get
20 beaten as bad as I did, I think you will do anything to
21 feel safe.

22 Q. Okay. You wouldn't have felt safer taking out a
23 restraining order against me --

24 A. You knew -- I told you I was going to court and that
25 you were going to get what you deserved, I said I will go

TESTIMONY OF SHANNON TRUSEDAL

1 and I will tell them that, you know, the other guy come in
2 or whatever you told them and I did that. And you thought
3 all along that I went along with this lame story you gave
4 that other solicitor.

5 Q. Excuse me, what other guy?

6 A. I don't know, there wasn't another guy. You're the
7 one that told the solicitor there was another guy. You
8 told the courtroom yesterday that I owed him money so who
9 is he, where is he at? I want to put the person in jail
10 the person that did this to me, not somebody that didn't
11 do it to me.

12 Q. Well, I'm asking, you wouldn't have felt safer with a
13 restraining order?

14 A. No, I wouldn't have. No, I would have not.

15 Q. That doesn't make any sense. So now --

16 MR. MAXWELL: Object to that, Your Honor.

17 Q. So now --

18 MR. MAXWELL: I'm going to object, Your Honor.

19 THE COURT: The objection is that you're testifying
20 Mr. Lupo -- I'm assuming that that is the objection. You
21 need to ask questions of her.

22 THE DEFENDANT: Okay.

23 Q. So after I supposedly beat you and you became
24 terrified and afraid you seen a different side of me,
25 right?

TESTIMONY OF SHANNON TRUSEDAL

1 A. You was the same person you were before you beat me,
2 you just flipped out for no reason. You were the same
3 person you were before you beat me.

4 Q. But after --

5 A. I didn't think you was that evil monster before you
6 beat me, you just flipped out just like that. You did and
7 you know you did.

8 Q. You know the truth and I know the truth and you know
9 that you owed that money person money --

10 MR. MAXWELL: I'm going to object, Your Honor.

11 THE COURT: Hold on just one minute, folks.

12 Mr. Lupo, the objection again is that you're testifying,
13 what you need to do is ask questions of the witness.

14 Q. So you became terrified and afraid because you say
15 that you seen a different side of me, that supposedly your
16 side of the story that I did this, you became terrified
17 and afraid of me and you were scared of me, right?

18 A. Uh-huh.

19 Q. And my point is no restraining order was ever taken.
20 If something was to be done like that --

21 MR. MAXWELL: I'm going to object again, Your Honor,
22 he's testifying again.

23 THE COURT: Mr. Lupo.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You need to ask questions of the witness

TESTIMONY OF SHANNON TRUSEDAL

1 as opposed to making statements.

2 Q. When you heard that I had posted bond, were you
3 afraid for your life?

4 A. Yeah.

5 Q. You were?

6 A. Yeah.

7 Q. But yet no restraining order was taken out.

8 A. No for the third time.

9 Q. I imagine you probably lost sleep because you were
10 scared that I may come after you, correct?

11 A. Wouldn't you?

12 Q. But no restraining order was taken out.

13 THE DEFENDANT: No further questions, Your Honor.

14 THE COURT: Thank you, Mr. Lupo. Anything further,
15 Solicitor?

16 MR. MAXWELL: Just a few questions, Ms. Trusdale.

17 REDIRECT EXAMINATION

18 BY MR. MAXWELL:

19 Q. Ms. Trusdale, as you stated, did you have any
20 romantic intimate relationship with the defendant?

21 A. No, we talked.

22 Q. You did have contact with the defendant?

23 A. Yes, we did.

24 Q. You did see him around town.

25 A. Yes, I did. And I even went to his mother's house

TESTIMONY OF SHANNON TRUSEDAL

1 one day, we did not leave together, we did not have no
2 romantic relationship. I made him think whatever he
3 wanted to think because he thought if he had me as a
4 girlfriend or whatever and it was going on in his mind
5 that he wasn't going to go to prison.

6 Q. Winnsboro is a pretty small town, isn't it?

7 A. Right.

8 Q. Fairfield County is pretty small county?

9 A. Right.

10 Q. So you'll see people around here; is that correct?

11 A. Right.

12 MR. MAXWELL: No further questions.

13 THE COURT: Hold on just one minute, ma'am. Any
14 recross? Apparently not. You may step down. You may
15 call your next witness, Solicitor.

16 MR. MAXWELL: State rests, Your Honor.

17 THE COURT: The State rests. Mr. Lupo, you may call
18 your first witness.

19 THE DEFENDANT: I would like to call my -- I need to
20 make a motion outside of the presence of the jury.

21 THE COURT: Ladies and gentlemen, I'm going to ask
22 you to step into the jury room for a few minutes, we will
23 be right back with you I hope. I remind you it's too
24 early to begin discussing the case.

25 (The jury left the courtroom.)

TESTIMONY OF ANNE FRAZIER

1 THE COURT: Mr. Lupo, your motion?

2 THE DEFENDANT: Yes, sir. I would like to make a
3 motion for a directed verdict and the grounds are the
4 State has failed to establish a prima facia case.

5 THE COURT: All right. Anything else?

6 THE DEFENDANT: That's it.

7 THE COURT: I will deny the motion. Now, are we
8 ready for the jury?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Bring our jury back in.

11 (The jury returned to the courtroom.)

12 THE COURT: Welcome back, ladies and gentlemen. I
13 believe we are now ready to receive evidence from the
14 defense. Mr. Lupo, you may call your first witness.

15 THE DEFENDANT: Ms. Osby.

16 The witness, ANNE FRAZIER, was first duly sworn and
17 testified as follows, on:

18 DIRECT EXAMINATION

19 BY THE DEFENDANT:

20 THE CLERK: State your name for the record and speak
21 in to the mic.

22 THE WITNESS: The name I was born with was Lela Ann
23 Odom.

24 Q. Ms. Odom, do you recall seeing me and Ms. Trusdale
25 together after the incident?

TESTIMONY OF ANNE FRAZIER

1 A. Yes, sir, I do.

2 Q. Would you say we were romantically involved?

3 A. Yes, sir, you were.

4 Q. Did we spend the night at your house after the
5 incident?

6 A. Yes, sir you did. Your mother, Ms. Shirley Lupo,
7 called me on a night there was a sale on a window air
8 condition and she asked me would I let her borrow the
9 money --

10 MR. MAXWELL: Objection, Your Honor.

11 THE COURT: The objection is?

12 MR. MAXWELL: Hearsay.

13 THE COURT: Sustain the objection. The objection is
14 to the witness quoting another person about a statement
15 made out of court.

16 THE DEFENDANT: Yesterday --

17 THE WITNESS: Sir --

18 THE COURT: Here is the way we have to operate
19 things, the attorney asks you questions and you respond to
20 the questions.

21 THE WITNESS: Okay.

22 THE COURT: You may ask her another question,
23 Mr. Lupo.

24 Q. You say we were romantically involved?

25 A. Yes, sir. You came down to my house to get the money

TESTIMONY OF ANNE FRAZIER

1 to go get the air condition, you and Missy did, it was at
2 Big Lots over in West Columbia. You and Missy came back
3 to my house with the air condition, your mother had been
4 calling my house because she was concerned where y'all
5 were. I told her not to worry. You came back, you asked
6 my husband and I if y'all could go ahead and spend the
7 night. I asked my husband, he stated yes, and you asked
8 me to call Ms. Lupo, which I did and explained it to her
9 and she was also wanting a pair of shoes that you --

10 MR. MAXWELL: I'm going to object, Your Honor. I
11 think she was about to get into some hearsay.

12 THE DEFENDANT: I'm just trying to prove my point
13 that she has perjured herself.

14 THE COURT: The objection is to the witness quoting
15 someone who made a statement outside of court.

16 THE DEFENDANT: Yes, sir. Okay. Well, yesterday she
17 made the statement that we weren't romantically involved,
18 matter of fact that we never spent the night with each
19 other, we didn't live with each other --

20 MR. MAXWELL: I'm going to object to him testifying.

21 THE COURT: You're testifying, Mr. Lupo. What you're
22 supposed to be doing now is asking questions of the
23 witness.

24 A. But, yes, sir. Y'all did stay that night and you
25 were at your mother's, y'all stayed that night.

TESTIMONY OF ANNE FRAZIER

1 Q. When we stayed the night with you what was the
2 sleeping quarters for us?

3 A. Y'all slept with each other.

4 Q. Do you know where her children were at this time?

5 A. Yes, sir. They were here in Winnsboro as she stated.

6 Q. On any occasion did you see us drinking?

7 A. Yes, sir. You came to my house, you had stated that
8 your mother had put you and Missy out and asked me --

9 Q. This was after the incident, correct?

10 A. Yes, sir, it was. You had asked me if you and Missy
11 could come and take showers on occasions and to wash
12 clothes, I believe that lasted about four days or four
13 nights. Also, one of the nights -- and I understand that
14 this hasn't been asked but he's not an attorney -- I had
15 Ms. Chavis staying there with me at that time plus her
16 grandson and my husband and I went to bed early that night
17 and I didn't know it, they were just supposed to take
18 showers and wash clothes if needed to. When I got up that
19 morning Ms. Chavis told me that Mr. Lupo --

20 MR. MAXWELL: Objection.

21 THE COURT: The objection is hearsay?

22 MR. MAXWELL: Yes, sir.

23 THE COURT: That's all right, ma'am. Hold on just
24 one minute. Mr. Lupo, let's go back to the procedure that
25 I have outlined before, you need to ask a specific

TESTIMONY OF ANNE FRAZIER

1 question of the witness and have the witness answer a
2 question.

3 THE DEFENDANT: I'm just trying to show the jurors
4 that she indeed perjured herself.

5 THE COURT: Go ahead and ask the question, Mr. Lupo.

6 Q. How long would you say we were together after the
7 incident?

8 A. As I stated, you were together at my house during the
9 day. Besides that night y'all slept in your truck on a
10 mattress, and yes, I can say a blowed up mattress, I seen
11 the mattress, I seen the covers, I seen the quilts, I seen
12 the float. The reason I mentioned Ms. Chavis was because
13 I got a phone call and it was from a Ms. Chrystal Cooper
14 wanting to speak to --

15 MR. MAXWELL: I'm going to object, Your Honor.

16 THE COURT: The objection is hearsay again.

17 THE DEFENDANT: I know, but --

18 THE COURT: Mr. Lupo, what we need for you to do is
19 ask questions of the witness, and ma'am, what I want you
20 to do is just try to answer his question, the question he
21 asks. You have a habit of doing what a lot of people do,
22 me included -- let me finish, and that is when you start
23 to answer questions you just begin talking. I need for
24 you to answer the question, think about what he asks you.
25 Mr. Lupo, you may ask your next question.

TESTIMONY OF ANNE FRAZIER

1 Q. Yes, sir. The night that we stayed the night with
2 you, the next morning my fiance' called and wanted to
3 speak with me, and the sleeping quarters as you said we
4 were together in bed, the same bed, correct?

5 A. Yes, sir, I did.

6 Q. And when the phone rang what happened?

7 A. I came down to the room, which is on the first floor,
8 I knocked on the door, I asked, "May I come in?" Missy
9 said, "Yes." I came in, I woke you up, I told you,
10 "Billy, Chrystal was on the phone." And you was waiving
11 at me. I gave you the phone and you talked with her on
12 the phone. I left the room so I don't know what was said.

13 Q. And we were in bed together, correct?

14 A. You were in bed together. I noticed that
15 Ms. Trusdale was cuddled up to you in the bed, yes.

16 Q. Was there ever a point that when we left we borrowed
17 some money from you and our destination, where did we say
18 we were going?

19 A. Yes, there was a designation. There was still more
20 things that happened at the home but since I'm only
21 supposed to answer the questions that you ask, you're
22 leaving things out.

23 Q. Yes, ma'am.

24 MR. MAXWELL: I'm going to object to that statement,
25 Your Honor.

TESTIMONY OF ANNE FRAZIER

1 THE COURT: Yes, ma'am. Ms. Odom, as I said a minute
2 ago --

3 THE WITNESS: I understand that.

4 THE COURT: -- as I said a minute ago you need to
5 answer the questions that are asked and try to keep down
6 your extra comments, just answer the questions, please,
7 ma'am.

8 THE DEFENDANT: Okay.

9 THE COURT: Mr. Lupo, you may ask your next question.

10 Q. What all did you see during the course while we were
11 staying at your home?

12 A. As I stated, Ms. Chavis and her grandson were staying
13 at my house also. Ms. Chavis was having some problems out
14 of her grandson, I was hoping that Billy could be kind of
15 like a mentor towards him, to talk to him. One night
16 Billy, Missy, Ms. Chavis and Max went down to the lake and
17 I went down there to see what was taking them so long to
18 come back, that was around 8:30 or so and they said --

19 MR. MAXWELL: I'm going to object, Your Honor.

20 THE COURT: The objection is?

21 MR. MAXWELL: Hearsay.

22 THE COURT: Mr. Lupo?

23 THE DEFENDANT: I just asked what all she seen during
24 our course of stay there just to show the jury that --

25 THE COURT: I understand. But what the objection,

TESTIMONY OF ANNE FRAZIER

1 Ms. Odom, is that you're saying what other people said,
2 that's the objection. Go ahead now, finish answering your
3 question.

4 A. I said what I seen. I asked them to come --
5 Ms. Chavis and Max to come back soon, they didn't get back
6 until about 1:30 in the morning. When they got back
7 Ms. Chavis was intoxicated, Billy was too. I had
8 explained to Ms. Chavis -- I told Billy that he had to
9 leave. I explained to Ms. Chavis that I would have to
10 take her home because she was intoxicated and she knowed
11 that she's not supposed to drink in my house. Billy was
12 trying to say it was his fault, I told him no, she could
13 have said no and I asked Billy to leave. So Billy and
14 Ms. Trusdale left and when the situation -- the situation
15 with the grandson was at my house I decided to just leave
16 it alone and let Ms. Chavis stay the night as long as with
17 her grandson. Missy and Mr. Lupo showed up as they did
18 every morning between 10:00 and 11:00 staying late, that
19 wasn't the deal, so finally I went to my husband and told
20 my husband and he told me if I ever needed his help just
21 to say something.

22 MR. MAXWELL: I'm going to object, Your Honor,
23 hearsay.

24 THE COURT: Mr. Lupo?

25 THE DEFENDANT: I asked what all -- just for her

TESTIMONY OF ANNE FRAZIER

1 to -- what all see seen while we were staying in her home,
2 sir.

3 THE WITNESS: They were all --

4 THE DEFENDANT: I just wanted to show the jury
5 that --

6 THE COURT: I know the reason you asked the question,
7 Mr. Lupo.

8 A. They were always in arms and kissing and hugging and
9 carrying on. Missy even fixed tuna salad at the house for
10 everyone. She talked about how good of a man Billy was.
11 I didn't talk much to Ms. Trusdale. Basically we as usual
12 in my home drinking coffee, sitting around talking. I
13 talked to her mostly about God and stuff. And then as
14 time went on I asked my husband to talk with Billy but I
15 thought it was time for them to go because it wasn't the
16 way the arrangement was supposed to be. They were staying
17 at my house -- coming there between 10:00 and 11:00 in the
18 morning and staying anywhere from 8:00, 9:00 until
19 10:00 and later as I stated at night. Before they left --

20 Q. This was after the incident?

21 A. That's correct.

22 Q. And she said that I was a good man and she was --

23 A. She loved you.

24 Q. Okay. Did you give us money to leave?

25 A. My husband gave you money, I didn't give you money.

TESTIMONY OF ANNE FRAZIER

1 Q. Yes, that's correct. And where did we say we were
2 going?

3 A. You said you were going to your cousin's who lived
4 somewhere in North Carolina, you hadn't seen him in a long
5 time, his name was Leonard and he was supposed to call my
6 house -- I can't say that because I was upstairs in my
7 bedroom, I had enough. But --

8 Q. When we come back from -- do you know about how long
9 we were in North Carolina? Did I keep in touch with you
10 or did I tell you --

11 A. Yes. You stayed in touch with me.

12 Q. And about how long would you say we were in North
13 Carolina?

14 A. Maybe four or five days if you were in North Carolina
15 for the whole time, I don't know that. I know some way or
16 another your cousin came to Great Falls.

17 Q. And did we live in -- did me and Missy reside at my
18 house in Great Falls?

19 A. Yes, y'all did.

20 Q. This was after the incident, correct?

21 A. That's correct. Plus her children were there, her
22 mother had been there on occasions, and that's what I
23 heard on the phone.

24 Q. Does it seem to you that what I am accused of --

25 MR. MAXWELL: I'm going to object, Your Honor.

TESTIMONY OF ANNE FRAZIER

1 THE COURT: Sustained.

2 Q. Were her kids -- during the course of when we were at
3 my mother's house to her house to North Carolina to Great
4 Falls, were her kids ever around at any point in time?

5 A. I can't mention -- I wouldn't know about any other
6 place, I would only know about my own home, and no. I did
7 ask Ms. Trusdale about her children.

8 THE DEFENDANT: Thank you, Ms. Frazier. No further
9 questions.

10 THE COURT: Cross examination?

11 MR. MAXWELL: May it please the Court?

12 CROSS EXAMINATION

13 BY MR. MAXWELL:

14 Q. Ms. Odom; is that right? I'm Riley Maxwell, the
15 assistant solicitor. What is your relationship with the
16 Lupos?

17 A. Ms. Lupo has known my husband for I would say that I
18 know of for maybe 40 years.

19 Q. She's known your husband 40 years or known you 40
20 years?

21 A. Known my husband for 40 years.

22 Q. How long have you known her?

23 A. I have known Ms. Lupo myself maybe approximately 25
24 years.

25 Q. How long have you known Billy Lupo, the defendant?

TESTIMONY OF ANNE FRAZIER

1 A. Since August of 1996 or either September of 1996.

2 Q. Y'all have a -- do you have a friendly relationship,
3 close relationship? What is the status of your
4 relationship with --

5 A. My relationship and my husband's relationship with
6 Billy Lupo is Ms. Lupo brought Mr. Lupo up to my husband's
7 office in August or September of '96, she stated that her
8 son needed to borrow some money and that was my
9 relationship -- I'm sorry, that was my husband's
10 relationship over the years with Ms. Lupo. And Ms. Lupo
11 explained the situation to my husband and my husband lent
12 Mr. Lupo the money and a note was written up, Mr. Lupo
13 signed it, I still have the note to this date.

14 Q. Were you at the Fairfield Motel on April 6th of 2007?

15 A. No, sir, I was not.

16 Q. The day before or the night before or the morning --
17 the night of April 5th or the morning of April 6th you
18 weren't there at the Fairfield Motel at all?

19 A. No, sir, I was at my home.

20 Q. Ms. Odom, do you have a different last name?

21 A. Yes, sir, I do. And I would appreciate that not to
22 be brought up. I know what you're fixing to bring up, you
23 can bring it up but you don't have to use that last name.

24 Q. You go by the name of Anne Frazier as well or at one
25 point in time you did?

TESTIMONY OF ANNE FRAZIER

- 1 A. I go by Anne Frazier, yes, sir, I do. I'm still
2 going by Anne Frazier.
- 3 Q. Okay.
- 4 A. I am Anne Frazier, go ahead.
- 5 Q. All right. Did you sign --
- 6 A. I asked you -- I told you I know what you were fixing
7 to ask and I asked you not to bring that name up and you
8 did it anyhow, and I may be in contempt of court but I
9 done everything I could for that name to stay out of this
10 court.
- 11 Q. Okay.
- 12 A. But you go ahead and you bring up yours and also when
13 you do this you need to call Ms. Faye -- go ahead.
- 14 Q. Did you use the name Anne Frazier to sign Mr. Lupo's
15 bond --
- 16 A. Yes, sir, I did.
- 17 Q. On this -- when he got arrested on this charge?
- 18 A. Yes, sir, I did.
- 19 MR. MAXWELL: No further questions.
- 20 THE COURT: Any redirect, Mr. Lupo?
- 21 THE DEFENDANT: No, sir.
- 22 THE COURT: Thank you, ma'am. You may step down.
- 23 Mr. Lupo, you may call your next witness.
- 24 THE DEFENDANT: I call my mother, Shirley Lupo.
- 25 The witness, SHIRLEY LUPO, was first duly sworn and

TESTIMONY OF SHIRLEY LUPO

1 testified as follows, on:

2 DIRECT EXAMINATION

3 BY THE DEFENDANT:

4 THE CLERK: State your name for the record.

5 THE WITNESS: Shirley Hill Lupo.

6 THE DEFENDANT: Can I call her mama or Ms. Lupo?

7 Q. Mama, did you ever see me and Ms. Trusdale after the
8 incident?

9 A. Yes.

10 Q. And you let us stay at your house, right?

11 A. Yes.

12 Q. Were the kids ever there?

13 A. Yes.

14 Q. For the most part of the time or not, most part of
15 the time?

16 A. They stayed over there a few times but I was tired of
17 the way that they were being treated like --

18 MR. MAXWELL: I'm going to object, Your Honor,
19 relevance.

20 THE COURT: What is the relevance of how the children
21 are being treated? I'll sustain the objection. Ask her
22 another question, Mr. Lupo.

23 Q. Would you say we were romantically involved?

24 A. Oh, yeah.

25 Q. Did she ever confide in you exactly what happened

TESTIMONY OF SHIRLEY LUPO

1 about the incident?

2 A. Yeah.

3 MR. MAXWELL: Objection.

4 THE COURT: What was that question? I'm sorry.

5 THE DEFENDANT: Did she ever confide -- did

6 Ms. Trusedale confide in my mother what happened about the
7 truth about the incident?

8 A. Yes.

9 Q. Okay. And there were two warrants taken out, one for
10 me and the hotel took out the other warrant.

11 MR. MAXWELL: I'm going to object, Your Honor. I
12 don't know how the witness would have knowledge of what
13 warrants were taken out.

14 THE COURT: Was that a question?

15 THE DEFENDANT: Because it was the address that they
16 come --

17 THE COURT: Was that a question you were asking the
18 witness?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Tell me what the question was.

21 THE DEFENDANT: The warrants, there were two warrants
22 that were taken out that --

23 THE COURT: That wasn't a question though.

24 THE DEFENDANT: Yes, sir. There were two warrants
25 that were taken out, I was asking her that there were two

TESTIMONY OF SHIRLEY LUPO

1 warrants that were taken out for me being --

2 MR. MAXWELL: I'm going to be object, Your Honor.

3 He's testifying and the jury is in the courtroom.

4 THE COURT: I'm going to sustain the objection.

5 Q. She did confide in you what happened, the truth about
6 the accident?

7 A. Yes.

8 Q. Could you tell us what she told you?

9 A. Yes. She said that bad deal went on at the motel and
10 you told her to tell the police you did it because you
11 wanted to go after that guy.

12 Q. Did she say that drugs were involved or --

13 A. Yeah, the drugs was involved. As a matter of fact
14 you used to go to her house, if I'm not mistaken she woke
15 you up every morning with a spoon of cocaine wanting to
16 feed you --

17 MR. MAXWELL: I'm going to object, Your Honor. The
18 witness wasn't there -- the witness wasn't present to
19 testify to that, wasn't there to have knowledge of that,
20 direct knowledge.

21 THE DEFENDANT: Well, she actually found stuff one
22 time --

23 MR. MAXWELL: I'm going to object to that, Your
24 Honor.

25 THE COURT: I sustain that objection. You've got to

TESTIMONY OF SHIRLEY LUPO

1 ask a question of the witness.

2 THE DEFENDANT: Yes, sir.

3 Q. So she did tell you what happened in the hotel. What
4 did she -- did she ever say anything like -- did she tell
5 you who did it and why they did it?

6 A. She said it was a drug deal went wrong and this man
7 came in and that since the drug deal went wrong you were
8 in the bathroom and he jumped on her and beat her. Anyway
9 what happened is Billy told her to tell the police he did
10 it because he was so mad that that guy beat her that bad
11 until he wanted to go --

12 THE DEFENDANT: That's the truth so help me God.

13 MR. MAXWELL: Your Honor, I object --

14 THE COURT: Mr. Lupo, you can't address the jury.

15 THE DEFENDANT: Okay.

16 THE COURT: You have to ask questions of the witness.

17 THE DEFENDANT: Yes, sir, I just --

18 THE COURT: You have to ask questions of the
19 witness --

20 THE DEFENDANT: I just -- yes, sir. I mean, I don't
21 know why she's lying on me.

22 MR. MAXWELL: I'm going to object, Your Honor.

23 THE COURT: Mr. Lupo, if you say that one more time I
24 will cite you for contempt of court in front of this jury.

25 THE DEFENDANT: Yes, sir, I am sorry.

TESTIMONY OF SHIRLEY LUPO

1 THE COURT: You and I have had this discussion.

2 THE DEFENDANT: Yes, sir, I'm just representing
3 myself.

4 THE COURT: Mr. Lupo, are you going to ask a question
5 of the witness?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Ask a question.

8 THE DEFENDANT: Okay.

9 Q. So she did say that it wasn't me that did that to
10 her?

11 A. Right.

12 Q. And she said that I was outraged that it happened and
13 that I wanted to get at the guy, right?

14 A. Right.

15 Q. And I told her to tell the police that --

16 MR. MAXWELL: I'm going to object to --

17 THE DEFENDANT: I'm just going by what she --

18 THE COURT: Mr. Lupo, there's an objection. The
19 objection is?

20 MR. MAXWELL: I believe he was about to try to
21 testify other than asking a question.

22 THE COURT: You have to ask questions, you cannot
23 testify.

24 THE DEFENDANT: Okay.

25 Q. How long were we together after the incident?

TESTIMONY OF SHIRLEY LUPO

1 A. Pretty good while. You left my house because I told
2 you you couldn't stay there and I had to buy the children
3 clothes because they were sleeping in jockey shorts.

4 MR. MAXWELL: I'm going to object to that, Your
5 Honor, about the children. I don't think it's relevant.

6 THE COURT: Why is that relevant? Hold on, ma'am.

7 THE DEFENDANT: It doesn't pertain to the case.

8 THE COURT: You're withdrawing the question?

9 THE DEFENDANT: Withdraw it.

10 THE COURT: Well, then ask another question, please,
11 sir.

12 Q. How long did you say we were together, Mama?

13 A. Y'all moved to Great Falls and lived over there for a
14 long time, and then you told her that she would have to
15 keep the children because it wasn't fair for her -- she
16 told you that --

17 MR. MAXWELL: I'm going to object. I think she's
18 about to testify to something that's irrelevant in terms
19 of the children.

20 THE DEFENDANT: I'm really trying to cross the bridge
21 here and I want to try to get to the point. The reason
22 that -- if you would just give me a chance.

23 THE COURT: Go ahead and ask a question.

24 Q. Okay. When we broke it off, what kind of mood would
25 you say she was in?

TESTIMONY OF SHIRLEY LUPO

1 A. She was mad --

2 MR. MAXWELL: I'm going to object to that, Your
3 Honor. I don't know how she can tell what kind of mood
4 the victim was in, I don't know how she could know that or
5 if she's qualified to.

6 THE COURT: I'll overrule that. Go ahead and answer
7 the question.

8 A. She said that if she couldn't have you nobody could
9 have you and she would see to it that you made time, that
10 she would do anything to see that you made time.

11 Q. Yes, ma'am.

12 THE DEFENDANT: I have no further questions.

13 THE COURT: Thank you, Mr. Lupo. Cross examination,
14 Solicitor?

15 MR. MAXWELL: May it please the Court?

16 CROSS EXAMINATION

17 BY MR. MAXWELL:

18 Q. Ms. Lupo, you are the defendant's mother; is that
19 correct?

20 A. Correct.

21 Q. You don't want to see him go to jail, do you?

22 A. Pardon?

23 Q. You don't want nothing bad to happen to your son, do
24 you?

25 A. No. Most mothers wouldn't and their fathers.

TESTIMONY OF SHIRLEY LUPO

1 Q. Were you at the Fairfield Motel on April 5th or
2 April 6th of 2007?

3 A. No.

4 MR. MAXWELL: No further questions.

5 THE COURT: Any redirect?

6 THE DEFENDANT: No, sir, that's it.

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

8 You may call your next witness.

9 THE DEFENDANT: That's it, Your Honor. That's all I
10 have, Your Honor. I had a --

11 THE COURT: No, sir. Do you have a witness or not?

12 THE DEFENDANT: No, sir, I don't.

13 THE COURT: Anything in reply from the State?

14 MR. MAXWELL: If we could just have a few moments,
15 Your Honor, just right here, me and Mr. Barfield.

16 (Break in proceedings.)

17 MR. MAXWELL: We have nothing further, Your Honor.

18 THE COURT: Ladies and gentlemen, we have I'm
19 guessing about an hours worth -- hour or hour and 15
20 minutes, maybe less, more to go by way of closing
21 arguments and the Court giving you or telling you about
22 the law that applies in the case. In other words, you
23 have now heard all of the evidence in the case. I'm going
24 to let you go to lunch until 1:00. When you come back
25 from lunch at that time the attorneys will make their

TESTIMONY OF SHIRLEY LUPO

1 closing arguments to you, I will then give you the law and
2 you will begin your deliberations. I'll remind you
3 though, you're on your lunch break, don't let anybody talk
4 to you about the case, don't talk to anybody about the
5 case even in the jury room don't talk about the case yet
6 until it's time to begin deliberations. Thank you so
7 much, see you back in the jury room at 1:00.

8 (The jury left the courtroom.)

9 THE COURT: State going to open?

10 MR. MAXWELL: I would like to argue last, Your Honor.

11 THE COURT: All right. In other words you're going
12 to waive opening?

13 MR. MAXWELL: Yes, sir, waive opening.

14 THE COURT: Now, Mr. Lupo?

15 THE DEFENDANT: I object. I would like to go last.
16 I didn't take the stand so that's why --

17 MR. MAXWELL: The defense offered evidence, Your
18 Honor.

19 THE COURT: You did offer evidence in the case.

20 THE DEFENDANT: But I never took the stand.

21 THE COURT: I understand.

22 THE DEFENDANT: And I asked if I could go last.

23 THE COURT: The State objects to you going last. You
24 offered evidence in the case which in my mind waives your
25 right to argue last. The State is waiving their right to

1 open and close, they want to close; is that right?

2 MR. MAXWELL: Yes, sir.

3 THE COURT: So you will open. Mr. Lupo, you
4 cannot -- you listen to me now -- you cannot in your
5 closing argument do what you did a few minutes ago and
6 tell the jury, "I didn't do it."

7 THE DEFENDANT: Your Honor, this is my first time
8 ever in general sessions.

9 THE COURT: Mr. Lupo, you already told me that you
10 have tried 14 cases before and won them all.

11 THE DEFENDANT: That's in magistrates court, I never
12 been in general sessions court.

13 THE COURT: Didn't I tell you it was going to be
14 difficult?

15 THE DEFENDANT: Yes, sir, you did.

16 THE COURT: Didn't I tell you that you would be held
17 to the same standard as to what a lawyer would be held to.

18 THE DEFENDANT: Yes, sir, you did.

19 THE COURT: And actually I'm not holding you to that
20 standard because if you were a lawyer I would have already
21 cited you for contempt of court.

22 THE DEFENDANT: Yes, sir, I understand. I appreciate
23 you being patient with me.

24 THE COURT: Now, any questions about what you can and
25 can't do in closing argument?

1 THE DEFENDANT: I just know that I can say anything
2 that was brought up, pretty much summarize and --

3 THE COURT: Any additional limitations on closing
4 arguments from the State?

5 MR. MAXWELL: I wouldn't expect I would take too much
6 time. I don't need -- 15 or 20 minutes closing I think
7 would be sufficient.

8 THE DEFENDANT: And also I want to renew the motion
9 that I made earlier.

10 THE COURT: All right. You want to tell me about it
11 or you want me -- I think I know what you mean, I think I
12 know what you mean but I will be glad to hear from you if
13 you want me to.

14 THE DEFENDANT: I would just -- I would like to make
15 a motion for a directed verdict on grounds of the State
16 has failed to establish a prima facia case.

17 THE COURT: All right. I do understand your motion.
18 The way I see the evidence, Mr. Lupo, is that there is, in
19 fact, direct testimony that you did, in fact, assault the
20 victim, Ms. Trusdale, as alleged, that you assaulted her
21 with a board or a piece of furniture. The difference
22 in -- there's testimony about the difference in sizes,
23 your sex, and the use of a weapon, all of that I believe
24 could lead a jury to find you guilty of the allegations of
25 the charges as alleged, so I deny your motion. The

1 suggestion of the Court is a form for the jury verdict
2 that would find the defendant either guilty or not guilty
3 of the charge of assault and battery of a high and
4 aggravated nature. Any objection or comments from the
5 State?

6 MR. MAXWELL: Just the basic question and yes or no,
7 guilty or not guilty.

8 THE COURT: And Mr. Lupo?

9 THE DEFENDANT: I don't have any objection, Your
10 Honor.

11 THE COURT: I don't see a lesser-included charge.
12 And I will be glad to hear you on that if you wish to. I
13 don't see one, though, Mr. Lupo, do you?

14 THE DEFENDANT: Can I make another point? I'm being
15 tried for this, the jury is not here and they can't hear
16 it, even though I am incident, they failed to produce the
17 actual evidence, the board that was shown. There was no
18 DNA samples taken on that board, the blood. Okay.
19 There's no witness or expert sitting here saying that that
20 is what actually did the damage. Okay. And then there's
21 no -- where is the actual weapon? Where is it? Was there
22 any DNA samples?

23 THE COURT: I think you can make that argument to the
24 jury is that you don't see the DNA samples. I'm not going
25 to tell you what to argue, I'm just saying --

1 THE DEFENDANT: Right. Can I use this in my closing
2 arguments?

3 THE COURT: Any objection to the defendant telling
4 the jury that the State has failed to produce DNA?

5 MR. MAXWELL: Well, Your Honor, I don't think we
6 have a -- there's certainly evidence that she was beaten
7 in the room. We don't object to the defendant going into
8 questioning that part of the case.

9 THE COURT: All right. The State does not object to
10 you suggesting to the jury that there's a failure of proof
11 here because there's no DNA.

12 THE DEFENDANT: Right.

13 THE COURT: And we will be in recess until 1:00.

14 (A lunch break was taken.)

15 THE COURT: Twenty minutes each, right?

16 MR. MAXWELL: Sounds good, Your Honor.

17 THE COURT: Limit on argument, don't have to use the
18 whole 20 you can use -- you can use five minutes if you
19 would like. All right. Is the State ready for the jury
20 to return?

21 MR. MAXWELL: Yes, sir.

22 THE COURT: And Mr. Lupo, is the defendant ready for
23 the jury to return?

24 THE DEFENDANT: Yes, sir.

25 (The jury returned to the courtroom.)

CLOSING ARGUMENTS

1 THE COURT: Welcome back, ladies and gentlemen. I
2 believe that we are now ready for the closing arguments.
3 The State wishes to open? The State waives?

4 MR. MAXWELL: We are waiving opening, Your Honor.

5 THE COURT: Mr. Lupo.

6 THE DEFENDANT: Like I said before yesterday, my name
7 is Billy Lupo and I appreciate you being here today. I'm
8 trying to -- I'm sorry that you have to be here. And I
9 know y'all's time is important and I hope that y'all all
10 look at the evidence and everything that y'all have been
11 presented and that you have seen. As far as the stick
12 and -- there's no evidence, they didn't do any blood
13 samples on the stick, that is irrelevant. The stick was
14 used, I was there but it wasn't me. I swear to God it
15 wasn't me. I am looking at ten years on my life here --
16 MR. MAXWELL: Object, Your Honor, I object, giving
17 the jury the punishment he's facing.

18 THE DEFENDANT: Well, I'm looking at time for
19 something I didn't do.

20 THE COURT: Mr. Lupo, I've already told you you
21 couldn't talk about that, didn't I?

22 THE DEFENDANT: Okay. I'm sorry. I don't really --
23 I'm new to this here, you know. All it takes is just one
24 to find me not guilty. I am hoping that y'all will look
25 at the evidence and y'all will see that I am not guilty.

CLOSING ARGUMENTS

1 They say the eyes are the window to the soul, just look at
2 my eyes and I am not guilty. They're going to paint a
3 picture after I'm done and they're going to try to
4 convince you that I'm guilty. The motel was damaged but
5 not by me. There was a warrant for my arrest for the
6 damage to the motel and it was later dropped because they
7 found out exactly what had happened.

8 MR. MAXWELL: I'm going to object, Your Honor. I
9 don't think there was any evidence about why it was
10 dropped.

11 THE COURT: I'm going to sustain that objection,
12 Mr. Lupo. I told you you cannot talk about matters that
13 were not presented into evidence.

14 THE DEFENDANT: It was numerous times that she lied
15 under oath and Ms. Frazier -- Ms. Odom and my mother
16 testified what they had heard and what they had seen. If
17 I did such heinous crimes why didn't she take out a
18 restraining order against me? Why would she actually get
19 back with me and involve herself in a relationship with
20 me? You heard that after the incident we were
21 romantically involved again. Excuse me for a minute.

22 (Break in proceedings.)

23 THE DEFENDANT: This is her, that's her but I did not
24 do this, by the hand of God I did not do it. Why would
25 she get back with someone that did this to her? I mean,

CLOSING ARGUMENTS

1 if this would have happened to you all would you have got
2 back --

3 MR. MAXWELL: I'm going to object to that, Your
4 Honor, he's trying to illicit an answer from the jury.

5 THE DEFENDANT: Your Honor, I'm just making my point,
6 Your Honor.

7 THE COURT: Overruled, go ahead.

8 THE DEFENDANT: I mean, no restraining order, no
9 nothing. I was in a rage at the time and I told her I
10 went after the guy and jumped over the balcony and I
11 actually sprained my ankle --

12 MR. MAXWELL: I'm going to object, Your Honor.

13 THE COURT: Sustained, Mr. Lupo. Mr. Lupo, I've
14 already told you you can't testify.

15 THE DEFENDANT: But she told you -- I could say what
16 was said, can't I?

17 THE COURT: Mr. Lupo, go ahead and proceed, remember
18 what I told you.

19 THE DEFENDANT: But said that I said to say that I
20 did it --

21 MR. MAXWELL: I'm going to object to that, Your
22 Honor, he's testifying.

23 THE DEFENDANT: I'm just saying what my mother said
24 on the stand.

25 THE COURT: You're testifying again.

CLOSING ARGUMENTS

1 THE DEFENDANT: I'm sorry. Like I said, no
2 restraining order was taken out against me, no nothing.
3 We got back together after that. When she found out I was
4 getting back with my fiance' and she said she would rather
5 see me in prison than with another woman.

6 MR. MAXWELL: I'm going to object to that, Your
7 Honor.

8 THE DEFENDANT: That's what my mother said on the
9 stand.

10 THE COURT: Hold on a minute, I couldn't hear the
11 objection.

12 MR. MAXWELL: I think he's testifying, he's not
13 referring to his mother saying --

14 THE DEFENDANT: That's what my mother said on the
15 stand.

16 THE COURT: Go ahead and proceed, Mr. Lupo.

17 THE DEFENDANT: And that's what happened, that's
18 exactly what happened so help me God.

19 THE COURT: Mr. Lupo, I sustained the objection.

20 THE DEFENDANT: Also, she said that the alcohol was
21 what fueled it. You heard from Ms. Odom that we were
22 drinking, why would she get back with me? No restraining
23 order after the incident much less get back with somebody
24 that she said alcohol was what fueled it? I'm sorry again
25 that y'all had to be here today, I am sorry. But I am

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1 innocent so help me God.

2 MR. MAXWELL: I'm going to object to that, Your
3 Honor.

4 THE COURT: Mr. Lupo, sustained. I ask the jury to
5 disregard the last comment of Mr. Lupo.

6 THE DEFENDANT: She said that alcohol is what fueled
7 the incident. Yes, we --

8 MR. MAXWELL: Object to that, Your Honor.

9 THE COURT: I couldn't understand him.

10 MR. MAXWELL: He was about to testify again.

11 THE DEFENDANT: I mean Ms. Odom said that we were
12 drinking.

13 THE COURT: Go ahead and proceed, overruled.

14 THE DEFENDANT: And I just hope that y'all will come
15 back with a verdict of not guilty. I mean, I have never
16 had a problem --

17 MR. MAXWELL: I am going to object to that, Your
18 Honor.

19 THE COURT: Sustained.

20 THE DEFENDANT: I have never had a problem --

21 MR. MAXWELL: Objection.

22 THE COURT: I'll let him go ahead this time.

23 THE DEFENDANT: I have never had a problem pleading
24 guilty, if I'm in the wrong I will plead guilty.

25 THE COURT: Sustained. Mr. Lupo, there's no evidence

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1 in the case about that.

2 THE DEFENDANT: I just hope you find in your heart
3 and look at all of the evidence with everything and come
4 back with a not guilty verdict and find me not guilty.
5 Thank you, and God bless.

6 THE COURT: Thank you. Solicitor?

7 MR. MAXWELL: May it please the Court, Your Honor?
8 Ladies and gentlemen of the jury, Mr. Foreman, I want to
9 thank y'all again for being here. I thank you for your
10 attention, I thank you for your patience in this matter.
11 You heard the defendant. The defendant put up two
12 witnesses to try to portray the picture that he and
13 Ms. Trusdale, the victim, got back together after the
14 incident. One of the witnesses, Ms. Odom, has had a long
15 personal relationship with that defendant. She signed a
16 bond for Mr. Lupo to get out on his bond for this
17 particular charge, and in her testimony Mr. Lupo kept
18 referring -- kept asking her, "After the incident did you
19 see us together? After the incident what happened?" She
20 never said when the incident happened, no dates were
21 brought up, she didn't say at what point in time she saw
22 them together that they spent the night at her house if
23 that did happen. You heard Ms. Trusdale on the stand say,
24 "I saw the defendant, I saw Mr. Lupo around town, I talked
25 to him, I had contact with him. We didn't have a

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1 relationship." I would submit they didn't have a
2 relationship. You heard the defendant's mother get on the
3 stand and say she saw them together. I would submit that
4 Mr. Lupo didn't want to see her son get punished, she
5 didn't want him to get in any trouble. And the Judge will
6 instruct you that you can look at the bias of witnesses.
7 Also, I would like to argue that even if they got back
8 together after this happened, does it change what happened
9 in that hotel room? I would submit to you they didn't get
10 back together in any type of relationship, but does that
11 change what happened in that hotel room?

12 THE DEFENDANT: I object Your Honor.

13 MR. MAXWELL: Anything that happened before or
14 after --

15 THE DEFENDANT: I object Your Honor. She made --
16 because she testified that she heard it was a drug deal
17 gone bad and that's what happened and she would rather see
18 me in the penitentiary than with another woman.

19 THE COURT: Overruled, you may continue.

20 MR. MAXWELL: If Ms. Trusdale and the defendant did
21 get back together after this happened, if that's true
22 Ms. Trusdale had a lot of time, over a year, to come to
23 the solicitor's office and say, "This is what happened,
24 Mr. Lupo didn't do this." She could have done it
25 yesterday. She didn't want to be on this stand yesterday,

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1 she wasn't having fun today or yesterday, she's not having
2 fun right now being in this courtroom. She could have
3 told us a long time ago that Mr. Lupo didn't do this. If
4 they were together in a romantic relationship as Mr. Lupo
5 wants to say they were or as his friends and family want
6 to say they were, she could have come up here and said,
7 "Mr. Lupo didn't do this. I love him, we're in a
8 relationship, I don't want him to be punished for this, I
9 don't want him to get into trouble for this." If that did
10 happen we wouldn't be here today and we're obviously here
11 today. And you heard testimony from Ms. Trusdale that
12 there was a little bit of a plan with her and the prior
13 solicitor that she wanted to make Mr. Lupo think that she
14 wasn't going to pursue this real hard. So -- and she
15 maybe was friendly with him outside of the courtroom to
16 keep that charade up but she never told the solicitor they
17 wanted to drop the charges, not one time did she say that.
18 You heard Mr. Lupo come up with some story about a drug
19 dealer, this mystery drug dealer that came into the room
20 and some type of altercation ensued, Ms. Trusdale got
21 injured. And I would submit that that's just a mystery
22 person, grasping at straws. If that did happen -- if
23 somebody else did this why didn't Mr. Lupo stay in the
24 hotel and help Ms. Trusdale? Why didn't he call 911?
25 Why didn't he call the police?

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1 THE DEFENDANT: I object, Your Honor. Because he
2 took the phone cord out of the room.

3 THE COURT: No, sir, overruled.

4 MR. MAXWELL: He didn't call anybody for help, he
5 didn't go get help for her, he didn't take her anywhere to
6 get help. If it wasn't his fault he could have done all
7 of that. You heard Ms. Lupo say something about a plan
8 Ms. Trusdale and Mr. Lupo had about she was going to tell
9 the police that Mr. Lupo did it and leave out this third
10 guy so Mr. Lupo would have an opportunity to go after her
11 and beat up this mystery guy. How logical is that? How
12 logical is that? He's going to come up with a plan where
13 he's going to be the accuser so he can get a warrant put
14 out for him where the police are looking for him and he's
15 going to look for this mystery guy and leave her in the
16 room bloody, battered and swollen. I would submit to you
17 there was no mystery man. Mr. Lupo momentarily brought up
18 the board. I can't speak to what happened with the board.
19 You saw a picture of it, saw a picture of a board with
20 blood on it that the police took off while in the hotel
21 room and Ms. Trusdale is obviously hurt from those
22 pictures, you can tell that. I would submit to you that
23 the fact there's no DNA or there's no board is irrelevant.
24 I presented evidence about a letter. I can't speak for
25 when that letter was written, what it was referring to,

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1 all I can say was it was written by Mr. Lupo to
2 Ms. Trusdale, to Missy apologizing for something and it
3 was found in the hotel room after this happened, and that
4 Ms. Trusdale had never seen the letter before. And I
5 would submit to you when the police took it that day it
6 has been in state custody since then. Listen to what
7 Ms. Trusdale said happened in that room. She got beat
8 up, no doubt about it. She blamed Mr. Lupo from the very
9 beginning, right when the police got there she gave them
10 that name, she's sitting here a year later accusing him of
11 doing it, plenty of time to back out and say something
12 else had happened of what happened in that hotel room.
13 There was no other people there. The defense witnesses
14 were not there in that hotel room, they don't know what
15 happened in that hotel room. They might think they do but
16 they don't. Ms. Trusdale got off work that night and was
17 getting ready to go to her son's birthday party the next
18 day and she couldn't go because of what Mr. Lupo did.
19 Mr. Lupo said look at the evidence and I'll also say look
20 at the evidence. The evidence is that Mr. Lupo injured
21 Ms. Trusdale and there's no explanation -- there's no
22 other explanation as to what happened when you view the
23 evidence as a whole. Ladies and gentlemen, thank you very
24 much for your time, thank you very much for your
25 attention. I feel confident you will return a guilty

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1 verdict. Thank you.

2 THE COURT: Thank you, Solicitor. Ladies and
3 gentlemen, as I told you earlier the defendant is charged
4 by way of an indictment in this case with the crime of
5 assault and battery of a high and aggravated nature. And
6 I remind you though that the fact that the defendant was
7 charged with this indictment, was arrested, is not
8 evidence and cannot be considered by you as evidence. The
9 indictment is simply the formal written instrument by
10 which this case is brought before the Court. And, of
11 course, the defendant has pled not guilty to this charge.
12 The fact that the defendant has pled not guilty puts the
13 burden upon the State to prove his guilt beyond a
14 reasonable doubt. I tell you that a person charged with a
15 crime in this state is never required to prove himself
16 innocent, that burden is always upon the state. A person
17 charged with a crime in this state is always presumed to
18 be innocent of the crime for which an indictment was
19 issued unless guilt has been proven by evidence that
20 satisfies you of that guilt beyond a reasonable doubt.
21 This presumption of innocence does not end at the time you
22 begin your deliberations but it accompanies the defendant
23 throughout the trial until you reach a verdict of guilt
24 based on the evidence that satisfies you of that guilt
25 beyond a reasonable doubt. And this presumption of

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1 innocence is like a robe of righteousness that is placed
2 about the shoulders of a defendant which remains with a
3 defendant until it has been stripped from the defendant by
4 evidence that satisfies you the jury of that guilt beyond
5 a reasonable doubt. I tell you that this presumption of
6 innocence is not a mere legal theory, it's not just a
7 legal phrase, it is a substantial right to which every
8 defendant is entitled unless you the jury are satisfied
9 from the evidence of the defendant's guilt beyond a
10 reasonable doubt. What is a reasonable doubt? A
11 reasonable doubt is the kind of doubt that would cause a
12 reasonable person to act. You may have served as jurors
13 in civil cases and in such case you were probably told
14 that it was only necessary to prove that a fact is more
15 likely true than not true such as by the greater weight or
16 the preponderance of the evidence. In criminal cases,
17 though, the State's burden must be more powerful than that
18 it must be beyond a reasonable doubt. Proof beyond a
19 reasonable doubt is proof that leaves you firmly convinced
20 of the defendant's guilt. Of course, there are very few
21 things in this world that we now know of with absolute
22 certainty and in criminal cases the law does not require
23 absolute certainty. It does not require proof that
24 overcomes every possible doubt. If based on your
25 consideration of the evidence you are firmly convinced

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1 that the defendant is guilty of the crime charged you must
2 find the defendant guilty. If on the other hand you think
3 that there's a real possibility that the defendant is not
4 guilty, you must give the defendant the benefit of the
5 doubt and find the defendant not guilty. During this
6 trial, ladies and gentlemen, you and I have had different
7 functions. Your job as I have already told you is to find
8 the facts of this case. It's been my job, though, to rule
9 on the admissibility of evidence in this case. And I also
10 have to tell you about the law that applies in this case.
11 You are to consider only the competent evidence before
12 you. If there was any testimony stricken during this
13 trial you must disregard that testimony. You may consider
14 only the testimony which has been presented from the
15 witness stand and any exhibits that will be given to you
16 in the jury room, and you can consider that evidence in
17 reaching your decision. The same judge that makes you
18 the -- the same law that makes you the judges of the facts
19 of the case make me the judge of the law of the case and
20 under your oath you must accept the law as I give it to
21 you and apply it to the facts as you find them to be. You
22 must accept the law as I give it to you even if you think
23 the law might be different or should be different, or even
24 if you disagree with the law. Under your oath you're
25 required to accept the law as I give it to you. If I have

JURY CHARGE

1 done anything, said anything that causes you to believe
2 that I have an opinion about the facts of this case you
3 must disregard it, because as I told you I am not
4 permitted to express an opinion about the facts of this
5 case in your presence. You decide what the facts are, you
6 take the facts, apply it to the law as I give it to you
7 and you reach a fair and just verdict. Generally
8 speaking, ladies and gentlemen, there are two types of
9 evidence which are presented during the trial, either
10 direct evidence or circumstantial evidence. Direct
11 evidence is the testimony of a person who claims to have
12 actual knowledge of a fact such as an eye witness. It is
13 evidence which immediately establishes a fact sought to be
14 proven. Circumstantial evidence is proof of a chain of
15 facts and circumstances indicating the existence of a
16 fact. It is evidence which immediately establishes
17 collateral facts from which a main fact may be inferred.
18 Circumstantial evidence is based on inference, not on
19 personal knowledge or observations. I tell you though the
20 law makes no distinction between the weight or the value
21 to be given to either direct or circumstantial evidence,
22 nor is a greater degree of certainty required of
23 circumstantial evidence than of direct evidence. You
24 should weigh all of the evidence in this case. After
25 weighing all of the evidence if you're not firmly

JURY CHARGE

1 convinced of the guilt of the defendant beyond a
2 reasonable doubt you should find the defendant not guilty.
3 In reaching your decision in this case, ladies and
4 gentlemen, you certainly must determine the credibility of
5 the witnesses who have testified in this case. The
6 credibility simply means the believability. It becomes
7 your duty as jurors to analyze and to evaluate the
8 evidence and determine which evidence convinces you of its
9 truth. In determining the believability of witnesses who
10 have testified, of course, you may believe one witness
11 over several witnesses or several witnesses over one
12 witness. You may believe part of the testimony of a
13 witness and reject the remaining testimony of that very
14 same witness. You may believe the testimony of a witness
15 in its entirety or reject all of the testimony of a
16 witness in its entirety. And, of course, you may decide
17 and consider whether or not the witness has any --
18 exhibited to you any interest, any bias, any prejudice or
19 any motive in this case. I instruct you and emphasize
20 that the fact that the defendant did not testify in this
21 case is not a factor to be considered by you in any way in
22 your deliberations and in your consideration on the
23 question of the guilt or of the innocence of the
24 defendant. It must not be considered by you in any manner
25 whatsoever that the defendant has the constitutional right

JURY CHARGE

1 to remain silent and the assertion of this right must not
2 be considered by you in your deliberations. I repeat
3 under your oath you are to draw no conclusion whatsoever
4 from the fact that the defendant did not testify. The
5 fact that the defendant did not testify should not even be
6 discussed in the jury room. The burden of proof as I've
7 already told you is on the State, the defendant is not
8 required to prove his innocence. The burden is on the
9 State to prove his guilt beyond a reasonable doubt. The
10 defendant in this case is charged with the crime of
11 assault and battery of a high and aggravated nature. I
12 tell you that that is an unlawful act of violent injury to
13 the person of another accompanied by circumstances of
14 aggravation. Trying to break it down some, an assault
15 occurs when a person unlawfully attempts or offers to
16 commit a violent injury upon another person and has the
17 ability -- the present ability to complete the attempted
18 injury. An assault is the intentional creation of the
19 reasonable fear of immediate bodily harm. It is not
20 necessary that the attempted injury or harm actually take
21 place. For example, if I walk up to one of you, stand
22 within arms reach and I draw back and threaten to hit you
23 I have the ability to carry it through, the present
24 ability, that is the assault. The battery would be if I
25 follow through, thus assault and battery. Assault is me

JURY CHARGE

1 threatening to do is it with the ability to follow
2 through, the battery is when I follow through and strike
3 you. A battery is the unlawful touching of another person
4 by a person who has committed the assault. An unlawful
5 touching can be caused by any part of the accused's body
6 or by any object that the accused puts into motion. As I
7 said, the battery is the completion of the assault by
8 using or applying force to another person however slight
9 in a rude, angry or resentful manner without legal
10 justification for doing so. The State must also prove a
11 circumstance of aggravation. Circumstances of aggravation
12 include the use of a deadly weapon or the intent to commit
13 a felony or the infliction of serious bodily injury. I
14 tell you the deadly weapon is any article or instrument or
15 substance which is likely to cause death or great bodily
16 harm. Whether an instrument has been used as a deadly
17 weapon depends on the facts and circumstances of each
18 case. In just a few moments, ladies and gentlemen, you
19 will retire to the jury room and you will begin your
20 deliberations. When you have reached a unanimous verdict
21 I would ask you to knock on the door of the jury room to
22 let us know that you've reached such a verdict. I tell
23 you the verdict must be unanimous, meaning all 12 of you
24 must agree before there can be any verdict. And there are
25 only two possible verdicts, either guilty or not guilty.

JURY CHARGE

1 I will ask our foreperson if he would on behalf of the
2 entire jury once the jury has made a unanimous decision
3 and reached a unanimous verdict circle on the verdict form
4 the appropriate verdict, once again you would either
5 circle the word guilty or you would circle the word not
6 guilty and then sign your name and presumably put in
7 today's date if you would sign your name as foreperson of
8 the jury. When it's time for you to begin your
9 deliberations, and I think that will just be in a couple
10 of minutes, I will send to the jury room this verdict form
11 with the exhibits, that will be sent by way of a bailiff,
12 that will be your cue to begin deliberations. I ask you
13 not to begin your deliberations until that is sent to the
14 jury room, and if you would please retire there we hope to
15 be with you shortly.

16 (The jury left the courtroom.)

17 THE COURT: Any exceptions or objections from the
18 State?

19 MR. MAXWELL: None, Your Honor.

20 THE COURT: Not from the State. What about the from
21 the defense?

22 THE DEFENDANT: No, sir.

23 THE COURT: Will y'all look at the exhibits and make
24 sure we have them all?

25 (At this time the jury began deliberations.)

JURY CHARGE

1 THE COURT: The bailiff indicates that the jury has
2 knocked on the door and are ready to receive the verdict.
3 Is the State ready to receive the verdict in the case?

4 MR. MAXWELL: Yes, sir.

5 THE COURT: Mr. Lupo?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Let me make this comment to the group. I
8 don't want any demonstrations by anybody about this
9 verdict. Somebody obviously is going to be unhappy. I
10 don't want any demonstrations.

11 (The jury returned to the courtroom.)

12 THE COURT: Welcome back, ladies and gentlemen. Let
13 me ask our foreperson, the bailiff indicates to the Court
14 that she believes that the jury has reached a verdict; is
15 that correct, Mr. Graham?

16 THE JUROR: Yes, sir.

17 THE COURT: Let me ask you a couple of questions.
18 Was it a unanimous verdict?

19 THE JUROR: Yes, sir.

20 THE COURT: Does that all mean all 12 of you agreed
21 on a verdict?

22 THE JUROR: Yes, sir.

23 THE COURT: Did you, in fact, circle the appropriate
24 response on the verdict form?

25 THE JUROR: Yes, sir.

JURY VERDICT

1 THE COURT: And sign the form on behalf of the jury?

2 THE JUROR: Yes, sir.

3 THE COURT: If you would please pass that forward.

4 Madam Clerk, would you please publish the verdict?

5 THE CLERK: Yes, sir. State of South Carolina vs.

6 Billy Lupo, verdict: We, the jury, as to indictment

7 number 2007-GS-20-289, assault and battery of a high and

8 aggravated nature find the defendant, Billy Lupo, guilty.

9 Signed, James Graham, foreperson of the jury dated

10 April 29, 2008. Ladies and gentlemen, if this was your

11 verdict and still your verdict please signify by raising

12 your right hand. Let the record reflect all jurors raised

13 their right hand, the verdict stands as read.

14 THE COURT: Thank you, Madam Clerk. Anything before

15 the jury is discharged from the State?

16 MR. MAXWELL: No, Your Honor.

17 THE COURT: From the defense?

18 THE DEFENDANT: No, sir.

19 THE COURT: All right.

20 (The jury was dismissed at this time.)

21 THE COURT: And is the State ready for sentencing?

22 MR. MAXWELL: Yes, Your Honor.

23 THE COURT: Defendant, Mr. Lupo, are you ready for
24 sentencing?

25 THE DEFENDANT: Yes, sir, I have a motions.

SENTENCING HEARING

1 THE COURT: All right, sir. I will be glad to hear
2 it.

3 THE DEFENDANT: I would like to make a motion for a
4 new trial.

5 THE COURT: And what grounds? You can talk to your
6 attorney.

7 THE DEFENDANT: The evidence taken as a whole was
8 really not enough to convict me.

9 THE COURT: Mr. Lupo, what I think about the facts of
10 the case are irrelevant, but I do think that there was
11 sufficient evidence presented for a jury to reach the
12 verdict that they did. There was direct testimony that
13 you did what the indictment accused you of doing and what
14 the State accused you of doing, there's also
15 circumstantial evidence and therefore I will deny your
16 motion.

17 THE DEFENDANT: And also on the grounds that I
18 requested a motion for a continuance for the police
19 officer, I didn't have enough time to -- he told me that
20 if it would have been sufficient enough time for him that
21 he would have been able to come to court in my defense.

22 THE COURT: Did you have that subpoena served on him?

23 THE DEFENDANT: It was faxed.

24 THE COURT: When was it faxed?

25 THE DEFENDANT: Yesterday.

SENTENCING HEARING

1 THE COURT: Was it received?

2 THE DEFENDANT: I spoke with him last night and he
3 was supposed to get back in touch with me today and I told
4 him that today was going to be the last day of trial.

5 THE COURT: You didn't try to have it served on him?

6 THE DEFENDANT: Sir?

7 THE COURT: You didn't try or attempt to have the
8 subpoena served on the officer?

9 THE DEFENDANT: Well, actually me and Mr. Lee, we --
10 I give him the phone number, I couldn't find the address
11 and we tried several times to get in contact with him, he
12 was on vacation at the time is what he told me. He said
13 he would have to go over the police scan on his car.

14 THE COURT: Let me flesh this out a little bit more
15 and see if I understand what this officer was going to
16 talk about, I'm not sure I know. But you say that you
17 believe he would have confirmed your -- the fact that you
18 were with the victim, Ms. Trusdale, later after the --

19 THE DEFENDANT: Yes, sir. And me being intoxicated
20 and everything and her being the driver and she -- in her
21 statement she said that's what fueled the incident.

22 THE COURT: And what else?

23 THE DEFENDANT: That's it. And I was drunk and she
24 was the driver of the vehicle and he said he would ask if
25 there's enough time but by it being so late --

SENTENCING HEARING

1 THE COURT: Mr. Lupo, remember though, this is a case
2 that even you admit was scheduled to begin yesterday and
3 the schedule was set almost a month ago, wasn't it, or
4 more than three weeks ago?

5 THE DEFENDANT: Yes, sir. And I had a time finding
6 out who the officer was and then when I finally found it
7 out I give the name to Mr. Lee and a number where he could
8 be reached at and it was the way it worked.

9 THE COURT: All right. Anything else now, Mr. Lupo?

10 THE DEFENDANT: No, sir.

11 THE COURT: I'm going to deny your motion. Now, are
12 we ready for sentencing?

13 MR. MAXWELL: Yes, sir.

14 THE COURT: Okay. Anything the State wanted to bring
15 to the attention of the Court concerning priors?

16 MR. MAXWELL: Just his prior record.

17 THE COURT: All right.

18 THE DEFENDANT: He has a 1990 disorderly conduct, two
19 1991 disorderly conducts, a 1992 grand larceny conviction,
20 '95 driving under the influence, '97 petty larceny, '98
21 strong armed robbery, common law robbery, 2004 disorderly
22 conduct. I believe that is all.

23 THE COURT: All right. Mr. Lupo, I will be glad to
24 hear from you.

25 THE DEFENDANT: Yes, sir. I have done some things in

SENTENCING HEARING

1 my past I'm not proud of and I made some mistakes when I
2 was younger. I guess with age comes wisdom and I was
3 young at the time and I made mistakes and like I said, I'm
4 not proud of it.

5 THE COURT: Let me ask you a question, Mr. Lupo. How
6 old are you?

7 THE DEFENDANT: Thirty-six.

8 THE COURT: And these convictions that the solicitor
9 has brought to the Court's attention, did you ever serve
10 time or get probation, what happened on these cases?

11 THE DEFENDANT: Yes, sir. Actually I was -- in 1993
12 and '94 -- well, actually I was put on probation in 1991
13 and I violated my probation and I did one year. And in
14 '97 I committed an armed robbery, I was on drugs and I
15 committed an armed robbery, but actually they dropped from
16 armed robbery to strong armed robbery because the pantry
17 that I robbed, the woman actually come to court in my
18 defense and said that, you know, they asked her if she
19 felt like her life was ever in any kind of danger and she
20 said no, she seen a disturbed young man. She couldn't
21 have asked for a more polite robber because I kept
22 apologizing telling her I was sorry, that I was just
23 messed up on drugs.

24 THE COURT: What happened as a result of that
25 conviction?

SENTENCING HEARING

1 THE DEFENDANT: I got a four year sentence.

2 THE COURT: You said four?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Anything else from the State?

5 MR. MAXWELL: No, Your Honor. I will say I believe
6 his first conviction when he violated his first probation
7 was a YOA sentence and I'll bring that to the Court's
8 attention.

9 THE COURT: Anything else you wanted to say,
10 Mr. Lupo?

11 THE DEFENDANT: No, sir. Just that I'm sorry that
12 y'all had to be here today and I had to be here myself, I
13 apologize.

14 THE COURT: Mr. Lupo, as I said a minute ago, what I
15 think about the facts of the case really is irrelevant.
16 The jury has found unanimously that you did those acts
17 which were alleged in the indictment and presumably which
18 were described by Ms. Trusdale, which included breaking
19 her arm, bloodying her face. Mr. Lupo, I sentence you to
20 the department of corrections for a period of seven years.
21 Good luck to you, sir.

22 (END OF THE PROCEEDINGS.)

23

24

25

1 I, the undersigned Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of
3 South Carolina, do hereby certify that the foregoing is a
4 true, accurate and complete transcript of record of the
5 proceedings had and evidence introduced in the trial of
6 the captioned case, relative to appeal, in the Court of
7 General Sessions for Fairfield County, South Carolina, on
8 the 28-29th days of April, 2008.

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

11

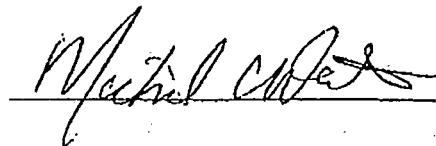
12

August 18, 2008.

13

14

15

A handwritten signature in cursive script, appearing to read "Michael C. Watkins", is written over a horizontal line.

16

Court Reporter

17

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25

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Fairfield County

Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BILLY J. LUPO,

APPELLANT.

FINAL ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in granting appellant's request to appear pro se because appellant did not voluntarily and intelligently waive his right to counsel in the case.

STATEMENT OF THE CASE

Appellant Billy J. Lupo was convicted per jury trial of assault and battery of a high and aggravated nature during the April 2008 term of the Fairfield County General Sessions Court before the Honorable Brooks P. Goldsmith, Judge. Appellant was sentenced to imprisonment for a period of seven years. Appellant appealed. This brief follows.

ARGUMENT

The trial judge erred in granting appellant's request to appear *pro se* because appellant did not voluntarily and intelligently waive his right to counsel in the case.

At trial, Shannon Trusedale testified that she and appellant were lodging, drinking beer, and talking at the Fairfield Motel on the night of April 6, 2007. Trusedale stated that around 5:00 a.m. on the following morning, appellant woke her to discuss why she did not want a relationship with him and he started "tearing up the room" and "flipping out" when she refused to talk to him. Trusedale stated that appellant "came over to [her] me and he choked [her], hit [her]", and then "grabbed [her] by [her] ankles and snatched [her] out of the bed and [she] hit the floor." Trusedale added that appellant picked up a board and "started beating [her] on the right side of [her] head" while saying all along "he was going to kill [her]." R. p. 37, line 1 – p. 47, line 23.

Prior to trial, defense counsel informed the court of appellant's desire to represent himself at trial and counsel requested that the court make a determination in the matter. Thereafter, the trial judge informed appellant that he did not know the law nor rules of court, nor when to object; and the judge admonished appellant about the fact that had not been to college nor law school. Appellant responded by explaining that he believed he could do a better job than his attorney. In addition, the court warned appellant that he did know the impeachment rules nor the definitions/elements of the offenses involved, nor what evidence was admissible or inadmissible, nor how to give opening and closing statements. The court stated that pro se representation would be a mistake, but granted appellant's motion to proceed pro se.

Although the trial judge explained the dangers of self representation, he did not question appellant regarding whether he was coerced or mistreated. Though appellant was dismayed over counsel's failure to subpoena a certain defense witness for trial, appellant was never questioned by the trial judge about whether his decision to proceed pro se was the result of coercion or mistreatment.

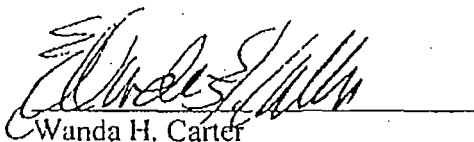
The Sixth Amendment guarantees criminal defendants the right to counsel, but that right can be waived if the accused is advised of his right to counsel and adequately warned of the dangers of self representation. State v. Roberson, 371 S.C. 334, 638 S.E.2d 93 (2007) citing Faretta v. California, 422 U.S. 806 (1975). See also Gardner v. State, 351 S.C. 407, 570 S.E.2d 184 (2002). For example, In Re Christopher, 359 S.C. 161, 569 S.C. 500 (2001) the court held that in making sure the defendant knows the danger of self representation, the court should inquire into whether appellant was previously involved in a criminal trial, whether he knew the nature of the charges and possible penalties, and if his waiver was the result of coercion or mistreatment. The coercion and/or mistreatment inquiries were not made by the trial judge in the case. Thus, appellant did not intelligently waive his right to counsel.

Clearly, appellant did not intelligently waive his right to counsel prior to trial, and thus the trial judge erred in granting appellant's request to proceed pro se as a result. This error violated the Sixth and Fourteenth Amendments to the United States Constitution and article I § 14 of the South Carolina State Constitution were violated.

CONCLUSION

Based on the foregoing argument, appellant's conviction should be reversed and his case remanded to the Fairfield County General Sessions Court for a new trial.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Wanda H. Carter", is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

April 27, 2009

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Fairfield County

Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BILLY J. LUPO,

APPELLANT

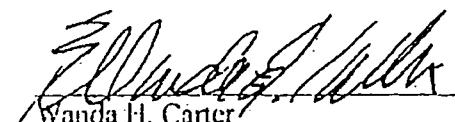
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Billy J. Lupo states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Brooks P. Goldsmith, which was held on April 29, 2008, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Billy J. Lupo.

Respectfully submitted,



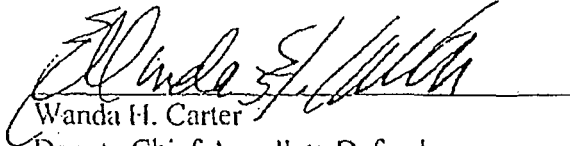
Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

April 27, 2009



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
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Attorney for Appellant

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Fairfield County

Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BILLY J. LUPO,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, Assistant Deputy Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201; and the Final Anders Brief of Appellant and Record on Appeal have been served upon Billy J. Lupo, #200494 at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 27th day of April, 2009.

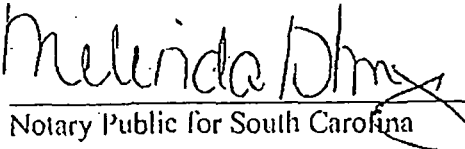


Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of April, 2009.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2018.

188 RECEIVED

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ANDERS RESPONSE BRIEF

SC Court of Appeals

6-25-09

To Whom it may Concern,

My name is Billy Lupo
SCDC #200494 & am now serving 7 years because
I was found guilty of ABHAW in a court of law
in which I represented myself. I received a letter
from the SC Court of Appeals advising me that my
counsel filed a brief indicating that my appeal is
without merit & that she moved to be relieved as my
counsel & that I have 45 days to file a pro se
brief about issues I believe the court should consider.
I don't know much about the law but I will try &
explain my situation the best to my ability & hope that
you consider & look into this case. On Feb 10 2007 I
was in a bad accident in which I went through a
window & severed the arteries, tendons & etc to my
left arm. I lost almost half the blood in my body &
was in the hospital for 11 days 3 of which I was in
ICU. Whenever I was released I was given several
prescriptions for medications. One was Oxycontin. The
next month I'm going to court for my charge. The
Judge was Judge Cooper. I asked for a continuance
on the count of the medications that I was on &
also so that I could get my hand fixed. It is documented
in the transcripts. It is also documented that I had
been offered a deal. He granted me a continuance until
the next month. This time I went in front of Judge
Goldsmith. I was on a lot of medicine & needed to
get my arm fixed & asked for a continuance to

do so but it wasn't granted. The DA. offered me 30 months. If my mind had not been so clouded by the oxycontin & other medication I would have taken that deal but I was impaired at the time & even during the whole trial I was not in my sound state of mind. I just ask that you look into this matter & judge for yourselves. My hand is still crippled because I can't get the proper surgeries. I hope this is how this promise is done.

Thank you
Sincerely
Billy Dupps

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Billy J. Lupo,

Appellant.

Appeal From Fairfield County
Brooks P. Goldsmith, Circuit Court Judge

Unpublished Opinion No. 2010-UP-021
Submitted January 4, 2010 -- Filed January 25, 2010

APPEAL DISMISSED

Deputy Chief Appellate Defender Wanda H. Carter,
of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
all of Columbia; and Douglas A. Barfield, Jr., of
Lancaster, for Respondent.

PER CURIAM: In April, 2008, Billy J. Lupo was sentenced to seven years for assault and battery of a high and aggravated nature. Lupo's counsel attached to the brief a petition to be relieved as counsel, stating she had reviewed the record and concluded this appeal lacked merit. Lupo filed a pro se brief.

After a thorough review of the record, the pro se brief, and counsel's brief pursuant to Anders v. California, 386 U.S. 738 (1967) and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss¹ the appeal and grant counsel's petition to be relieved.

APPEAL DISMISSED

HUFF, A.C.J., GEATHERS, J., and CURETON, A.J., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



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February 10, 2010

REMITTENTUR

The Honorable Betty Jo Beckham
101 South Congress St.
PO Drawer 209
Winnsboro, SC 29180-0299

Re: The State v. Lupo, Billy J.
2007-CS-20-00289

Dear Mrs. Beckham,

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

V. Claire Allen, Deputy Clerk
Tanya A. Gee
Clerk of Court

TA GYM

Billy J. Lupo #200494
 Deputy Chief Appellate Defender Wanda H. Carter
 Assistant Deputy Attorney General Sally W. Elliott
 Douglas A. Barfield, Jr. Esquire

FORM 5

STATE OF SOUTH CAROLINA)

County of Fairfield)

IN THE COURT OF COMMON PLEAS

2010 MAR 25 A 11:15

2010-CP-20-150

Billy James Lupo

Full name and prison number (if any) of Applicant

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

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 Corr. Inst. SA-44
4848 Goldmine rd. Kershaw SC 29067
2. Name and location of Court which imposed sentence Gen. Sessions Court
Court of Fairfield County
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) 2008-GS-20-289 ABHAN
 - (b) _____

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) April 29 2008 7 yrs

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty yes

(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. Appeal dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. Jan 25 2010

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such

results:

i. Not known

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) Ineffective Assistance of Council due to Prescription
 (b) Ineffective Appellate Council Medication
 (c) U.S. & S.C. Constitutional Violations

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Allowed me to represent myself while heavily medicated
 (b) I didn't know anything about the law. There was a plea
 (c) offer of 30 months & if I would not have been so sedated I would have taken it.

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? Direct appeal only
 (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. S C Court of Appeals
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. Dismissed
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. Jan 25, 2010
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Not Known
- 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?

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) Could not be heard on direct appeal

(b) _____

(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? No

(c) your sentencing? NO

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ~~Yes~~ Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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. Tyre Lee (Sif in Council) Public Defender for
For Fairfield County General Sessions Court

ii. Wanda Carter, Deputy Chief Appellate Defender
S.C. Court of Appeals P.O. Box 11629 Columbia SC 29211

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Represented myself by Tyre Lee was allow Sif in Council

ii. Direct Appeal

iii. _____

19. State clearly the relief you seek in filing this application:

Vacate & Remand for trial

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 Kershaw)

VERIFICATION

I, Billy Lupo #200494, 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.

Billy J. Lupo

SWORN to and subscribed before me this 23 day of March, 2010.

Catherine A. Ormrod (L.S.)
Notary Public

My Commission Expires: December 22, 2018

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Billy Lupo #200494, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Billy J. Lupo
Applicant

SWORN or affirmed to and subscribed before me this
23 day of March, 2010.

Catherine A. Amason
Notary Public

My Commission Expires: December 22, 2018

2010 MAR 25 A 11:16
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH JUDICIAL CIRCUIT
COUNTY OF FAIRFIELD	)	
	)	
Billy James Lupo, #200494,	)	2010-CP-20-0150
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

In response to the post-conviction relief application filed on March 25, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Fairfield County Clerk of Court's orders of commitment. Applicant was indicted by the Fairfield County Grand Jury at the May 2007 term of General Sessions for assault and battery of a high and aggravated nature (07-GS-20-0289). The Applicant appeared *pro se*. On April 29, 2008, a jury convicted the Applicant of this charge. The Honorable Brooks P. Goldsmith sentenced the Applicant to confinement for seven years.

Applicant filed a timely notice of appeal. An Anders brief was submitted on Applicant's behalf. The South Carolina Court of Appeals dismissed Applicant's appeal by written Order. State v. Lupo, Un. Pub. Op. 2010-UP-021 (filed January 25, 2010). The Remittitur was returned on February 10, 2010.

For the purpose of this Return, the Respondent incorporates the trial transcript, the Clerk of Court records, the Appellate records, and the South Carolina Department of Corrections' records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
 - a. "Allowed me to represent my self while heavily medicated,"
 - b. "I didn't know anything about the law,"
 - c. "There was a plea offer of 30 months and if I would not have been so sedated I would have taken it,"
2. Ineffective assistance of appellate counsel; and
 - d. U.S. and S.C. constitutional violations.

III.

Respondent interprets the Applicant's allegation of ineffective assistance of trial counsel as an allegation that he was denied his right to counsel, in that Applicant appeared at trial *pro se*. Respondent submits that this allegation is without merit and conclusively refuted by the record.

In order for an uncounseled conviction to be sustained, the record must show a knowing and intelligent waiver of counsel. A defendant may waive his right to counsel, and courts must entertain every reasonable presumption against waiver. United State v. Johnson, 659 F.2d 415 (4th Cir. 1981). There is no particular form of interrogation required by the courts. United v. King, 582 F.2d 888 (4th Cir. 1978). A specific inquiry by the trial judge expressly addressing the disadvantages of a *pro se* defense is preferred; however, the paramount consideration is not the trial judge's advice to the accused but the accused's understanding. Bridwell v. State, 306 S.C. 518, 413 S.E.2d 30 (1992).

In the absence of the preferred inquiry courts will look to the record to determine if the accused had sufficient background to understand the disadvantages of self-representation or was apprised of his rights by some other source. Id.; State v. Cash, 309 S.C. 40, 419 S.E.2d 811 (Ct. App. 1992). Furthermore, a defendant who elects to represent himself cannot thereafter complain that the quality of his own defense amounted to a denial of "effective assistance of counsel." Id. at 581. Although Respondent submits that the record conclusively refutes Applicant's claims,

Respondent requests an evidentiary hearing to fully resolve the issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The allegation that appellate counsel was ineffective is without merit. Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel.

However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Applicant also alleges that there were constitutional, statutory and procedural violations and errors during his trial. However, the Respondent submits that the applicant's allegation is without merit because the applicant has failed to specifically set forth the grounds upon which his application is based in accordance with S.C. Code Ann. §17-27-50. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

Furthermore, it appears that this allegation might raise a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

VI.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VII.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By:


Attorneys for the Respondents
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

Dec 16, 2010

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

) IN THE COURT OF COMMON PLEAS
) SIXTH JUDICIAL CIRCUIT

Billy James Lupo,

2010-CP-20-0150

Applicant,

v.

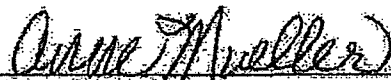
CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Jim J. Leventis, Esquire
Leventis & Ransom
P.O. Box 11067
Columbia, South Carolina 29211


Anne A. Mueller
Legal Assistant for the Respondent

DATED this 16th day of December, 2010:

ORIGINAL

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
 COUNTY OF FAIRFIELD)

Billy James Lupo,)
)
 PLAINTIFF,) PCR HEARING
) 2010-CP-20-00150
)
 -VS-)
)
 State of South Carolina,)
)
 DEFENDANT.)
 _____)

BEFORE THE HONORABLE J. ERNEST KINARD, JR., JUDGE

FEBRUARY 22, 2011

WINNSBORO, SOUTH CAROLINA

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

Jim J. Leventis, Esq.
 For the Applicant

Suzanne H. White, Esq.
 For the State

REMA K. GANTT THOMAS
 CIRCUIT COURT REPORTER

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1 (The defendant, together with counsel, was
2 personally present in the courtroom.)

3 MS. WHITE: Your Honor, this is Billy
4 James Lupo versus the State of South Carolina. It's
5 2010-CP-20-0150. He's represented today by Mr. Jim
6 Leventis. I've been informed that Mr. Lupo may want
7 to withdraw his application. But I'll turn it over
8 to Mr. Leventis at this time.

9 THE COURT: Okay, Mr. Leventis. Did you
10 find your way all the way here to Lancaster?

11 MR. LEVENTIS: I sure, did. I got behind
12 a logging truck this morning. I didn't want to try
13 to pass him. There was too much traffic.

14 THE COURT: What's the situation with Mr.
15 Lupo? Have you discussed it with him?

16 MR. LEVENTIS: I have, Your Honor. Mr.
17 Lupo is currently -- he's been incarcerated for
18 thirty-months on a seven-year sentence. He's got
19 another twelve months to do before he maxes out. I
20 informed him that what this Court should do is not
21 to reconsider the sentence or any of that, because
22 there was an offer on the table for him to plead to
23 a thirty-month sentence.

24 He did represent himself pro se in
25 this case. But I explained to him that all this

1 Court could grant him is a new trial, which would
2 put him back before the Court, back before the
3 prosecution. It would not allow him to do anything
4 more than that.

5 He's decided that he would like to
6 finish out the sentence rather than to go back to
7 court and perhaps get a longer sentence and not be
8 the time that he got.

9 So he wants to do that. He wants to
10 withdraw his application, and finish out his twelve
11 months, and start being a productive citizen.

12 THE COURT: Okay, let's swear Mr. Lupo in.
13 Will you swear him in?

14 (The witness was sworn.)

15 THE COURT: All right, Mr. Lupo, just a
16 couple of questions. You've been incarcerated a
17 while, right?

18 MR. LUPPO: Yes, I have.

19 THE COURT: You don't like it in there,
20 I'm sure.

21 MR. LUPPO: No, sir, it's not a walk in the
22 park.

23 THE COURT: You filed a post-conviction
24 proceeding, and you're represented by Mr. Leventis,
25 is that right?

1 MR. LUPO: Yes, sir.

2 THE COURT: Mr. Leventis told me that he
3 has discussed it with you, and he has explained the
4 ramifications to you if you are successful in your
5 post-conviction relief, and that after what he has
6 advised you of, you decided to withdraw, serve
7 another year, and be through with it?

8 MR. LUPO: Yes, sir.

9 THE COURT: You don't have to do that, of
10 course. You can go ahead with your post-conviction.
11 Mr. Leventis is here. The witnesses are here. But
12 if you withdraw it, we've got something called no
13 successive application, which means you will not be
14 able to file it again, you know, like tomorrow if
15 you say, "You know, I shouldn't have withdraw that."
16 You understand that?

17 MR. LUPO: I do, but I did not.

18 THE COURT: All right. And in addition,
19 because there's talk in the Department of
20 Corrections and so forth about you can go to Federal
21 Court, you have the right to go to Federal Court.
22 But they're not going to take any habeas corpus or
23 collateral attacks on this sentence that you
24 received, because they have a rule that says you
25 must exhaust State remedies before you can go to

1 Federal Court.

2 So if you withdraw your petition
3 here, you can't go to Federal Court either. In
4 other words, you would serve one more year, and
5 you'd be out. If you won in post-conviction, as Mr.
6 Leventis told you, that doesn't reduce your
7 sentence. I couldn't sentence you to less time
8 today.

9 All that means is that you get a new
10 trial, and they might keep you in jail until you get
11 a trial and so forth. But you're satisfied that you
12 just want to withdraw it and serve out another year?

13 MR. LUPO: I could get more time if I was
14 to go forward?

15 THE COURT: That's right.

16 MR. LUPO: Would I get credit for the time
17 I've already done?

18 THE COURT: Well, you would get credit for
19 the time that you have already served. But you
20 might get more time.

21 MR. LUPO: So would I forfeit any time?

22 THE COURT: You don't forfeit any time.
23 If you get a new trial, though, I can't tell you
24 what a Judge would do. But normally, if you get a
25 new trial, they're not going to give you time

1 served. I can't tell you that.

2 MR. LUPO: I would like to go forward with
3 the petition.

4 THE COURT: Well, all you get is a new
5 trial. You might be found not guilty, and that
6 would be the end of it, right?

7 MR. LUPO: Yes, sir.

8 THE COURT: If you're found guilty, the
9 Judge could sentence you to up to whatever -- Mr.
10 Leventis, seven years?

11 MR. LEVENTIS: Yes, sir.

12 THE COURT: Up to seven years. Oh, ten?

13 MR. LEVENTIS: It's ten years.

14 THE COURT: Up to ten.

15 MR. LUPO: But the time that I've already
16 got into it, three years, would they forfeit that
17 time?

18 THE COURT: No.

19 MR. LUPO: So I still could keep that time
20 on a new sentence?

21 THE COURT: Yes. If they gave you ten
22 years, you would get to keep three years. You would
23 still have to serve two or three more years.

24 MR. LEVENTIS: Your Honor, he wants to go
25 forward on the PCR.

1 THE COURT: Well, that's why I explained
2 it to him.

3 MR. LEVENTIS: Can I talk to him a minute?
4 I'm a little --

5 THE COURT: Yes, take him out and talk to
6 him. I didn't mean to confuse him.

7 MR. LEVENTIS: I think it's the idea that
8 he's facing more time if he goes to trial. He's not
9 sure about that.

10 THE COURT: Yes. If you were convicted --
11 what is it ABHAN?

12 MR. LEVENTIS: Yes, sir.

13 THE COURT: The sentence range is zero to
14 ten years.

15 MR. LUPO: Yes, sir.

16 THE COURT: If you got a trial and were
17 found not guilty, it would all be over with. If
18 you're found guilty, the sentencing Judge who
19 presided at the trial could sentence you up to ten
20 years.

21 MR. LUPO: Okay.

22 THE COURT: That's all.

23 MR. LUPO: Suppose that he gave me like,
24 let's say, seven years, okay, and I've already got -

25 -

10

1 THE COURT: You'd still have to serve
2 another -- the same time. You'd be right back where
3 you are.

4 MR. LUPO: But I'd get credit for the
5 three and a half years I've already -- the three
6 years I've already done?

7 THE COURT: If the Judge gave you the same
8 sentence, you'd be right where you are today.

9 MR. LUPO: Okay.

10 THE COURT: You wouldn't have to serve any
11 more time, but you wouldn't serve a day less either.

12 MR. LUPO: Okay.

13 THE COURT: All right, go talk to him
14 about it.

15 MR. LEVENTIS: Let me talk to him for a
16 second.

17 THE COURT: I'm not trying to talk him
18 into it. I just have to explain it to him.

19 MS. WHITE: I understand, Your Honor.

20 MR. LEVENTIS: Your Honor, he does want to
21 go forward.

22 THE COURT: All right.

23 MS. WHITE: Your Honor, I'll put the case
24 back on, then. It's Billy James Lupo versus State
25 of South Carolina, 2010-CP-20-0150. He's

1 represented today by Mr. Jim Leventis.

2 He proceeded pro se, Your Honor. Mr.
3 Tyre Lee was actually appointed as standing counsel
4 or sitting counsel, I guess you would say. He was
5 originally indicted in May of '07 on ABHAN,
6 ultimately proceeded to trial, and was convicted,
7 received a sentence of seven years.

8 An appeal was filed on his behalf and
9 an Anders brief perfected. The appeal was denied,
10 and remittitur was issued. He has filed not
11 essentially ineffective assistance of counsel
12 obviously, as he represented himself, but claims
13 that the Court allowed him to go forward pro se
14 while heavily medicated, that he did not know
15 anything about the law, and that he would have taken
16 a plea of thirty months if he had not been so
17 sedated. So I will turn it over to Mr. Leventis at
18 this time.

19 THE COURT: All right, Mr. Leventis.

20 MR. LEVENTIS: Your Honor, I'd like to
21 call Billy Lupo to the stand.

22 THE COURT: All right, Mr. Lupo.

23 He's already sworn.

24 BILLY JAMES LUPO, JR., having first
25 been duly sworn, testified as follows:

Billy Lupo, Jr. - Direct

12

1 DIRECT EXAMINATION

2 BY MR. LEVENTIS:

3 Q Billy, can you state your full name for
4 the record, please?

5 A Billy James Lupo, Jr.

6 Q All right, Billy, we're here today -- you
7 represented yourself as trial counsel on a case that
8 went in Fairfield County on April 28, 2008, is that
9 correct?

10 A Yes, sir.

11 Q Can you tell the Court about an injury you
12 sustained in February of that year?

13 A February 10th, on my mama's birthday, I
14 was getting the house cleaned up. We was going to
15 cook out for her, and I had an accident. I fell
16 through the window, and I was in -- they had to rush
17 me to Richland Memorial Hospital.

18 I severed all my arteries in my left hand
19 and hurt the main -- the tendons. I don't know, it
20 was like a lot of other things. But I was in ICU
21 for three days, a total of eleven days.

22 They stuck me on Oxycontin, and I was
23 supposed to have six surgeries to repair my hand.
24 And when I went to court, I still needed those
25 surgeries, and they offered me a plea of thirty

1 months.

2 Well, I figured if I would have been in my
3 sound state of mind, I would have taken that plea.
4 But the medication that I was on, I never messed
5 with Oxycontin before, and it had me to where I
6 wasn't thinking right.

7 Q Billy, you got medications for your
8 injury, is that correct?

9 A Yes, sir.

10 Q And those medications were filled at Price
11 Pharmacy, is that correct?

12 A Yes, sir.

13 Q Can you look over this list of
14 medications? Does that look like the medications
15 that you received?

16 A Yes, sir.

17 Q All right.

18 MR. LEVENTIS: Your Honor, this is a
19 printout that we got from Price Pharmacy --

20 THE COURT: All right.

21 MR. LEVENTIS: -- that would indicate his
22 medications, and I want to submit that into the
23 record. And, Your Honor --

24 Q Billy, these medications, can you briefly
25 tell the Court what medications you were on and what

Billy Lupo, Jr. - Direct

14

1 effect they had on you?

2 A Percocet, Xanax, Oxycontin, Hydrocodone,
3 and there were a few more pharmacies that I had
4 medication coming from. But that's the only one we
5 have the bill.

6 MR. LEVENTIS: We'd like to mark this as
7 an exhibit, Your Honor.

8 THE COURT: Any objection to it?

9 MS. WHITE: No objection, Your Honor.

10 (Applicant's Exhibit Number One, List
11 of Medications, was entered in evidence.)

12 Q When you went to -- when the case was
13 called for trial, had you taken any of these
14 medications or a combination of these medications?

15 A I was eating them like candy.

16 Q All right. How many -- can you recall
17 what combination you took or how many of those
18 medications you were taking on April 28th?

19 A I was taking Xanax, Oxycontin, and
20 Percocet.

21 Q Can you tell the Court what your -- how
22 you felt that day, what your mindset was that day?

23 A I wished they'd of had a camera in court,
24 because I was sweating profusely. I mean, I don't
25 really remember a whole lot of it. I just remember

Billy Lupo, Jr. - Direct

15

1 sweating real bad and itching. I mean, it was like
2 I was in a fog. I don't really -- I don't really
3 recall a lot of it.

4 Q And do you feel those medications affected
5 your ability to try to be your acting lawyer in that
6 case?

7 A Absolutely.

8 MR. LEVENTIS: I have no further
9 questions.

10 MS. WHITE: Thank you.

11 CROSS-EXAMINATION

12 BY MS. WHITE:

13 Q Just a few briefly, Mr. Lupo. When you're
14 discussing the medications that you're on, was this
15 -- you actually went to court before you went to
16 trial, is that correct -- one time for a
17 continuance?

18 A Yes -- yes, ma'am.

19 Q Okay. And were you on medications at that
20 point?

21 A Yes, ma'am.

22 Q And was that the time that they offered
23 you the thirty-month plea offer?

24 A Both times.

25 Q Okay. So your testimony is that they

Billy Lupo, Jr. - Cross

16

1 offered you a thirty-month plea offer, and you asked
2 for a continuance at the first hearing, is that
3 right?

4 A Yes, ma'am.

5 Q Were you represented by counsel then?

6 A Yes, ma'am.

7 Q Is that Mr. Tyre Lee?

8 A Yes, ma'am.

9 Q And then the second time you went to
10 court, you actually wanted to relieve Mr. Lee, is
11 that right?

12 A Yes, ma'am.

13 Q And represent yourself?

14 A Yes, ma'am.

15 Q Now, the Judge went through a pretty
16 extensive questioning of you in regards to
17 representing yourself, is that right?

18 A Yes, ma'am.

19 Q Okay. And you talked about the fact that
20 you were -- that you had a hand injury, that you had
21 previously been continued -- the case had previously
22 been continued because of that injury, is that
23 right?

24 A Yes, ma'am.

25 Q And the Judge knew all that, is that true?

1 A Yes, ma'am.

2 Q And you talked with him about the fact
3 that you wanted to proceed even though all that
4 information was available, is that right?

5 A Yes, ma'am.

6 Q And did the Judge recommend that you
7 proceed on your own to represent yourself? Do you
8 recall?

9 A I really can't remember. I had a chance
10 to briefly look at my transcript, and I seen in
11 there to where I changed my mind a few times.

12 They asked me if I wanted Mr. Lee to
13 represent me, and I told them yes. And then I --
14 after a few more questions was asked, I was like,
15 "No, I want to represent myself."

16 And then I changed my mind again after
17 they asked me some other questions, and I said that
18 I'd rather Mr. Lee represent me. And then I changed
19 my mind again, and I told them -- after a few more
20 questions, I told him no, that I'd like to represent
21 myself.

22 Q And you told the Court that you had
23 previously represented on about twelve to fourteen I
24 think Magistrate charges, is that right?

25 A Yes, ma'am.

Billy Lupo, Jr. - Cross

18

1 Q Okay. And you told the Court, I think,
2 that you wanted to represent yourself because you
3 could explain the situation and your defense better
4 than Mr. Lee, is that right?

5 A Yes, I think that's correct -- yes, ma'am.

6 Q Okay, all right.

7 MS. WHITE: That's all the questions I
8 have at this time, Your Honor.

9 THE COURT: Well, even though I'm a speed
10 reader, it takes me a little while. So go ahead and
11 ask him.

12 MR. LEVENTIS: Thank you, Your Honor. I
13 just have a couple.

14 REDIRECT EXAMINATION

15 BY MR. LEVENTIS:

16 Q Billy, did the Court ever ask you if you
17 were on any medications, or did you ever volunteer
18 that information?

19 A No, sir, they never asked me.

20 Q Is there a reason you didn't let them know
21 you were on any medications that day?

22 A I told them I was in an accident and
23 showed them my wrist and the damage that was done.
24 And I told them that I was wanting to get my
25 surgeries out of the way.

1 And they said that they didn't have time
2 for a continuance. And I was on all this
3 medication, and I just -- like I said, it was like I
4 was in a fog. I really don't -- I really don't even
5 remember a lot of it, to be honest.

6 MR. LEVENTIS: I have no further
7 questions, Your Honor.

8 THE COURT: I've got to read on before I
9 can ask him any questions.

10 All right, Mr. Lupo, I don't know
11 anything about your case. You understand?

12 MR. LUPO: Yes, sir.

13 THE COURT: Other than what I've just
14 heard you say. I represent to you that I'm a pretty
15 rapid reader, but even so, it's a pretty thing that
16 we have to go through.

17 MR. LUPO: Yes.

18 THE COURT: And I've read so far the
19 appeal, and I read the Anders brief that they filed,
20 and I read the opinion where they granted the Anders
21 motion saying you didn't make out a case.

22 Now I'm reading on the day of the
23 actual trial. I'm not going to read the whole
24 trial, but I'm reading your communications with the
25 Judge. And I'm there to the point where you told

Billy Lupo, Jr. - Redirect

20

1 him that you had been in Magistrate's Court fourteen
2 times and won all those cases. Is that right?

3 MR. LUPO: Sir, I don't think it was
4 actually fourteen times.

5 THE COURT: I didn't say it was. That's
6 what you told the Judge.

7 MR. LUPO: Yes, I know it. I mean, that
8 right there shows you -- the jury was in the room,
9 and I was actually incriminating myself. Like I
10 say, I don't know much about the law, but that just
11 shows you how much I know, you know?

12 THE COURT: All right, anything else?

13 MR. LEVENTIS: Nothing, Your Honor.

14 MS. WHITE: Your Honor --

15 THE COURT: I have no questions of Mr.
16 Lupo. I read what he told the Judge, that he was
17 coherent at the time. There's no reason to suspect
18 anything.

19 MS. WHITE: Yes, Your Honor.

20 THE COURT: And he changed his mind, you
21 know, didn't want Mr. Lee to represent him, does
22 want Mr. Lee to represent him. That's what the
23 Appellate Court did, and that's all I do at this
24 point. I'm not an evidentiary person to review the
25 record, Mr. Lupo. If it's here in the record, you

Billy Lupo, Jr. - Redirect

21

1 can't win.

2 MS. WHITE: The State would have no

3 witnesses, Your Honor.

4 THE COURT: All right.

5 MR. LEVENTIS: Thank you, Your Honor.

Billy Lupo, Jr. - Redirect

22

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON FEBRUARY 22, 2011, IN WINNSBORO, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE SECOND DAY OF JULY, 2011.


REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2013

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Billy James Lupo, #200494,

Applicant,

v.

State of South Carolina,

Respondent.

2011 MAR 30 AJO: 35
 FAIRFIELD COUNTY
 CLERK OF COURT
 BETTY JO BECKHAM

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

2010-CP-20-0150

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 25, 2010. The Respondent made its Return on or about December 16, 2010. An evidentiary hearing into the matter was convened on February 22, 2011, at the Lancaster County Family Court Facility. At the hearing, the Applicant was present and was represented by Jim J. Leventis, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. This Court also had before it a copy of the transcript of the Applicant's guilty plea, the records of the Fairfield County Clerk of Court, Applicant's appellate records, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Fairfield County Clerk of Court's orders of commitment. Applicant was indicted by the Fairfield County Grand Jury at the May 2007 term of General Sessions for assault and battery of a high and

aggravated nature (07-GS-20-0289). The Applicant appeared *pro se*. On April 29, 2008, a jury convicted the Applicant of this charge. The Honorable Brooks P. Goldsmith sentenced the Applicant to confinement for seven years.

Applicant filed a timely notice of appeal. An Anders brief was submitted on Applicant's behalf. The South Carolina Court of Appeals dismissed Applicant's appeal by written Order. State v. Lupo, Un. Pub. Op. 2010-UP-021 (filed January 25, 2010). The Remittitur was returned on February 10, 2010.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that:
 - a. "Allowed me to represent myself while heavily medicated,"
 - b. "I didn't know anything about the law,"
 - c. "There was a plea offer of 30 months and if I would not have been so sedated I would have taken it,"
2. Ineffective assistance of appellate counsel; and
3. U.S. and S.C. constitutional violations.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel – Right to Counsel

The Applicant alleges that he was under the influence of drugs and should not have been allowed to represent himself at his trial. This Court finds that this allegation appears to be directly

refuted by the record. In order for an uncounseled conviction to be sustained, the record must show a knowing and intelligent waiver of counsel. A defendant may waive his right to counsel, and courts must entertain every reasonable presumption against waiver. United State v. Johnson, 659 F.2d 415 (4th Cir. 1981). There is no particular form of interrogation required by the courts. United v. King, 582 F.2d 888 (4th Cir. 1978). A specific inquiry by the trial judge expressly addressing the disadvantages of a *pro se* defense is preferred; however, the paramount consideration is not the trial judge's advice to the accused but the accused's understanding. Bridwell v. State, 306 S.C. 518, 413 S.E.2d 30 (1992). In the absence of the preferred inquiry courts will look to the record to determine if the accused had sufficient background to understand the disadvantages of self-representation or was apprised of his rights by some other source. Id.; State v. Cash, 309 S.C. 40, 419 S.E.2d 811 (Cl. App. 1992). Furthermore, a defendant who elects to represent himself cannot thereafter complain that the quality of his own defense amounted to a denial of "effective assistance of counsel." Id. at 581.

The Applicant testified that he went to court while represented by counsel and turned down a plea offer for thirty months, but sought a continuance because he wanted to relieve counsel and proceed *pro se*. Applicant testified that he informed the court that he had represented himself before on at least fourteen previous magistrate court cases and that he believed he could tell his side of the story better than counsel. This Court, after reviewing the record and testimony presented, finds that it is clear that the Applicant knowingly and voluntarily waived his right to counsel for this trial. Not only did the lower court carefully examine Applicant as to his age, education level, previous experience with criminal trials, and knowledge of the charges and potential penalties, but stand by counsel was also provided. State v. Cash, 309 S.C. 40, 419 S.E.2d 811 (Cl. App. 1992). The

Applicant understood court procedures enough to move for a continuance, issue subpoenas, and cross-examine witnesses. The record also reflects that this issue was raised and ruled upon by the South Carolina Court of Appeals, who dismissed Applicant's appeal. This Court finds that the record clearly refutes Applicant's allegations that he did not knowingly and voluntarily waive his right to counsel. Therefore, this allegation is denied.

Ineffective Assistance of Appellate Counsel

Regarding Applicant's allegation that appellate counsel was ineffective, this Court finds that the Applicant has failed to present any testimony or evidence in support of the allegation. Therefore, this claim is denied and dismissed.

Constitutional Violations

Regarding Applicant's allegation of constitutional violations, this Court finds that the Applicant has failed to present any testimony or evidence in support of the allegation. Therefore, this claim is denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR.

Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243¹ for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 29 day of March, 2011.

Cornel, South Carolina


J. Ernest Kinard, Jr.
Presiding Circuit Court Judge

¹ Formerly Rule 227, SCACR. Rules 224 through 230, SCACR, were renumbered as Rules 240 through 246, SCACR, by order of the South Carolina Supreme Court dated April 29, 2009.

WITNESSES

WPS #07-04-1473

DOCKET NO. 2007-GS-20-289

The State of South Carolina

County of Fairfield

2007 MAY -1 P 1 06

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKMAN

COURT OF GENERAL SESSIONS

MAY TERM 2007

ARREST WARRANT NUMBER

K17106 (DOA 01-09-07)

ACTION OF GRAND JURY

THE STATE

vs.

Billy Lupo

KNOE, BILL

20 02

For person of Grand Jury
Date: 5/1/07

VERDICT

Indictment for

Assault and Battery of a High and
Aggravated Nature

SC Code §17-25-0030

ODR Code 0013

Class: Misdemeanor, UNC

I, Betty Jo Beckman, Clerk of Court,
Fairfield County, South Carolina, do
hereby certify this is a true copy of
the original on file in this office.*Betty Jo Beckman*
Clerk of CourtFor person of Petit Jury
Date:

STATE OF SOUTH CAROLINA)

INDICTMENT

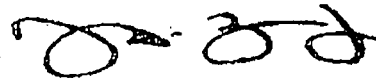
COUNTY OF FAIRFIELD)

At a Court of General Sessions, convened on May 1, 2007, the Grand Jurors of Fairfield County present upon their oath:

ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE

That Billy Lupo did in Fairfield County on or about April 6, 2007, commit an assault and battery upon the victim, Shannon Truesdale, constituting an unlawful act of violent injury to the person of the victim accompanied by circumstances of aggravation, to wit: did hit the victim about the face and head with a stick from a broken end table.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Douglas A. Barfield, Jr., SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

STATE OF SOUTH CAROLINA,

vs.

BILLY LUPO,

Defendant.

IN THE COURT OF GENERAL SESSIONS

Case Nos.: 2007-GS-20-289

VERDICT FORM

WE, THE JURY, as to Indictment Number 2007-GS-20-289, ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE, unanimously find the Defendant BILLY LUPO:

GUILTY

NOT GUILTY

James E. Graham
FOREPERSON'S SIGNATURE

DATED APR 1 29, 2008
CLERK OF COURT

I, Betty Jo Beckham, Clerk of Court,
Fairfield County, South Carolina, do
hereby certify this is a true copy of
the original on file in this office.

Betty Jo Beckham
Clerk of Court

