

THE STATE OF SOUTH CAROLINA
SUPREME COURT

APPEAL FROM YORK COUNTY

John C. Hayes, Circuit Court Judge

Case No. 2014-001163

RECEIVED

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Robert Hooker #00347354, Petitioner,

S.C. SUPREME COURT

v.

State of South Carolina, Respondent.

SUPPLEMENTAL APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
)
)
Robert Hooker, #350619,)
)
)
Applicant,)
)
)
v.)
)
State of South Carolina,)
)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

2013-CP-46-1483

RETURN

In response to the post-conviction relief application filed on May 13, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the June 2011 term of the York County Grand Jury for Malicious Injury to Real Property (2011-GS-46-1837), Burglary, 1st degree (2011-GS-46-1838) and Stalking (2011-GS-46-1839). Melissa Inzerillo, Esquire, represented him. On August 10, 2011, the Applicant proceeded to a jury trial pursuant to which he was found guilty of all charges as indicted. The Honorable Lee S. Alford sentenced the Applicant to confinement for fifteen (15) years for Burglary, 1st degree, five (5) years for Stalking and thirty (30) days for Malicious injury to real property.

A notice of appeal was filed on the Applicant's behalf and an appeal perfected pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Hooker, Op. No. 2013-UP-100 (filed March 13, 2013). The Remittitur was issued on April 5, 2013.

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"
 - a. "Petitioner's counsel's(sic) was ineffective during the course of his criminal case in General Sessions Court."

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of 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).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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August 21, 2013.

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

2013-CP-46-1483

ROBERT HOOKER, #350619)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

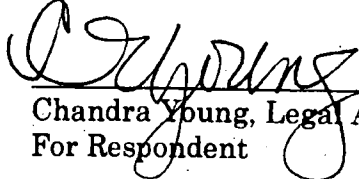
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Bobby G. Frederick, Esquire
Post Office Box 8219
Myrtle Beach, SC 29578

DATED this 21st day of August, 2013.


Chandra Young, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
 4 THE STATE)
 5 -vs-) TRANSCRIPT OF RECORD
 6 ROBERT HOOKER,) 2011-GS-46-01837
 7 DEFENDANT.) 2011-GS-46-01838
) 2011-GS-46-01839
) AUGUST 9, 2011
) YORK, SOUTH CAROLINA

(VOLUME I)

B E F O R E:

THE HONORABLE LEE S. ALFORD, JUDGE. ; And a Jury.

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

ERIN JOYNER, ASSISTANT SOLICITOR
 JENNIFER COLTON, ASSISTANT SOLICITOR
 ATTORNEYS FOR THE STATE

MELISSA INZERILLO, ASSISTANT PUBLIC DEFENDER
 AMY SIKORA, ASSISTANT PUBLIC DEFENDER
 ATTORNEYS FOR THE DEFENDANT

MICHAEL R. WATTS
 CIRCUIT COURT REPORTER

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1 (PROCEEDINGS, AUGUST 9, 2011)

2 MS. JOYNER: May it please the court, do you want
3 me to call the case, Your Honor?

4 THE COURT: Yes, ma'am.

5 MS. JOYNER: Your Honor, the State calls the case
6 of the State of South Carolina versus Robert Terrence
7 Hooker. These are indictments 2011-GS-46-1838, burglary in
8 the first degree; 1837, malicious injury to real property.
9 Your Honor, that indictment alleges a value of more than
10 \$2,000. We are proceeding on the lesser offense of less
11 than \$2,000. And indictment 2011-GS-46-1839 which charges
12 stalking.

13 The defendant, through Melissa Inzerillo as his
14 attorney, said that he wished to plead not guilty, and the
15 State is ready for trial.

16 THE COURT: Is the defense ready for trial?

17 MS. INZERILLO: Yes, Your Honor.

18 THE COURT: Let's go ahead and look at the voir
19 dire first before we get to the motions, if you don't mind.
20 Do either of you have any problems with the others requested
21 voir dire?

22 MS. JOYNER: I have no objection, Your Honor, only
23 to question 10 in reference to a theft offense, and we
24 aren't alleging any theft. But other than that, we have
25 objection to Ms. Inzerillo's requests.

1 And number 7 as well, Your Honor, I'm sorry.

2 MS. INZERILLO: Your Honor, we don't have any
3 objection to Your Honor not ---

4 THE COURT: Asking --

5 MS. INZERILLO: -- asking those questions.

6 And we have no objections to the State's voir
7 dire. I think they overlap our voir dire in some cases.

8 THE COURT: All right. I'll take out theft and
9 leave in burglary.

10 Is there any concerns about the State's requests?

11 MS. INZERILLO: No, Your Honor.

12 THE COURT: Let me tell you what. I will ask the
13 questions, all of them except the ones that we just struck
14 with regard to theft.

15 What I plan to do is on the defense's 8, 9 and 10,
16 if they need to respond to that, I'll bring them down front
17 and catch their responses so we won't contaminate the rest
18 of the jury, depending on what their responses would be.

19 And then the State's request 1, 2, 3, 5, we'll
20 bring them down front for all of those. Again, whatever
21 their responses might be could contaminate the rest of the
22 jury. I would rather get their responses down front.

23 All right, let's go through the pretrial motions
24 at this time.

25 Does the State have any?

1 MS. JOYNER: Your Honor, the State does have
2 several motions. They kind of sort go along for the most
3 part with Ms. Inzerillo's motions.

4 The two exceptions I will say, we do have a
5 motion, and I don't have the case law with it necessarily on
6 point, but in this case the officers arrived and found the
7 defendant in the victim's apartment. They initially charged
8 malicious injury to property, did not charge burglary or
9 stalking. Detective Dugan became involved the next day. He
10 sought warrants for all charges. So we would make a motion
11 just to preclude any reference to the fact the initial
12 officers did not charge burglary, because it would create an
13 appearance to the jury that perhaps there is some other
14 issue they don't understand, when really it's strictly a
15 legal question that's already been passed on by the
16 magistrate and by the Grand Jury, so that we would ask that
17 no reference be made to their initial charging decision.

18 MS. INZERILLO: Your Honor, we would ask the court
19 to allow us to go into that line of questioning.

20 In this particular case we have a bit of an
21 unusual fact pattern, in that one of the responding officers
22 that responded to this burglary also took an incident report
23 from the victim the day before regarding some
24 perhaps threats. So we are in a particular situation where
25 one of the charging officers actually had prior knowledge

1 about the relationship between the defendant and the victim
2 in this case, or at least some allegation of some threat.
3 And I do think the jury should know, whether they give it
4 the weight they want to give it or not, that there was this
5 information that this officer had, and that even after
6 finding Mr. Hooker in the house, the only charge was
7 malicious injury. And certainly, either upon direct or
8 cross-examination, Detective Dugan can fully explain upon
9 further investigation why he added the additional charges.

10 MS. JOYNER: Your Honor, and just to clarify,
11 several of the officers had had interactions with Mr. Hooker
12 during the time period. Officer Slawson, Officer Felmet and
13 Officer Wells were also at the scene on the 28th and all had
14 prior interactions with the defendant and with the victim,
15 or both.

16 But why it would create confusion, Your Honor,
17 these officers did not -- they wanted to charge a burglary.
18 Now, for whatever reason someone higher up than them said
19 they will have to -- the matter was referred to the
20 detective division, and I have never been able to determine
21 the exact reason for that. But that their line of
22 questioning would imply that these officers somehow didn't
23 believe the victim, or they had some other knowledge, and
24 that would create confusion to the jury, when, in fact,
25 their -- it's not a relevant line of questioning, because

1 ultimately -- ultimately the decision to charge lies within
2 the solicitor's office discretion.

3 Had this been a case where Detective Dugan never
4 become involved and I had become involved and I had direct
5 indicted for burglary first and stalking, it would not have
6 been a proper area of cross-examination of those officers
7 either, that I was the one that initiated the charges and
8 not them. So I think that it becomes confusing to the jury.
9 It creates an impression that quite honestly is not a
10 truthful truthful portrayal of what actually happened that
11 night, and it becomes completely irrelevant when you
12 consider that the decision to charge ultimately rests in the
13 solicitor's office discretion, and, you know, the charges I
14 believe were properly brought.

15 MS. INZERILLO: Your Honor, I certainly, either
16 under State's questioning or defense questioning, you know,
17 having the officers explain why they didn't charge
18 something, I think that's completely within the purview of
19 questioning with the court. And if the initial officers
20 wanted to explain why I did want to charge this but I didn't
21 get clearance to, then the jury can, you know, feel free to
22 weigh that, along with everything else.

23 I do think we have sort of a cross here as well.
24 In the burglary indictment, one of the alleged crimes that
25 he committed therein is stalking. And certainly, from my

1 review of the case it would appear that the incident report
2 that was taken the day before, which is the fact there was
3 stalking, which by extension is in fact there's a burglary.

4 Also, Your Honor, what it leaves is essentially
5 not allowing the defense to cross-examine on that, the
6 situation that happened the day before either, because then
7 we may be in a situation where by cross-examining on that,
8 then we may inadvertently overstep the court's ruling and
9 may cause even more confusion. And so I do think it is
10 relevant, not only to the witness connection, but also to
11 the stalking connection, which does flow through two of the
12 charges in this case.

13 MS. JOYNER: But it would also put into play, Your
14 Honor, I think basically hearsay, because they didn't --
15 they didn't receive clearance from somebody who is not here
16 in court to explain why. And the explanation could be as
17 something "where I met with the officers. One of those said
18 I think that we referred those to the detective." And the
19 other officer said "I don't remember if we referred it to
20 the detective." It creates a confusion.

21 And it, again, creates the impression that somehow
22 these officers didn't think that burglary was the
23 appropriate charge, that burglary is a legally sufficient
24 charge in this case and it would confuse the jury.

25 And it's more prejudicial -- if you look at it

1 just under the Rules of Evidence, under 403, it's more
2 prejudicial than probative of any point in this case.

3 I think that the prior day, the February 27th
4 incident report of the phone calls, of course, that's going
5 to come up in the State's case. I would anticipate that it
6 would come up during cross-examination, but I can't imagine
7 how that would inadvertently cause the defense to overstep
8 into a ruling that simply said you cannot question the
9 officers about why they didn't charge burglary.

10 MS. INZERILLO: Your Honor, I just want to be
11 clear. The extent of the defense questioning on this matter
12 would be the fact that burglary was not charged, stalking
13 was not charged.

14 If the State wants to go into why, I mean,
15 obviously the State can do that. My concern is he was
16 charged with trespassing and malicious injury to property.
17 He is before the jury on malicious injury to property. He
18 actually pled to trespassing, and there is a possibility the
19 State may enter that in this case, and that they have
20 provided me with a certified conviction on that. So being
21 precluded from asking the officers at all about any charging
22 implicates a lot of other facts and positions in this case,
23 and we would just ask the court to allow us to go into the
24 questioning of the fact that those charges are not made at
25 the scene, that Detective Dugan did ultimately make the

1 decision to charge that charge.

2 MS. JOYNER: Again, I just have to stress it's
3 simply not relevant for an ultimate question for the jury.
4 The only reason to ask the officers why if they didn't
5 charge burglary at the scene is somehow an attempt to draw
6 an inference that somehow burglary and stalking were
7 improper charges, and that would confuse the jury. It is
8 for them to decide whether those charges are proper.

9 The only reason to ask the officers whether they
10 charged burglary is to create the inference, as I said, but
11 somehow they are not proper charges, or somehow the officers
12 didn't believe the victim, or somehow the officers didn't
13 believe anything that they had seen that night, and that
14 would simply be irrelevant and overly prejudicial.

15 MS. INZERILLO: And I don't want to belabor the
16 point, Your Honor, but the situation we have here, we have
17 the officers who are going to testify who were actually on
18 the scene and interacted with the victim. By my anticipated
19 testimony actually interacted with the defendant as well,
20 noticed the scene, took photographs of the damage, actually
21 observed the scene. And by extension, with no objection to
22 the defense -- by the defense, could testify to that, to
23 what they saw, what they took in. And the jury should be
24 allowed to get a context of what was charged at the scene
25 versus what was charged later, because the officers will be

1 allowed to go into whatever they saw or heard, the
2 information they received that day.

3 So just to make it clear, I don't think it would
4 be confusing the jury. It would actually put everything in
5 context for the jury.

6 MS. JOYNER: And I would worry, Your Honor, about
7 how that information would be used later in the trial. I
8 think that you can -- I can -- I can see a situation where
9 we are in closing arguments and the defense says, "and the
10 police didn't even charge burglary. The police didn't even
11 charge stalking," and now we can't unring the bell.

12 And so the only reason to elicit the testimony is
13 to later make that argument, whether so blatantly or more
14 subtly, that somehow the charges aren't proper because they
15 weren't made that night. And at that point the damage has
16 been done and something overly prejudicial has been
17 introduced to the jury.

18 MS. INZERILLO: Your Honor, in addressing that I
19 would only make two points, the first being the jury is
20 instructed that Your Honor is the judge of the law, that
21 they are to take the law as you give them, as you provide to
22 them, that the indictment in this case is all for their
23 review, and then you provide the law underneath those
24 indictments as laid out in the statute and any other charges
25 the court may see fit.

1 To speak plainly, Your Honor, all of my arguments
2 to the jury are that the charges aren't proper, that the
3 State hasn't met its burden. That's what the defense
4 essentially argues in every single trial. And so to say
5 that in this case we would be precluded to arguing that
6 element of it, when the State has a chance to also address
7 the jury and explain why they are proper, I think would
8 unfairly prejudice the defendant in making a full case for
9 the jury.

10 THE COURT: How does it tie into your defense?
11 You would have to be able to show me that it's part of your
12 defense in this case. I think you are entitled to present
13 your defense.

14 How does the fact that he was not charged with
15 burglary and stalking -- excuse me -- yeah, burglary and
16 stalking until the next day, how does that at all play into
17 a defense? I mean, it doesn't matter when they charged. He
18 could be charged a week later, which happens sometimes,
19 after somebody reviews the case in the solicitor's office.
20 How does that play into your defense?

21 I mean, if the facts are there. Isn't that the
22 issue, whether the State can prove the issues of these
23 charges and not when they decided to make the charge? Isn't
24 that correct?

25 MS. INZERILLO: That is correct, Your Honor.

1 Essentially in this case the State has the burden of showing
2 every single element of every single crime.

3 THE COURT: Right.

4 MS. INZERILLO: And as the court is aware, one of
5 the elements of stalking that help us lead into burglary
6 would be overlap of the crime committed therein. Element of
7 burglary is fear from stalking.

8 And certainly I would refer back to the argument
9 about the officers being on the scene. Obviously this one
10 particular officer, Officer Wells, having some prior
11 information about harassing phone calls and then being on
12 the scene and being able to interact with the victim.
13 Because that is such a subjective viewpoint from her in
14 terms of "I know this fear. I did not see fear," or these
15 statements were made, because that element is very
16 subjective. I think the jury having all the evidence about
17 what happened at the scene, you know, and if Officer Wells,
18 or a fellow member, or anybody else said "I did notice this
19 and I was told not to charge it," that's something the jury
20 could take into consideration to determine whether it was a
21 valid charge, it just got charged by someone else in the
22 department, or they could consider that and disregard it,
23 for whatever reason. But because fear is an element that
24 essentially stalking by extension could possibly implicate
25 the burglary. That would be -- that would be the tie-in at

1 least for the defense in the case.

2 MS. JOYNER: And, again, Your Honor, that just
3 suggests already that the defense presupposes that Officer
4 Wells didn't believe those charges were sufficient, which is
5 not the case.

6 THE COURT: Well, I'm going to allow them to ask
7 it. I think it's a fair question.

8 They are entitled to their defense. I'm not going
9 to preclude them from being able to put up a defense. I
10 think that would be error on my part. So if somebody made
11 the decision that night to charge only malicious injury to
12 property and they didn't choose that night to charge it,
13 this is an ongoing thing between these parties, you know,
14 that certainly could impact the defense, if they are not
15 allowed to get into that. At least ask about that why the
16 charges were not made.

17 These ongoing relationships and investigations by
18 the police and you are charged with stalking and they are
19 going to have to show that there was a pattern of fear
20 caused by actions on the part of the defendant, then that's
21 also part of the burglary that he went in there to stalk and
22 commit the crime. The defense is entitled to explore that.

23 Now, I think that -- and it is what it is insofar
24 as the facts are concerned. They didn't make that charge
25 that night. They didn't -- you know, they certainly could

1 testify, you know, we charged that that night and arrested
2 him on that charge and then referred it to the detective
3 division to investigate it further, and the detective
4 division investigated it and they made the decision to make
5 these charges the next day. I don't see that as unduly
6 prejudicial to the State.

7 I think you can explain it with your testimony,
8 but I think it's -- it would be error for me to preclude the
9 defense from having their defense, or any inferences that
10 the jury could draw from all of the facts, because this was
11 an ongoing situation, but I think it would be prejudicial to
12 the defense not to at least be able to ask them that.

13 Now, you can explain it as you explained it. I
14 mean, obviously policemen on the scene who are called out --
15 you know, patrol officers who are called out to
16 investigate -- I mean to come in immediately on these kind
17 of things, make an immediate response to them, would not be
18 the final authority on necessarily what to charge somebody
19 with. And I don't think it's unduly prejudicial to the
20 State for the facts to come out that he wasn't charged with
21 these that night, but the detective charged them the next
22 day when they had to a chance to review it, talk to the
23 officers and viewed the incident report. That happens. I
24 don't see that it's that unduly prejudicial to the State.

25 Yeah, it allows them to argue, well, that night

1 they didn't -- you know, they didn't take very seriously.
2 They it more seriously after it was reviewed, but,
3 nevertheless, that is what it is.

4 I mean, the defense takes the position that he
5 really wasn't stalking or it really wasn't a burglary,
6 didn't intend to burglarize, all of that comes into play. I
7 just don't think I can keep it out. I think it's
8 prejudicial, more prejudicial than probative, so I'm going
9 allow it in.

10 You can explain it away. That happens. I mean, I
11 have heard them asked many times, the officer asked, "you
12 know, you didn't charge them that night. You charged them.
13 Then later you charged them with these things," and that
14 happens.

15 MS. JOYNER: Your Honor, along those same lines,
16 though, I wish to extend the motion to ask the court to make
17 a ruling that what arguments could be made in closing
18 arguments. I know it's a little bit premature, but even if
19 that line of questioning is allowed, I think it would still
20 be improper to make the argument to the jury that if the
21 officers didn't charge it that night, it shouldn't be before
22 the jury, and to make any argument --

23 THE COURT: I'm not going to allow that at all,
24 and the defense needs to understand you can argue the facts
25 and that's all you can argue. You absolutely cannot argue

1 to the jury, intimate to the jury, simply because he wasn't
2 charged that night it's not true. And you can -- I think
3 you can argue that they could consider the fact that he
4 wasn't charged that night, was charged the next day, but I
5 don't think you can argue any inferences to be drawn from
6 that, although, that that establishes the charge that should
7 have been made. They can be made the next day, or the next
8 week, or the next month, sometimes three months later by the
9 solicitor's office, once they fully review the case. They
10 can go get a direct indictment, so they have the final say
11 on that. This case was the detective -- but the solicitor's
12 office could have made it, and I think they can argue that
13 to the jury that that was a decision that could be made at
14 any time, you know, including the -- if the solicitor's
15 office didn't think the charges were appropriate, that they
16 were free to get a direct indictment and they can charge. I
17 think they can make that argument to the jury. And so --

18 And the detective certainly had a right, once
19 reviewing the incident report and talking to the officers,
20 to make what charges they thought were appropriate, the
21 supervising officers.

22 But I don't think that you can argue -- I don't
23 think it would be proper to argue that simply because the
24 charge wasn't made that night it's not true, or he shouldn't
25 have been charged. You can't argue that or infer to this

1 jury that that was the case.

2 You can say that charges weren't made that night,
3 you know, could have made the charges that night, but I
4 don't think that you can argue any other inferences from it.
5 Okay?

6 MS. INZERILLO: Yes.

7 THE COURT: Or you can draw whatever inference
8 they want from it, but I don't think that's proper argument.
9 All right. Then I think it becomes prejudicial to the State
10 under those situations.

11 Under 403 it would also confuse the issues, under
12 Rule 403, confuse the issues for the jury, if you are
13 allowed to argue that. And it is somewhat misleading or
14 confusing to the jury under 403, I'll give you that, but I
15 think that they are entitled to their defense, and so -- and
16 the inferences that could be drawn from that, but I think it
17 would then become more prejudicial than probative. Defense
18 is allowed to argue to the jury that simply because he
19 wasn't charged that night, the charges don't apply. You can
20 say they weren't charged that night, they can say why they
21 weren't charged that night, what the procedures are in
22 charging. I have no problems with that.

23 All right, what else?

24 MS. JOYNER: Your Honor, Ms. Inzerillo previously
25 provided a video to me that she now tells me that she will

1 not enter or attempt to enter into evidence, but along those
2 same lines I would move that any allegations that the victim
3 has any sort of recreational drug use or any kind of
4 addiction would be completely irrelevant and should not be
5 elicited from any testimony during the course of the trial.

6 And along those lines I have prepared seven
7 different phone calls that we intend to introduce into
8 evidence, and I prepared redactions to two of them, which
9 removed from the phone call references I hear to drugs. I'm
10 not sure if Ms. Inzerillo -- I don't believe that she is
11 going to elicit that testimony based off of our conversations.
12 I just wanted to put that on the record.

13 MS. INZERILLO: Your Honor, I don't have a
14 problem. I have a question, because fundamentally I am not
15 opposing this motion. The only thing I just want to clarify
16 is if I could get from the State exactly what has been
17 redacted and consider something within those.

18 MS. JOYNER: Absolutely.

19 THE COURT: Okay.

20 MS. JOYNER: And if we could do that between a
21 break, I can allow her to listen to the those calls.

22 THE COURT: Okay.

23 MS. JOYNER: Thank you.

24 THE COURT: Anything else from the State?

25 MS. JOYNER: No, sir, Your Honor.

1 Oh, I'm sorry, one more thing. As to the stalking
2 indictment, I made Ms. Inzerillo aware just prior to trial,
3 and I don't think there is any objection, the warrant
4 originally alleged the time period of October 1st through
5 February 28th, 2011, as the time period for stalking. I
6 have advised Ms. Inzerillo that I want to amend the
7 indictment to read December 1st of 2010, through February
8 28th of 2011.

9 THE COURT: Did you want to amend October the 1st
10 to December the 1st?

11 MS. JOYNER: Yes, sir, Your Honor.

12 THE COURT: Okay. And then February the 28th day,
13 we are amending that?

14 MS. JOYNER: It would remain the same, Your Honor.

15 THE COURT: Remain the same.

16 The amendment would be from December the 1st to
17 February, instead of October the 1st?

18 MS. JOYNER: Correct, Your Honor.

19 THE COURT: Any objection?

20 MS. INZERILLO: No.

21 THE COURT: All right. I'm going to go ahead and
22 mark through on the indictment. I don't submit the
23 indictment back to the jury anyway, but I'm going to change
24 that at this time to be amended to December the 1st, 2010,
25 to February the 28th, 2011. I'm making that change to the

1 stalking indictment and I'm initialing that change. All
2 right.

3 Is that all from the State?

4 MS. JOYNER: Yes, sir, Your Honor.

5 Just a motion regarding the statement, and I wish
6 to get -- if we could do the Jackson v. Denno now?

7 THE COURT: Let's do the Jackson v. Denno hearing.

8 MS. JOYNER: Okay. I call Detective Keith Dugan.

9 And, Your Honor, Ms. Inzerillo can make a motion
10 to sequester. I don't know if you want to begin that
11 sequestration now.

12 MS. INZERILLO: I would ask that we do.

13 THE COURT: All right. Well, let's go ahead and
14 take up the motion, the motion for sequestration.

15 MS. JOYNER: Okay.

16 THE COURT: The State doesn't object to that?

17 MS. JOYNER: No, sir. Your Honor, we would
18 designate Detective Dugan as our case agent and ask that our
19 victim obviously be allowed to remain. We have no other
20 objections.

21 THE COURT: All right. Let me explain that
22 sequestration means not discussing your testimony with
23 anybody who has not yet testified. You are not allowed to
24 do that. And, in addition, not being in the courtroom until
25 after you have testified. Of course, except for the case

1 agent and victim, they are allowed to be in the courtroom
2 throughout. So we will do that, but anybody else -- I guess
3 all the other witnesses, fact witnesses, that are going to
4 testify need to be out of the courtroom while we hear this
5 suppression hearing.

6 (Off the record)

7 (Back on the record)

8 DETECTIVE KEITH DUGAN, having been first duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION BY MS. JOYNER:

11 Q. Detective Dugan, can you please state your full name
12 for the record?

13 A. It's Keith Gerald Dugan.

14 Q. And Detective Dugan, how are you employed?

15 A. I'm employed with the Rock Hill Police Department as a
16 detective.

17 Q. Now, on or about March 1st of 2011, did you become
18 involved in the investigation of Robert Hooker?

19 A. I did.

20 Q. Okay. Now, as part of that investigation did you have
21 an occasion to take a statement from Mr. Hooker?

22 A. I did.

23 Q. Okay. Just briefly, if you can tell me, was Mr. Hooker
24 in custody at the time that you took the statement?

25 A. He was.

1 Q. Okay. Was he actually in the jail at the Rock Hill
2 Police Department?

3 A. Yes, ma'am, he was.

4 Q. Okay. And did you go and get him from the jail, or did
5 you take the statement at the jail?

6 A. Actually we went and got him from cell one and brought
7 him into our interview one room inside the detective
8 division, which is in the same building.

9 Q. Okay. And what is the size of interview room one?

10 A. I believe it's approximately 8 X 12 size rooms. It's a
11 fairly decent size interview room, say from -- one wall is
12 from me to the door, and then probably as wide as, you know,
13 from the end of this clip to the wall.

14 Q. Was there anybody else in the room with you besides Mr.
15 Hooker?

16 A. No, it was just myself and Mr. Hooker.

17 Q. Was Mr. Hooker wearing handcuffs at the time?

18 A. He was not.

19 Q. But he was in custody?

20 A. He was.

21 Q. Okay. Do you recall what time that you brought Mr.
22 Hooker in the interview room?

23 A. I believe his was probably closer to noon. I will give
24 you the exact time. 12:30 in the afternoon.

25 Q. Okay. And that's the time that -- you are basing that

1 time off of --

2 A. That's the time we complete the statement, which is on
3 or about the time we took the statement. After we get done
4 with Miranda Rights and go through the process we record it
5 in writing, so give or take half an hour. It usually takes
6 about half an hour to an hour to do the interview.

7 Q. Okay. And when you went and got Mr. Hooker, did you
8 advise him of the reason why you were coming to get him?

9 A. I did.

10 Q. Okay. And did you tell him that you were coming to
11 take a statement from him?

12 A. I wanted to -- I asked him, I said I wanted to talk to
13 him about what happened last night.

14 Q. Okay. And did he indicate to you that he would talk to
15 you?

16 A. Yeah, he said great.

17 Q. And when you got him in the interview room one, did you
18 read him Miranda Warnings?

19 A. Yes, ma'am, I did.

20 Q. Okay. And could you please, for the court, tell us
21 what Miranda Warnings that you gave him?

22 A. I'll read them as I do from the paper. We have a
23 screen that we read them from every time. They are a little
24 extensive, so I'll give them to you.

25 It's, "before I ask you any questions, you must

1 understand your rights.

2 "You have the right to remain silent.

3 "Anything you say can be used against you in court.

4 "You have the right to talk to a lawyer for advice
5 before we ask you any questions and to have him or her with
6 you during questioning.

7 "You have the right to advice and presence of a lawyer,
8 even if you cannot afford one to hire one. We have no way
9 of appointing you a lawyer, but one will be appointed to you
10 for court for you, if you wish.

11 "And if you wish, you may answer any questions without
12 the presence of a lawyer.

13 "And you may stop questioning or answering questions
14 any time you desire until a lawyer is present."

15 Then I tell them that, "you know that I'm a police
16 officer," and he says "yeah."

17 I say, "I have read to you a statement of your rights.
18 And what you are stating now to me is that you understand
19 your rights and that you are willing or not willing to make
20 a statement; that you do not want a lawyer at this time; and
21 you understand and know who I am, what we are talking
22 about," which says, "I understand and know that what I am
23 doing, I know that a person I'm talking to talking with me
24 is a police officer and understand what he's talking to me
25 about."

1 Q. Okay. So that's all in that form that you were just
2 reading?

3 A. It is correct, and it's signed both times. You get it
4 signed, once we read to it them and then after we read it to
5 them.

6 Q. So do you let them read along with it as you read it to
7 them?

8 A. We can. It's on a screen, must normally we put them
9 back. You know, they can see the screen to look at it, if
10 there is any questions, but --

11 Q. Are you --

12 A. -- I don't know that he read it aloud.

13 What's that?

14 Q. Are you referring to a computer screen?

15 A. Yeah, computer screen.

16 Q. Now, as you went through these rights with Mr. Hooker,
17 at any point did he say, "no, I don't want to talk with
18 you?"

19 A. Never.

20 Q. Okay. Did he appear to understand what you were saying
21 to him?

22 A. He did.

23 Q. Okay. Now, there is some -- there will be some
24 testimony about his level of intoxication the night before.

25 Did Mr. Hooker appear to you to be sober that day?

1 A. He was.

2 Q. Did he appear to be of average intelligence?

3 A. He was.

4 Q. Okay. Did he ever -- did he ever express to you any
5 confusion about what you were saying to him?

6 A. No, he did not.

7 Q. Okay. Did he appear to understand?

8 A. He -- he -- he said to us -- well, the jailer was
9 there. We had to take him out of the cell. He said, "I'm
10 glad I get to tell my side of the story finally."

11 Q. And that was before Miranda?

12 A. That's correct.

13 Q. Okay. But during Miranda he did appear to understand?

14 A. Oh, yeah.

15 Q. And did he agree to speak with you?

16 A. He did.

17 Q. Did he ever at any point ask for a lawyer?

18 A. Never.

19 Q. Okay. At any point when you are reading him Miranda,
20 or at any point during the time that you were talking with
21 him, did you ever promise him anything?

22 A. I never promised him anything.

23 Q. Did you ever threaten him?

24 A. No. I may read this end to you, if you would like, at
25 the end where he signs on this, where I go over this with

1 him?

2 Q. Okay.

3 A. It says, "you, the person that appears before me" --
4 or, "personally appears before me, who deposes and says that
5 Robert Hooker, I make this statement on my own free will and
6 accord, without reward or hope of reward. I have not been
7 mistreated or threatened in any way. All the above is the
8 truth, the whole truth, and nothing but the truth, so help
9 me God."

10 Now, I don't make them raise their hands if I'm not --
11 I mean, I am a notary, but I have -- you know, I just -- if
12 they say so help me God and they say that they are -- you
13 know, there is no type of duress there. They have given me
14 a statement and not asked for an attorney. We make them
15 sign that that is done, and that was done at 12:30 on that
16 date, on the 1st.

17 Q. Would that have been done after he gave the statement
18 or before?

19 A. Correct, after he gave the statement.

20 Q. Okay. But before he gave the statement, you went
21 through the warnings that you just read?

22 A. Correct.

23 Q. Did he at any point ask to see an attorney?

24 A. No.

25 Q. Okay. How long in total -- I think you have already

1 said this. How long in total do you think that you were in
2 the interview with him, from the time that you started
3 talking to the time that you completed the form?

4 A. Possibly an hour.

5 Q. Approximately an hour.

6 At any point during that hour do you recall whether he
7 asked to use the bathroom or indicated that he was hungry or
8 wanted food?

9 A. I don't remember him asking for anything he wanted to
10 get. He wanted to tell me his side.

11 Q. Okay. Had he just -- you don't recall, but in your
12 practice, if had he asked you for a bathroom break, or food,
13 or anything of that, would you have granted him that?

14 A. Oh, yeah, absolutely. And the cell he came from had a
15 bathroom in it.

16 Q. Okay.

17 A. So -- and he wasn't gone for more than an hour, I don't
18 believe. If he was gone longer for an hour, it may have
19 been an hour and 15 minutes. I think we have a sign-out
20 log.

21 Q. Okay. Now, how is it that you take a statement? Do
22 you first talk with the person and then go back and type the
23 statement, or --

24 A. Yeah, usually I'll read them their rights and do what I
25 call norming them, to find out is there any type of mental

1 disabilities. I'll ask maybe about their family, what they
2 are doing, to try and find out.

3 And I understood going in with Mr. Hooker the previous
4 evening, according to the supervisors I spoke to in the
5 morning, that he was very intoxicated at the residence.
6 Something around a dozen beers, or so, had been consumed,
7 but they couldn't confirm it. And so there is a good time
8 from the time of arrest to the time that I interviewed him.
9 In fact, I interviewed the victim before I interviewed him,
10 and he was in custody, which would have gave him a full at
11 least twelve hours from the time of arrest.

12 Q. Okay. So you didn't detect any intoxication or any
13 other disabilities that --

14 A. No.

15 Q. Okay. Now, after you did all that, do you first talk
16 to them and then type the statement? Is that how you do it?

17 A. I do.

18 Q. Okay.

19 A. I always -- I always read them their rights, speak to
20 them, talk to them for a little bit, and then we go right
21 into the statement.

22 Q. Is that what you did with Mr. Hooker?

23 A. I did.

24 Q. Okay. So you went right into the statement?

25 A. After we talked for a little bit, yeah.

1 Q. Okay. And how do you prepare the statement? Do you
2 allow them to dictate the statement to you?

3 A. I'll go usually line for line and I'll say, "is that
4 correct," and they will say, "yeah, that's correct."

5 Like we will go over it verbally one time when we were
6 speaking and say, "kind of tell me a little bit about it,"
7 and I might have to say, "slow down, because I can't type
8 real fast," and they will say something like, "me and
9 Shanna," and he will go into a date or something. "We have
10 been dating since when." I'll say, "all right, slow down a
11 little bit. I can't type real fast." So it's about that
12 speed that it goes -- that we go through that.

13 Q. Now, do you include every single thing the person says,
14 or do you just try to hit the --

15 A. I guess it is possible I could miss something they say.

16 Q. And after you are done -- with Mr. Hooker, after you
17 were done typing this statement, did give him an opportunity
18 to read it --

19 A. Yeah.

20 Q. -- before he signed the form?

21 A. Oh, yeah, he has to read it before we sign it. We will
22 never let them sign anything they haven't read and agree to
23 saying, "it's in your words, not in my words, correct?" And
24 then they say "yeah," and then they will sign it.

25 Q. Did you give him an opportunity to make any changes

1 that he wanted to make?

2 A. I don't recall that there was any changes made on this
3 report, so -- but we would have gave him an opportunity,
4 yeah.

5 Q. Okay. Now, if you could please read that statement to
6 the court?

7 A. Sure.

8 This statement reads -- this was taken on March the 1st
9 of 2011, at approximately -- or, completed approximately
10 12:30.

11 "Me and Shanna Graham were dating back on July 17th,
12 2009, and have been together for awhile. Last December 22nd
13 Shanna told me she wanted to be friends. I was going into
14 town to fish with my job so I left. We have not been
15 together sexually since or lived together since December of
16 2010. I do remember one night in January where I crashed at
17 her house, but there was no sex. I don't remember the
18 police ever telling me not to come to her house, but I do
19 remember the police officer driving me to a friend's place
20 because I had been drinking. That officer may have told
21 something about not going back to her house, but I don't
22 remember because I was drinking. I went to her house
23 earlier in the day around 10:30 to give her son a toy that I
24 had bought for him. When I got to Shanna's in the day
25 around 10:30 I gave her son" -- I'm sorry, "when I got to

1 Shanna's she told me to go away, but I wanted to get the toy
2 to her son, so I kept on until she opened the door. I gave
3 her son the toy and we talked for several hours. Shanna
4 left for the hospital with her son about an ear infection
5 about four p.m. and then I bought some beer and hung out for
6 awhile. I waited in the rain to see if Shanna could give me
7 a ride home. It kept raining and I got cold, so I used my
8 fists and broke into her house by punching a hole through
9 the drywall. I would never hurt Shanna and probably said
10 some stuff to her while I was drinking that I should not
11 have said. But once again she lies to me and baits me and
12 then calls the law on me. Shanna always tells me that the
13 neighbors are calling the law on me. I would never hurt
14 her. I love her son and would never hurt them and will
15 leave them alone from now on. I don't want no problems. If
16 I knew she was calling the law all this time I would have
17 never gone back down to her house."

18 Q. Now, additionally, not in that statement, did Mr.
19 Hooker also indicate to you that he sometimes stays there,
20 but he didn't live there? Do you recall telling me that?

21 A. I believe he said that initially that they did live
22 together, or possibly he stayed over there a couple of
23 times. This is previous to December I think when he went
24 out of town. And I asked him did he have any clothes there,
25 or anything like that, and he said, "I don't have anything

1 over there."

2 Q. Did he ever indicate that he paid rent there?

3 A. There was something about how he assisted her paying
4 some rent, but I could never confirm that. Even when I
5 talked to Shanna prior, I think she said something about he
6 let her borrow some money at one point, but we couldn't
7 establish if it was for rent or not.

8 Q. Uh-huh.

9 A. On his -- I don't know that I went into the rent
10 situation. It's not written down, so I don't -- I don't
11 remember him telling me he paid for her rent. Maybe he said
12 he helped her out every once in a while.

13 Q. And at any point in time, just to recap, did he ever
14 indicate that he wanted to stop talking with you?

15 A. No.

16 Q. Did he ever indicate that he wanted a lawyer?

17 A. No.

18 Q. At any point did you threaten him at any way, pull your
19 firearm, or anything like that?

20 A. No.

21 Q. Could you please answer any questions that Mr.
22 Inzerillo has?

23 A. Sure.

24 MS. INZERILLO: May it please the court, Your
25 Honor?

1 THE COURT: Counsel.

2 CROSS EXAMINATION BY MS. INZERILLO:

3 Q. Good morning, detective.

4 A. Good morning.

5 Q. I want to return to the defendant, the questions you
6 just answered, but I just want to make sure that I'm clear,
7 okay?

8 A. Yes, ma'am.

9 Q. So essentially when you want to interview someone, like
10 in this case, you bring the person into the room?

11 A. Uh-huh.

12 Q. The first thing that you do is just to explain why you
13 are there, is that right?

14 A. I explained to him why I was interviewing him in the
15 jail.

16 Q. Okay.

17 A. That way to see if he wanted to speak to me at the jail
18 cell, because they don't have to come out of the jail to be
19 interviewed. So I told him who I was and what I wanted to
20 talk to him about and he agreed to come back and talk in the
21 room.

22 Q. And he was willing to talk with you about --

23 A. Correct.

24 Q. As I believe, as you put it, his side of the story, is
25 that right?

1 A. Correct.

2 Q. Okay. And so once you sit down with him, the first
3 thing that you do at that point is go over the Miranda
4 Rights?

5 A. That's correct.

6 Q. And then you read the second paragraph about, "I want
7 to talk to you. I know that you are a detective and I want
8 to talk to you."

9 A. Correct.

10 Q. Is that essentially what it says?

11 A. Yes.

12 Q. From there, and help me make sure that I get this
13 right, is it an interview format where essentially he
14 dictates everything and you type it down, or do you kind of
15 discuss the situation and while you are thinking about what
16 probably needs to be put in the statement and then after
17 that you start drafting the statement?

18 A. No, after I read him his rights, normally what I will
19 do is talk to him for a little bit and ask him how he's
20 doing. We might spend five to ten minutes on that just to
21 try and -- it's called norming. It's -- that's not actually
22 part of -- unfortunately there is some spontaneous things
23 that come out during this conversation. They will break
24 into maybe the relationship side of it. What I'm really
25 trying to find out during this process is to find out if

1 there is any deficiencies. Maybe -- it might be mental, it
2 could be intoxication, it could be a drug, or something, or
3 it could be anger. I'm just trying to feel where we are
4 going to -- you know, maybe the line of questioning to see
5 do we have somebody competent here. And perhaps that could
6 be done before the rights are read, but I have found that I
7 read the rights every time initially right up front, because
8 there are some spontaneous utterance that comes out and I
9 can't include those sometimes because I haven't read them
10 their rights, so --

11 Q. Okay.

12 A. -- I try to read the rights every time up front, and
13 then we do the norming. And then I'll say, "well, listen,
14 the reason why we are here today, I wanted to -- like you
15 said, I wanted to let you tell your side of it."

16 And I think I may have asked him about his family. He
17 told me he was a professional fisherman. He even went to
18 the extent of saying that, you know, he's -- he means a lot
19 to his family because he is the breadwinner and he brings
20 home a decent amount of money, and this and that. I didn't
21 include that in the statement, because it didn't have
22 anything to do with the actual event.

23 Q. And so while you are talking to him, you are trying to
24 gauge whether he is still intoxicated?

25 A. Well, in this situation, yeah, that would have been

1 more than normal on this one, but also I would like to also
2 make sure, you know, where he is education-wise. You know,
3 are we -- you know, how is he speaking. Is he fine. Is
4 there any impairments that I need know about. I mean,
5 especially mental stuff. Sometimes you are dealing with
6 someone and they are jumping all over the place.

7 Q. Okay. Now, to your understanding Mr. Hooker was
8 arrested about ten or eleven o'clock the night before?

9 A. Yes, ma'am, that's what I was advised, and the booking
10 slip shows somewhere before midnight.

11 Q. Okay. All right. And you -- I think by your sort of
12 time designation probably initiated the interview about
13 11:00, 11:15 maybe?

14 A. Yes, ma'am.

15 Q. Okay. And that was the next morning?

16 A. Yes, ma'am.

17 Q. Now, when you -- I know that you had some information
18 from the supervisors about the beer that was found, I
19 believe the twelve?

20 A. Correct, and the reports to go off of as well. It was
21 kind of handed to me by my captain in a folder saying we
22 need to take this -- put a second set of eyes on this.

23 Q. Okay. So you were aware he had been drinking some, at
24 least extensively the night before?

25 A. Correct. According to the -- according to all the

1 stuff.

2 Q. Did you question him about whether he had had anything
3 else to drink prior to that time, or in addition to what the
4 other officers had conveyed to you?

5 A. No, ma'am, I did not.

6 Q. And when you are conducting your interview, if you get
7 to a point where he says something you don't understand, do
8 you stop at that point and question him?

9 A. Oh, yeah.

10 Q. Okay. So I believe you indicated that what's
11 necessarily written may not be everything because there may
12 be some extraneous stuff that you are discussing with him?

13 A. Well, he was very excited. So that's why I say I will
14 definitely give some allowance for there is -- there could
15 be something where he's saying -- like, for instance, I
16 believe he started talking about some kind of marijuana use,
17 and it really didn't have anything to do with what we were
18 talking about, because he's talking about previous marijuana
19 use that happened months prior and something about a
20 neighbor and getting high and she's a nurse and --

21 Q. Okay.

22 A. I was trying to stay focused on what took place that
23 evening.

24 Q. Okay.

25 A. He jumped around a lot about -- and he seemed to be

1 very angry about previous things that had taken place.

2 Q. Okay.

3 A. So we just kind of -- I kind of kept bringing him back
4 to the night that this took place, this whole breaking -- or
5 breaking into the house.

6 Q. Okay. Now, you were the main detective during the
7 investigation of this case, is that right?

8 A. Yes, ma'am, I was.

9 Q. And with these statements about the neighbor, did you
10 learn in your investigation that that was a neighbor that
11 had called 911 at a previous time?

12 A. I did. I learned a lot of this later, because, like I
13 said, I interviewed Shanna first.

14 Q. Okay.

15 A. And then I gathered some reports and I ordered some
16 reports, because some of our stuff is now archived.

17 Q. Okay.

18 A. Some of it is at warehouses, and some of it is actually
19 we can redact it directly from the computer systems.

20 Q. Okay.

21 A. But we had to pull some of the stuff out, so I was
22 waiting on it. And in the process of waiting I interviewed
23 Mr. Hooker at that time.

24 Q. Okay. Now, during the course of your investigation
25 when you learned who this neighbor was, did you rely on any

1 of the statements that he had told you on this night about
2 the neighbor, the marijuana use, or anything else that you
3 did in your investigation?

4 A. I didn't record any of them. As you are saying, as far
5 as writing them down?

6 Q. I mean, did you -- did you at some point --

7 A. Yeah.

8 Q. -- say, "oh, yeah, you told me about this guy," or do
9 nothing?

10 A. Yeah, I think it came into play later when I looked
11 into a 911 tape and found out that the neighbor he was
12 speaking of or the person he was speaking of that supposedly
13 smoked marijuana, or supposedly was smoking marijuana with
14 his girlfriend, or ex-girlfriend, is that he claims to have
15 been the person that he said something about, "I hit him in
16 the face," or something at one point, and then found out
17 about some marijuana. But it seems -- and I can't one
18 hundred percent confirm this, but it seems like one of the
19 911 tapes is made by that neighbor, I believe.

20 Q. Okay.

21 A. I never confirmed a name on the gentleman.

22 Q. Sure.

23 A. I just confirmed that it was a guy --

24 Q. Okay.

25 A. -- that lived across the street from Shanna's house.

1 Q. Okay. Outside of the statement that you read into the
2 record --

3 A. Yes.

4 Q. -- that you typed up, the statement about Mr. Hooker
5 being the breadwinner of his family and his family being
6 proud of him; the statement about the marijuana use by the
7 neighbor; and the incident that you said that he was -- the
8 prior incident that you said he was a little bit excited
9 about; and the statement made about the money, where he
10 thought he had paid Shanna's rent, or given her money at
11 some point; were there any other statements that you
12 recalled him making during this interview that we have not
13 gone over?

14 A. No.

15 Q. Just one last question.

16 On the --

17 A. And there could always be something he said. Like I
18 said, this payment thing, when we are asking him -- when I'm
19 asking him a question about something, "you don't live
20 there," this or that, he said, "no, but I have helped her
21 out before."

22 Q. Okay.

23 A. Helped her out, like watching the kid, or something
24 along those lines, and -- but he couldn't tell me if he
25 helped out with rent or when he helped out with rent, except

1 for other than that he had helped her out.

2 Q. Okay. Did he tell you --

3 A. Something about she owed him money, or he owed her
4 money, or something along those lines.

5 Q. Okay. Did you get any dates from him about when he
6 helped her out watching her child?

7 A. He couldn't remember.

8 Q. Okay.

9 A. I mean, he actually said something about it was
10 probably before December is the last time that they had been
11 together.

12 Q. Okay.

13 A. So I would assume that he was talking about that time
14 frame.

15 Q. Okay. And he did indicate to you that he had seen her
16 past December, is that right? I think you referenced one
17 night in January where he crashed at her house?

18 A. Yeah, he states that sometime in January he did sleep
19 over one night, or she allowed him to sleep over one night.

20 Q. Okay. Did he reference any other dates that you can
21 readily think of in reference to any other statements he
22 made about staying at the house or seeing her or the child?

23 A. Just the date of the actual event itself. He had gone
24 over, you know, earlier in the day and spent time with a toy
25 or something.

1 Q. Okay. And there is no other statements that you
2 remember him making?

3 A. No, ma'am, not that I can remember him making.

4 Q. Okay.

5 MS. INZERILLO: Your Honor, no further questions.

6 MS. JOYNER: We have nothing further on this
7 statement, Your Honor.

8 THE COURT: Thank you, sir. You may stand down,
9 sir.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: Any other testimony on the statements?

12 MS. JOYNER: Not on this particular statement,
13 Your Honor.

14 THE COURT: Okay.

15 MS. JOYNER: I'm not sure if Ms. Inzerillo has a
16 motion on it.

17 MS. INZERILLO: Your Honor, just for the record,
18 we would just ask the court to make findings on the record
19 regarding the statement.

20 THE COURT: I don't know what findings you want me
21 to make.

22 I will find that the statements were -- based on
23 the totality of the information I got before the court that
24 the statement was made freely and voluntarily after being
25 fully advised of his Miranda Rights and warnings; that he

1 was not induced by any promises or threats; and he made the
2 statement freely and voluntarily.

3 Obviously --

4 So the court would make that finding. So,
5 therefore, from purely that standpoint it would be
6 admissible into evidence.

7 But, of course, there obviously may be other
8 questions there. Obviously it's self-serving statements
9 when he's trying to give his side of the story, the question
10 of whether it comes in or not, but I'm not ruling on
11 self-serving hearsay statements that he might have made in
12 making those statements, but I am saying that the court does
13 find they are freely and voluntarily after he was fully
14 advised of his rights and not the subject of any coercion,
15 promises, and that sort of thing.

16 MS. JOYNER: Your Honor, we do have some cases on
17 the issue of self-serving hearsay, if we could make that
18 argument.

19 Did you say Your Honor wouldn't rule on it, or you
20 hadn't ruled on it yet?

21 THE COURT: I haven't been asked to rule on it.

22 MS. JOYNER: At this time I would ask that the
23 court find that although they are freely and voluntary, that
24 they are only admissible if offered by the State.

25 And the State's position would be that the

1 defendant's statement comes into evidence under one of two
2 theories; one, that it's an admission by a party-opponent,
3 which is Rule 801 (d) (2); and the fact that it's a statement
4 against interest, 804(b) (3).

5 Clearly it's admission by a party-opponent. If
6 the State sought to introduce that testimony, we would be
7 entitled to do so. And I think although the statement is
8 somewhat self-serving, there are some portions of it that
9 could be construed as statements against interests. So
10 basically if we chose to enter it under that theory, we
11 could.

12 However, if we do not enter it, it's the State's
13 position that it would be improper for the defense to elicit
14 any testimony regarding this statement; or, in the
15 alternative, to introduce this statement itself.

16 And there is case law that I believe the court
17 says -- I'll pass it up to the court and to Ms. Inzerillo,
18 is -- the first two cases are the State v. Atkinson, 268
19 S.C. 588. And the second is State v. Sweet, 270 S.C. 97.

20 And, Your Honor, those cases speak generally about
21 the idea of the defendant introducing into evidence their
22 own statements made to another party.

23 In the Sweet case, it was to test the statements
24 made by the defendant to a law clerk of an attorney. And
25 essentially he was attempting to have those statements.

1 entered through the law clerk, and they were statements that
2 he had made regarding his knowledge about the rape victim's
3 past. And the purpose was to insinuate or to bolster his
4 defense of consent and to show that he had that knowledge
5 about her, to bolster the consent.

6 The court found -- they cited Atkinson in saying
7 "as such, it was hearsay and self-serving and inadmissible.
8 Under the rules recently affirmed in State v. Atkinson a
9 defendant cannot introduce in his defense his own statements
10 made to others," which is certainly what these are. These
11 are the defendant's statements made to a police officer.

12 Atkinson is a case where a woman was charged with
13 murdering her husband, and she attempted to introduce the
14 testimony of an Atlanta attorney that she had consulted
15 about a divorce action prior to her husband's murder. And
16 basically she wanted to offer testimony of her relationship
17 with the decedent at the time that she consulted with the
18 lawyer. And the court said that the rules of evidence you
19 cannot introduce in his own defense his own statements made
20 to others. So, again, saying you cannot -- you cannot offer
21 your statements made to another person.

22 And then there is finally the case of the State v.
23 Terry, which is 339 S.C. 352, and that's a case where the
24 defendant is actually charged with -- I believe he's charged
25 with rape, and -- I'll find my copy. He was. He was

1 charged with rape. And he had given a statement to the
2 police that he had -- it was rape and murder. And he had
3 given a statement that he had consensual sex with the
4 defendant, and that following that he became angered. She
5 was angry when he started to leave, so he ended up losing
6 his temper and striking her in the head several times and
7 then leaving.

8 The State in that case, like the State here, went
9 through to the process of a Jackson v. Denno, that
10 ultimately elected not to enter that statement into
11 evidence.

12 The defendant did not testify, but he instead
13 tried to introduce his own statement. He argued that
14 his statements to police that he had consensual sex and then
15 lost his temper and hit her in the head several times and
16 left. He argued that that should come in, that should be
17 coming in in the confession as a statement against penal
18 interests under Rule 804(b)(3). And the court said no, you
19 cannot offer your own statement. It's a statement against
20 interests. You are not rendered unavailable, which is what
21 804 would require, you are not rendered unavailable by you
22 asserting your own Fifth Amendment Right. So if you want to
23 tell your story, you have to take the stand and tell your
24 story.

25 So I think our situation is very much like Terry,

1 where the statement puts him at the scene of the crime, but
2 basically says well, I was there, but here is all the
3 reasons why I'm not really responsible for what happened.
4 And so to allow the defense to elicit any testimony
5 regarding that statement, or in the alternative to introduce
6 that statement, would be improper under Terry.

7 And Terry even went so far as to say that the
8 defense cannot even insinuate anything about the statement
9 by asking questions about, "did my client cooperate with
10 you? Did my client give a statement," that that was
11 improper. So that's the basis of our motion, is that these
12 are completely self-serving. This is hearsay. It would be
13 inadmissible if elicited by the defense.

14 MS. INZERILLO: Your Honor, at this time, in
15 reviewing the rules, the party-opponent rules, we do not
16 have an objection. The rule clearly says the statement must
17 be offered against the party. However, we disagree with the
18 entire statement in and of itself as self-serving. So we
19 would just ask that if the State were to open the door, that
20 we would be allowed to revisit this.

21 And not to belabor the point at this time --

22 THE COURT: If they put it in, I think you are
23 entitled to get it all in, but I don't think it's
24 admissible. I think it is self-serving hearsay and it
25 doesn't fall within the exception to the hearsay rule.

1 I think if he wants to get that information
2 before -- he can't get his testimony before the jury on a
3 self-serving hearsay statement he made. If he wants to get
4 that before the jury, he will have to testify, be subject to
5 cross-examination. So, I mean --

6 And there are other ways that it could possibly
7 come in, but I don't think the defense can make any
8 reference to the statement itself, unless the State gets
9 into it.

10 Now, if the State opens the door to it, obviously
11 under the rule of completeness you are entitled to get it
12 all in. But if they don't get into it, then, of course, it
13 does not come in, and you agree with that.

14 If he wants to give his side of the story as to
15 say well, his testimony is what happened, he needs to take
16 the stand under oath and be subject to cross-examination.
17 You can't cross-examine a hearsay statement.

18 Anything else?

19 MS. JOYNER: We do have a few other minor
20 statements that we would like to offer, proffer some
21 testimony, Your Honor. I don't think Ms. Inzerillo will
22 have a motion on those.

23 THE COURT: All right, let's take a quick break.
24 Let's take a quick restroom break. Take just five quick
25 minutes and come back.

1 MS. JOYNER: Yes, sir.

2 (Whereupon, proceedings were recessed)

3 (Whereupon, proceedings were reconvened)

4 THE COURT: Anything else from the State?

5 MS. JOYNER: We have the jury downstairs as well
6 here. Do you want to do pretrial?

7 THE COURT: Well, I don't like to keep them down
8 there, but, on the other hand -- I don't think we need too
9 much longer. Let's try to go ahead. I mean, we could
10 always -- I'm saying we might could save that pretrial after
11 they get the jury drawn, but, you know, I don't -- it's
12 really not lunchtime or anything like that. Let's just
13 press on and try to get through it as quickly as we can.

14 MS. JOYNER: Yes, Your Honor.

15 I'm going to step out in the hall and ask my next
16 witness to come in.

17 OFFICER ANGELA WELLS, having been first duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION BY MS. JOYNER:

20 Q. Can you please state your full name for the record?

21 A. Angela Hyland Wells.

22 Q. And Officer Wells, who do you work for?

23 A. The Rock Hill Police Department.

24 Q. Back on February 28th of 2011, were you dispatched to
25 Shanna Graham's house?

1 A. Yes, I was.

2 Q. And during the course of that call did you encounter
3 the defendant in this case, Robert Hooker?

4 A. Yes, I was.

5 Q. And how did you encounter him?

6 A. When I walked into the house, he was laying on the
7 floor. Sergeant Culbreath had placed him in handcuffs.

8 Q. Did they ultimately place the defendant in the back of
9 your patrol car?

10 A. Yes, they did.

11 Q. And during the course of the time that you were inside
12 the house and interacting with the defendant, did you hear
13 the defendant make any statements -- not talking about the
14 transport back, but just talking about on the scene, did you
15 hear him make any statements regarding the case?

16 A. He stated we were making a mistake, that he lived
17 there, he had a right to be there.

18 Q. Okay. And was that in response to any questioning by
19 yourself or any other law enforcement officer?

20 A. No, it was not.

21 Q. All right. That's all the questions that I have.
22 Please answer any questions that Ms. Inzerillo may have.

23 MS. INZERILLO: May it please the court, Your
24 Honor?

25 THE COURT: Yes.

1 CROSS EXAMINATION BY MS. INZERILLO:

2 Q. Officer Wells, just briefly, did you ask Mr. Hooker any
3 questions while you were at the house?

4 A. No, I did not.

5 Q. Did he make any other statements to you while you were
6 inside the house?

7 A. No, just what I had stated to Ms. Joyner.

8 Q. And those statements were made inside the house?

9 A. Correct.

10 Q. Did he make any statements to you when you were
11 transporting him?

12 A. He made several statements.

13 Q. Did you ask any questions of him prior to your camera
14 being on?

15 A. No, I did not.

16 Q. And you at no point mirandized him?

17 A. Correct.

18 Q. And he was in handcuffs?

19 A. He was in handcuffs, yes.

20 Q. Can you tell me -- I know he said several things to
21 you on the case.

22 A. Correct.

23 Q. Sort of pertinent to this case, do you recall what
24 statements he made?

25 A. He stated that, you know, he lived there. He just kept

1 saying we are making a mistake. That was pretty much the
2 it. He just wanted to defame the victim.

3 MS. INZERILLO: No further questions, Your Honor.

4 REDIRECT EXAMINATION BY MS. JOYNER:

5 Q. And no questions were asked? You did not attempt to
6 elicit any of the statements that he made to you, is that
7 correct?

8 A. That's correct.

9 Q. You didn't threaten him in any way, or promise him, or
10 do anything to induce those statements?

11 A. No, I did not.

12 MS. JOYNER: We have no further questions, Your
13 Honor, of Ms. Wells.

14 I don't believe Ms. Inzerillo has a motion.

15 THE COURT: Thank you, ma'am.

16 MS. INZERILLO: No, Your Honor.

17 OFFICER T.B. FELMET, having been first duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION BY MS. JOYNER:

20 Q. Officer Felmet, could you please state your full name
21 and occupation?

22 A. I'm officer Timothy Felmet with the Rock Hill Police
23 Department.

24 Q. Officer Felmet, on February 28th of 2011, were you
25 dispatched to Shanna Graham's home in reference to a

1 domestic or burglary?

2 A. Yes, ma'am, I did.

3 Q. Please tell the court just briefly, when you arrived,
4 did you encounter the defendant in this case?

5 A. Yes, ma'am, I did.

6 Q. And where was he when you first encountered him?

7 A. He was in the -- like a -- not really a kitchen, but
8 it's like an open area living room that leads into the
9 kitchen area.

10 Q. Okay. And what was he doing at the time that you
11 arrived?

12 A. If I recall correctly, the defendant's father had him
13 on the ground, and myself and Sergeant Culbreath took him
14 into custody.

15 Q. Okay. And at the time that you took him in custody,
16 did he say anything to you and Officer Culbreath?

17 A. Basically he was just very, I guess, ranting about
18 whether -- the fact he lived there, that we had the wrong
19 person, that we should be arresting the defendant's (sic)
20 father for assault.

21 Q. You mean the victim's father?

22 A. Yeah, I'm, sorry, correction.

23 Q. And was that a response to any questioning by you, or
24 Officer Culbreath, or any other officer on the scene?

25 A. No, ma'am, it was just -- he was just saying it on his

1 own accord.

2 Q. Okay. And did you do anything to induce him to make
3 those statements; any promises, threats, anything like that?

4 A. No, ma'am, we didn't.

5 Q. Okay.

6 THE COURT: Let me clarify one thing. You said
7 when you got there, that the defendant's father was holding
8 him down? Was it the defendant's father or the victim's
9 father?

10 THE WITNESS: The victim's father. My mistake.

11 MS. JOYNER: I have no further questions. Please
12 answer any of Mr. Inzerillo's questions.

13 MS. INZERILLO: May it please the court, Your
14 Honor?

15 THE COURT: Counsel.

16 CROSS EXAMINATION BY MS. INZERILLO:

17 Q. Officer Felmet, were these the only statements that Mr.
18 Hooker made in your presence?

19 A. Mr. Hooker was basically -- beyond him being -- I don't
20 know if it's been raised or not, intoxicated, or whatever,
21 he continued to talk the entire time. But his main points
22 were that he lived there, he had a right to be there, that
23 he wasn't the person we should be arresting.

24 Q. Okay. At any point while you were on the scene with
25 him, did you ask him any questions at all?

1 A. No, ma'am.

2 Q. Okay. You said that he lived there, he had a right to
3 be there?

4 A. That was his statements.

5 Q. Okay. And that you needed to arrest the victim's
6 father?

7 A. Yes, according to him.

8 Q. Did you interact with --

9 Well, if I'm understanding right, you were inside the
10 house with him while he was handcuffed, and then it was
11 Officer Wells that transported him to Rock Hill PD, is that
12 right?

13 A. Yes, ma'am, myself and Sergeant Culbreath, once we had
14 him in custody, escorted him and placed him in the back of
15 Officer Wells' patrol vehicle.

16 Q. Okay. Do you remember anything else he said besides
17 the three things that you --

18 A. Not that I recall specifically and not anything I could
19 just quote.

20 Q. And he was handcuffed this whole time?

21 A. Yes, ma'am.

22 MS. INZERILLO: No further questions, Your Honor.

23 MS. JOYNER: I have nothing further of this
24 officer, Your Honor.

25 THE COURT: Thank you, sir. You may stand down.

1 THE WITNESS: Thank you.

2 OFFICER TONY SLAWSON, JR., having been first duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION BY MS. JOYNER:

5 Q. Please state your full name and occupation for the
6 record.

7 A. Tony Ray Slawson, Jr., police officer for the Rock Hill
8 Police Department.

9 Q. Were you working for the Rock Hill Police Department on
10 February 28th, 2011?

11 A. I was.

12 Q. And shortly thereafter did you have an occasion to
13 transport the defendant, Robert Hooker, from the Rock Hill
14 Police Department to the Moss Justice Center?

15 A. I did.

16 Q. And could you please tell the court just a little bit
17 about that ride over? Did the defendant make any statements
18 to you during the course of that ride?

19 A. The defendant did. He stated that we were wrong for
20 not arresting the complainant's father for assaulting him,
21 and made several other statements about we were wrong for
22 the charges we made on him.

23 Q. Did he say anything in relation to where he lived or
24 whether he was entitled to be in the home?

25 A. He did state he should have been able to be there.

1 Q. Okay. Was that in response -- he was definitely in
2 custody at that time, correct?

3 A. That's correct.

4 Q. Was that in response to any kind of questioning by you?

5 A. It was not.

6 Q. Did you say anything to elicit any statements from him
7 at all?

8 A. No, I did not.

9 Q. Okay. Did you promise him anything or threaten him to
10 make him say those statements?

11 A. No, I did not.

12 Q. Was your in-car camera recording at the time those
13 statements were made?

14 A. It was not recording.

15 Q. Thank you. Please answer any questions that Ms.
16 Inzerillo has.

17 A. I will.

18 MS. INZERILLO: May it please the court, Your
19 Honor?

20 THE COURT: Yes, ma'am.

21 CROSS EXAMINATION BY MS. INZERILLO:

22 Q. Hi, Officer Slawson, how are you doing?

23 A. I'm doing well.

24 Q. Okay. I have got the first two things that you said.

25 Mr. Hooker said that y'all were wrong for not arresting the

1 complainant's father for assault, is that right?

2 A. That's correct.

3 Q. Y'all were wrong for the charges that y'all were making
4 on him, is that right?

5 A. That's correct.

6 Q. Okay. And then what was the third thing that you said?

7 A. That he was entitled to be there at that residence in
8 Brookview.

9 Q. That he could be in the house.

10 And you didn't ask him any questions to elicit this?

11 A. I did not.

12 Q. So you were riding -- were you riding in the car with
13 Officer Wells?

14 A. No, this was after the arrest. This was the next day
15 transporting Mr. Hooker to the Moss Justice Center.

16 Q. I got you. Okay.

17 Were you at the scene the night before for his arrest?

18 A. That is correct, I was secondary officer that arrived
19 after the initial arrest.

20 Q. Did he make any statements to you when you were at the
21 scene the night before?

22 A. I don't recall.

23 Q. Do you recall asking him any questions to elicit any
24 responses about what happened at the house, or why he was
25 there, or anything like that?

1 A. No, I do not.

2 Q. You also interacted with Mr. Hooker on January 29th,
3 2011? Do you remember that, for a trespass warning?

4 A. That's correct.

5 Q. And you took a report on that day? It was just a field
6 interview report? Do you recall that?

7 A. I do. That was a field interview and a trespass form
8 on Mr. Hooker for that residence.

9 Q. When you made that field report, were those statements
10 made after Mr. Hooker's arrest, or before?

11 A. Which statements?

12 Q. The statements that you cite in your field interview.

13 A. Those statements in the field interview, that was the
14 night the field interview was processed.

15 Q. So you -- I just want to make sure we are both on the
16 same page. So on January 29th you got a call out from Ms.
17 Graham regarding Mr. Hooker, is that right?

18 A. That's correct.

19 Q. And when you got to the house, you found him hiding by
20 a creek, or something like that?

21 A. That's correct.

22 Q. Is that right?

23 A. Yes.

24 Q. And there was a trespass warning put on him at that
25 time?

1 A. That's correct.

2 Q. And you were the officer that put that trespass warning
3 on him?

4 A. Yes, ma'am.

5 Q. Okay. But then you also gave him a ride to a friend's
6 house, is that right?

7 A. That's correct, ma'am. Yes, ma'am.

8 Q. Did you place him under arrest for the trespass, or
9 just issued a warning?

10 A. We just issued a trespass warning advising him not to
11 go back to that residence.

12 Q. Okay. So he's not placed under arrest?

13 A. That is correct.

14 Q. And you drove him down to his friend's house away
15 from --

16 A. Away from that residence, yes, ma'am.

17 Q. Thank you.

18 MS. JOYNER: Nothing further from this officer.

19 THE COURT: Thank you, sir. You may stand down.
20 Anything else, solicitor?

21 MS. JOYNER: No other witnesses, Your Honor.

22 THE COURT: Any motions, counsel?

23 MS. INZERILLO: Your Honor, from my review of what
24 I have heard testified to, the position as these were
25 voluntary statements not elicited; therefore, I do not have

1 a Jackson v. Denno motion.

2 However, I just want to state a concern at this
3 time that if these statements were to be elicited by the
4 State that Mr. Hooker indicated that he had the right to be
5 there, obviously, and I know that a burglary is without
6 consent. From thinking through this, I would think
7 logically the State is arguing he did not have consent
8 there. So we do have concerns that these would be elicited
9 to essentially show the jury perhaps that Mr. Hooker was
10 caught in a lie so they could repeat that lie. I don't
11 think that it serves any purpose. I think it's improper.
12 If that is the reason why these statements are being
13 elicited, that that would be an improper reason to elicit
14 this testimony and that it not be allowed.

15 MS. JOYNER: Your Honor, I think that what we have
16 here is a person who is charged with stalking and harassing
17 a person and I think it goes to his state of mind. She is
18 clearly going to state he didn't have consent, that he had
19 not had consent to be there in some three months, but it
20 just goes to the state of mind that he continues to believe,
21 despite all evidence, that he's somehow entitled or allowed
22 to be there or that he lives there, and those are simply
23 incorrect.

24 THE COURT: On the issue of stalking and state of
25 mind, they are entitled to go into that, counsel. Anything

1 with regards to state of mind with regard to the stalking,
2 difficult to prove, I think they are entitled to go there.
3 He's made statements saying he's entitled to be there when
4 he's, in fact, been issued a no trespass warning not to be
5 there, and he still thought he had a right to be there. I
6 think it does go to the frame of mind or state of mind as to
7 whether there was stalking going on in his way of seeing it.

8 So I think they can -- these were statements made
9 by him, unsolicited by the State, statements made by him, so
10 I think they are entitled to get into them, the res gestae,
11 the whole factual situation that existed with regard to the
12 stalking charge.

13 MS. INZERILLO: Your Honor, in light of that
14 ruling, then I would revisit the prior ruling of the State
15 opening the door on the statement given to Detective Dugan.
16 Under my cross-examination of Detective Dugan, in regards to
17 that previous motion, he indicated that Mr. Hooker had
18 informed him that sometime in January Ms. Graham had allowed
19 him to stay at her house. I think eliciting these
20 statements from these three officers that we have heard
21 would open the door to that, because that would explain why
22 he thought he may have had permission. If the victim
23 allowed him to stay at her house, spend the night, then that
24 would further explain it. And my argument would be that
25 that those statements would open the door to that portion of

1 the presentation that he gave the statements.

2 MS. JOYNER: I think that falls back onto, you
3 know, sort of the underlying current of Terry is if he wants
4 to say that, he felt that he was entitled to be there, he
5 can take the stand and say that, but I don't think his
6 statements to officers on the scene or statements when he
7 was transported a day later opened the door to what he said
8 to Officer Dugan. I think that the court's ruling on that
9 remains, that this information unchanged by whether this
10 statement the other statements that he made. So we would
11 argue it does not open the door. It would continue to be
12 improper for the defense to elicit any testimony about that
13 particular statement.

14 MS. INZERILLO: Your Honor, the State has argued
15 that the first statement repeatedly made to three different
16 officers by Mr. Hooker goes to the state of mind as to why
17 he thought he could be there. Obviously they are interested
18 in the statements to that extent that Mr. Hooker was very
19 specific to the Detective Dugan that it was the victim who
20 allowed him to stay. That also goes to the state of mind,
21 and our position would be that the State opened --

22 THE COURT: He can get on the stand and testify to
23 that, counsel. He can't get his testimony in through a
24 hearsay statement, the same ruling I made earlier. If he
25 wants to testify, he can get on the stand and testify and

1 anything he wants to testify. Then he would be subject to
2 cross-examination, but he can't get his testimony in through
3 a statement, a self-serving hearsay statement that he made.
4 Obviously he could have said anything he wanted to him.
5 Does that mean it comes in? Because he made a self-serving
6 hearsay statement that's favorable to him, does that mean it
7 comes in? He could have said anything he wanted to in that
8 statement. But if he's going to get that statement in, it
9 needs to be subject to cross-examination. That's an
10 entirely different issue. And so, you know, I don't agree
11 with you on that. I think that it's still a self-serving
12 hearsay statement.

13 Now, if there is any other witness that knows
14 anything else about that that takes the stand, you certainly
15 can ask them about it, you know, so -- but I don't think you
16 can get his self-serving hearsay statement in to that
17 effect, if -- you know, it may or may not be true, but I
18 think that it puts his credibility in issue and he needs to
19 be put on the stand and cross-examined about it.

20 He has a right not to take the stand, obviously,
21 not to testify, but if he wants to his statement in, he
22 needs to get on the stand and be subject to
23 cross-examination, because it would then put his credibility
24 at issue. He can't do it through self-serving hearsay
25 statements. You can run around and make all kinds of

1 statement to people, but that doesn't mean they come in to
2 help exonerate you.

3 Let me ask you this now. Now, when was the no
4 trespass warning given?

5 MS. JOYNER: January 29th, the early morning
6 hours.

7 THE COURT: And so obviously the police were
8 called out on that time.

9 So when was it that he allegedly in his statement
10 spent the night there?

11 MS. JOYNER: I do not know.

12 THE COURT: Ms. Inzerillo?

13 MS. INZERILLO: Your Honor, all he says in his
14 statement to the police, that would be -- it would be one
15 night in January.

16 Our position is when he spent, Your Honor, that it
17 was the night of the trespass warning.

18 THE COURT: I'm not going to allow that in. If he
19 wants to -- if he wants to testify on that issue and be
20 subject to cross-examination on that issue, he's entitled to
21 do that.

22 I think they are entitled to say what he says that
23 night and they are entitled to put that in. If he wants to
24 put his other self-serving statement in that he made to an
25 officer during examination when he's had a chance to think

1 about it and give his quote, "side of the story", unquote,
2 that's a different situation than what he said that night
3 when he was being arrested and inside the house.

4 But, you know, if he -- if somebody takes the
5 stand that would be aware of his spending the night -- I'm
6 not talking about the police officer eh gave a self-serving
7 hearsay statement about that to, but if there is somebody --
8 you know, if there's somebody else that has knowledge of
9 that could take the stand and testify that has knowledge of
10 that, you can ask them about that, obviously you can go into
11 that. And if he wants to take the stand and testify, he can
12 take the stand and testify, but then he would be subject to
13 cross-examination.

14 If his statement is coming in and the defense is
15 putting it in, then his credibility is in issue and it needs
16 to be subject to cross-examination on that issue.

17 Anything else?

18 MS. JOYNER: Nothing from the State, Your Honor.

19 MS. INZERILLO: Your Honor, the defense does have
20 just some standard motions, if we could put those on the
21 record.

22 The first is to determine if the State has
23 complied with Rule Five and Brady.

24 Ms. Joyner and I have been in constant contact on
25 this case over the last week, and we spoke as recently as

1 this morning prior to beginning this case, but I just want
2 to make a motion out of an abundance of caution make sure
3 there is nothing else.

4 THE COURT: Let me back up one minute. I'm sorry
5 to interrupt you, but I want to add to my ruling, my last
6 ruling, that if the State seeks to introduce these oral
7 statements that he made that are not subject to any kind of
8 interrogation by the State, if they are admissions against
9 interests, you know, then they come in on that basis. But
10 it would not come, this other statement, if they sought to
11 introduce the statement, you can get it all out from the
12 statement. But if they don't seek to introduce it, that's
13 up to them whether they are going to introduce that or not,
14 but they can introduce these other statements against
15 interests that he made, because they wouldn't be hearsay on
16 that basis. I just wanted to make that clear on the record,
17 my ruling.

18 All right. Go ahead. I'm sorry to interrupt you.

19 MS. INZERILLO: That's all right.

20 I just want to add out of an abundance of caution
21 to make the motion to make sure there has been no additional
22 information received by the State since our last
23 conversation.

24 MS. JOYNER: And that's correct, Your Honor.

25 I do want to place this on the record. It's a

1 conversation with Ms. Inzerillo and I, and it's been an
2 ongoing conversation we have been having. I think it was
3 Thursday afternoon the victim contacted me and she said, "I
4 still have text messages on my phone." She came in and we
5 immediately started trying to sort of retrieve those text
6 messages. We were able to retrieve -- she was able to
7 e-mail to me text messages between her and Ms. Lori Starnes
8 that would have occurred from the breakup forward up past
9 time of arrest. We e-mailed those to Ms. Inzerillo, the
10 dates and times.

11. The victim also advised me that she had all -- she
12 realized that in her phone memory there were all the text
13 messages, or many text messages, that the defendant had sent
14 during the period of time we would have been talking about
15 the period for stalking. She could not get those off the
16 phone that day. The phone is now broken, and I have shared
17 that with Ms. Inzerillo. We had hoped to have it processed
18 this morning, and Ms. Inzerillo has been very gracious about
19 that, but we were going to get those text messages to her as
20 soon as we were able to process them off the phone. The
21 phone is broken, and so I don't know how to retrieve the
22 text messages.

23 There is additionally some extra messages the
24 victim told me about today that are also stuck on that
25 phone, but I wanted to make sure that our conversation was

1 put on the record so there is never a question the State has
2 not in possession of those text messages or additional phone
3 voice messages.

4 MS. INZERILLO: She is correct, Your Honor. We
5 have had that conversation.

6 We would just ask if the technological situation
7 is rectified and they intend to use those, they just supply
8 us with those.

9 MS. JOYNER: Certainly, Your Honor.

10 THE COURT: Okay.

11 MS. INZERILLO: Your Honor, the second motion is
12 to determine the prior record of the defendant, should he
13 testify.

14 Your Honor, from South Carolina in the last ten
15 years it would appear there are two convictions of which I'm
16 aware of. There is a DUI second offense from 2010, on which
17 Mr. Hooker is currently on probation. He received a year
18 suspended to six months probation.

19 It appears on the rap sheet as well there is a
20 conviction from 2003 of a DUS. It says convicted, but
21 that's all the information that I have.

22 THE COURT: Is that a DUS? You said driving under
23 suspension?

24 MS. INZERILLO: Yes, sir.

25 Your Honor, our position would be that neither one

1 of those would be admissible.

2 And if the State has any other information that if
3 he had received any other convictions that are reflected on
4 that.

5 MS. JOYNER: Not that I believe come in, Your
6 Honor. I did look at our computer system yesterday and saw
7 where Mr. Hooker had many years ago been charged with
8 resisting arrest, but ultimately pled to a municipal court
9 charge. Obviously that does not come in.

10 The only other conviction that I'm aware of is a
11 Georgia conviction for criminal trespass, Your Honor. He
12 was pled from a burglary to a criminal trespass. I just
13 don't know what that offense carries, and so I would ask if
14 we could introduce that to impeach him, if he were to
15 testify.

16 However, I will tell the court, and this is sort
17 of jumping down into the defense motion five for any Lyle
18 for evidence, that if he were to open the door, the facts of
19 that case are somewhat similar. He did kick in a door of
20 someone else's apartment while he was intoxicated. So if he
21 were to somehow open the door to say this is not something
22 that was in his character, we certainly would cross-examine
23 him regarding that facts of the case.

24 MS. INZERILLO: We certainly understand that, Your
25 Honor.

1 THE COURT: Okay.

2 MS. INZERILLO: The third motion is for a list of
3 criminal histories of any of the non-law enforcement
4 witnesses. I have received a witness list from the State
5 and it appears there were seven. I'm not counting Mr.
6 Sanders, who is employed with the solicitor's office, but
7 there are seven non-law enforcement witnesses on the State's
8 witness list. We would just ask for criminal histories for
9 those.

10 MS. JOYNER: When we have those run, we will be
11 happy to share those with Ms. Inzerillo on a break.

12 THE COURT: Okay.

13 MS. JOYNER: The only witness I do not have
14 information on, I have listed Amanda Graham. She's not here
15 and it's very likely she won't be called. But if that does
16 change, I will provide her criminal history.

17 MS. INZERILLO: We have already addressed motion
18 four, which is the motion to sequester.

19 I wanted to address the fifth motion is the
20 existence and admissibility of any prior bad acts under
21 Lyle. I don't know, outside of the situation in Georgia, if
22 the State is intending to introduce anything else under
23 Lyle.

24 The only thing I would address now, Ms. Joyner and
25 I have had conversations about this. She informed me of her

1 intent to get into other essentially bad acts by the
2 defendant in regards to the victim that occurred prior to
3 the dates of the indictment. Our -- we would oppose any of
4 these prior incidents coming in. She's told me of one that
5 she was aware of that essentially the victim would testify
6 that our client broke in through a sliding glass door, he
7 jimmied the sliding glass door and come in. He did that
8 approximately twenty times. We don't have any dates
9 referencing that that occurred between January and March of
10 2010. We don't have any specific dates, but in light of the
11 fact that the State has amended the indictment to actually
12 construct the dates, then we would ask that the State be
13 bound by then the four corners of the indictment and that no
14 prior incidents under Lyle or any other bad acts be allowed
15 in by the State.

16 MS. JOYNER: The break-ins that Ms. Inzerillo
17 testified to all occurred after she had broken up with the
18 defendant, so it would be within the date range alleged in
19 the stalking, December 1st to February 28th.

20 Other incidents that would come in during that
21 time frame include -- and I just want to make the court
22 aware so I don't want you to be surprised by the testimony.
23 An incident in February where he broke the nose of Ms.
24 Graham's new boyfriend. It was the neighbor that was
25 referenced in the previous hearing. That was done when the

1 neighbor, Mr. Bruton, came outside to try to talk Mr. Hooker
2 into leaving and he broke his nose and that was done in
3 front of Ms. Graham.

4 Her testimony will be essentially during this
5 stalking period of time that there were multiple incidents,
6 multiple phone calls, repeated incidents of him coming to
7 the house, breaking into the house some twenty times, coming
8 uninvited even when he didn't break in. So that would all,
9 I think, come in as to the res gestae of the stalking.

10 Now, as to any incidents that occurred prior to
11 the breakup, prior to the time of the stalking time frame,
12 there would be very minimal testimony from the victim about
13 the demise of the relationship, just as they had contact
14 that -- the only question I anticipate asking her was from
15 her perspective what led -- what led her to break up with
16 the defendant. And the way that I understand what her
17 testimony will be was that he had become more violent. He
18 was becoming more controlling, and it was simply becoming a
19 situation that she felt like she needed to get out.

20 Let me refer just really quickly to my notes and
21 make sure I'm including everything.

22 (Off the record)

23 (Back on the record)

24 MS. JOYNER: Could I beg the court's indulgence
25 for just one minute?

1 THE COURT: Yes.

2 MS. JOYNER: I need to ask her one question.

3 (Off the record)

4 (Back on the record)

5 MS. JOYNER: I misspoke a moment ago. October is
6 when the first time that he did enter the house without
7 consent. The victim will testify that the relationship
8 really started to sour in October, and that's when things
9 began to change. He definitely started calling her all the
10 time, wanting to know where she was. If she didn't answer,
11 he would be angry. If she did answer, he wanted to know
12 where she was, and, you know, tell her, you know, she better
13 not being seeing anybody. He became jealous, begin
14 suspecting her seeing other people. And so it really,
15 really spiraled from there and led for her decision to end
16 the relationship in December.

17 That would be the extent of anything that we would
18 be talking about prior to the stalking date, would be
19 primarily from October on. And there would include some
20 periods where he did enter the house prior -- without her
21 permission prior to the time that she broke up with him.

22 MS. INZERILLO: Your Honor, I would make, again,
23 the same motion that the State has amended the indictment.
24 The original indictment included October and included the
25 time between October and February. And then subsequently

1 this morning they decided to amend that to move that up to
2 December. So our position would be the thing that in light
3 of the State's moving to amend, that anything between
4 October and December not be allowed.

5 MS. JOYNER: And we think that it's important for
6 the jury to have a context of why the relationship ended,
7 because I think that one of the things that we have to show
8 with the stalking is her actual fear. . . This actually
9 requires us to show her fear of him, that she actually felt
10 afraid of assault, or malicious injury, or death, or the
11 laundry list of things that are included in the statute.

12 It would not put the -- it would not allow the
13 State to present the full case for -- basically the State
14 would be bound to say that, oh, in December we broke up and
15 then for the implication to be that all the sudden he turned
16 into this different person. It wouldn't -- it wouldn't put
17 their relationship in the true context.

18 This was not a good relationship, and we don't
19 want to get into the specifics of every horrible thing that
20 he ever did, but to say that he began entering the house
21 without her permission prior to the time that she broke up
22 with him; that he became more controlling. It explains a
23 lot about her actions and it puts into context their
24 breakup. It shows why she has this fear during this period
25 of time where he was stalking.

1 We didn't -- again, Your Honor, I want to say we
2 didn't just decide to amend this indictment this morning.
3 We notified the defense of it last week when -- or I think
4 maybe before that to reflect the date from which she -- the
5 approximate date from which she ended their relationship,
6 because I felt like even though the October forward is
7 relevant to show her fear and to show the context of their
8 relationship and sort of explain why different things
9 happened and why she reacted the way that she did and why
10 she felt the way that she did, it wouldn't be -- it wouldn't
11 be fair, until that time that she said we are done and I
12 want you out of my life, to allege that he was stalking her.
13 That's the reason for the amendment. It wasn't to suggest
14 that there may be other things would be irrelevant for the
15 jury's consideration.

16 MS. INZERILLO: I think I may be just a little bit
17 confused. My understanding of the State's explanation is
18 that the indictment reflects the date they broke up, which
19 reflecting under the stalking, that that between the
20 December and February would be the pattern of incidents that
21 caused the victim to fear bodily injury or death, from my
22 discussions with Ms. Joyner, it would be a fair glean from
23 the indictment.

24 I think what the State is also arguing, though, is
25 in light of that amendment we want the indictment to reflect

1 the pattern was between December and February, but we also
2 want the jury to consider the same pattern that occurred
3 from October, and I'm not quite sure the State could have it
4 both ways. And I would ask that in light of the amendment,
5 which was, of course, moved for by the State, that any of
6 the -- that any alleged pattern prior to December not be
7 allowed in.

8 Fundamentally, Your Honor, I mean, if she needs to
9 explain, you know, that broke up with him, he -- I felt he
10 was more controlling, that just that statement could go to
11 res gestae, but I think anything in terms of his actions
12 that would constitute a pattern for this jury to consider in
13 light of stalking, I think that perhaps oversteps the bounds
14 of the indictment.

15 MS. JOYNER: I don't think it's a question of the
16 indictment, Your Honor. I think it's a question of, which
17 could happen in any case, evidence of when it come in to
18 show, it explains further the context of the whole case.

19 As I said before, it's not as though this was a
20 great relationship and on December 1st, Your Honor, about
21 that date when she ended it he changed into a different
22 person. And if the jury is left with that impression, then
23 they are not left with the full impression of the case.

24 We are not talking -- we are not offering anything
25 prior --

1 THE COURT: Why did you amend the indictment then?

2 MS. JOYNER: I amended it to reflect the date of
3 which she ended the relationship, because the indictment I
4 thought was -- it should reflect the period of time from
5 which she said to him "leave me alone. I don't want you to
6 in my life" forward. I thought that was in the interest of
7 the actual -- of the charge what was appropriate.

8 So what we are offering from October to the
9 amendment of the indictment is not pattern evidence. We are
10 not asking the jury to find him guilty of stalking based on
11 those things. It's simply we are dealing with a case where
12 the intent of the defendant is very important and the
13 subjective beliefs of the victim are very, very important.

14 I mean, I think that to understand why she would
15 feel fear beginning on December 1st, why his actions would
16 be significant on December 1st, you have to go back to what
17 happened prior to the events of December 1st.

18 If they had a wonderful relationship on December
19 1st and they broke up and then he began calling constantly,
20 well, that in and of itself isn't going to make a reasonable
21 person fearful of death, or assault, or malicious injury to
22 property. That in and of itself wouldn't necessarily cause
23 fear. They broke up, they otherwise had a perfect
24 relationship, and he came by to her house intoxicated.
25 Well, that one incident in isolation might not cause a

1 reasonable person to be fearful, or cause Ms. Graham under
2 that scenario to feel fear.

3 But on December 1st, or on or about that date when
4 they ended their relationship, if he began the pattern of
5 conduct, there was -- she already -- there was already a
6 past history where he did things that were controlling.
7 There was violence towards her. There was certain
8 intimidation. She ended the relationship. So already on
9 December 1st her subjective belief is that this is a
10 situation where there is fear; there is a possibility that
11 he is going to come back in my house; there is a possibility
12 that he's going to show up at any given time; there is a
13 possibility that he's going to call me, call me, and call
14 me. So it all goes to her fear beginning on the date of
15 December 1st.

16 MS. INZERILLO: Just one final comment, Your
17 Honor.

18 Again, I think what the State is arguing and
19 everything going back to October, that said, there is a
20 fear, which is an element of stalking, which, again, with
21 the State's amendment of the indictment would precede what
22 the indictment has laid out.

23 From my review of the stalking statute there is no
24 exception for dating, or marriage, or anything like that.
25 So the victim certainly could explain "I was dating him, but

1 I was fearful," and all that could have been encompassed
2 under the original indictment and could have explained the
3 fear, but I don't see anything in the statute that
4 precludes -- that gives us an argument that it's not
5 stalking, because they were dating.

6 So I don't think the December 1st, even though I
7 understand the State's logic, but that does mark an end date
8 for the victim in terms of the relationship, I don't know
9 that that initially is relevant when the prior incidences
10 and testimony she wishes to elicit from the victim would
11 ultimately go to the fearful things that Mr. Hooker
12 allegedly did, may cause fear that ultimately brings us here
13 today.

14 THE COURT: Let me clarify where you want to go
15 with that. I think she can testify -- even with the amended
16 dates in the indictment, I think she can testify as to what
17 was happening in the relationship that caused her to end the
18 relationship.

19 Now, how far do you go with that? That's the
20 question?

21 I think she can testify that he became more
22 controlling; that he came to the house unexpectedly, to her
23 house, and came in unexpectedly. She didn't know when he
24 was going to be there; and that he questioned her about any
25 other relationships and that kind of thing. I think you can

1 go there to show what happened with regard to any
2 relationship in December, so I think you can do that.

3 But as far as going into breaking into the house
4 and that sort of thing, I think you need to have your
5 October 1st date, if you are going into the dates that he
6 broke into the house and that sort of thing.

7 I think you can show what the relationship, but if
8 you are going -- you know, going in and breaking into the
9 house prior to December --

10 MS. JOYNER: He did break into the house after
11 December, all the way up until --

12 THE COURT: Oh, I understand. You can go into
13 that. There is no question about that, okay, but you make
14 up your mind. Do you want to amend it back?

15 I mean, I assume, that because you had an ongoing
16 relationship that your concern is that there was still an
17 ongoing relationship if there was some stalking going on,
18 but that does happen in ongoing relationships before they
19 end.

20 MS. JOYNER: Could I have just a moment, Your
21 Honor?

22 THE COURT: Yes.

23 (Off the record)

24 (Back on the record)

25 MS. JOYNER: The State would like to amend the

1 indictment back from then. We will go from October 1st on.

2 THE COURT: All right. Any opposition from the
3 defense? Obviously you are not prejudiced by that. You
4 were already aware of the dates.

5 MS. INZERILLO: Yes, Your Honor.

6 THE COURT: All right, we will amend it back to
7 October the 1st.

8 Anything else?

9 MS. INZERILLO: No, Your Honor.

10 THE COURT: All right. I think we are probably
11 about ready to bring the jury up. We will go get the jury
12 now.

13 Does anybody need a break before we get the jury
14 up here?

15 MS. JOYNER: Your Honor, if we are going to go
16 straight into openings, may I --

17 THE COURT: Well, I'm not saying we are going into
18 openings. It's going to take a little while to get the jury
19 drawn, so I don't know how far we are going to get, but we
20 can always take a break before openings. I don't have a
21 problem with that.

22 We will get them up here, it will probably be --
23 by the time we get them selected, I might give them a
24 preliminary charge, which I usually do, and then we can send
25 them on out to lunch probably, and get into opening

1 statements right after lunch. We will do that.

2 Now, the strikes will be ten for the defense and
3 five for the State.

4 We will draw one alternate. The strikes are two
5 for the defense and one for the State on the alternate.

6 All right. Do y'all need a break, or are we ready
7 to bring the jury up?

8 MS. JOYNER: I'm ready for the jury, Your Honor.

9 MS. INZERILLO: I'm ready, Your Honor.

10 THE COURT: The witnesses could be in here for
11 selection of the jury, but it's up to you all. I don't know
12 if you want them in or not. They can sit all the way in the
13 back.

14 MS. INZERILLO: Your Honor, just for clarification
15 before the jury comes up, the witness that's on my list is
16 the same Lori Starnes that is on the State's list. That
17 would be fine if you --

18 THE COURT: We will do it from theirs. I already
19 noticed that.

20 MS. INZERILLO: Sure.

21 THE COURT: Thank you.

22 To the witnesses, potential witnesses in the case.
23 If you are here, you can stand up when I call your name so
24 the jury can see who you are, to see if they know you
25 personally.

1 (Whereupon, the jury venire panel entered the
2 courtroom)

3 THE COURT: Good afternoon -- excuse me, good
4 morning, ladies and gentlemen. It seems like afternoon.
5 It's getting close to it.

6 I apologize for the long delay in keeping you
7 downstairs. We had some pretrial matters in this case that
8 we thought we would complete around 10:30, or so, when we
9 had you come in, but as it turns out sometimes we ran a
10 little over with our time. I apologize for the delay in
11 keeping you down there.

12 We are ready now to get started with the trial in
13 the case of the State of South Carolina versus Robert T.
14 Hooker.

15 The State charges Robert T. Hooker with the
16 offenses of burglary first degree, malicious injury to real
17 property, and stalking.

18 To these charges the defendant has pled not guilty
19 and we are about to go into a trial on these charges.

20 The State is represented in this case by assistant
21 solicitors Erin Joyner and Jennifer Colton.

22 Counsel, please stand so the jury can see who you
23 are in person.

24 Thank you. You may be seated.

25 Is anyone on the jury panel related by blood or

1 marriage, friends with, or have any other type social,
2 business, or professional relationship with either Erin
3 Joyner or Jennifer Colton? If so, please stand.

4 (No response)

5 THE COURT: Is anyone on the jury panel related by
6 blood or marriage, friends with, or have any other type
7 social, business, or professional relationship with anyone
8 who works in the Sixteenth Circuit solicitor's office? If
9 so, please stand.

10 (No response)

11 THE COURT: The defendant, Robert T. Hooker, is
12 represented in this case by Melissa Inzerillo and Amy Sikora
13 of the Public Defender's office.

14 Counsel, would you please stand? Also ask,
15 please, Mr. Hooker to stand so the jury can see who he is in
16 person.

17 Thank you. You may be seated.

18 Is anyone on the jury panel related by blood or
19 marriage, friends with, or have any other type social,
20 business, or professional relationship with Robert T.
21 Hooker? If so, please stand.

22 (No response)

23 THE COURT: Is anyone on the jury panel related by
24 blood or marriage, friends with, or have any other type
25 social, business, or professional relationship with either

1 Melissa Inzerillo or Amy Sikora? If so, please stand.

2 (No response)

3 THE COURT: Is anyone on the jury panel related by
4 blood or marriage, friends with, or have any other type
5 social, business, or professional relationship with,
6 including knowing anybody through representation with anyone
7 in the Sixteenth Circuit solicitor's office -- excuse me,
8 public defender's office. If so, please stand.

9 (No response)

10 THE COURT: Ladies and gentlemen of the jury
11 panel, I'm going to go through a list of potential witnesses
12 in this case. What I'm going to ask you to do, when I call
13 the potential witness' name -- and all of these witnesses
14 may not be called, but they may be called. When I call the
15 potential witness' name, if you are related by blood or
16 marriage, friends with, or have any other type social,
17 business, or professional relationship with any of these
18 named potential witnesses, when I call their names, I would
19 ask that you please stand.

20 Now, if the witnesses happen to be present in the
21 courtroom, I'll ask them to stand, so the jury can see who
22 you are.

23 Shanna Graham.

24 This is Ms. Graham all the way in the back. Thank
25 you, ma'am. You may be seated.

1 Robert David Bruton, spelled B-R-U-T-O-N.

2 Ray Graham.

3 This is Mr. Graham all the way in the back. Thank
4 you, sir.

5 Alice Broome, spelled B-R-O-O-M-E.

6 This is Alice Broome all the way in the back.
7 Thank you.

8 Lori Starnes.

9 This is Ms. Starnes in the back. Thank you. You
10 may be seated. Thank you, ma'am.

11 Brent Graham.

12 This is Mr. Graham all the way in the back. Thank
13 you, sir.

14 Amanda Graham, who is not present:

15 Sergeant Carlos Culbreath, spelled
16 C-U-L-B-R-E-A-T-H, with the Rock Hill Police Department.

17 This is Sergeant Culbreath in the back. Thank
18 you, sir.

19 Officer T.B. Felmet with the Rock Hill Police
20 Department.

21 This is Officer Felmet. Thank you, sir.

22 Officer Angie Wells with the Rock Hill Police
23 Department.

24 She is in the back. Thank you, ma'am.

25 Officer Tony Slawson, spelled S-L-A-W-S-O-N.

1 This is Officer Slawson in the back. Thank you,
2 sir.

3 Detective Keith Dugan from the Rock Hill Police
4 Department.

5 This is Detective Dugan down front. Thank you,
6 sir.

7 Yes, ma'am, how do you know Detective Dugan?

8 JUROR NUMBER 124: He investigated a case where I
9 was the victim.

10 THE COURT: All right. Give us your name and
11 number, ma'am.

12 JUROR NUMBER 124: Deborah Jones, 124.

13 THE COURT: If you will, I'm going to get you to
14 come down front for just a minute, if you don't mind.

15 Counsel, I'll ask you to come as well.

16 (The following was a bench conference with Juror
17 124)

18 THE COURT: Counsel.

19 He investigated something, is that what you are
20 saying?

21 JUROR NUMBER 124: Yes.

22 THE COURT: How was that? What was that about?

23 JUROR NUMBER 124: A thing from me forging checks,
24 stole some money.

25 THE COURT: From you?

1 JUROR NUMBER 124: Uh-huh.

2 THE COURT: And he investigated that?

3 JUROR NUMBER 124: Uh-huh.

4 THE COURT: Okay. Is there anything about your
5 relationship in that regard with Officer Dugan that would
6 interfere in any way, if he would be a witness in this case,
7 that would interfere in any way with your ability to give
8 both the State and the defendant a fair and impartial trial
9 in this case?

10 JUROR NUMBER 124: No.

11 THE COURT: Thank you, ma'am.

12 (Bench conference with Juror 124 was concluded)

13 THE COURT: Anyone else?

14 (No response)

15 THE COURT: David Sanders, who is with the York
16 County solicitor's office.

17 (No response)

18 THE COURT: Has any member of the jury panel,
19 either presently or in the past, ever been employed by or
20 volunteered with any city, county, state, or federal law
21 enforcement agency or law enforcement victim witness
22 assistance program? If so, please stand.

23 Yes, ma'am, please give us your name and number,
24 ma'am.

25 JUROR NUMBER 131: Susan Kirby, 131. I work for

1 the FBI.

2 THE COURT: And, ma'am, how -- what is your
3 employment there?

4 JUROR NUMBER 131: Pardon me?

5 THE COURT: What is your employment with the FBI?

6 JUROR NUMBER 131: I'm a CTOP specialist. I
7 answer complaint lines and I do searches. I sit on wire
8 taps.

9 THE COURT: You don't actually go out and arrest
10 people and that sort of thing?

11 JUROR NUMBER 131: No, sir, I do not.

12 THE COURT: Ma'am, is there anything about that
13 employment or experience in that regard that would interfere
14 in any way with your ability to give both the State and the
15 defendant a fair and impartial trial in this case?

16 JUROR NUMBER 131: No.

17 THE COURT: Thank you, ma'am.

18 Anyone else?

19 (No response)

20 THE COURT: Is any member of the jury panel
21 related by blood or marriage to or close personal friends
22 with any person who is now or has ever been employed by or
23 volunteered with any city, county, state, or federal law
24 enforcement agency or law enforcement's victim witness
25 assistance program? If so, please stand.

1 I will begin in the front and go back.

2 Yes, ma'am, please give us your name and your
3 juror number.

4 JUROR NUMBER 21: Kim Black, number 21.

5 THE COURT: Yes, ma'am.

6 JUROR NUMBER 21: Uncle by marriage, Randy Clinton
7 with the York County canine unit.

8 THE COURT: Ma'am, is there anything about that
9 relationship that would interfere in any way with your
10 ability to give both the State and the defendant a fair and
11 impartial trial in this case?

12 JUROR NUMBER 21: No, sir.

13 THE COURT: Thank you, ma'am.

14 Yes, sir, please give us your name and number.

15 JUROR NUMBER 187: John Ratterree, juror 187.

16 My brother was a deputy sheriff with York County
17 in the mid seventies.

18 THE COURT: Sir, is there anything about that
19 relationship that would interfere in any way with your
20 ability to give both sides a fair and impartial trial in
21 this case?

22 JUROR NUMBER 187: No, sir.

23 THE COURT: Thank you, sir.

24 Ma'am, we will go back to you on the front.

25 Yes, ma'am, give us your name and number.

1 JUROR NUMBER 77: I'm Kimberly Durden. My number
2 is 77, and my son is a correctional officer at the Moss
3 Justice Center.

4 THE COURT: Ma'am, have you discussed this case at
5 all with him?

6 JUROR NUMBER 77: No.

7 THE COURT: Is there anything about that
8 relationship that would interfere in any way with your
9 ability to give both the State and the defendant a fair and
10 impartial trial in this case?

11 JUROR NUMBER 77: No.

12 THE COURT: Thank you, ma'am.

13 Yes, ma'am, please give us your name and number.

14 JUROR NUMBER 216: Claudia Strenk, number 216.

15 THE COURT: Yes, ma'am.

16 JUROR NUMBER 216: My grandfather.

17 THE COURT: Pardon me?

18 JUROR NUMBER 216: My grandfather was the jailer
19 at one time.

20 THE COURT: All right. Ma'am, have you discussed
21 this case at all with him?

22 JUROR NUMBER 216: I didn't even know what the
23 case was.

24 THE COURT: I mean you didn't know, but I need to
25 ask you, have you discussed this case at all with him?

1 JUROR NUMBER 216: (Shaking head no).

2 THE COURT: Ma'am, I need to get you to answer
3 verbally because we are on the record. You need to answer
4 verbally instead of shaking your head.

5 JUROR NUMBER 216: Oh, no.

6 THE COURT: Okay. Thank you.

7 Ma'am, is there anything about that relationship
8 that would interfere in any way with your ability to give
9 both the State and the defendant a fair and impartial trial
10 in this case?

11 JUROR NUMBER 216: I don't be able to be say
12 because I don't know which way.

13 THE COURT: Ma'am, please come down front.

14 (The following was a bench conference with Juror
15 Number 216)

16 THE COURT: You don't know whether you would be
17 fair to both the State and the defendant because somebody
18 that works at a correction facility, is that what you are
19 telling me?

20 JUROR NUMBER 216: Well, if I have to be honest,
21 it's a murder, I'm already thinking the person is guilty,
22 you see?

23 And then another uncomfortable situation, I
24 realize you asked if I knew professionals by court for the
25 State. And until I could understand the question, it was so

1 fast that -- I do work in the dental office, so several of
2 the people, the police officers, the one person was in the
3 court yesterday, I recognized because he's a patient of
4 mine, but then I'm not supposed to say, because see -- I
5 mean --

6 THE COURT: Okay. Now, I don't want you to get
7 upset.

8 Are you saying that based on other things, other
9 than the fact that you have a relative at the detention
10 center, that you would have problems in the case?

11 JUROR NUMBER 216: My grandmother was murdered.

12 THE COURT: Okay.

13 JUROR NUMBER 216: And then they just -- now
14 yesterday I didn't even understand the question and today I
15 understood what you said. You said if you know people
16 professionals. I do, but I don't know what, because if I
17 say I'm breaking HIPA.

18 THE COURT: Okay. Well, I understand, but we are
19 not asking you to do that, to identify anybody or anything
20 like that.

21 But, I mean, because you have some relationship
22 with an officer, you don't have to say in what capacity.

23 But, in any event, let me ask you this. Based on
24 what happened to your grandmother you say?

25 JUROR NUMBER 216: Yes.

1 THE COURT: I didn't understand that was the case.
2 I thought you had thought just because they worked
3 somewhere, but you are saying that she was actually
4 murdered? That's what you are saying?

5 JUROR NUMBER 216: She was. And also --

6 THE COURT: Let me ask you --

7 JUROR NUMBER 216: Because yesterday he asked
8 again and I thought I already excused you, so --

9 THE COURT: Already -- I beg your pardon?

10 JUROR NUMBER 216: Yesterday when these questions
11 were asked, one of the questions was if I had a family
12 member who was murdered and when.

13 THE COURT: No, no, I didn't ask you that
14 yesterday.

15 JUROR NUMBER 216: Well, I'm sorry, it was the
16 other judge.

17 THE COURT: Oh, you were in the other courtroom?

18 JUROR NUMBER 216: Yes.

19 THE COURT: Oh, okay.

20 JUROR NUMBER 216: Then he excused, but he said I
21 already excused on the question before.

22 THE COURT: Okay.

23 JUROR NUMBER 216: I'm sorry. I'm confusing which
24 judge.

25 THE COURT: Okay. That would have been in the

1 other courtroom where they do -- I think they are trying a
2 case where somebody was accused of murder.

3 JUROR NUMBER 216: This isn't is the case here
4 this morning?

5 THE COURT: No, this is -- no, this is burglary --
6 burglary and malicious injury to property and stalking.
7 Those are the charges.

8 JUROR NUMBER 216: I understood murder. You see,
9 I can't even understand.

10 THE COURT: Let me ask you. Just be as honest as
11 you can, could you listen to the testimony and evidence in
12 this case and the law as given to you by the court and
13 render a decision which would be fair to both the State and
14 the defendant in this case? Could you do that, or could you
15 not do that? Just be as honest as you can.

16 JUROR NUMBER 216: I don't think I can.

17 THE COURT: Okay. Well, that's -- that's an
18 honest answer.

19 JUROR NUMBER 216: Because it's too much
20 responsibility.

21 THE COURT: Okay. And I'm not going to require
22 you --

23 JUROR NUMBER 216: I don't want to be wrong.

24 THE COURT: You might have -- you know, you could
25 have told me that yesterday when we were qualifying

1 downstairs, but be that as it may, I'm not going to require
2 you to sit on this jury, but what I would ask you to do is
3 just go back and have you seat and follow instructions, but
4 I'm not going to require you to sit on this case, okay?

5 JUROR NUMBER 216: Okay. Thank you.

6 THE COURT: I'm sorry you got upset.

7 JUROR NUMBER 216: No, that's okay. It's just a
8 little uncomfotable position for me and I'm sorry. It's
9 something if I were to have not really -- I'm not trying to
10 get away from my duty.

11 THE COURT: Okay. That's fine. Just please go
12 back and have a seat.

13 JUROR NUMBER 216: Okay.

14 THE COURT: Just follow instructions.

15 JUROR NUMBER 216: Okay. Thank you, ma'am.

16 JUROR NUMBER 216: Thank you.

17 (Whereupon, bench conference was concluded with
18 Juror Number 216)

19 THE COURT: Has any member of the jury panel,
20 either presently or in the past, ever been employed by or
21 volunteered with any city, county, state, or federal
22 prosecutor's office or prosecutor's victim witness
23 assistance program? If so, please stand.

24 (No response)

25 THE COURT: Is any member of the jury panel

1 related by blood or marriage to or close personal friends
2 with any person who is now or has ever been employed by or
3 volunteered with any city, county, state, or federal
4 prosecutor's office or prosecutor's victim witness
5 assistance program? If so, please stand.

6 (No response)

7 THE COURT: Has any member of the jury panel ever
8 contributed money to or volunteered time with any
9 organization which lobbies on behalf of victim's or lobbies
10 for tougher sentences for criminal offenders? If so, please
11 stand.

12 (No response)

13 THE COURT: Has any member of the jury panel ever
14 contributed money to the Fraternal Order of Police, the
15 South Carolina Law Enforcement Officers Association, or any
16 law enforcement organization, or organization which supports
17 the police or law enforcement? If so, please stand.

18 Yes, sir, please give us your name and number,
19 sir.

20 JUROR NUMBER 28: Michael Bowens, number 28.

21 THE COURT: And what do you contribute to, sir?

22 JUROR NUMBER 28: Fraternal Order.

23 THE COURT: Sir, is there anything about your
24 support of that organization that would interfere in any way
25 with your ability to give both sides a fair and impartial

1 trial in this case?

2 JUROR NUMBER 28: No.

3 THE COURT: Thank you, sir.

4 Yes, sir, please give us your name and number.

5 JUROR NUMBER 242: John Whitten, 242.

6 THE COURT: Yes, sir.

7 JUROR NUMBER 242: South Carolina Fraternal order
8 of Police Officers.

9 THE COURT: Sir, is there anything about your
10 support of that organization that would interfere in any way
11 with your ability to give both sides a fair and impartial
12 trial in this case?

13 JUROR NUMBER 242: No.

14 THE COURT: Thank you, sir.

15 Yes, ma'am, please give us your name and number.

16 JUROR NUMBER 178: Jacquelyn Picard, 178.

17 Fraternal Order of Police and the sheriff's
18 department.

19 THE COURT: Ma'am, is there anything about your
20 support of those organizations that would interfere in any
21 way with your ability to give both the State and the
22 defendant a fair and impartial trial in this case?

23 JUROR NUMBER 178: No, sir.

24 THE COURT: Thank you, ma'am.

25 Anyone else?

1 (No response)

2 THE COURT: Is any member of the jury panel
3 friends with or associates with any person who works for or
4 has worked for the York County Public Defender's office or
5 any criminal defense attorney? If so, please stand.

6 (No response)

7 THE COURT: All right, ladies and gentlemen, I'm
8 going to ask you now a series of about four questions. And
9 what I'm going to do is ask you to wait until I have
10 completed all four of these questions. If you think one, or
11 more, of these questions may apply to you, or you need to
12 respond to one, or more, of these questions, I'll ask you to
13 wait until I have completed all four questions, and then
14 I'll get you to come down front, which we can take your
15 responses with a little more privacy next to the court
16 reporter here. So listen carefully to these questions. If
17 you think one, or more, of them apply to you -- actually I
18 believe there are five of them, then please come forward
19 when you are asked to do so. Here are the questions.

20 Well, I beg your pardon, it looks like there are
21 about seven of them.

22 Have you or a member of your immediate family,
23 ever been accused of, investigated, arrested, or convicted
24 of burglary or other similar crimes? The first question.

25 Have you, or a member of your immediate family,

1 ever been accused or investigated, arrested, or convicted of
2 stalking, harassment, or other similar crime?

3 Have you, or a member of your immediate family,
4 ever been accused of, investigated, arrested, or convicted
5 of malicious injury to property or other similar crime?

6 Has any member of the jury panel been the victim
7 of stalking or harassment?

8 Has any member of the jury panel ever been charged
9 with stalking or harassment?

10 Has any member of the jury panel ever been the
11 victim of a burglary or have a relative or close friend
12 that's been the victim of a burglary?

13 And, finally, do you have any beliefs, religious
14 or otherwise, that would prevent you from you rendering
15 judgment against another person?

16 If you need to respond to any of these questions
17 or any of these questions apply to you, I'll ask you to come
18 to the center aisle at this time and come forward one at a
19 time, as the bailiff may direct.

20 (Whereupon, the following were on-the-record bench
21 conferences)

22 (Juror Number 155 approached the bench)

23 THE COURT: Come right on up here, if you will.

24 Give us your name and number for the record.

25 JUROR NUMBER 155: Joyce Miller.

1 THE COURT: And your number?

2 JUROR NUMBER 155: 155.

3 THE COURT: Yes, ma'am. What did you respond to?

4 JUROR NUMBER 155: I was the victim of a burglary.

5 THE COURT: Okay. Ma'am, is there anything about
6 your experiences in that regard that would interfere in any
7 way with your ability to give both the State and the
8 defendant a fair and impartial trial in this case?

9 JUROR NUMBER 155: I don't think so.

10 THE COURT: Thank you, ma'am. You may return to
11 your seat.

12 (Juror Number 155 returned to the jury venire
13 panel)

14 (Juror Number 136 approached the bench)

15 THE COURT: Give us your name and number for the
16 record.

17 JUROR NUMBER 136: Myra Little, 136.

18 THE COURT: Yes, ma'am.

19 JUROR NUMBER 136: Not burglary, but robbery. My
20 husband and I, along with his parents, were robbed at
21 gunpoint during vacation in Atlanta a couple years ago.

22 THE COURT: Ma'am, is there anything about your
23 experiences in that regard that would interfere in any way
24 with your ability to give both the State and the defendant a
25 fair and impartial trial in this case?

1 JUROR NUMBER 136: I don't think so.

2 THE COURT: Thank you, ma'am.

3 (Juror Number 136 returned to the jury venire
4 panel)

5 (Juror Number 120 approached the bench)

6 THE COURT: Give us your name and number for the
7 record.

8 JUROR NUMBER 120: Rodney Jackson, Jr., 120.

9 THE COURT: Yes, sir.

10 JUROR NUMBER 120: My apartment was burgled about
11 1999.

12 THE COURT: Okay. Sir, is there anything about
13 your experiences in that regard that would interfere in any
14 way with your ability to give both the State and the
15 defendant a fair and impartial trial in this case?

16 JUROR NUMBER 120: No.

17 THE COURT: Thank you, sir.

18 (Juror Number 120 returned to the jury venire
19 panel)

20 (Juror Number 10 approached the bench)

21 THE COURT: Please give us your name and number
22 for the record.

23 JUROR NUMBER 10: Frank Arnold, number 10.

24 THE COURT: Yes, sir, Mr. Arnold.

25 JUROR NUMBER 10: I had a burglary quite a number

1 of years ago that was -- you know, I had -- that I was the
2 victim of.

3 THE COURT: Okay. Sir, is there anything about
4 your experiences in that regard that would interfere in any
5 way with your ability to give both the State and the
6 defendant a fair and impartial trial in this case?

7 JUROR NUMBER 10: No. No.

8 THE COURT: Thank you, sir.

9 (Juror Number 10 returned to the jury venire
10 panel)

11 (Juror Number 28 approached the bench)

12 THE COURT: Give us your name and number again for
13 the record.

14 JUROR NUMBER 28: Michael Bowens, number 28.

15 THE COURT: Yes, sir.

16 JUROR NUMBER 28: Yes, sir, I was the victim of a
17 burglary.

18 THE COURT: Sir, is there anything about your
19 experiences in that regard that would interfere in any way
20 with your ability to give both the State and the defendant a
21 fair and impartial trial in this case?

22 JUROR NUMBER 28: I think it would.

23 THE COURT: Do you think it would interfere?

24 JUROR NUMBER 28: Yes.

25 THE COURT: All right. I'm not going to require

1 you to sit on this particular jury, but -- on this case, I
2 mean, but if you will just go back and have your seat and
3 just follow instructions. Stay with the jury, okay?

4 JUROR NUMBER 28: Okay.

5 (Juror Number 28 returned to the jury venire
6 panel)

7 (Juror number 44 approached the bench)

8 THE COURT: Give us your name and number for the
9 record.

10 JUROR NUMBER 44: Harry Carland, 44.

11 THE COURT: Yes, sir.

12 JUROR NUMBER 44: I had my house burglarized and I
13 had property stolen two other times where I live.

14 THE COURT: Is there anything about your
15 experiences in that regard that would interfere in any way
16 with your ability to give both the State and the defendant a
17 fair and impartial trial in this case?

18 JUROR NUMBER 44: No, sir.

19 THE COURT: Thank you, sir.

20 (Juror Number 44 returned to the jury venire
21 panel)

22 (Juror Number 26 approached the bench)

23 THE COURT: Please give us your name and number
24 for the record.

25 JUROR NUMBER 26: Stephanie Bohnas, number 26.

1 THE COURT: Yes, ma'am.

2 JUROR NUMBER 26: Last year my teenage son was
3 accused of harassment by another student in high school and
4 he went through the arbitration program in York County.

5 And then as far as burglary seven years ago in
6 Oregon. My family was burglarized in a motel.

7 THE COURT: Ma'am, is there anything about your
8 experiences in either of those situations that would
9 interfere in any way with your ability to give both the
10 State and the defendant a fair and impartial trial in this
11 case?

12 JUROR NUMBER 26: No.

13 THE COURT: Thank you, ma'am.

14 (Juror Number 26 returned to the jury venire
15 panel)

16 (Juror Number 178 approached the bench)

17 THE COURT: Give us your name and number for the
18 record.

19 JUROR NUMBER 178: Jackie Picard, 178.

20 THE COURT: Yes, ma'am.

21 JUROR NUMBER 178: Burglary.

22 THE COURT: You were burglarized?

23 JUROR NUMBER 178: Uh-huh. Yeah. I didn't do it.

24 THE COURT: Well, we are on the record.

25 Is there anything about your experiences in that

1 regard that would interfere in any way with your ability to
2 give both the State and the defendant a fair and impartial
3 trial in this case?

4 JUROR NUMBER 178: No, sir.

5 THE COURT: Thank you, ma'am.

6 (Juror Number 178 returned to the jury venire
7 panel)

8 (Juror Number 220 approached the bench)

9 THE COURT: Give us your name and number for the
10 record.

11 JUROR NUMBER 220: Curtis Tillman, 220.

12 THE COURT: Yes, sir.

13 JUROR NUMBER 220: Well, I have had one of my
14 vehicles stolen once, and my house was broken into once, and
15 I was having built -- I have had multiple times that I have
16 had burglaries, and I don't have much use for a thief.

17 THE COURT: Let me ask you, nevertheless, whether
18 anything about those experiences that would interfere with
19 your ability to give both the State and the defendant a fair
20 and impartial trial in this case? By that I mean could you
21 listen to the testimony and evidence that comes in during
22 the trial and the court's instruction on the law and render
23 a decision which would be fair and impartial to both the
24 State and also for the defendant? Could you do that or
25 could you not do that?

1 JUROR NUMBER 220: I would do my best.

2 THE COURT: Well, I need a more definitive answer
3 than that. Just be as honest as you can.

4 JUROR NUMBER 220: I would say no.

5 THE COURT: Okay. Then I'm not going to require
6 you to sit on this particular case. So if you will just go
7 back and have a seat with the jury and follow instructions.
8 Okay?

9 JUROR NUMBER 220: Thank you.

10 (Juror Number 220 returned to the jury venire
11 panel)

12 (Juror Number 173 approached the bench)

13 THE COURT: Come on up just a little bit more.
14 Give us your name and number for the record.

15 JUROR NUMBER 173: Lorraine Pagan-Tyler, 173.

16 THE COURT: Yes, ma'am.

17 JUROR NUMBER 173: I was the victim of rape.

18 THE COURT: Of rape?

19 JUROR NUMBER 173: Yes.

20 THE COURT: Ma'am, is there anything about your
21 experiences in that regard that would interfere with your
22 ability to give both sides a fair trial?

23 JUROR NUMBER 173: Yes.

24 THE COURT: Do you think it would interfere?

25 JUROR NUMBER 173: Yes.

1 THE COURT: Then I'm not going to require you to
2 sit on this particular jury, but what I'll ask you to do is
3 just go back and have your seat and just follow instructions
4 with the jury. I won't put you on this case, okay?

5 JUROR NUMBER 173: Thank you.

6 (Juror Number 173 returned to the jury venire
7 panel)

8 (Juror Number 207 approached the bench)

9 THE COURT: Please give us your name and number
10 for the record.

11 JUROR NUMBER 207: Katherine Shive, 207.

12 THE COURT: Yes.

13 JUROR NUMBER 207: My business has been
14 burglarized and robbed.

15 THE COURT: In a house or on your property?

16 JUROR NUMBER 207: On the premises?

17 THE COURT: Well, no, not --

18 JUROR NUMBER 207: Because I had --

19 THE COURT: Yeah, you have to be on your property.

20 JUROR NUMBER 207: I mean your -- home.

21 THE COURT: Yes.

22 JUROR NUMBER 207: No, I had stuff stolen out of
23 my car.

24 THE COURT: Someone broke into your car?

25 JUROR NUMBER 207: Yeah.

1 THE COURT: Let me ask you whether there is
2 anything about your experiences in that regard that would
3 interfere in any way with your ability to give both the
4 State and the defendant a fair and impartial trial in this
5 case?

6 JUROR NUMBER 207: No.

7 THE COURT: Thank you, ma'am.

8 (Juror Number 207 returned to the jury venire
9 panel)

10 (Whereupon, the bench conferences were concluded)

11 THE COURT: I have just a few more questions for
12 you, ladies and gentlemen.

13 Has any member of the jury panel had any prior
14 knowledge about this case from any source before coming here
15 to court today? If so, please stand.

16 (No response)

17 THE COURT: Has any member of the jury panel
18 formed or expressed an opinion as to the guilt or innocence
19 of the defendant Robert T. Hooker? If so, please stand.

20 (No response)

21 THE COURT: Is any member of the jury panel
22 conscious of any interest; bias, or prejudice for or against
23 the defendant Robert T. Hooker? If so, please stand.

24 (No response)

25 THE COURT: Can each member of the jury panel give

1 both the State and the defendant Robert T. Hooker a fair and
2 impartial trial in this case? If not, please stand.

3 (No response)

4 THE COURT: Does any member of the jury panel know
5 of any reason whatsoever why he or she should not serve as a
6 juror in this particular case? If so, please stand.

7 (No response)

8 THE COURT: Any additional questions requested of
9 the jury panel from the State?

10 MS. JOYNER: Not from the State, Your Honor.

11 THE COURT: From the defense?

12 MS. INZERILLO: No, Your Honor.

13 THE COURT: Madam Clerk, please give us a jury.

14 THE CLERK: When your name is called, please bring
15 all your personal belongings and stand by the bailiff.

16 Number 10, Frank Arnold.

17 What say you for the State?

18 MS. JOYNER: Please present the juror.

19 THE CLERK: Defense?

20 MS. INZERILLO: Please excuse the juror.

21 THE CLERK: You may return to your seat.

22 Number 111, Kellie Hoover.

23 What say you for the State?

24 MS. JOYNER: Please present this juror.

25 THE CLERK: Defense?

1 MS. INZERILLO: Please swear the juror.

2 THE CLERK: You may have a seat in the jury box.

3 Number 82, James Finch.

4 What say you for the State?

5 MS. JOYNER: Please present this juror.

6 THE CLERK: Defense?

7 MS. INZERILLO: Please swear the juror.

8 THE CLERK: You may have a seat in the jury box.

9 Number 77, Kimberly Durden.

10 What say you for the State?

11 MS. JOYNER: Please present this juror.

12 THE CLERK: Defense?

13 MS. INZERILLO: Please excuse the juror.

14 THE CLERK: You may return to your seat.

15 Number 193, Lula Robinson.

16 What say you for the State?

17 MS. JOYNER: Please present this juror.

18 THE CLERK: Defense?

19 MS. INZERILLO: Please swear the juror.

20 THE CLERK: You may have a seat in the jury box.

21 Number 30, Kathleen Bowman.

22 What say you for the State?

23 MS. JOYNER: Please present this juror.

24 THE CLERK: Defense?

25 MS. INZERILLO: Please swear the juror.

1 THE CLERK: Have a seat in the jury box.
2 Number 21, Kimberly Black.
3 What say you for the State?
4 MS. JOYNER: Please present this juror.
5 THE CLERK: Defense?
6 MS. INZERILLO: Please swear the juror.
7 THE CLERK: Have a seat in the jury box.
8 Number 232, Denise Wallace.
9 What say you for the State?
10 MS. JOYNER: Please present this juror.
11 THE CLERK: Defense?
12 MS. INZERILLO: Please swear the juror.
13 THE CLERK: Have a seat in the jury box.
14 Number 165, Willie Neely.
15 What say you for the State?
16 MS. JOYNER: Please present this juror.
17 THE CLERK: Defense?
18 MS. INZERILLO: Please swear the juror.
19 THE CLERK: You may have a seat in the jury box.
20 Number 205, Paul Shealy.
21 What say you for the State?
22 MS. JOYNER: Please present this juror.
23 THE CLERK: Defense?
24 MS. INZERILLO: Please swear the juror.
25 THE CLERK: You may have a seat in the jury box.

1 Number 124, Deborah Jones.

2 What say you for the State?

3 MS. JOYNER: Please present this juror.

4 THE CLERK: Defense?

5 MS. INZERILLO: Please excuse the juror.

6 THE CLERK: You may return to your seat.

7 Number 187, John Ratterree.

8 What say you for the State?

9 MS. JOYNER: Please excuse this juror from service
10 in this case.

11 THE CLERK: You may return to your seat.

12 Number 42, Laurie Campbell.

13 What say you for the State?

14 MS. JOYNER: Please present this juror.

15 THE CLERK: Defense?

16 MS. INZERILLO: Please swear the juror.

17 THE CLERK: You may have a seat in the jury box.

18 Number 131, Susan Kirby.

19 What say you for the State?

20 MS. JOYNER: Please present this juror.

21 THE CLERK: Defense?

22 MS. INZERILLO: Please excuse this juror.

23 THE CLERK: You may return to your seat.

24 Strikes are now four for the defense and one for
25 the State.

1 Number 227, Michael Urso.
2 What say you for the State?
3 MS. JOYNER: Please present this juror.
4 THE CLERK: Defense?
5 MS. INZERILLO: Please excuse the juror.
6 THE CLERK: You may return to your seat.
7 Number 13, Kay Auten.
8 What say you for the State?
9 MS. JOYNER: Please present this juror.
10 THE CLERK: Defense?
11 MS. INZERILLO: Please swear the juror.
12 THE CLERK: You may have a seat in the jury box.
13 Number 242, John Whitten.
14 What say you for the State?
15 MS. JOYNER: Please present the juror.
16 THE CLERK: Defense?
17 MS. INZERILLO: Please swear the juror.
18 THE CLERK: You may have a seat in the jury box.
19 Number 179, Stephen Pinner.
20 What say you for the State?
21 MS. JOYNER: Please present this juror.
22 THE CLERK: Defense?
23 MS. INZERILLO: Please swear the juror.
24 THE CLERK: You may have a seat in the jury box.
25 THE COURT: This is for the alternate.

1 THE CLERK: 178, Jacquelyn Picard.

2 What say you for the State?

3 MS. JOYNER: Please present this juror.

4 THE CLERK: Defense?

5 MS. INZERILLO: Please excuse this juror.

6 THE CLERK: You may return to your seat.

7 Number 14, Jerry Baker.

8 What say you for the State? .

9 MS. JOYNER: Please present this juror.

10 THE CLERK: Defense?

11 MS. INZERILLO: Please swear the juror.

12 THE CLERK: Take a seat in the jury box.

13 THE COURT: Any questions concerning the selection
14 process from the State?

15 MS. JOYNER: No, sir, Your Honor.

16 THE COURT: From the defense?

17 MS. INZERILLO: No, Your Honor.

18 THE COURT: Ladies and gentlemen of the jury panel
19 who were not selected for this particular case, I want to
20 thank each of you for your patience today. I want to excuse
21 you at this time and ask you, if you will, to call in
22 tonight after seven o'clock. Sometime tonight after seven
23 o'clock to your voicemail number for further instructions.
24 Please enjoy your afternoon. And, again, thank you for your
25 patience. You are free to go.

1 (Whereupon, the jury venire panel left the
2 courtroom)

3 THE COURT: All right, counsel, I think we will go
4 ahead and take lunch before we get started with the trial.
5 It's about 23 to one at this time.

6 Ladies and gentlemen of the jury panel, we are
7 going to go ahead and recess for lunch before we actually
8 get started with this case.

9 I'm going to ask you to do one thing for me, if
10 you will, before you go to lunch. I'm going to ask you to
11 go back into the jury room and if you will elect from your
12 group from the first twelve, not from the alternate, but
13 from the first twelve chosen, I would ask you to elect from
14 your group a foreperson for the jury.

15 Let me explain the role of the foreperson. The
16 foreperson is asked to serve as spokesperson for the jury
17 back to the court. So if there is a matter that needs to
18 come to the attention of the court from the jury, we ask
19 that the foreperson write the message down on a tablet
20 provided for you back in the jury room, give that to the
21 bailiff and the bailiff will bring it to me, and I'll
22 correspond in like manner, or bring you back out in the
23 courtroom and respond.

24 We also ask that the foreperson serve as moderator
25 once we reach the deliberative stage of the trial, to

1 maintain some order in deliberations, make sure everyone is
2 allowed to participate and be heard in deliberations.

3 And then finally once a unanimous verdict is
4 reached by the jury, to record those verdicts on the verdict
5 forms which will be provided to you and explained to you at
6 the appropriate time, at the conclusion of the trial.

7 The primary role of the foreperson is the same as
8 every other juror, and that is to listen carefully to the
9 testimony and the evidence so you will be in a position to
10 deliberate and help reach a verdict in this case.

11 So I'll ask you, if you will, when you go back
12 into the jury room, as soon as you have elected a foreperson
13 from the first twelve, that person will write their name and
14 juror number down and give it to the bailiff and you are
15 free to go to lunch at this time.

16 Let me give you a couple of other quick
17 instructions. First of all, please do not discuss this case
18 among yourselves. You really don't know anything about it
19 at this point in any event, but please do not begin
20 discussing this case. I'll explain the reasons for that
21 more fully once you come back from lunch before we get
22 started with the case.

23 Please do not discuss it amongst yourselves or
24 with anyone else you might see on a break from a recess from
25 court. If someone wants to find out something about the

1 case you are on, please do not discuss it with them. Again,
2 I'll explain the reasons for that in more detail in just a
3 minute.

4 If anyone tries to discuss the case with you
5 during a recess from court, please do not discuss it with
6 them, but make note of that person and let the bailiff know
7 upon your return. The bailiff will let me know and I'll
8 deal appropriately with that person. No one should try to
9 discuss the case with you. If they do, I certainly wish to
10 be made aware of it.

11 When you come back to the jury room after lunch,
12 if you want to bring something that you have to drink back
13 in the jury room with you in the jury box, the Clerk of
14 Court allows you to do that, and I do as well. So if you
15 have Coke, water, tea, whatever back there to drink, if you
16 want to bring it in the jury box, we allow you to do so.

17 All right. Thank you, ladies and gentlemen. I'll
18 give you further instruction once you get back before we get
19 started with the case. I'll ask you if you will at this
20 time to retire to the jury room and elect a foreperson, and
21 then you can go to lunch.

22 I will ask you to be back in the jury room ready
23 to go let's say about 1:50. That's ten minutes to two. Ten
24 minutes to two. That should give everybody plenty of time
25 to get lunch and get back in the jury room. Thank you.

1 Please enjoy your lunch and be back at ten to two.

2 (The following takes place outside the presence of
3 the jury panel)

4 THE COURT: I'll ask everyone to stay seated when
5 the jury is coming in or going out, please. Please remain
6 seated. You are welcome to move around any other time, but
7 when they are going out or coming in, please remain seated.

8 Is there anything else we need to take up at this
9 time?

10 MS. JOYNER: No, sir, Your Honor.

11 MS. INZERILLO: No, Your Honor.

12 THE COURT: All right. When we come back,
13 counsel, I'll give them, the jury, a preliminary
14 instruction. We will swear them when we come back out. I
15 deliberately didn't swear them yet, but I'll give them an
16 instruction when we come back and we get started with the
17 trial. Thank you.

18 (Whereupon, proceedings were recessed)

19 (Whereupon, proceedings were reconvened)

20 (Taped Recording marked as State's Exhibit No. 1
21 for identification)

22 (Taped Recording marked as State's Exhibit No. 2
23 for identification)

24 (Taped Recording marked as State's Exhibit No. 3
25 for identification)

1 (Taped Recording marked as State's Exhibit NO. 3
2 for identification)
3 (Taped Recording marked as State's Exhibit No. 4
4 for identification)
5 (Taped Recording marked as State's Exhibit No. 5
6 for identification)
7 (Taped Recording marked as State's Exhibit No. 6
8 for identification)
9 (Taped Recording marked as State's Exhibit No. 7
10 for identification)
11 (State's Exhibit No. 8 marked for identification)
12 (State's Exhibit No. 9 marked for identification)
13 (Photograph marked as State's Exhibit No. 10 for
14 identification)
15 (Photograph marked as State's Exhibit No. 11 for
16 identification)
17 (Photograph marked as State's Exhibit No. 12 for
18 identification)
19 (Photograph marked as State's Exhibit No. 13 for
20 identification)
21 (Photograph marked as State's Exhibit No. 14 for
22 identification)
23 (Taped Recording marked as Court's Exhibit No. 1
24 for identification)
25 (Taped Recording marked as Court's Exhibit No. 2

1 for identification)

2 THE COURT: All right, counsel, we can go into the
3 matter about the juror. It looks like to me it's probably
4 juror 242, John Whitten. I think that's probably the one.
5 We can bring them back out to make sure when he comes back
6 out, but we can go ahead and address that.

7 Before we do that, let me tell you that the jury
8 selected juror number 82, Steve Finch, as their foreperson.

9 Let me hear with you regard to juror who came into
10 the courtroom.

11 MS. JOYNER: Yes, Your Honor, just put on the
12 record we advised you in chambers. Several moments ago one
13 of the jurors came through the courtroom rather than going
14 downstairs, so I directed him to the back door, at which
15 point Detective Dugan turned around and I think -- I don't
16 think he was aware this was a juror, and just greeted him
17 and said "good afternoon, how are you doing?" And I believe
18 that he responded that he was very fine.

19 DETECTIVE DUGAN: "Doing well."

20 MS. JOYNER: "Doing well."

21 That was the extent of the interaction. We just
22 wanted to make the court aware of that brief conversation.

23 THE COURT: Detective Dugan, you can answer me
24 from there, if you will. Do you know this fellow? Do you
25 know this juror?

1 DETECTIVE DUGAN: No, sir, I do not.

2 THE COURT: Prior to coming to court in here?

3 DETECTIVE DUGAN: No, sir.

4 THE COURT: Do you have any knowledge of him?

5 DETECTIVE DUGAN: In fact, I didn't even recognize
6 him as a juror at first until he was right up on me. I
7 apologize.

8 THE COURT: Okay. Well, I need ask you that.

9 We will bring him out.

10 Please bring juror number 242, Mr. Whitten out,
11 please.

12 You can have a seat, officer.

13 DETECTIVE DUGAN: Yes, sir.

14 (Whereupon, Juror 242 was brought into the
15 courtroom)

16 THE COURT: Mr. Whitten, you can stand right
17 there, if you will. I wanted to ask you this question.

18 Does anybody need to put him under oath?

19 MS. JOYNER: No, Your Honor.

20 MS. INZERILLO: No.

21 THE COURT: Mr. Whitten, just now when you were
22 coming back from lunch, did you come through the courtroom?

23 JUROR NUMBER 242: Yes, sir. No, I came -- yeah,
24 I came right IN here, yes.

25 THE COURT: You came right through the courtroom?

1 JUROR NUMBER 242: Yeah.

2 THE COURT: And, of course, you were supposed to
3 go down to the jury assembly room immediately when
4 returning.

5 JUROR NUMBER 242: I -- I didn't know.

6 THE COURT: Okay. But you did come through here
7 right here?

8 JUROR NUMBER 242: Yes.

9 THE COURT: And because you thought you were
10 supposed to come back through here?

11 JUROR NUMBER 242: Yes.

12 THE COURT: And Detective Dugan spoke to you when
13 you came in.

14 You don't know Detective Dugan, do you, or do you
15 know him?

16 JUROR NUMBER 242: No.

17 THE COURT: Okay. And he spoke to you, just
18 greeted you "how are you doing," and you spoke back?

19 JUROR NUMBER 242: I guess so.

20 THE COURT: Is there anything about that contact
21 that would interfere in any way with your ability to give
22 both the State and the defendant Robert T. Hooker and fair
23 and impartial trial in this case?

24 JUROR NUMBER 242: No, sir.

25 THE COURT: Okay. Thank you. We just needed

1 to --

2 JUROR NUMBER 242: Yeah.

3 THE COURT: -- as a precautionary measure ask you
4 that.

5 Please return to the jury room. We will have you
6 back out in just a minute.

7 JUROR NUMBER 242: All right.

8 THE COURT: Thank you.

9 (Whereupon, Juror 242 was taken out of the
10 courtroom)

11 THE COURT: Any questions about that?

12 MS. INZERILLO: No, sir, Your Honor.

13 THE COURT: I think that's first time that I have
14 had a juror come up and go through -- come through the
15 courtroom, but, you know, this is -- this is just the start
16 of the case. I could see where he could be confused.

17 All right, anything else we need to take up before
18 we get started?

19 MS. JOYNER: Yes, sir, Your Honor..

20 Ms. Inzerillo and I listened together to the
21 redactions that I have made over the break. She asked that
22 I enter the originals or the full calls as Court's Exhibits,
23 so I marked them as Court's Exhibit 1 and 2, and we just ask
24 to make them a part of the record.

25 THE COURT: They would be courts exhibits and not

1 to go back to the jury room, but are part of the record.

2 MS. JOYNER: That's the only matter for the State,
3 Your Honor.

4 THE COURT: All right. Are you in agreement with
5 the redactions?

6 MS. INZERILLO: Yes, sir. And I have just spoken
7 to Ms. Joyner about when she actually enters it through the
8 witnesses that the court says it's entered, and just enter
9 the redacted copy. Then that way the Court's Exhibits -- we
10 already had that covered and we didn't have to break them.

11 THE COURT: That's fine. Anything else from
12 either side before we get started?

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

14 MS. INZERILLO: No, Your Honor.

15 THE COURT: What we will do, the first order of
16 business will be we will swear the jury panel, Madam Clerk,
17 and then I'll give them the preliminary instruction, and
18 then we will get started with opening statements.

19 Please bring them in.

20 (The following takes place in the presence of the
21 jury panel)

22 THE COURT: Good afternoon, ladies and gentlemen
23 of the jury panel. I hope you enjoyed your lunch today. We
24 are ready to get started with the trial now.

25 I had your note out indicating that you had

1 selected juror number 82, James Steven Finch, as the
2 foreperson for the jury.

3 You are Mr. Finch, is that correct?

4 JURY FOREMAN: Yes, sir.

5 THE COURT: I will ask you to keep that same seat
6 throughout the trial, if you will.

7 And I would ask the alternate as well. Mr. Baker,
8 if you will please keep your same seat throughout the trial.

9 All the other seats are interchangeable, so it
10 really does not matter where you sit, but we do like to keep
11 the foreperson and the alternate in the same seats
12 throughout the trial.

13 I'm going to ask the clerk, if she will, at this
14 time to please administer the oath to the jury.

15 THE CLERK: Ladies and gentlemen of the jury,
16 please stand and raise your right hand.

17 You shall well and truly try and in true
18 deliverance make between the State of South Carolina and the
19 defendant at the Bar whom you shall have in charge and a
20 true verdict give according to the evidence and the law, so
21 help you God.

22 Please acknowledge by saying I will.

23 (Whereupon the Jury Panel collectively said I
24 will)

25 THE CLERK: Let the record show all affirmed.

1 THE COURT: Thank you. Please be seated.

2 Now, Mr. Foreman, ladies and gentlemen of the jury
3 panel, I'm going to give you what I call a preliminary
4 charge or instruction as to what to expect as we go through
5 this trial to give you some idea how we are going to
6 proceed, and how all these trials really proceed. And
7 hopefully this will make you feel a little more comfortable
8 for these unfamiliar surroundings.

9 The first thing that will happen after I have
10 completed this instruction to you is that an attorney for
11 the State, who is an assistant solicitor, will make an
12 opening statement to you. And then an attorney for the
13 defendant will have the same opportunity to address you in
14 an opening statement.

15 Now, these opening statements by the attorneys are
16 not evidence, but you should pay close attention, because
17 they are going to identify to you what they perceive or say
18 the issues in the case are.

19 After they have made their opening statements to
20 you, then the State will proceed by presenting the testimony
21 and evidence they want you to consider.

22 The reason the State goes first is that the State
23 has the burden of proof in this case. There is no burden of
24 proof upon the defendant to prove his innocence. The burden
25 of proof is upon the State of South Carolina to prove the

1 charges against this defendant by evidence that satisfies
2 you, the jury, beyond a reasonable doubt before you can
3 return a verdict of guilty. If the state fails to meet that
4 burden of proof, then your verdict must be not guilty.

5 After the assistant solicitors have presented to
6 you the evidence they want you to consider on behalf of the
7 State, then the same opportunity will be afforded to the
8 defense. The defendant may, but is not required to, present
9 any testimony or evidence, because the State has the burden
10 of proving the defendant guilty beyond a reasonable doubt.
11 The defendant does not have to prove he is innocent. He is
12 presumed innocent, and that presumption stays with him
13 throughout the trial and may only be removed if the State
14 meets its burden of proving the guilt of the defendant
15 beyond a reasonable doubt.

16 Now, what is evidence in the case? Evidence is
17 the sworn testimony you hear from the witness stand to my
18 right, exhibits that have been admitted into the record for
19 your consideration by me, the presiding judge, and any
20 stipulations of counsel.

21 Now, exhibits may take many forms, such as
22 documents, pictures, videotape, maps, diagrams, and so
23 forth.

24 Stipulations are agreements of fact by the
25 attorneys. If the attorneys enter into a stipulation or

1 agreement of fact, that would be made known to you and you
2 can consider that, along with all the other testimony and
3 evidence. Give it such weight as you deem appropriate when
4 you begin your deliberations.

5 Sworn testimony, exhibits, and stipulations are
6 the only evidence you may consider in your deliberations of
7 the innocence or guilt of the defendant. You may not
8 consider anything you have heard from any other source about
9 this case in making your decision, because that is not
10 evidence.

11 After you have heard all the evidence, then the
12 attorneys for the State and the defendant will once again
13 appear before you and make what we call closing arguments.
14 We call them arguments because the attorneys are allowed to
15 argue their position, will attempt to persuade you as to
16 their view or position as to the facts and evidence.

17 When you have heard final arguments from counsel,
18 I will then charge you, which simply means to instruct you,
19 as to the law that applies to the issues in this case. You
20 will then retire to the jury room to deliberate and reach
21 your verdict.

22 That's how a case is tried in General Sessions
23 Court, whether it be this case or any other case. Some
24 cases take a half a day or a day. Some cases take weeks,
25 but the same format applies in every case.

1 As the trial judge I have three functions to
2 perform during the trial. I am the presiding officer and,
3 therefore, see that the trial is run in an orderly manner.
4 I decide, based on rules of criminal and criminal procedure,
5 whether testimony and exhibits are admissible into evidence
6 for your consideration. And at the conclusion of the trial
7 I instruct you as to the law you must apply to the facts in
8 this case in reaching your verdict.

9 You, ladies and gentlemen, are also judges in this
10 case. You are the judges of the facts. In other words, you
11 determine the truth of the facts in this case.

12 Under our Constitution I am not permitted as the
13 judge of the law to have an opinion about the facts, so I do
14 not get into whether I believe a witness or not. That is
15 not my function. I'm not even permitted to express an
16 opinion, if I had one, as to the facts in this case. So
17 you, the jurors, determine what is the truth of the facts.

18 Now, I do not permit jurors to take notes during
19 the trial, because it is my experience that while writing
20 notes you may fail to observe a witness when testifying. It
21 is important that you pay careful attention to all the
22 testimony and introduction of evidence, since you must judge
23 the credibility or believability of the witnesses and the
24 weight to give all evidence introduced in this case in
25 determining the truth of the facts.

1 Now, during the trial the attorneys may object to
2 the admissibility of certain testimony or other evidence. I
3 will either sustain the objection, which means I agree, and
4 the testimony or evidence may not be made part of the record
5 for your consideration; or, I will overrule the objection,
6 which means as the judge of the law I have determined that
7 it is admissible as part of the record for your
8 consideration. The mere fact that I have admitted it does
9 not mean that you must believe it or disbelieve it. I have
10 simply determined that it is admissible under our rules. It
11 is up to you then to believe it or disbelieve it and to
12 assign such weight to it as you determine to be appropriate.

13 At the conclusion of the trial when we send you to
14 the jury room every exhibit that is admitted into evidence
15 will be sent to the jury room for you to consider and give
16 such weight to it as you determine appropriate.

17 Now, I'll remind you that one of the most
18 important aspects of your duty as a jury lies essentially in
19 the oath that you have just taken, to well and truly try
20 this case and to determine the truth of the facts in this
21 case. That oath, once again, in a very essential way says
22 that you are the sole judges of the facts in this case.

23 Now, the defendant, as I have instructed you at
24 the beginning, is charged with three offenses today. He's
25 charged with burglary first degree, malicious injury to real

1 property, and stalking.

2 To these charges the defendant has entered a plea
3 of not guilty. This not guilty plea then places upon the
4 State of South Carolina the burden of proof in this case.

5 Under our Constitution a person charged with a
6 criminal offense is presumed innocent. The State of South
7 Carolina is required to prove the charges made against the
8 defendant by evidence that satisfies you of his guilt beyond
9 a reasonable doubt.

10 Now, Mr. Foreman, ladies and gentlemen of the
11 jury, whatever your verdict in this case, it must be your
12 unanimous verdict. All twelve jurors must agree on the
13 verdict which the foreperson would be authorized to write on
14 behalf of the jury.

15 Ladies and gentlemen, you are not to discuss this
16 case at any time during the trial until I tell you, and that
17 will not occur until you have received all of the evidence
18 and I have instructed you upon the law. You should not
19 discuss the case among yourselves. You should not discuss
20 it with anyone you might see on a recess from court. You
21 might say "well, what's wrong with our discussing the case
22 as we go along," or, "if we are on a recess and someone
23 finds out I'm on a jury and they want to know something
24 about the case, what's wrong with discussing it and talking
25 to them about the case?" The problem with discussing the

1 case among yourselves or with anyone else is that once you
2 start discussing the case, you start forming opinions. And
3 you wouldn't be fair to both sides of this case if you
4 didn't wait until you have heard all the testimony and
5 evidence and I have instructed you upon the law that applies
6 before you start forming opinions. Until then you should
7 keep an open mind. Wait until you have all the information
8 that you need before you start making a decision in this
9 case.

10 Now, if anyone should deliberately try to discuss
11 the case with you, again, you should not discuss it with
12 them, but leave and report that attempt to me.

13 If there should be any media coverage of this
14 trial, and I do not know of any at the present time, and
15 there may not be any, but if there should be any media
16 coverage of this trial, please do not read, listen to, or
17 watch any media account of this trial until after the trial
18 is over and the verdict is in. Should there be any media
19 coverage of the trial, if someone wanted to save it for you
20 until after the trial is over and the verdict is in, you are
21 welcome to read, listen to, or watch any media account after
22 the trial is over. There is no way we can guarantee the
23 accuracy of any other account of this trial, and you must
24 make your decision solely on the sworn testimony and
25 evidence that comes in during the course of the trial and

1 not from any other source.

2 Now, I'm well aware, too, that a number of people
3 these days get their information over the Internet,
4 including media information and other information over the
5 Internet. I instruct you now to not go on the Internet and
6 try to find out anything about this case, including any
7 possible media conversation, or any other thing about this
8 case. This will be a fairly short case as cases go and
9 that's not going to be a hardship on you. I'm going to ask
10 you not to go on the Internet to try to find out anything
11 about this case or to try to find out any media coverage of
12 this trial or anything else. Again, we can't guarantee the
13 accuracy of any information you might find there.

14 Now, I'm concerned about your comfort and your
15 ability to see and hear the testimony and evidence so you
16 can properly do your job. I will try to take a break about
17 every hour and a half. If you need a break before the time
18 a break is taken, please raise your right hand and let me
19 know and I'll take a break as quickly after that as I can.

20 If you cannot hear or see something you need to
21 hear or see during the course of the trial, I'll try to
22 anticipate that, but some of you are much further away from
23 the witness stand or where the attorneys may be standing
24 than I, so if you cannot hear or see something and I failed
25 to notice that, please do not hesitate to raise your right

1 hand and let me know and I'll make sure that you are able to
2 hear and see so you can properly do your job in this case.

3 If you wish to communicate with the court, other
4 than needing a break or the inability to see and hear,
5 please write the message down on the pad that's provided for
6 you in the jury room, give that to the bailiff, the bailiff
7 will bring it to me, and I'll either correspond in like
8 manner or I'll bring you back out into the courtroom and
9 respond, as the case need be. That's how we should
10 communicate, you now having been sworn as jurors in this
11 case.

12 I want to explain the role of the alternate. Mr
13 Baker, you are the alternate. Your role is the same as the
14 first twelve jurors chosen, and that's to listen carefully
15 to the testimony and evidence so you will be in a position
16 to deliberate and help reach a verdict in this case, because
17 if for any reason an emergency should develop with regard to
18 one of the first twelve jurors chosen, you would
19 automatically -- and we had to excuse that juror, you would
20 automatically fill in for that missing juror. You couldn't
21 do that if you hadn't listened carefully to the testimony
22 and evidence and were in a position to do that.

23 All right, this concludes my opening statement to
24 you. I appreciate your kind attention. As I do that now, I
25 ask you to please give your kind attention to the attorneys

1 as they address you in opening statement.

2 MS. JOYNER: Your Honor, may it please the court?

3 THE COURT: Solicitor.

4 MS. JOYNER: Ladies and gentlemen, during the
5 course of this trial you are going to meet a woman named
6 Shanna Graham. Ms. Graham lived, along with a four year old
7 son, at in Rock Hill.

8 In October of last year Ms. Graham's relationship
9 with the defendant, Robert Hooker, it began to sour. He
10 became controlling. He began to call her incessantly. He
11 began coming to the house unexpected, and even letting
12 himself into her house without permission. And by December
13 she simply couldn't take it any more. Around the first of
14 December she ended the relationship with Mr. Hooker. She
15 said to him "I don't want to be with you any more."

16 Mr. Hooker did not take the news of this breakup
17 very well. In fact, at times he didn't seem to accept the
18 breakup at all. He continued to call incessantly over and
19 over again, leaving messages, sending text messages. He
20 continued to come by uninvited. He continued to let himself
21 in her house. She couldn't figure out how he was doing it,
22 but she would come home and there he would be, inside her
23 apartment, and she would be left to coax him into leaving.
24 Sometimes she would call his friends. Sometimes she would
25 call his family. Sometimes she would text his mother

1 "please help me. Please come get him." And sometimes she
2 would call her own family to come over.

3 And finally she figured out -- she figured out
4 that he had learned how to jimmy that sliding glass door in
5 the back of her house, so she had a friend come over and put
6 some sheet rock screws through it so that nobody else could
7 open it from the outside any more. And she called the Rock
8 Hill Police Department. She had called them before, but she
9 called them again, and she said "please place him on
10 trespass notice."

11 A trespass notice is something that the police
12 officers do. It's a warning they give to a person, and this
13 warning says "if you come back, you can be arrested for the
14 offense of trespassing." She requested that assistance from
15 Rock Hill and she received it.

16 At about one o'clock in the morning on January
17 29th Officer Slawson of the Rock Hill Police Department came
18 out in response to Ms. Graham's call. He searched the area
19 and he found Robert Hooker hiding in a creek bed behind her
20 house. He gave him that trespass warning and he said "don't
21 come back here." And then instead of arresting him, he did
22 something nice and he drove him to a friend's house.

23 And that should have been it, right? Ms. Graham
24 is going to tell you that it wasn't. He continued. He
25 continued on the calling and coming by. He couldn't get in

1 any more, but he still came by. And, in fact, that marked
2 the beginning of a change where things actually became
3 worse. His messages became angrier. He became angrier.

4 One night Ms. Graham came home and he was sitting
5 on her front stoop, and so she called a friend to come help
6 her. She didn't call the police. She called a friend
7 "please come across the street and get him to leave," and
8 that friend came over, and the defendant broke his nose. He
9 head butted him and broke his nose and he ran away.

10 Then Ms. Graham went out of town and her phone
11 began to explode again, like it had so many times before,
12 calls and text messages. She just wanted them to stop. And
13 so she done what she did -- or she did what she had done
14 before sometimes, just to buy some silence in life and she
15 responded, and this response was "I'm out of town." What
16 response did she receive? She received messages. You are
17 going to hear two of those messages and they say things like
18 "when you come home I will be waiting. I'm going to kill
19 you. You are dead."

20 On February 27th, when she returned, she called
21 the police and she made a report again, and she played some
22 of these phone calls for Officer Wells, and you are going to
23 hear from her. She didn't ask him to be arrested, but she
24 made the report for documentation purposes.

25 And, again, on February 28th, just a day or two

1 after he had left these threatening messages he again showed
2 up at her house. And she thought maybe this will work, "I'm
3 going to tell him. I'm going to tell him that I have moved
4 on. I'm going to tell him that I'm seeing somebody else."

5 And, ladies and gentlemen, that didn't work
6 either, because that night when Mr. Graham came home she
7 found the defendant in her house again. And this time he
8 had not jimmed a sliding glass door. He had gone out her
9 back porch, enters through a closet. He had hoisted himself
10 up onto the rafters. He had taken apparently a screwdriver
11 and he punched a hole from the outside of her house inside
12 her house. He had crawled in through the hole he made
13 outside the wall. And, ladies and gentlemen, that's what
14 brings you here today.

15 Mr. Hooker is charged first with malicious injury
16 to property, and that is that he willfully and maliciously,
17 the first thing; second is to cut, mutilate, and deface, or
18 otherwise injure a house, outside fence, fixture, or other
19 trespass upon real property of another. Real property is
20 basically a house or a structure.

21 He's charged with stalking. Stalking is a pattern
22 of words or conduct, number one; that's serves no legitimate
23 purpose number two;

24 Three, they are intended to cause the targeted
25 person to fear, among other things, death, assault, bodily

1 injury, or malicious injury to property;

2 Or four, they actually caused that person to fear
3 those things.

4 And finally he's charged with burglary. Burglary,
5 you enter the dwelling of another person, without consent,
6 with the intent to commit a crime inside, and you enter or
7 remain in the nighttime.

8 Ladies and gentlemen, in this case you are not
9 just going to hear from Ms. Graham, you are going to hear
10 from Officer Slawson of the Rock Hill Police Department,
11 Officer Wells, Officer Felmet, Sergeant Culbreath, Detective
12 Dugan. You are going to hear from the victim's own family,
13 and some of her friends, perhaps, about the events of
14 February 28th, and all the events that occurred prior to it.

15 And after you have heard that evidence I'm going
16 to stand back before you and I'm going to ask you to reach a
17 verdict that speaks the truth and find the defendant guilty.

18 MS. INZERILLO: May it please the court, Your
19 Honor?

20 THE COURT: Counsel.

21 MS. INZERILLO: Ladies and gentlemen, you are
22 going to hear evidence in this case that Mr. Hooker was
23 found in Ms. Graham's house. You are going to hear that
24 when she got home on February 28th he was inside her house.

25 You are also going to hear that he was inside her

1 house doing his laundry with the oven on heating up the
2 house.

3 You are not going to hear any other evidence of
4 any other damage done to the house outside of any damage
5 that he allegedly did to get in. You are not going to hear
6 of any other testimony that he tore up anything in the
7 house.

8 And I would tell you this at the beginning,
9 because it's important to remember as you hear the evidence
10 in this case, that the simple fact that Mr. Hooker was
11 inside Ms. Graham's house is not burglary. The State just
12 reviewed the elements of burglary with you, and it's not
13 enough that Mr. Hooker was just in her house.

14 So as you listen to the testimony in this case, I
15 ask you to consider the context of him being in her house.
16 Consider was he there without consent and was he there in
17 order to commit a crime while he's inside the house?

18 Another charge that you will hear evidence on is
19 stalking. The solicitor also went through the elements of
20 stalking with you, and you heard that two parts of the
21 stalking statute requires fear. Fear.

22 You are going to hear testimony that Ms. Graham
23 didn't always call the police. Even after people would tell
24 her to call the police, she still didn't call the police.

25 And I ask you during all of the testimony - from

1 her, from the officers, or whoever else takes the stand
2 during this case - to ask yourself is there fear, because
3 again, ladies and gentlemen, general annoyance is not
4 stalking.

5 The State has to meet every single element of
6 every single charge against Mr. Hooker beyond a reasonable
7 doubt. General annoyance is not enough. Simply being in
8 the house is not enough.

9 There are other elements in the charges against
10 Mr. Hooker, and you will have essentially a front row seat
11 to all the testimony that would be taken during the course
12 of this case. I ask you to consider this, consider the
13 elements when you look into the evidence. Thank you.

14 THE COURT: The State will call its first witness,
15 please.

16 MS. JOYNER: Thank you, Your Honor.

17 The State calls Shanna Graham.

18 SHANNA GRAHAM, having been first duly sworn,
19 testified as follows:

20 DIRECT EXAMINATION BY MS. JOYNER:

21 Q. Good afternoon, Ms. Graham.

22 Can you please state your full name for the record?

23 A. My name is Shanna Nicole Graham.

24 Q. And it's very important, Ms. Graham, that you speak up
25 loud enough for the jury who is as far as away as I am. I'm

1 going to place myself next to them.

2 Can you state your name again for the record?

3 A. Shanna Nicole Graham.

4 Q. Ms. Graham, what is your address?

5 A.

6 Q. And how long have you lived at that address?

7 A. For a little over two years.

8 Q. And do you own that residence or do you rent that
9 residence?

10 A. I rent it.

11 Q. Now, does anybody else live with you at that address?

12 A. My four year old son lives with me.

13 Q. What's his name?

14 A. Gabriel P.

15 Q. Does anybody else currently live with you at that
16 residence?

17 A. No, ma'am.

18 Q. Has anybody else ever lived with you, other than Gabe,
19 at that residence?

20 A. No, ma'am.

21 Q. Now, do you know the defendant Robert Hooker?

22 A. I do.

23 Q. And how do you know him?

24 A. We dated.

25 Q. And how long did you date?

1 A. We started dating in December -- or July of 2009, and
2 we ended it in December of last year.

3 Q. So December of 2010?

4 A. Yes.

5 Q. Okay. I want to talk with you a little bit about
6 beginning in October of 2010. Was there a change in your
7 relationship?

8 A. There was. He became more violent, aggressive,
9 controlling.

10 Q. Now, I want to ask you just what you mean by each of
11 those things. When you say he became more controlling, what
12 exactly do you mean?

13 A. Anytime I wanted to go anywhere he questioned it. He
14 accused me of seeing someone else. Just always -- I was
15 always doing something wrong.

16 Q. You said he would accuse you of being with somebody
17 else?

18 A. Other men.

19 Q. Other men, okay.

20 Did you two attempt to work your problems out?

21 A. We -- I mean, we did. I mean, we had a rocky
22 relationship anyway, but it just -- he became more violent
23 in the house.

24 Q. And what do you mean by that?

25 A. He put holes in my door, in my walls. He would throw

1 beers. He would just -- he would tear the house up.

2 Q. During that time period while you were still together,
3 but when you were experiencing your rocky time, did he ever
4 come over uninvited?

5 A. He did.

6 Q. How often would that be?

7 A. In the beginning, I mean, it was -- it was frequent. I
8 mean, every week, usually.

9 Q. Now, at some point you decided to end the relationship.
10 Do you remember what date exactly you ended the
11 relationship?

12 A. Not the exact date, but it was in December.

13 Q. Well, do you know if it was close to the beginning of
14 December, or the middle of December?

15 A. Around the beginning.

16 Q. And from your perspective, why did the relationship
17 end?

18 A. Because he is violent and aggressive and I have a four
19 year old.

20 Q. Okay. And from your perspective, how did he appear to
21 handle the news that you were ending the relationship?

22 A. He did not handle it well, because he -- he called me
23 all the time, and would show up. And he would start to beg
24 or plead. And then if I didn't respond the way he wanted,
25 he would get mad or violent.

1 Q. Okay. You said he would start to beg or plead. Did he
2 do that by you accepting the phone call, or would that be by
3 message, or text, or how would --

4 A. He would leave voicemails if I didn't answer and he
5 would text me. And if I would text back, I would text back
6 to get him to leave me alone.

7 Q. What type of things would you text back to him?

8 A. I would tell him I'm doing something and hoping that he
9 would -- because usually if I told him I was doing
10 something, I would get a little bit of time of peace, so he
11 would leave me alone.

12 Q. Okay. How long would that peace last?

13 A. Two hours. However long I guess he thought that that
14 would take to do, whatever I told him.

15 Q. Now, when he said he would call, how frequently were
16 the phone calls?

17 A. Fifty calls thirty minutes, an hour.

18 Q. Would that be every day, or would it vary by day?

19 A. Well, there were a lot of calls each day, but I guess
20 they varied, depending on his mood, what was going on.

21 Q. Had the frequency changed from say October to December,
22 when you were still together, to after December when you
23 broke up? Were the frequency of calls more or less?

24 A. They increased as this went on.

25 Q. Would he leave a message every time he called?

1 A. Not every time.

2 Q. Can you even guesstimate how many times, like per calls
3 how many messages that you would receive?

4 A. If he called twenty times, he might leave five or six.

5 Q. And, generally, the beginning of your breakup, right
6 around December, that early part, what types of messages
7 would he leave, just as example for the jury?

8 A. Well, like I said, he would plead with me first. And
9 then if I didn't respond, he would get mad.

10 Q. Okay. And by pleading with you, what type of things
11 would he say in the voicemails?

12 A. Just to please answer his phone call, to talk to him,
13 tell him what -- you know, tell him what's going on. He
14 just pleaded for me to answer.

15 Q. And when you say he became angry, how would those
16 messages be different than the pleading messages?

17 A. Well, at this point he's accusing me, threatening me,
18 threatening to come by my house if I don't pick up the
19 phone, things like that.

20 Q. And when you say threatening you, was it just threats
21 to come by the house at that stage, or were there other
22 threats?

23 A. No, he's threatened me, my son, a neighbor, his
24 daughter.

25 Q. Now, when he would come by -- you testified a little

1 bit ago that he would come by uninvited, how often would he
2 come to your house uninvited?

3 A. Well -- like in December?

4 Q. Yeah.

5 A. Or --

6 Q. Let's start with December, the month of December.

7 A. Okay. Well, it was at least twice a week.

8 Q. And would you be home those times, or were you -- were
9 you home when he would come by?

10 A. Sometimes I was home. Sometimes I wasn't.

11 Q. If you weren't home what would happen?

12 A. He could get in through the sliding glass door.

13 Q. Okay. How often do you think total -- through the
14 whole time, let's say from October, when your relationship
15 became rocky, through the time that the police arrested him
16 inside your house in February, how many times could you
17 estimate that he was inside your house when you did not give
18 him permission to be there?

19 A. Twenty to thirty times.

20 Q. Okay. And you mentioned a moment ago the sliding glass
21 door. When you would find him inside the apartment, were
22 you aware at the time of how he was getting in?

23 A. I wasn't aware until I saw him actually trying to do
24 it.

25 Q. And do you recall when it was that you saw him trying

1 to do it?

2 A. I don't remember the date that I saw it.

3 Q. After you saw him trying to jimmy open the glass doors,
4 what did you do?

5 A. Well, I stood by the door so he couldn't get in.

6 Q. You did what?

7 A. I stood by the door so he couldn't get in.

8 Q. Okay. But after that did you do anything to prevent
9 him from getting in?

10 A. Oh, yes, my neighbor came over and bolted the door.

11 Q. And after that was he able to gain entry through that
12 sliding glass door?

13 A. No.

14 Q. Okay. When you would come home and you would find him
15 in your house, what would you -- I mean, what would you do?

16 A. Well, I would try to get him to leave. I would offer
17 to take him home, and then I would either call a friend
18 that -- he had a friend that lived near me, or his mother,
19 because I wasn't trying to have him arrested or get him in
20 trouble. I just wanted him to leave me alone.

21 Q. When you would reach out to his friends and family
22 members, would they help you?

23 A. Not usually, no.

24 Q. Did you ever reach out to your own family members?

25 A. Yes.

1 Q. Who of your family members came over at different times
2 to help you?

3 A. My brother, my sister, my dad, my stepmom.

4 Q. And your brother's name is?

5 A. Brent Graham.

6 Q. Your sister's name?

7 A. Amanda Graham.

8 Q. And your father's name?

9 A. Ray Graham.

10 Q. And your stepmother?

11 A. Alice Broome.

12 Q. Okay. And when they came over the different times,
13 were they sometimes successful in helping you get him out of
14 the house?

15 A. Yes.

16 Q. Now, when you would find him inside your house, what
17 type of state would the defendant be in?

18 A. Well, he was usually drunk.

19 Q. Okay.

20 A. And he would start -- he would try to plead first, like
21 trying to just talk to me. But if I didn't respond the way
22 he wanted, he would get violent.

23 Q. So that's when he was inside your house?

24 A. Yes.

25 Q. So he would start by pleading?

1 A. Uh-huh.

2 Q. What kind of things would he say?

3 A. Just trying to get me to change my mind to be with him,
4 to let him stay, to work on it.

5 Q. And when you say that he got violent, what do you mean?

6 A. He would cuss me and he destroyed my house.

7 Q. Okay. And what are you referring to when you say he
8 destroyed your house?

9 A. I mean, he -- well, he made multiple holes in the
10 walls. He destroyed like what-nots. Anything that -- he
11 just knocked things off and break them.

12 Q. Now, from the time that your neighbor helped you bolt
13 the door to the time that he was arrested on the 28th, did
14 he come inside your house again? Was he able to get back
15 inside the house?

16 A. No.

17 Q. Did he continue to come to your house uninvited?

18 A. Yes.

19 Q. Now, you have been talking a lot about your neighbor,
20 so I want to go ahead and ask you. Just tell the jury what
21 is the name of the neighbor that you have been referring to?

22 A. David Bruton.

23 Q. And Mr. Bruton -- at the time that you and Mr.
24 Hooker -- the time that you broke up with the defendant,
25 what was the nature of your relationship with David Bruton?

1 A. Me and David were friends. He had a four year old
2 daughter and they -- sometimes our kids would play and we
3 would talk about kid stuff.

4 Q. Did your relationship ever change to somewhat of a
5 romantic relationship?

6 A. Yes.

7 Q. And when was that?

8 A. After the breakup.

9 Q. Okay.

10 A. Like the beginning of January.

11 Q. Now, did you ever in the course of -- since the time
12 that you broke up to the time the defendant was arrested,
13 did you ever tell him that you were dating Mr. Bruton?

14 A. I didn't tell him until the day of the 28th, that
15 morning.

16 Q. Okay. And we will get to that in a minute, but did you
17 tell him specifically that you were dating Mr. Bruton?

18 A. No.

19 Q. Did you tell --

20 A. I told him I was dating someone, hoping that that would
21 get him to go away.

22 Q. But prior to that, the day of the 28th, did you ever --
23 did Mr. Hooker, the defendant, ever making accusations
24 regarding Mr. Bruton?

25 A. Yes.

1 Q. And what were those accusations?

2 A. He thought we were seeing each other before December.

3 Q. Now, I ask you specifically about one particular time
4 that -- or incident that you witnessed in February between
5 the defendant and David Bruton.

6 Did you ever witness any incident of violence between
7 the defendant and Mr. Bruton?

8 A. I did.

9 Q. Tell the jury how that came to happen.

10 A. Well, I came home late one night and he was standing in
11 front of my door, so I called David hoping that he could get
12 me -- help me get him to leave. So David came out and tried
13 to talk to him. And they talked for a minute and Robert
14 walked off, and we assumed that he was leaving, so David
15 kind of was in the middle of the parking lot with his -- I
16 guess his back was turned. And then I just heard footsteps,
17 and he come running back and they got into an altercation
18 right there, but I'm still in my car at this point. I'm
19 scared to get out of my car.

20 Q. But you were -- were you able to see that there was an
21 altercation?

22 A. Yes, I could turn around and see through the car
23 windows that they were fighting, but I couldn't tell who hit
24 who or what was going on.

25 Q. And ultimately after this was over did you observe any

1 injuries to David Bruton?

2 A. I did.

3 Q. And what -- to the best that you could tell, what had
4 happened to him?

5 A. It looked like his nose was broke. He was bleeding
6 from his nose.

7 Q. And was that the month of February?

8 A. Yes.

9 Q. Now, did you go out of town in the month of February?

10 A. I did.

11 Q. And do you recall what date you were gone in February?

12 A. I came back on the 27th, so at least the 25th through
13 the 27th. It was just a two or three day trip.

14 Q. While you were gone, did you receive any phone calls or
15 messages from the defendant?

16 A. I did.

17 Q. How many?

18 A. Enough to cut my phone off. I mean, multiple.
19 Hundreds of calls.

20 Q. Okay.

21 A. I cut my phone off.

22 Q. Did you in any way respond to any of these phone calls,
23 texts, or messages?

24 A. I -- I can't recall every time I responded. I
25 responded to get him to leave me alone. I told him I was

1 out of town, hoping that that would -- because he was at the
2 time pleading with me to help him. He didn't have nowhere
3 to go and I responded "I'm out of town," hoping that he
4 would take that and know that I can't help him, you know.
5 "I can't do anything, so please stop bothering me."

6 Q. As a result of that text message, did you receive any
7 messages from the defendant?

8 A. I did.

9 Q. And what were the nature of those messages that you
10 received?

11 A. There was one message that was horrible. I could
12 barely listen to it, it scared me so bad.

13 Q. Okay. Did you contact the police as a result?

14 A. I did. I contacted the police when I got home that
15 night.

16 Q. And did you allow the police to listen to some of the
17 messages?

18 A. I did.

19 Q. Before we get too much into that of what happened on
20 the 28th, prior to that February 27th when you reported the
21 phone calls, had you made any other reports to the police?

22 A. I did.

23 Q. Do you recall the dates of those?

24 A. I know I did trespassing on him. I don't know the
25 exact dates. I just know that weekend very well of the

1 28th.

2 Q. But you did the trespass notice?

3 A. I did.

4 Q. Did you make any other reports?

5 A. I called the police several times.

6 Q. It might be a little hard for the jury to understand,
7 so if you could try to explain this to them.

8 If the defendant was coming by and calling so
9 frequently, why didn't you call the police more than you
10 did?

11 A. I didn't call them more because I felt sorry for him.
12 He doesn't -- he didn't have any money. He lived with his
13 mom. I felt sorry for him. I tried to -- I tried
14 everything I could think of to get this man to leave me
15 alone. Everything. I didn't want to have him arrested. I
16 didn't want anything bad to come from him. I just wanted
17 him to go away, and I thought he just needed some time to
18 get that through his head. So, no, I didn't call every
19 time.

20 I would try to get -- I tried mainly to get his mom to
21 help me. And -- I mean, I know that's hard to understand,
22 but I just -- I -- I didn't want anything bad to happen to
23 him. I just wanted to be left alone. And I was tired of
24 being scared to come home with me and my son.

25 Q. All right. Let's talk for a minute about how you were

1 feeling throughout this.

2 Starting in October, when the relationship sort of
3 started to sour, were you afraid of the defendant at that
4 time?

5 A. No.

6 Q. Did you at some point develop a fear?

7 A. Yes.

8 Q. And what made you develop the fear of the defendant?

9 A. The way he would act and behave. And he would threaten
10 to kill me, and he just got more violent. And when he was
11 drinking I never, I didn't know what he would do.

12 Q. Now, I want to kind of recap with the phone calls.

13 Were there ever any -- from the time that you -- from
14 October -- from October until you broke up, how frequent
15 were the phone calls?

16 A. The phone calls got worse as the time progressed, and
17 by February they were very violent in nature.

18 Q. Okay.

19 A. And it was, you know -- I mean, fifty times in thirty
20 minutes. I mean, that's what I'm talking about. I mean, he
21 would -- my phone would explode, back to back to back.

22 Q. Was it the -- are the messages that made you afraid, or
23 the number of calls that made you afraid?

24 A. Well, the calls made me afraid, too, that he would call
25 me that much, but it was mainly the messages and him

1 threatening to kill me and my son.

2 Q. When he would come inside the house without permission
3 and you would find him there, how would you feel?

4 A. I was scared. I couldn't even come to my own house and
5 he was there.

6 Q. When you witnessed him assault David Bruton, how did
7 you feel?

8 A. I felt awful, that David was trying to help me and he
9 got his nose broke. He has a daughter, too, and I -- I
10 didn't want to involve him.

11 Q. Now, at some point after the defendant was arrested,
12 Mr. Bruton -- did Mr. Bruton help you make copies of some of
13 the phone calls?

14 A. He did.

15 Q. Ms. Graham, do you need a tissue?

16 A. Yes.

17 Q. Do you need water?

18 A. Please. Thank you.

19 Q. The calls that you made, or that Mr. Bruton helped you
20 make from your phone, have you had a chance to come to the
21 solicitor's office and listen to the recordings --

22 A. I did.

23 Q. -- of those calls?

24 Okay, and I'm taking these out of their sleeves.

25 Now, I'm just going to hand them to you individually.

1 I'm handing you State's Exhibit 1, State's Exhibit -- and
2 you can put them on the rail as you go. State's Exhibit 2,
3 State's Exhibit 3, State's Exhibit 4, State's Exhibit 5,
4 state Exhibit 6, and State's Exhibit 7.

5 Now, I have handed those to you individually, but as a
6 group do you recognize those exhibits?

7 A. I do.

8 Q. And how are you able to recognize those exhibits?

9 A. I signed each one that I listened to.

10 Q. Okay. And are those, in fact, accurate recordings?

11 A. They are.

12 Q. Of do they -- are of the messages the defendant left on
13 your phone?

14 A. Yes.

15 Q. Do they truthfully and accurately reflect the messages
16 that you received?

17 A. Yes.

18 Q. Okay. And were they received during the time period
19 from your breakup in December to February 27th?

20 A. Yes.

21 MS. JOYNER: Your Honor, we would move State's
22 Exhibits 1 through 7 into evidence and ask to publish them
23 to the jury at this time.

24 MS. INZERILLO: No objection.

25 THE COURT: Admitted without objection.

1 You may publish.

2 BY MS. JOYNER:

3 Q. And Ms. Graham, I'm going to start with State's Exhibit
4 No. 3.

5 (Whereupon, State's Exhibit No. 3 was played to
6 the jury panel)

7 BY MS. JOYNER:

8 Q. State's Exhibit 3, can you tell when that phone call
9 was received by you?

10 A. I don't know the date of that phone call.

11 Q. Okay. Would that be a phone call that you -- you
12 previously testified that you received sometime after the
13 breakup?

14 A. It was after the breakup.

15 Q. And was that indicative of a particular type of message
16 that you would receive from the defendant?

17 A. Yes, when he was pleading.

18 Q. Pleading?

19 A. Yes.

20 Q. The next exhibit I want to play for you is State's
21 Exhibit 4.

22 (Whereupon, State's Exhibit No. 4 was played to
23 the jury panel)

24 BY MS. JOYNER:

25 Q. Now, to the best that you can understand, it's

1 difficult to understand, what did the defendant appear to be
2 saying to you?

3 A. He was trying to tell me that he traced my phone
4 somehow.

5 Q. Do you know when this particular message was received
6 by you?

7 A. Again, I don't know the specific date, but it was after
8 we had broken up.

9 Q. And is this the type of message that would be
10 indicative of something that you would have received early
11 in the breakup, or later in the breakup?

12 A. That's not really a violent one, so it would -- I guess
13 it would be early, as opposed to later.

14 Q. The next call is State's Exhibit 7.

15 (Whereupon, State's Exhibit NO. 7 was played to
16 the jury panel)

17 BY MS. JOYNER:

18 Q. Now, Ms. Graham, do you know when this call was made
19 exactly?

20 A. I don't know the exact date.

21 Q. Do you know what incident that he's referring to was
22 this video of your son?

23 A. Well, when I -- I worked third shift and my stepmom
24 keeps him. And at that time I guess he was outside my
25 residence and my stepmom just brought my son home. I wasn't

1 there. My car was there, but I was with my sister. And he
2 was trying to make some -- trying to say that I'm not
3 answering -- because my son I guess had come up to the door
4 and knocked and he was trying to say that was being
5 neglectful, but I wasn't home.

6 Q. The next call I'm going to play for you is State's
7 Exhibit 5.

8 (Whereupon, State's Exhibit No. 5 was played to
9 the jury panel)

10 BY MS. JOYNER:

11 Q. Ms. Graham, do you know when that phone call that's
12 State Exhibit 5 was made?

13 A. I don't know the exact date.

14 Q. Can you guess, based on the tone?

15 A. I think it would be in February.

16 Q. And you think it's in February, based off of what?

17 A. Based off the fact that he's threatening to take my son
18 and he wished I would die and --

19 Q. Was that the nature of the phone calls that you were
20 receiving at that time?

21 A. Yes, in February.

22 Q. The next phone call I'm going to play is State's
23 Exhibit 6.

24 (Whereupon, State's Exhibit No. 6 was played to
25 the jury panel)

1 BY MS. JOYNER:

2 Q. Can you tell Ms. Graham when that call was made?

3 A. It would have to be in February, because he mentioned
4 the nose.

5 Q. Because he mentioned what?

6 A. Because he mentioned David's nose.

7 Q. And that incident occurred in February?

8 A. Yes.

9 Q. And just to be clear, at that point in time did the
10 defendant have actual knowledge that you were seeing David
11 Bruton?

12 A. No.

13 Q. When -- before I play the final few phone calls, just
14 by way of background, then the time that you dated the
15 defendant, did you have an occasion to be around him when he
16 was sober and when he was intoxicated?

17 A. I did.

18 Q. Could you form an opinion based off of his voice and
19 tell when you appears to be intoxicated or sober?

20 A. I could.

21 Q. The majority of the messages that you received from the
22 defendant, do they appear to be sober or intoxicated?

23 A. Intoxicated.

24 Q. Did you -- when he would come to your house uninvited
25 and became violent and throw things, would he be sober or

1 intoxicated?

2 A.. Usually he was intoxicated.

3 Q. And when he would enter your house without permission,
4 would he be sober or intoxicated?

5 A. Intoxicated.

6 Q. The next tape I'm going to play for the jury is State's
7 Exhibit 1.

8 (Whereupon, State's Exhibit No. 1 was played to
9 the jury panel)

10 BY MS. JOYNER:

11 Q. Ms. Graham, are you able to tell from the tone or the
12 content of this call when you received this messages?

13 A. In February.

14 Q. Do you know -- can you tell when in February that you
15 received it?

16 A. It would be, you know, out of town -- when I was out of
17 town, because he mentioned it.

18 Q. Okay. So that would be the time that you returned on
19 the 27th?

20 A. Yes.

21 Q. At that point has he already broken David Bruton's
22 nose?

23 A. Yes.

24 Q. Now, before I play the final call for you, how many --
25 or the phone calls I'm playing for the court, are these the

1 only messages that you ever received from the defendant?

2 A. No.

3 Q. Can you guesstimate how many messages that you received
4 from the defendant?

5 A. Over the three month period?

6 Q. Yes.

7 A. Hundreds.

8 Q. And from the times -- October through the time that you
9 broke up, can you estimate how many phone calls you received
10 from the defendant?

11 A. They were just worse after December. I mean --

12 Q. Okay. And how did you select -- or do you know how Mr.
13 Bruton selected which phone calls he recorded?

14 MS. INZERILLO: Objection to the speculation.

15 THE COURT: Sustained, unless she knows of her own
16 knowledge.

17 BY MS. JOYNER:

18 Q. Do you know how the phone calls were selected?

19 A. I listened to them and we just recorded them.

20 Q. I'm sorry, say that again.

21 A. We just recorded what I thought I needed to record.

22 Q. A sampling of the --

23 A. Yes, just a sampling of his personality.

24 Q. The last phone call I'm going to play is State's
25 Exhibit 2.

1 (Off the record)

2 (Back on the record)

3 MS. JOYNER: Your Honor, if we could just come
4 back to this in just a moment. I'm going to ask our I.T.
5 guy to come in.

6 BY MS. JOYNER:

7 Q. And while we are resolving our technical problems, I'm
8 just going to go ahead and go to the morning of February
9 28th.

10 A. Okay.

11 Q. Is that the day after you returned from out of town?

12 A. It is.

13 Q. If you could tell the jury a little bit about what
14 happened during the day on February 28th.

15 A. I came down the stairs and I seen my son like peeking
16 through the blinds. And when I went down, Robert was behind
17 the glass door and he had a toy and he was trying to
18 manipulate Gabe to open the door.

19 Q. That was the sliding glass door?

20 A. It is, in the back.

21 Q. Do you remember what time of day this was?

22 A. Around 10:30, 11:00 --

23 Q. Okay.

24 A. -- in the morning.

25 Q. And what was your response about his request to give

1 Gabe his toy?

2 A. I told him I didn't want him to have the toy, that he
3 didn't need it.

4 Q. And did you --

5 A. Through the door. I never opened the door.

6 Q. And what did he say in response?

7 A. He was just begging and pleading with me to try to talk
8 to him, and he was trying to talk to Gabe, but he was using
9 the toy to talk to Gabe.

10 Q. Did you ever let him give Gabe the toy?

11 A. No, he walked around to the front and sat it there at
12 the front door and came back to the back door.

13 Q. Did you ever open the front door to get the toy?

14 A. I got the toy for Gabe, because he had seen it. At
15 this point he wouldn't hush, so I did open it and give him
16 the toy.

17 Q. Did you interact with the defendant at all as to what's
18 been going on?

19 A. Through the door I was trying to talk to him and get
20 him to leave.

21 Q. And what type of things were you saying to him?

22 A. I just was pleading with him to go, that it was over, I
23 didn't know what else I could say to him. I had made my
24 decision and he just wouldn't go.

25 Q. Did you attempt to contact anybody else?

1 A. I did. I was texting his mother throughout this. I
2 told her that he was there pleading through the door to "let
3 me in." Could she please come and get him. And, of course,
4 she told me no, but she did tell me to call the police.

5 Q. Did you call the police?

6 A. I didn't.

7 Q. Why didn't you call the police?

8 A. Because I was trying to convince him to just leave on
9 his own accord and I knew he couldn't get in, so --

10 Q. At the time of the morning was he sober or intoxicated?

11 A. He was sober at this point.

12 Q. Are you afraid of him when he's sober?

13 A. No.

14 Q. Eventually did the defendant leave?

15 A. He did.

16 Q. And did you --

17 A. He knew my plans. Like he knew -- I told him I was
18 telling him that Gabe was sick, you know, I didn't have time
19 to deal with this. I had to take him to the doctor, and I
20 had a few errands to run, and I had to pick up some stuff
21 for Gabe, because he was sick.

22 Q. Did he leave before you left, as far as you knew?

23 A. Yes.

24 Q. What time of the day or night did you return back to
25 your house?

1 A. It was -- it was dark, so it had to be around 9:00 or
2 9:30, maybe.

3 Q. Had anything happened just prior to the time that you
4 returned to your house that caused you some concern?

5 A. He had texted me earlier saying that I had a new
6 comforter on my bed.

7 Q. And did you respond to that text?

8 A. I said "are you in my house?" And he says he was, "but
9 I'm not now."

10 Q. Did you take him at his word on that?

11 A. Yeah, I thought that -- I thought somehow that he had
12 gotten -- yeah, I mean, because that made me uneasy that he
13 knew I had a new comforter.

14 Q. Do you recall what time that you went home? You said
15 it was 9:00, about 9:30?

16 A. Yeah, around that time.

17 Q. And when you got to the house, did you have Gabe with
18 you?

19 A. I did. Gabe had fallen asleep in the car, so I was
20 going to bring in the groceries and wait to bring him in.
21 And when I brought -- when I came in the door, I knew
22 something was wrong, because I could hear a radio, some kind
23 of music playing, and the light was on, and I knew I hadn't
24 left anything on.

25 Q. Did you encounter anybody in the apartment?

1 A. I walked through the living room and into the kitchen
2 and he was in there in his boxers.

3 Q. Could you tell what he was doing?

4 A. He had the stove on, and, you know, the dryer was
5 going. And I asked him, I said, "what are you doing in my
6 house?" And he says, "this is my house. I live here."

7 Q. Did he ever live there?

8 A. No.

9 Q. What was your response of what he said "I live here?"

10 A. I said "get out of my house."

11 Q. What did he say?

12 A. He just looked at me really crazy and like started to
13 come around the bar and --

14 Q. What were you thinking when he was coming around the
15 bar?

16 A. I was scared to death and I ran. I ran out the door.

17 Q. Where did you go?

18 A. I got in my car, and he followed and just slammed his
19 hands down on my hood, and I'm just backing up. I didn't
20 even care. I mean, I'm just backing up.

21 Q. Did you call the police?

22 A. I went to -- because I live near K-Mart, so it's like a
23 minute up the road. I called my dad crying to help me. My
24 dad --

25 Q. Did you call the police?

1 A. Once I got back to the apartment --

2 Q. Okay.

3 A. -- I called.

4 Q. Why didn't you call the police right away?

5 A. I -- I don't know.

6 Q. Did your dad meet you at -- did your dad come to you?

7 A. Yes, he came to my -- he came to K-Mart and then
8 followed me back to my apartment.

9 Q. And did he have anybody else with him?

10 A. My stepmom.

11 Q. And what's her name?

12 A. Alice Broome.

13 Q. Did they go into the apartment with you?

14 A. They did.

15 Q. And what -- what did y'all see when you got to the
16 apartment?

17 A. Robert was there in his boxers. Just had his music
18 playing. He had beer out. And my dad told him to get out
19 of my apartment. They were trying to get him to get out.

20 And then I walked -- I didn't know how he had gotten
21 in, so I walked upstairs. And as I was going up the stairs
22 I could see a huge hole in my wall. And he had put the
23 computer monitor -- like I had an old computer monitor and
24 he just kind of like tried to hide it, I guess. I don't
25 know.

1 And then my dad followed, because he was like, you
2 know, how -- my dad knows what's going on. I just tried not
3 to involve him as much as I could.

4 And as we was up there, we were coming back down and
5 him and Robert and my stepmom were like arguing in each
6 other's face.

7 Q. Did you see anything that transpired between the
8 defendant and your stepmother prior --

9 A. They were -- they were just cussing, and he like kind
10 of reared back at her and that's when my daddy got involved.

11 Q. And when you said your dad got involved, did your dad
12 got involved?

13 A. My dad was just trying to prevent him from hitting me,
14 or any of us, you know. He held him down.

15 Q. I'm going to show you first what's been marked for
16 exhibit purposes as State's Exhibit 10, 11 and 12, and ask
17 you to look at those exhibits.

18 Do you recognize those photographs?

19 A. I do.

20 Q. Okay.

21 A. My utility room.

22 Q. And do those pictures truthfully and accurately reflect
23 how your utility room appeared after this break-in on
24 February 28th of 2011?

25 A. He destroyed like the bottom of it, and the holes where

1 he went through.

2 Q. So they are a accurate representation?

3 A. Yes, they represent.

4 MS. JOYNER: Your Honor, we would move State's
5 Exhibits 10, 11 and 12 into evidence.

6 MS. INZERILLO: Without objection.

7 THE COURT: Admitted without objection.

8 BY MS. JOYNER:

9 Q. Now, I'm just going to start with State's Exhibit 10
10 and 11 and ask you to -- you touched on it a moment ago. If
11 you could explain what exactly these photographs are
12 depicting.

13 We'll start with State's Exhibit 10.

14 A. Okay. This is my utility room, and it's kind of got
15 rafters in it, so you have to hoist yourself up. And he
16 hoisted himself up, and I guess he used a screwdriver to cut
17 a hole out to punch through. On the other side is my
18 bedroom.

19 Q. So this -- would this angle of this photograph be
20 looking up then?

21 A. Yes.

22 Q. Okay. And the hole is at the top?

23 A. Yes, ma'am.

24 Q. Okay. And is that the hole that he punched through?

25 A. Yes, ma'am.

1 Q. In this picture is there anything in front of the hole?

2 A. Yeah, I was scared my son would fall, because that's my
3 bedroom on the other side. I didn't want him to kind of
4 peek through the hole and fall down, so I covered it up. I
5 tried to.

6 Q. Now, State's Exhibit 11, can you tell the jury what
7 that is?

8 A. That's just a picture of the hole that he punched
9 through, and it's covered so my son couldn't get out through
10 there.

11 Q. And State's Exhibit 12?

12 A. This is just the bottom of -- the floor of the utility
13 room where he destroyed it. There is debris and paper
14 and --

15 Q. Was that white debris, was that there before, or is
16 that the wall?

17 A. This is old paper that I had in there, but it's like he
18 made a mess of the floor of that room.

19 Q. Okay. Now, is that utility room covered or enclosed?

20 A. It's a -- you walk out to my patio and it's to the left
21 and it had a door, so yes.

22 Q. So it would be a covered area --

23 A. Yes.

24 Q. -- in the rain? A people would go be sheltered there?

25 A. Yes.

1 Q. I'm going to show you what's been marked for exhibit
2 purposes as State's Exhibit 13.

3 A. Okay.

4 Q. And do you recognize that photograph?

5 A. I do. This is -- this is my bedroom wall where he came
6 in from the utility room and went through my bedroom.

7 And then that's the monitor that was used to try to
8 cover the hole.

9 Q. Is that a truthful and accurate representation of what
10 you saw --

11 A. It is.

12 Q. -- that night?

13 A. It is, that's what I saw.

14 Q. Does that monitor normally sit --

15 A. No.

16 Q. -- plugged in there?

17 A. No, it was moved. I keep it like in the back by my
18 dresser out of the way.

19 Q. And is this -- is your bedroom on the first floor or
20 the second floor?

21 A. It's on the second floor.

22 Q. And I'm going to show you what's been marked as State's
23 Exhibit 14 for exhibit purposes only. Do you recognize that
24 photograph?

25 A. I do.

1 Q. Is that a truthful and accurate representation of
2 something that was in your apartment or in your storage
3 building?

4 A. Yes, it's -- this is a screwdriver that I guess he went
5 and bought to go through the wall. It was lying on the
6 patio chair, the pack, the screwdriver pack.

7 Q. And why is that significant? Was that your
8 screwdriver?

9 A. No, I did not purchase a screwdriver.

10 Q. Did you -- had you recently purchased a screwdriver at
11 all?

12 A. No, I have screwdrivers.

13 Q. At the time that -- and you said you located this
14 screwdriver wrapper where?

15 A. It was on my patio on a chair outside, right beside the
16 utility room.

17 Q. Do you remember if it was raining that day?

18 A. It was raining that night.

19 Q. Okay. Was this wrapper in fairly good condition, as
20 far as you can recall?

21 A. Yes, it looked new.

22 Q. And had that been there on your back patio when you
23 left to take Gabe to the hospital?

24 A. No. No, ma'am.

25 MS. JOYNER: Court's indulgence.

1 (Off the record)

2 (Back on the record)

3 MS. JOYNER: Your Honor, I can't recall if I have
4 moved State's Exhibit 10 through 14 into evidence and would
5 publish those to the jury.

6 THE COURT: I think they are already admitted,
7 correct?

8 MS. INZERILLO: I don't believe 13 and 14 were,
9 but I have no objection.

10 THE COURT: Admitted without objection.

11 You may publish.

12 MS. JOYNER: Thank you.

13 BY MS. JOYNER:

14 Q. Ms. Graham, if you could just step down from the stand
15 for a moment, I'm going to ask you to point out a few things
16 for the jury.

17 (Witness off the witness stand)

18 BY MS. JOYNER:

19 Q. If you could use that pointer right here and just press
20 that button.

21 Could you -- is this picture properly positioned to
22 reflect what is up and what is down?

23 A. This is up. This is -- this is the rafters. You have
24 to hoist yourself up, and you would have to balance on that
25 up here in order to cut that hole out. And that's the hole

1 that he cut out there.

2 Q. I'm going to show you -- the next picture is -- I'm
3 going to put up State's Exhibit 12 for you. Is that -- can
4 you show the jury what was already there and what was you
5 think part of the damage that he inflicted?

6 A. The bike was there. That's where I pulled some of the
7 toys out there. And I think I had this -- this was paper
8 that was -- that I just had out there. That's a toy. Like
9 this is all clutter or mess that was not like this.

10 Q. And that is State's Exhibit 13, and is that the hole?

11 A. This is the hole in my bedroom on the other side of
12 that utility room.

13 Q. And that's State's Exhibit 14. It's kind of difficult
14 to see, but tell the jury again where did you locate the
15 screwdriver wrapper?

16 A. Back door on the patio, right beside the utility room,
17 and this screwdriver pack was on the chair out there.

18 Q. All right. Thank you very much. You can take your
19 seat again.

20 (Witness back on the witness stand)

21 BY MS. JOYNER:

22 Q. The last thing I'm going to play for you, and I'm
23 playing it a little bit out of order, I'm going to play for
24 you State's Exhibit 2 and ask you to listen to this call.

25 (Whereupon, State's Exhibit No. 2 was played to

1 the jury panel)

2 BY MS. JOYNER:

3 Q. Ms. Graham, do you remember when you received this
4 voicemail message?

5 A. I do. It was that weekend when I got back from out of
6 town.

7 Q. And you returned home on the 27th?

8 A. I did.

9 Q. And, again, what night -- what day did you find the
10 defendant in your apartment?

11 A. February 28th.

12 Q. When you got this message, what did you think about
13 this message?

14 A. That scared me to death. I thought he was going to
15 kill me.

16 Q. Thank you very much, Ms. Graham. Please answer any
17 questions Ms. Inzerillo might have.

18 MS. INZERILLO: If it please the court, Your
19 Honor.

20 THE COURT: Counsel, I don't know but what we
21 ought not to take a short break. This will probably be a
22 good time to do that. You are going to be awhile.

23 Mr. Foreman, ladies and gentlemen of the jury
24 panel, we have been at it about an hour and a half. I'm
25 going to go ahead and take a short recess at this time. You

1 may fresh yourselves during the break.

2 Again I'll remind you if you want to bring
3 something to drink back to the jury box, you are welcome to
4 do that.

5 Please retire to the jury room.

6 (The following takes place outside the presence of
7 the jury panel)

8 THE COURT: We will take a few minutes.

9 Ms. Graham, you can stand down during the break.
10 You may refresh yourself during the break. You cannot,
11 however, discuss the case with anyone. You can't discuss
12 anything about the case. You can talk about other things,
13 but not the case. Okay?

14 THE WITNESS: Yes.

15 THE COURT: We will take about ten.

16 MS. JOYNER: Thank you, Your Honor.

17 MS. INZERILLO: Thank you, Your Honor.

18 (Whereupon, proceedings were recessed)

19 (Whereupon, proceedings were reconvened)

20 THE COURT: All right, Ms. Graham, you can resume
21 your seat, please.

22 All right, please bring the jury in.

23 (The following takes place in the presence of the
24 jury panel).

25 THE CLERK: Counsel, ready to proceed.

1 MS. INZERILLO: May it please the court, Your
2 Honor.

3 THE COURT: Counsel.

4 CROSS EXAMINATION BY MS. INZERILLO:

5 Q. Ms. Graham, when you got home on the night of February
6 28th, you found Mr. Hooker in your house?

7 A. I did.

8 Q. And when he was in your house, I believe you testified
9 that he was wearing his boxers?

10 A. He had his boxers on.

11 Q. His clothes were in the washer or the dryer?

12 A. Dryer. I heard the dryer running.

13 Q. The dryer running, okay.

14 And I believe you indicated on direct examination that
15 it was raining or wet outside --

16 A. It was raining.

17 Q. -- your recollection?

18 A. Yes.

19 Q. And he was listening to some music?

20 A. Yes.

21 Q. And had the oven on, is that right?

22 A. Correct.

23 Q. And outside of the damage in the pictures that Ms.
24 Joyner showed you, in these pictures here, State's 10, 11,
25 12, and 13, this is the only damage to your house that you

1 saw that evening, is that right?

2 A. Yes, ma'am.

3 Q. Now, Mr. Hooker, as you testified, was at your house
4 earlier that today, is that right?

5 A. Yes, ma'am.

6 Q. Okay. And he brought a toy for your young son?

7 A. He did.

8 Q. And you talked to him through the door, essentially?

9 A. Yes, ma'am.

10 Q. And he was actually there for some time?

11 A. Outside the door?

12 Q. Yes.

13 A. Yes.

14 Q. Okay.

15 A. I guess.

16 Q. And you indicated that when he was at your house that
17 morning he was sober?

18 A. Yes, he was that morning.

19 Q. Okay. While he was at your house he started drinking,
20 though, is that right?

21 A. Well, he left. When I got there that night he was
22 drunk.

23 Q. Okay. While you were inside your house and he was
24 outside your house, you texted his mother, is that right?

25 A. I did.

1 Q. And you texted his mom "Robert is outside the house,"
2 right?

3 A. I did.

4 Q. And Robert's mother told you to call the police while
5 he's sober, isn't that right?

6 A. She told me to call the police, that he probably would
7 get a slap on the hand.

8 Q. Do you remember copying the text messages and providing
9 them to the State?

10 A. I do.

11 Q. Okay.

12 MS. INZERILLO: May I approach the witness, Your
13 Honor.

14 THE COURT: You may.

15 BY MS. INZERILLO:

16 Q. I'm going to show you an e-mail containing the text
17 messages that you sent to the solicitor. Review them fairly
18 quickly and confirm that that's what you have done.

19 A. Yes, ma'am.

20 Q. All right. And here -- there are texts here from
21 February 28th at 11:16 a.m., is that right?

22 A. Yes.

23 Q. And that is text between you and Lori Starnes, who is
24 his mother?

25 A. Yes.

1 Q. Okay. And you tell her "he's beating on my back door
2 crying," is that right? That's your text?

3 A. Yes.

4 Q. And she says "you can talk to him. Tell him it's
5 over", right? "Tell him you are going to call the police,"
6 right?

7 A. Right.

8 Q. So she's telling you to call the police, is that right?

9 A. Yes.

10 Q. And then a couple of text messages down she says again
11 "you really need to call the police while he's sober," is
12 that right?

13 A. Correct.

14 Q. And while you were inside the house, even at the urging
15 of his mother you didn't call the police, did you?

16 A. No, I didn't want to get him in trouble.

17 Q. Okay. But on this day, on February 28th --

18 A. Yes.

19 Q. -- when Robert is standing outside your house, you have
20 gotten all of these messages, is that right?

21 A. What messages?

22 Q. The voice messages that we just heard?

23 A. Yes.

24 Q. And the last one, State's No. 2, that you indicated
25 scared you so much, that's the message that you had gotten

1 before he came to your house the morning of February 28th?

2 A. Yes.

3 Q. Okay. So you also on this morning also had a trespass
4 notice put on him, is that right?

5 A. There was a trespass notice at this time, yes.

6 Q. Okay. And that was taken out in January?

7 A. Yes.

8 Q. Okay. So even with these messages that you testified
9 scared you so much and a trespass notice, you still allowed
10 him to sit outside your house and talk?

11 A. I didn't allow him to sit outside my house.

12 Q. You did not call the police?

13 A. No, I did not.

14 Q. While you were inside your house and he was outside
15 your house, you didn't call your parents then?

16 A. No.

17 Q. And --

18 A. But I wasn't -- he was sober. I wasn't scared of him
19 then.

20 Q. Okay. But you still never called the police?

21 A. No. No, ma'am, I did not.

22 Q. Okay. And it was after you had gotten all -- I believe
23 there was seven messages that we heard, is that right?

24 A. Yes, I think so.

25 Q. Because you -- the testimony was that these messages

1 were sort of accrued over time?

2 A. Yes.

3 Q. Is that right?

4 A. Yes.

5 Q. And on these messages, you kind of went through and
6 picked the messages to provide the State, is that right?

7 A. Yes.

8 Q. You didn't bring a copy of all the voice messages and
9 provide that to the State?

10 A. I didn't have a copy. I didn't have them all in my
11 phone.

12 Q. Okay.

13 A. I mean, it's too many.

14 Q. These were the only ones that you provided?

15 A. Yes.

16 Q. Is that right?

17 A. Yes.

18 Q. When he was at your house on the 28th, you could have
19 called the police and told them that he was violating the
20 trespass order, is that right?

21 A. (Shaking head yes).

22 Q. Okay. And that's your understanding of why you get a
23 trespass order, so that you can keep him from coming around
24 and bothering you, is that right?

25 A. Well, when I called the police, I didn't know it was

1 going to be a trespass. I mean, I didn't know the policy
2 for any of this.

3 Q. Okay.

4 A. I never dealt with this before.

5 Q. So when Officer Slawson talked to you on the 29th of
6 January, he didn't explain --

7 A. He did. He did then, but when I called them initially
8 I didn't know what would be done.

9 Q. But on February 29th you knew that that trespass order
10 was in place?

11 A. I did.

12 Q. Right?

13 A. Yes.

14 Q. And that, again, allowed you to call the police and
15 said he is violating the trespass order?

16 A. Yes.

17 Q. Is that right?

18 Okay. Now, on the night that you got the trespass
19 order, you let Robert come back and stay at your house that
20 night, is that right?

21 A. No.

22 Q. Did you let him stay at your house after the time that
23 you gave -- issued the trespass order?

24 A. I was not seeing Robert. We broke up in December.

25 Q. Not -- I'm not asking you if you were seeing him. I

1 say you allowed him come by and stay at your house, is that
2 right?

3 A. No, I was trying to get him to leave me alone.

4 Q. When you -- when the police came to your house on
5 February 28th, after that you talked to Detective Dugan, is
6 that right?

7 A. Yes, when the bond -- at the bond -- after the bond
8 hearing.

9 Q. Okay. And you gave him a statement?

10 A. I did.

11 Q. And when you talked to Detective Dugan, you didn't tell
12 Detective Dugan that Robert was actually at your house
13 earlier that day, is that right?

14 A. I don't recall.

15 Q. If I showed you that statement, would that refresh your
16 memory?

17 A. Yes.

18 Originally I went for the bond hearing, and that's when
19 I -- they sent me to talk to Dugan, because of the -- I was
20 concerned. I didn't understand why B&E wasn't filed that
21 night, so that's why they originally sent me over there.

22 Q. And when they sent you over there, that's when you
23 talked to Detective Dugan and gave a statement?

24 A. About what happened that night, yes.

25 Q. Okay. Is that the statement that you signed and gave

1 to Detective Dugan?

2 A. Yes, ma'am.

3 Q. And in that statement you told Detective Dugan you have
4 not seen Robert Hooker since December of 2010, is that
5 right?

6 A. We weren't dating since 2010.

7 Q. You didn't tell him Robert Hooker was actually at your
8 house earlier that day?

9 A. I might not have, no.

10 Q. Well, let's be sure. You say "I have not dated him or
11 seen him since this date," is that right?

12 A. Yes.

13 Q. And you didn't tell Detective Dugan that you had
14 allowed Robert to give your son a toy that morning?

15 A. I didn't allow it. I told him to take the toy back.
16 He walked around and put it at the front. And Gabe had seen
17 it and he wanted it, so I was just trying to -- I mean, I
18 mean, he left at the front door, so I gave it to my son, but
19 I originally told him to take it back. I didn't want the
20 toy. He doesn't need it.

21 Q. You had talked to the police, officer Slawson, during
22 the trespass order on January 29th, is that right?

23 A. Yes.

24 Q. And on that day you did not indicate to Officer Slawson
25 that Mr. Hooker was ever violent towards you, is that right?

1 A. No. I mean, he never hit me.

2 Q. And you never indicated to Officer Slawson that he was
3 violent towards your child?

4 A. No, he never hit me or my child.

5 Q. And when you spoke to Officer Wells the day before
6 about the harassing phone calls, you didn't indicate to her
7 that he had been violent towards you?

8 A. No.

9 Q. Okay.

10 A. I just indicated that I was scared of him.

11 Q. Okay. And you did not indicate to her that he had been
12 violent towards your child?

13 A. No.

14 Q. Now, we talked a little bit earlier about you texting
15 Mrs. Starnes, who is Robert's momma, on the day of February
16 28th, is that right?

17 A. Yes.

18 Q. And I have showed you the text messages that you
19 provided to the State?

20 A. Yes.

21 Q. Is that right?

22 A. Yes.

23 Q. As far back as January 1, she was telling you to let
24 him --

25 MS. JOYNER: Your Honor, I'm going to object. We

1 are getting into hearsay here, Your Honor, no relevance.

2 THE COURT: What's the relevancy?

3 MS. INZERILLO: May we approach, Your Honor?

4 THE COURT: Yes.

5 (Whereupon, the lawyers approached the bench for

6 an off-the-record discussion)

7 BY MS. INZERILLO:

8 Q. All right, Ms. Graham, I'm sorry to jump around so
9 much.

10 I'm going to go back to the statement that you gave to
11 Detective Dugan. Do you remember meeting with him --

12 A. Yes, sir.

13 Q. -- after this happened? Okay.

14 And I'll show you the statement again.

15 Now, when you met with Detective Dugan, he typed up
16 that statement, is that right?

17 A. Yes, he did.

18 Q. So that statement is based on your own words?

19 A. Yes.

20 Q. And your understanding in giving that statement is that
21 you need to give all the details that were necessary to help
22 Detective Dugan investigate the case?

23 A. I gave the circumstances of that night.

24 Q. Okay. He told you specifically to tell him all the
25 details that he needed, is that right?

1 MS. JOYNER: Your Honor, I'm going to object to
2 what Detective Dugan told Ms. Graham.

3 THE COURT: I sustain the objection.

4 You can rephrase it in a different way, if you
5 want to, but I sustain the objection.

6 BY MS. INZERILLO:

7 Q. When he typed up that statement, you reviewed that
8 statement, is that right?

9 A. Yes.

10 Q. And you reviewed the second page of that statement, is
11 that right?

12 A. Yes.

13 Q. And the second page of that statement indicates that
14 you are telling the truth, the whole truth, and nothing but
15 the truth, is that right?

16 A. Yes.

17 Q. And you signed underneath that?

18 A. I signed it.

19 Q. All right. And that oath, it's similar to the oath
20 that you just took today, is that right?

21 A. Yes.

22 MS. INZERILLO: May I approach the witness, Your
23 Honor?

24 THE COURT: You may.

25 BY MS. INZERILLO:

1 Q. Ms. Graham, I'm going to show you these three pictures.

2 Do you recognize the person in those pictures?

3 A. It's me.

4 Q. Is that in your house?

5 A. Yes.

6 Q. Do you recognize where those pictures are from?

7 A. I'm on my bed.

8 Q. Okay.

9 A. It's my bed.

10 Q. Do you -- the date of those pictures are around

11 January, is that right?

12 MS. JOYNER: I object, Your Honor. That's a

13 leading question.

14 THE COURT: I sustain it, counsel.

15 A. I don't know the date of these pictures.

16 BY MS. INZERILLO:

17 Q. I'm going to show you this picture. Do you recognize

18 the person in that picture?

19 A. That's me.

20 Q. All right. Are you in the same room?

21 A. I am.

22 Q. And do you -- that picture was taken in February, is

23 that right?

24 MS. JOYNER: I object again, Your Honor. It's

25 leading.

1 A. No.

2 THE COURT: She can answer, if she knows, counsel.

3 A. I don't know the date of any of the pictures.

4 BY MS. INZERILLO:

5 Q. Do you know where these pictures are from?

6 A. Where they are from, no.

7 Q. The only time that you seen Mr. Hooker being violent is
8 in an altercation with David Bruton, is that right?

9 A. In a fight, yes.

10 Q. And you indicated that in that fight when you were
11 sitting in your car, you saw of the two of them fighting,
12 and then that resulted in David having a broken nose, is
13 that right?

14 A. Yes.

15 Q. And in the times after that that you spoke to the
16 police, you did not indicate to the police that that had
17 happened, is that right?

18 A. No, I -- I didn't tell them. I thought that that --
19 the police had come that night for some reason, but they
20 never went over and talked to David about his nose, which I
21 didn't really understand.

22 Q. But you didn't go over to them and say -- that relates
23 to them that this fight had happened, is that right?

24 A. I told them that his nose was broken.

25 Q. Okay. Did you get give a statement, file a police

1 report?

2 A. I don't think I filed a police report. There has been
3 several reports, but I don't know the dates. The only one
4 that I know well is the 28th. That's the only one that I
5 know well.

6 Q. Do you remember calling for the trespass notice in
7 January, is that right?

8 A. Yeah, but I didn't know the date until we have been
9 discussing it.

10 Q. Okay. Do you remember talking to the police on January
11 3rd about getting a lot of messages from Mr. Hooker?

12 A. Like I said, I have called them several times.

13 Q. Do you remember that date?

14 A. Not the specific date. I don't remember -- like when I
15 called, I don't remember the date like, I can't recall it in
16 my head that it was January 3rd.

17 Q. Okay. Do you remember talking to the police in early
18 January about receiving a lot of text messages?

19 A. Yeah, I'm sure I did.

20 Q. And on that date you did not ask Mr. Hooker to be
21 arrested, is that right?

22 A. I never wanted him to be arrested. I wanted him to
23 leave me alone and quit threatening me.

24 Q. So you never asked for him to be arrested?

25 A. No.

1 Q. And in these twenty or thirty times when he would break
2 into your sliding glass door, you didn't call the police and
3 file a report on those dates?

4 A. I did not file a report every time, no.

5 Q. You didn't file a report at all?

6 A. Okay, I filed a few reports. That's all, throughout
7 the course of this, I know.

8 Q. And, again, when you filed those reports, talked to
9 Officer Slawson, Officer Wells, or Detective Dugan, at no
10 time did you relate to them he had broken in your sliding
11 glass door twenty or thirty times?

12 A. I told them that he had been coming into my apartment.

13 Q. Okay. But you didn't relay that he had done that
14 twenty or thirty times?

15 A. No, I probably didn't say that, no.

16 Q. And when Mr. Hooker would come into your house twenty
17 or thirty times, you didn't tell him those twenty or thirty
18 times "I don't want you here, please leave?"

19 A. Who, Robert, when he came in?

20 Q. Yes.

21 A. I would tell him that. I tried to get him to leave.

22 Q. Okay.

23 A. I would try to talk to him first, because I know how he
24 is. He gets upset.

25 Q. So you were hoping that he would leave?

1 A. Yes.

2 Q. But you stopped short of calling the police on those
3 times?

4 A. I did not call the police all the time, no.

5 Q. And all of these things happened in this duration
6 between October leading up to February?

7 A. Yes.

8 Q. Is that right?

9 A. Yes, starts to go -- everything starts to go bad in
10 October.

11 Q. And then your testimony was that it got progressively
12 worse based on how you kind of went through the voicemail
13 messages?

14 A. Yeah, after the breakup everything got worse.

15 Q. Okay. And just to be clear, all of this stuff happened
16 and sort of culminated with the events on February 28th, is
17 that right?

18 A. Yes.

19 MS. INZERILLO: No further questions.

20 REDIRECT EXAMINATION BY MS. JOYNER:

21 Q. Ms. Inzerillo was asking you about Mr. Hooker bringing
22 a toy for Gabe.

23 A. Yes, ma'am.

24 Q. Did you ask him to bring a toy for Gabe?

25 A. No, ma'am.

1 Q. Did you invite him over that day?

2 A. No, ma'am.

3 Q. Had you invited him over any day since you had broken
4 up with him?

5 A. No, ma'am.

6 Q. When he showed the present to Gabe, how did you feel
7 about that?

8 A. I was upset, because --

9 Q. Why?

10 A. I thought -- he was manipulating my son through the
11 door to try to get him to open it. That's when I heard him.
12 I could hear Gabe downstairs talking. That's how I knew he
13 was playing through the blinds. He was trying to manipulate
14 a four year old kid to open the door, yeah.

15 Q. Did you ever see him ask Gabe to open the door?

16 A. Yes.

17 Q. What did Gabe say?

18 A. Gabe was crying and getting in the middle, like --

19 Q. Why was Gabe crying?

20 A. Because he wanted toy and he was made at me because I
21 wouldn't open the door.

22 Q. When you contacted the police early January about
23 harassing phone calls --

24 A. Yes.

25 Q. -- was that in person or by telephone? Do you

1 remember?

2 A. I don't remember. I don't remember the specifics of
3 all the few reports that I did make.

4 Q. All right. But in the time that you made reports to
5 the police, like the trespass notice or you met with Officer
6 Wells on February 27th, how in-depth were your discussions
7 with them about your prior relationship with Mr. Hooker?

8 A. I mean, it's not like I gave them the whole three month
9 history. I would just kind of give them a little bit of
10 what was going on so they could understand.

11 Q. Ms. Inzerillo was asking you about I believe this is
12 the trespass notice. You could have called the police and
13 had him arrested before. Why didn't you call the police and
14 have him arrested before this?

15 A. I know this is hard to understand, but I'm a decent
16 person. I didn't want him to go to jail. I didn't want him
17 to get arrested. I just wanted to be left alone.

18 Yeah, I'm scared of him, but I knew he couldn't get in.
19 So if I know he can't get in to get me, I mean, I -- I --

20 I know he's lost. He was lost. He didn't have any
21 family, no money, nothing, and I begged his momma to help
22 me. Why would I call his momma to help me?

23 I -- I don't want to have anybody arrested and put in
24 jail for who knows how long. I know he's not going to be
25 able to get out.

1 Q. Okay. Well, let me ask you about your interactions
2 with his mother. How often was it that you would contact
3 his mother for help?

4 A. I usually called her every time that he would come,
5 or --

6 Q. I'm sorry?

7 A. -- the majority of the time. I mean, I tried to let
8 her know what was going on.

9 Q. Would she give you help?

10 A. No, she wouldn't.

11 Q. Ms. Inzerillo had you read a portion of some text
12 messages from an exchange on February 28th. I want you to
13 take a look at this printout where I have drawn the line to
14 the top and bottom.

15 A. Okay.

16 Q. From the top line to the bottom line, does that
17 represent the full text conversation that you had with Ms.
18 Starnes, the defendant's mother, on February 28th?

19 A. Yes.

20 Q. Ms. Inzerillo, is it correct, she did not ask you about
21 every single one of those texts, did she?

22 A. No, ma'am, there is three pages there.

23 Q. Okay. Well, let me just ask you about this
24 specifically the ones that go toward February 28th.

25 Are these all the texts that you can recall going back

1 and forth? It's one, two, three, four, five, six, seven,
2 eight, nine, ten going back and forth between you and the
3 defendant's mother on that date.

4 A. Yes.

5 Q. Can you please tell me what the first text -- is the
6 first text from you or from his mother?

7 A. The first text is from me.

8 Q. And what did you text to her?

9 A. I said, "did you bring him here?"

10 Q. Okay. And did she indicate whether she had brought him
11 here?

12 A. She says, "no, he walked. I took him to cash his
13 check."

14 Q. What's the next -- is the next text message from you?

15 A. It's from his mother.

16 Q. What does that one say?

17 A. "Tell him you are going to call the law. You have had
18 enough. It is over."

19 Q. Did you respond to that?

20 A. I did.

21 Q. What was your response?

22 A. "He's beating on my back door crying."

23 Q. Did she respond to that?

24 A. She said, "you can talk to him. Tell him it is over.
25 Tell him you are going to call the police. Tell him. He's

1 not going to leave. Don't worry about the crying."

2 Q. What was your response to that?

3 A. I didn't respond.

4 Q. Did she follow up with another text message?

5 A. She followed up later on to see if he was still outside
6 the door. She says, "is he still there?"

7 Q. Thank you.

8 Well, let me ask you this. Is there any other -- after
9 he is still there, do you respond to her at all?

10 A. And I said, "he won't go."

11 Q. And what's her response?

12 A. "You really need to call the police while he's sober."

13 Q. Okay.

14 A. And she goes, "if you call the law while he's sober,
15 they might just tell him to leave. He's never ever going to
16 stop. He has nothing else."

17 Q. Okay.

18 A. And then she responded a few hours later asking if he
19 was still there.

20 Q. Did you respond to that e-mail?

21 A. No.

22 Q. Now, when you called Mr. Hooker violent in your direct
23 testimony, please explain to the jury what you meant by
24 violent.

25 A. I mean, he destroys my house. Like he took the back of

1 the chair, like it's a wooden chair with, you know, the
2 lines through it, ripped that off and slung that through the
3 wall.

4 Q. Okay.

5 A. Okay. I mean, that's violent.

6 Punching holes through doors.

7 Slinging -- slinging stuff across the room. That's
8 violent to me.

9 He never physically assaulted me.

10 Q. So when you met with the officer Slawson about the
11 trespass officer, or Officer Wells about the has harassing
12 phone calls, did either of them ever ask you about whether
13 he was violent in the sense that you are talking about?

14 A. Physical violence?

15 Q. Yes.

16 A. No.

17 Q. Did they ever ask you whether he was violent in the
18 meaning or the way that you are describing violence?

19 A. I mean, I know I told them that he was. This is why I
20 was scared of him, because things were just escalating,
21 escalating to the point where I didn't know what he would do
22 when he was getting that drunk and I was scared.

23 Q. When you gave a statement to Detective Dugan, you told
24 them that you had not dated him or seen him since the date
25 of your breakup. What did you mean by that?

1 A. I meant that we weren't together as a couple.

2 Q. And when you gave a statement to Detective Dugan, did
3 you include every detail of everything that had happened --

4 A. No, ma'am, I did not.

5 Q. -- since October 4th?

6 A. That would have been a book.

7 Q. Okay.

8 MS. JOYNER: Thank you very much, Ms. Graham.

9 MS. INZERILLO: Nothing further, Your Honor.

10 THE COURT: Thank you, ma'am. You may stand down.

11 THE WITNESS: Thank you.

12 MS. JOYNER: Your Honor, the State calls Alice
13 Broome.

14 Alice Broome, if you would please step forward and
15 be sworn.

16 ALICE BROOME, having been first duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION BY MS. JOYNER:

19 Q. Alice Broome, can you please state your full name for
20 the record?

21 A. Alice Eleanor Broome.

22 Q. Okay. Alice Broome, make sure to speak up loud enough
23 so that the last juror can hear you.

24 A. Alice Eleanor Broome.

25 Q. Ms. Broome, where do you live?

- 1 A.
- 2 Q. 30 what?
- 3 A.
- 4 Q. And do you know the victim in this case, Shanna Graham?
- 5 A. Yes, ma'am.
- 6 Q. How do you know Shanna?
- 7 A. She's my stepdaughter.
- 8 Q. Your stepdaughter?
- 9 A. Yes.
- 10 Q. And so you are with her father Ray Graham, is that
- 11 correct?
- 12 A. Yes, ma'am.
- 13 Q. How long have you known Shanna?
- 14 A. Nineteen years.
- 15 Q. I think we have heard some testimony already. You
- 16 watch Gabe for Shanna?
- 17 A. Yes, I've watched him for the last two years.
- 18 Q. And that's while she's at work at the hospital?
- 19 A. Yes, ma'am.
- 20 Q. Now, do you know the defendant, Robert Hooker?
- 21 A. Not all that well.
- 22 Q. But you know him as Shanna's former boyfriend?
- 23 A. Yes.
- 24 Q. I want to talk with you about the night of February
- 25 28th of 2011. Did you and your husband receive a phone call

1 from Shanna that night?

2 A. Yes, we were asleep and she called a little after ten.

3 Q. And what was the nature of that phone call?

4 A. She called crying and said that he had broken into her
5 house. She came in and went back out because she was scared
6 of him.

7 Q. Did she ever request your assistance or your husband's
8 assistance?

9 A. Yes.

10 Q. And did y'all agree to provide her that assistance?

11 A. Yes, we went over there to her house.

12 Q. Okay. Did you go to her house first or did you meet
13 her somewhere else?

14 A. Met her at the K-Mart, where she had called us from,
15 because she didn't want to be anywhere around him.

16 Q. How far away is the K-Mart?

17 A. Right across the street.

18 Q. Can you guesstimate for the jury what time you arrived
19 back at Shanna's house?

20 A. It wasn't very long. It was about 10:30, something to
21 eleven.

22 Q. And what did you -- did you all go into the apartment
23 together?

24 A. We walked in and -- she lives in a house. And we went
25 in and Mr. Hooker was in the kitchen in his boxer shorts

1 and --

2 Q. I want to stop you and just kind of walk through step
3 by step.

4 When you walk in and after you saw him, did Mr. Hooker
5 say anything to you? Did you say anything to him?

6 A. Yes.

7 Q. Well, who said what?

8 A. We told him that he needed to leave, that he didn't
9 have any business being in there.

10 Q. Did you say that, or did you hear somebody else say
11 that?

12 A. I said it, and then Ray told him that he needed to get
13 his stuff and leave.

14 Q. And by Ray, you mean Shanna's daddy?

15 A. Yes.

16 Q. What was Mr. Hooker's response?

17 A. He said -- he started cussing and yelling, saying he
18 lived there and he didn't have to leave. And I said, you
19 know, he didn't live there.

20 Q. Now, at some point were you left alone with Mr. Hooker?

21 A. Yes.

22 Q. How did that happen?

23 A. Shanna had went upstairs and she found a hole and she
24 come down and told her daddy "come up here and look at
25 this," and he went up there and looked at it. While she was

1 upstairs I was down there by myself with Mr. Hooker.

2 Q. Initially were you concerned about being alone with Mr.
3 Hooker?

4 A. In a way, yeah, but I knew they were right upstairs,
5 you know.

6 Q. Did anything happen while you were left alone with Mr.
7 Hooker?

8 A. Yeah, he was ranting and raving and everything and
9 threatening to kill Gabey and Shanna.

10 Q. When you say Gabey, who do you mean?

11 A. My grandson.

12 Q. That's Gabe?

13 A. Yeah. He said he was going to kill him.

14 Q. Do you remember the exact words that he used to say he
15 was going to kill him?

16 A. He said he was going to kill him.

17 Q. And beyond ranting and raving, did anything else happen
18 while --

19 A. I told him, I said "that's just wrong. You shouldn't
20 say stuff like that," and we even came at me. And when he
21 came at me and swung, I swung back at him.

22 Q. You said he came at you and swung. Where were you
23 standing and --

24 A. In the living room.

25 Q. You were in the living room?

1 A. Yes.

2 Q. Where had he been?

3 A. He came out from the kitchen, right out -- the kitchen
4 hallway is right there.

5 Q. And was he in the kitchen?

6 A. He was right between the kitchen and the living room.

7 Q. And you said he swing. What do you mean he swung?

8 A. He come at me, you know. I don't know, I guess he was
9 drunk, or whatever, I don't know. He was all crazy.

10 Q. Can you describe his motion or can you demonstrate the
11 motion?

12 A. He called at me a fat ho.

13 Q. And you mentioned swinging. Can you describe what that
14 meant?

15 A. Yeah, he went like, like that.

16 Q. Like whipping the right arm?

17 A. Yes, pushing me and swinging at me.

18 Q. Okay. What was your response to that?

19 A. I swung back.

20 Q. You swung back.

21 While all this was -- this kind of melee was going on,
22 did Shanna or --

23 A. Yeah, they heard it and they came downstairs.

24 Q. And what happened when they saw what was going on?

25 A. Ray took over.

1 Q. That's your husband?

2 A. Uh-huh.

3 Q. And was he able to subdue the defendant?

4 A. (Shaking head yes).

5 Q. You have to answer out loud.

6 A. Yes, ma'am.

7 Q. And did you do anything after that?

8 A. No.

9 Q. Did you contact 911?

10 A. Yes, I did. I called 911.

11 Q. And were you there when the police arrived and arrested
12 Mr. Hooker?

13 A. Yes, ma'am.

14 MS. JOYNER: Beg the court's indulgence.

15 (Off the record)

16 (Back on the record)

17 BY MS. JOYNER:

18 Q. Thank you, Ms. Broome. Please answer any questions Ms.
19 Inzerillo might have.

20 MS. INZERILLO: May it please the court, Your
21 Honor.

22 THE COURT: Yes, counsel.

23 CROSS EXAMINATION BY MS. INZERILLO:

24 Q. Ms. Broome, when Shanna contacted you and your husband,
25 her father, about coming over to help her out, you met her

1 at the K-Mart parking lot, is that right?

2 A. Yes.

3 Q. You did not call the police from the K-Mart parking
4 lot?

5 A. No.

6 Q. You and your husband and Shanna went to the house, is
7 that right?

8 A. Yes.

9 Q. And when you got to the house, you saw Mr. Hooker
10 inside the house, is that right?

11 A. (Shaking head yes).

12 THE COURT: Ma'am, you have to answer verbally,
13 because we are on the record.

14 A. Yes, ma'am.

15 BY MS. INZERILLO:

16 Q. And he was wearing the boxer shorts?

17 A. Yes, ma'am.

18 Q. And his clothes were in the dryer?

19 A. I assume they were. I didn't see them in the dryer.

20 Q. Okay. And you saw the oven on?

21 A. I did not see no oven on.

22 Q. Okay. Did you hear the music that was playing?

23 A. No, I didn't hear any music.

24 Q. Okay. So when you walked in, you just saw him there in
25 the boxer shorts, is that right?

1 A. Yes, with a beer.

2 Q. Okay. When you saw him inside the house, you and Mr.
3 Graham and Shanna did not turn around and then leave again,
4 is that right?

5 A. No.

6 MS. INZERILLO: No further questions, Your Honor.

7 MS. JOYNER: Nothing further.

8 We would ask that Ms. Broome be released from her
9 subpoena at this time.

10 THE COURT: No objection, counsel?

11 MS. INZERILLO: No.

12 THE COURT: Thank you for coming, ma'am. You may
13 be excused, if you wish.

14 THE WITNESS: Thank you.

15 MS. JOYNER: Beg the court's indulgence just one
16 moment.

17 (Off the record)

18 (Back on the record)

19 MS. JOYNER: Your Honor, the State calls Officer
20 Slawson.

21 Officer Slawson, please step over there and be
22 sworn.

23 OFFICER TONY SLAWSON, JR., having been first duly
24 sworn, testified as follows:

25

1 DIRECT EXAMINATION BY MS. JOYNER:

2 Q. Officer Slawson, can you please state your full name
3 for the record?

4 A. Tony Ray Slawson, Jr..

5 Q. What's your occupation, sir?

6 A. Police officer for the Rock Hill Police Department.

7 Q. How long have you been with the Rock Hill Police
8 Department?

9 A. Just over two years.

10 Q. And just generally what is the description of your job
11 duties?

12 A. Just basic patrol in a certain zone that's assigned per
13 team.

14 Q. As part of your job do you sometimes take reports or
15 get called out to answer complainant's concerns about
16 different things?

17 A. We do. We have calls for service, which is basically
18 what our job entails; taking reports, complaints, things of
19 that nature.

20 Q. Does every time that you take a complaint necessarily
21 result in someone being arrested?

22 A. No, ma'am, not every time.

23 Q. Are there instances where a person may call to report
24 to the police that something has happened, but that criminal
25 charges are not brought at that time?

1 A. That is correct.

2 Q. Is that something that you do for documentation
3 purposes?

4 A. That would be for documentation purposes, yes, ma'am.

5 Q. Now, during the course of your time at Rock Hill Police
6 Department have you ever had an occasion to interact with
7 the defendant Robert Hooker?

8 A. Yes, ma'am, I have.

9 Q. Have you also had an opportunity to interact with
10 Shanna Graham?

11 A. Yes, ma'am.

12 Q. And do you recall the first time that you interacted
13 with Ms. Graham in relation to any kind of complaint against
14 the defendant?

15 A. I do.

16 Q. And what was the date of that, if you can recall?

17 A. I don't recall exactly. I believe it was in January of
18 this year.

19 Q. And what type of interaction did you have with Ms.
20 Graham?

21 A. The call was a complaint about harassment and
22 trespassing. Mr. Hooker had been at her residence and she
23 did not wish him to be there.

24 Q. Okay. Now, are there -- were there two separate calls?
25 You said harassment and then trespassing, or is that one

1 call?

2 A. It was one call, both enveloped together.

3 Q. One call what?

4 A. It was one call. Both of those incidents enveloped
5 together.

6 Q. Okay.

7 A. She said he was a harassing her and he was trespassing
8 and was not supposed to be there. She did not want him
9 there.

10 Q. So are you saying that -- am I correct that the report
11 that you filed on January 3rd, where you took a complaint
12 over the phone, that connects to the trespass notice, is
13 that correct?

14 MS. INZERILLO: Objection to the leading, Your
15 Honor.

16 THE COURT: Sustained, counsel.

17 BY MS. JOYNER:

18 Q. Officer Slawson, I'm handing you several pages and I
19 would ask you to take a look over these.

20 A. (Witness reviewing documents).

21 Q. Do you recall did that help refresh your memory --

22 A. Yes; ma'am.

23 Q. -- about your interaction.

24 If you could just tell the jury, what is the first time
25 that you dealt with Ms. Graham regarding Mr. Hooker?

1 A. It would have been that night, as far as dealing with
2 Ms. Graham person to person the night that Mr. Hooker was
3 trespassed.

4 However, there was an incident where it was called in
5 by David Bruton that Mr. Hooker was harassing Ms. Graham and
6 a report was taken by phone for documentation purposes at
7 that time.

8 Q. Did you take that first report?

9 A. That's correct.

10 Q. Okay. Now, let's talk about the trespass notice. Can
11 you explain to the jury what exactly a trespass notice is?

12 A. Trespass notice is something that we will give out. It
13 doesn't have to be for any reason for anyone that wants
14 someone trespassed from their property, but we actually have
15 to physically make contact with the person that's being
16 trespassed to give them notice that they don't need to be at
17 that property any more or they can be arrested for that.

18 Q. And did you answer a call for service for Ms. Graham?

19 A. That is correct. The night he was trespassed?

20 Q. Yes.

21 A. Yes, we did answer a call for service in reference to
22 harassment and trespassing, where Ms. Graham stated that Mr.
23 Hooker was on the scene and she did not want him there.

24 Q. Do you recall or do those he papers help you recollect
25 what day that was that you placed the defendant on trespass

1 notice?

2 A. The date he was placed on trespass notice was the 29th
3 of January.

4 Q. Can you tell what time of the day or night that was?

5 A. Approximately 1:53 in the morning.

6 Q. Do you recall what time you initially spoke with Ms.
7 Graham?

8 A. I do not recall exactly what time it was that I spoke
9 with Ms. Graham.

10 Q. Would it have been close in time to when you located
11 Mr. Hooker?

12 A. It was very close in proximity to that time.

13 Q. Do you recall where you located the defendant?

14 A. Yes, ma'am, I do. We located Mr. Hooker in a creek bed
15 adjacent to the residence.

16 Q. Did it appear to you that he was attempting to conceal
17 himself?

18 A. He was hiding from us. He knew we were looking for him
19 at that time.

20 I do recall going into Ms. Graham's residence and Mr.
21 Hooker was at the back window. When we tried to go around
22 the house to locate and talk with Mr. Hooker, he had fled
23 from the scene and that's where we located him afterwards,
24 in the creek bed.

25 Q. Did you -- in your personal life or in your

1 professional life, have you had an occasion to be around
2 people while they were under the influence of alcohol?

3 A. Myself personally, I do not drink, so I'm not around
4 that typically.

5 Q. But in your line of work as a police officer --

6 A. In our line of work we do, yes, ma'am.

7 Q. Okay. Did you form an opinion, just a personal
8 opinion, as to whether Mr. Hooker appeared to be under the
9 influence the night of the 29th of January?

10 A. I did. I could smell the odor of alcohol coming from
11 his person.

12 Q. When you located him, were there any other officers
13 with you?

14 A. Officer Jenkins was on the scene with me and we was
15 able to locate Mr. Hooker in a creek bed. I was on one side
16 of the creek bed and Officer Jenkins was on the other side
17 and by using a spotlight and flashlights we were able to
18 locate him down in the creek bed.

19 Q. And once you located him, what did you do?

20 A. We called him up to us. I went down in the creek bed
21 to help him up. He was slightly inebriated, and we brought
22 him up to the car and advised him at that point that he was
23 trespassed from the residence on

24 Q. Did you place him under arrest at that time?

25 A. We did not.

1 Q. What did you do with Mr. Hooker?

2 A. We did give Mr. Hooker a ride to a residence in Rock
3 Hill away from that residence on

4 Q. Now, following that incident were you dispatched out to
5 Shanna Graham's house on February 28th, 2011?

6 A. I was not dispatched. There were other units
7 responding to that house. However, I had prior knowledge of
8 Mr. Hooker being trespassed, so I took it upon myself to go
9 to the house to make sure the officers that were responding
10 were aware of that fact.

11 Q. And following that day did you see Mr. Hooker again?

12 A. I did. The following day I was selected to do a
13 prisoner transport and Mr. Hooker was that prisoner to be
14 transported to the Moss Justice Center.

15 Q. And let's just explain that to the jury for a minute.
16 Why do you transport people from Rock Hill to the Moss
17 Justice Center?

18 A. When it's a case where it's going to be a high court or
19 if they are not able to pay out for bond, they are
20 transported to the Moss to be facilitated there.

21 Q. And is transporting part of your standard job duties?

22 A. That is correct.

23 Q. When you transported Mr. Hooker, did you transport
24 him -- was he your only prisoner that you transported?

25 A. That's correct, he was the only one in the car.

- 1 Q. Were there any other officers with you?
- 2 A. No, ma'am, there were not.
- 3 Q. Now, your car was equipped with recording equipment, is
4 that correct?
- 5 A. That's correct.
- 6 Q. And is does that recording equipment activated?
- 7 A. We can activate it through a device that we carry on
8 our belt and we just push the button to activate it.
- 9 Q. Will it also activate for blue lights?
- 10 A. That's correct, with blue lights or a siren when we
11 code.
- 12 Q. Go ahead.
- 13 A. No, that was it, when we code.
- 14 Q. Do you record transports from Rock Hill PD to the Moss
15 Justice Center?
- 16 A. Typically we do not.
- 17 Q. Did you record this transport?
- 18 A. I did not, no.
- 19 Q. During the course of this transport did you ask the
20 defendant any questions about his case?
- 21 A. I did not, no, ma'am.
- 22 Q. Did you ask him any questions about anything?
- 23 A. No, ma'am, I did not.
- 24 Q. Did Mr. Hooker make any spontaneous statements to
25 you --

1 A. He did.

2 Q. -- regarding this case?

3 A. He did. He stated that we were wrong for not arresting
4 the complainant's father for assaulting him and that he
5 was -- had the right to be at the apartment.

6 Q. And you talked about this earlier. Ms. Graham's
7 residence on is that address within the
8 city limits of Rock Hill?

9 A. It is within the city limits, yes.

10 Q. Is that within York County?

11 A. Yes, ma'am, it is.

12 Q. Thank you very much, Officer Slawson. Please answer
13 any questions that Ms. Inzerillo has.

14 A. Okay.

15 MS. INZERILLO: May it please the court, Your
16 Honor?

17 THE COURT: Counsel.

18 CROSS EXAMINATION BY MS. INZERILLO:

19 Q. Good afternoon, officer.

20 A. Good afternoon.

21 Q. On January 29th --

22 A. Yes, ma'am.

23 Q. -- when you did the trespass notice for Mr. Hooker --

24 A. Uh-huh.

25 Q. -- you spoke to Ms. Graham that evening, is that right?

1 A. That is correct, I did.

2 Q. And typically when you do trespass notices, you explain
3 to the victim exactly what that means, is that right?

4 A. That is correct.

5 Q. And you explained to the victims that that means if
6 whoever is on notice for trespass, if they come back, they
7 should call the police --

8 A. That is correct.

9 Q. -- is that right?

10 Because your understanding is that someone has to be
11 told not to come back before they can be arrested for coming
12 back?

13 A. Yes, that's correct.

14 Q. Okay. And since -- and on this night that's what you
15 explained to Ms. Graham?

16 A. That's correct.

17 Q. And that was on January 29th of 2011?

18 A. Yes, ma'am.

19 Q. Is that right? Okay.

20 And I believe you have another incident report from
21 January 3rd, 2011, that the state provided to you. Do you
22 have that?

23 A. Yes, ma'am, I have it right here.

24 Q. You were the reporting officer on that night as well --

25 A. That's correct.

1 Q. -- is that right?

2 A. Yes.

3 Q. Okay. And on that night there was a complaint about
4 voice messages being left with Ms. Graham, is that right?

5 A. Yes, that is correct.

6 Q. And you indicated that you took that over the phone?

7 A. Yes, I spoke with Mr. Bruton over the phone in regards
8 to that.

9 Q. And you spoke to Ms. Graham as well, as indicated by
10 your narrative, is that right?

11 A. Yes.

12 Q. And you handled this on the phone because you didn't
13 have to actually go out to her house and do a report, is
14 that right?

15 A. That's correct, they requested that we give them a call
16 rather than come to the house.

17 Q. Okay. And so she was not requesting that Mr. Hooker be
18 arrested on this night?

19 A. No, she was just calling to report it, I guess to leave
20 a paper trail.

21 Q. Okay. So just to do a report, not to ask for you guys
22 to come out and investigate and do an arrest?

23 A. Correct.

24 Q. Okay. And you indicate in your report that this report
25 is for documentation only, is that right, administratively?

1 A. That's correct.

2 Q. And you put that in there because that reflected her
3 wishes that she -- like you indicated, she just wanted
4 something on paper?

5 A. That's correct.

6 Q. All right.

7 MS. INZERILLO: I have no further questions, Your
8 Honor.

9 MS. JOYNER: Your Honor, we have nothing further
10 from this officer. We would ask that he be released from
11 the subpoena.

12 THE COURT: Any objection?

13 MS. INZERILLO: No objection.

14 THE COURT: Thank you for coming, sir. You may be
15 excused at this time.

16 THE WITNESS: Thank you, sir.

17 MS. JOYNER: The State's next witness is Officer
18 Felmet.

19 Step forward and be sworn.

20 OFFICER T.B. FELMET, having been first duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION BY MS. JOYNER:

23 Q. Officer Felmet, could you please state your full name
24 for the record?

25 A. Officer Timothy Felmet with the Rock Hill Police

1 Department.

2 Q. And what is your rank at the Rock Hill Police
3 Department?

4 A. I'm a Police Officer 1.

5 Q. And what are your job duties as a Police Officer 1?

6 A. I'm basically just a standard patrol officer. You
7 know, we answer calls for service. And when we are not
8 doing that we take a proactive approach to crime -- or law
9 enforcement.

10 Q. Do you have with Rock Hill particular divisions other
11 areas that you work?

12 A. I work on what we call Zone 4. That's -- if you are
13 familiar with Rock Hill, that's Cherry Road, Anderson Road,
14 Dave Lyle area, and everything between them.

15 Q. So would _____ fall within your zone?

16 A. _____ actually falls within Zone 1, which
17 Zone 1 has the north side of Cherry Road, whereas I have the
18 south side, but Zone 1 would be my partner zone.

19 Q. So would that sometimes interactions overlap between
20 Zone 1 and Zone 4, as far as what officers respond to
21 different calls?

22 A. That's correct.

23 Q. Okay. Now, on February 27th of 2011, did you and
24 officer Wells have an occasion to respond to Shanna Graham's
25 house?

1 A. That's correct.

2 Q. And how did you come to be at Ms. Graham's house that
3 day?

4 A. I'm sorry, which day are we talking about?

5 Q. How did you -- how did you and Officer Wells end up at
6 Ms. Graham's house?

7 A. Are we talking about the -- I apologize.

8 Q. The 27th, not the burglary day, but the day before.

9 A. I'm sorry, we had actually been dispatched to a
10 separate call. I believe it was a disorderly that happened
11 in the same apartment complex. At that time after we had
12 finished what we needed to do there and got that call
13 cleared we were approached by a gentleman about his
14 girlfriend at the time harassment from her ex-boyfriend.

15 Q. And did you -- was that girlfriend Ms. Graham?

16 A. That's correct.

17 Q. Did you go to her house?

18 A. Yes, ma'am, we did.

19 Q. Did you go with Officer Wells?

20 A. Yes, ma'am.

21 Q. And during the course of that visit did either you or
22 Officer Wells listen to any voicemail messages that had been
23 alleged to have been left by the defendant?

24 A. Ms. Graham kind of gave a brief summary of what's been
25 happening with her ex-boyfriend, and then Officer Wells

1 reviewed some of the voicemail messages.

2 Officer Wells is our shift -- she kind of handles a lot
3 of our CDV's, so it's kind of her forte, I suppose you would
4 say.

5 Q. Okay. But you didn't personally listen to those phone
6 calls on the 27th?

7 A. I did not.

8 Q. Were you dispatched back out to the residence on the
9 28th of February?

10 A. Yes, ma'am.

11 Q. Okay. And do you recall how you were called out to the
12 residence on that night?

13 A. We were basically called -- I believe dispatch actually
14 gave us a call as a domestic and we --

15 Q. Let me stop and ask you about that.

16 A. Yeah.

17 Q. Is it your understanding, or what is the your
18 understanding of how dispatch comes to code something or
19 call something?

20 A. Generally dispatch will receive a call from whoever a
21 complainant decides to call in. And, you know, initially
22 the call would come in, just whatever the complainant has to
23 say, and they will try to get a brief understanding of kind
24 of a totality of what's going on. Then they will enter that
25 call into our call screen, and then actually a separate

1 dispatcher will dispatch that call out.

2 Q. But it came in as a domestic?

3 A. I believe so, yes.

4 Q. Would it be -- is it Rock Hill policy to activate or go
5 to a domestic call with blue lights or sirens?

6 A. No, ma'am, without approval from a supervisor, we only
7 respond to code to situations involving immediate threat to
8 life or great bodily injury. Situations like that -- maybe
9 a fight where we have been involved -- I'm sorry, advised
10 that a weapon or like a gun or knife has been involved.

11 Q. Okay. So you did -- you did -- so you did not go with
12 your blue lights, is that correct?

13 A. No, ma'am.

14 Q. Did you ever have to activate your camera?

15 A. No, ma'am.

16 Q. When you arrived at the scene, what was going on?

17 A. Essentially myself, Sergeant Culbreath, and Officer
18 Wells all got there within the same I would say span of a
19 minute. We were actually pretty close by. Officer Wells
20 and I were actually just clearing a call. And when we got
21 there and made entry into the apartment, we met, and the
22 victim -- I'm sorry, the victim's father had Mr. Hooker on
23 the floor. He was restraining him on the floor. It looked
24 like they had been in some kind of altercation.

25 Q. Okay. Do you see the gentleman in the courtroom who

1 was restrained on the kitchen floor?

2 A. Yes, ma'am, that would be Mr. Hooker.

3 Q. Okay. You are pointing to the defendant?

4 A. Yes, ma'am.

5 Q. Do you recall whether -- did anybody place handcuffs on
6 Mr. Hooker at this point?

7 A. I believe Sergeant Culbreath took the defendant into
8 custody.

9 Q. And once he was placed into custody, what happened to
10 him? Where did he go?

11 A. Myself and Sergeant Culbreath escorted the defendant
12 out from the apartment, as he was fairly disorderly as we
13 were trying to kind of assess the situation. We escorted
14 him from the apartment to Officer Wells' patrol vehicle.

15 Q. Now, you determined he was fairly disorderly. In
16 either your personal life or your professional life have you
17 had an occasion to be around people who are intoxicated?

18 A. Yes, ma'am.

19 Q. Did you form an opinion that night about whether the
20 defendant was intoxicated?

21 A. Yes, ma'am, Mr. Hooker was, in my opinion, extremely
22 intoxicated. In fact, where -- in the area he had been
23 there was several empty beer cans that he had brought, we
24 later determined that he had brought into the residence.

25 Q. You say he was ranting and raving. Did you ask him any

1 questions? Did any of the officers on the scene that night
2 ask him any questions?

3 A. Basically no. Our prior knowledge with what had been
4 going on between the two of them and the fact that we knew
5 he did not live there, it was a pretty easy determination
6 that go ahead and take him into custody.

7 Q. Okay. Did you hear him make any statements that were
8 not in response to any questioning, but anything in regards
9 to --

10 A. Basically Mr. Hooker was just very irate at the fact
11 that we were taking him into custody and not the victim's
12 father for assaulting Mr. Hooker.

13 Mr. Hooker was also very angry at the fact that, you
14 know, he allegedly that he had lived there and he had a
15 right to be there.

16 Q. Thank you very much, Officer Felmet. Please answer any
17 questions that Ms. Inzerillo has.

18 A. Yes, ma'am.

19 MS. INZERILLO: May it please the court, Your
20 Honor.

21 THE COURT: Counsel.

22 CROSS EXAMINATION BY MS. INZERILLO:

23 Q. Officer Felmet, when you first interacted with Mr.
24 Hooker this night at Shanna Graham's house, on February
25 28th, you observed he had a black eye?

1 A. No. No, ma'am, I don't recall that.

2 Q. Okay. You were aware that he was being restrained by
3 Shanna's stepfather (sic), is that right?

4 A. Yes, ma'am.

5 Q. And during -- when you were at the house on that night
6 did Ms. Graham show you any damage to the house, other than
7 any damage allegedly made when Mr. Hooker made entry into
8 the house?

9 A. I'm sorry, you are asking if I saw any damage, other
10 than the damage he caused?

11 Q. Correct.

12 A. Not that I recall, no.

13 Q. Did she indicate to you, in your investigation, point
14 out anything to you around the house, any other damage to
15 the house?

16 A. No, ma'am.

17 Q. Okay. And the day before when you and Officer Wells
18 responded about the text messages and the voicemail, when
19 you were at her house that day, did she indicate any damage
20 to the house?

21 A. No, ma'am, we stayed in the common area of the living
22 room.

23 MS. INZERILLO: No further questions, Your Honor.

24 MS. JOYNER: We have nothing further from this
25 officer. We ask him to be released from his subpoena.

1 THE COURT: Thank you for coming, sir. You may be
2 excused.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Counsel, unless you have got a short
5 witness, it may be a good time to stop. Have you got a
6 short witness?

7 MS. JOYNER: I believe that the next witness would
8 be very short, Your Honor.

9 THE COURT: Call your next witness, please.

10 MS. JOYNER: Sergeant Culbreath, please.

11 OFFICER CARLOS CULBREATH, having been first duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION BY MS. JOYNER:

14 Q. Sergeant Culbreath, could you please state your full
15 name for the record?

16 A. My name is Carlos Christopher Culbreath.

17 Q. And what is your occupation?

18 A. I'm a sergeant at the Rock Hill Police Department.

19 Q. How long have you been with the Rock Hill Police
20 Department?

21 A. It will be eight years in December.

22 Q. And what are your -- what's the listing of your normal
23 job duties as a sergeant?

24 A. My job as a sergeant is pretty much supervise my troops
25 or my officers. We have one lieutenant and two sergeants

1 per shift, and my job is to make sure that I supervise, and
2 I have to check all the paperwork at the end of night.

3 Q. And do you also, in addition to those duties, handle
4 the other duties of a police officer, answer complaints and
5 enforce traffic laws and other such things?

6 A. Yes.

7 Q. Okay. Now, prior to February 28th of 2011, had you had
8 any interactions that you aware of with the victim Shanna
9 Graham as it relates to the defendant Robert Hooker?

10 A. Yes.

11 Q. You had. Had you responded to other calls?

12 A. Oh, I'm sorry, no, I haven't.

13 Q. On February 28th of 2011, did you become involved in a
14 call out to Ms. Graham's residence?

15 A. Yes, I did.

16 Q. Okay. What was the nature of that call?

17 A. Well, we received a call in reference to a burglary in
18 progress. I was nearby. I responded to the scene.

19 As I arrived on the scene, if I'm not mistaken, the
20 victim's mother was outside wanting me to come in the house.
21 When I walked inside her residence the victim's father was
22 holding down Mr. Hooker. I came on the scene. I
23 immediately placed handcuffs on Mr. Hooker and I escorted
24 him outside the residence.

25 Q. And did you transport Mr. Hooker back to the Rock Hill

1 Police Department, or did you put him in another officer's
2 car?

3 A. I placed Mr. Hooker in Officer Wells car. I did not
4 transport him.

5 Q. Okay. When you came in and you saw Mr. Hooker and Ms.
6 Graham's father, what room were they located in?

7 A. If I'm not mistaken, I think it was the kitchen, if I'm
8 not mistaken. I think when you first walked in, it was
9 maybe a living room. I think he was on the floor in the
10 kitchen.

11 Q. Did other officers enter the apartment with you or
12 close in time to you?

13 A. Yes, I was the first one inside the residence and I
14 know -- I don't know if a second or a minute later Officer
15 Felmet was behind me.

16 Q. Do you recall what state of dress the defendant was in
17 when you entered the apartment?

18 A. His clothing?

19 Q. Yes, what he is wearing.

20 A. If I'm not mistaken, I think he had his shirt off and
21 a -- I can't recall what he had on, as far as his pants or
22 anything, but I remember that he had a shirt off.

23 Q. In your personal life or your professional life, have
24 you had the occasion to be around people who have had too
25 much to drink?

1 A. Yes, I have.

2 Q. And did you form an opinion about whether the defendant
3 had had too much to drink on February 28th?

4 A. Well, my encounter with Mr. Hooker was very, very
5 short. I did speak with him. When we got him back to the
6 police department I walked in the jail and I could tell that
7 he had been drinking.

8 Q. And other than your interaction with initially
9 handcuffing him and then walking him back to the jail, did
10 you have any interaction with Mr. Hooker on this case?

11 A. No, just a small conversation we had at the jail, but
12 nothing really pertaining to the case.

13 Q. Thank you very much. Please answer any questions that
14 Ms. Inzerillo has.

15 MS. INZERILLO: May it please the court, Your
16 Honor.

17 THE COURT: Counsel.

18 CROSS EXAMINATION BY MS. INZERILLO:

19 Q. Sergeant Culbreath, while you were at Ms. Graham's
20 house on February 28th, did she indicate to you any other
21 damage to her house, other than what she alleged was done?

22 A. No, she didn't.

23 Q. Okay. Do you recall whether -- well, I'm sorry.

24 When you interacted with Mr. Hooker, you indicated you
25 remember he didn't have a shirt on, is that correct?

1 A. Yes.

2 Q. Okay. Do you recall that his clothes were in the
3 dryer?

4 A. I don't recall that.

5 Q. Okay. Do you recall if the oven was on?

6 A. Say that again?

7 Q. Do you recall if the oven was on?

8 A. I don't recall that either.

9 MS. INZERILLO: No further questions, Your Honor.

10 MS. JOYNER: We have nothing further.

11 We would ask that sergeant be released from his
12 subpoena as well.

13 MS. INZERILLO: No objection.

14 THE COURT: Thank you for coming, sir. You may be
15 excused, sir.

16 It's probably a good time to adjourn, but if you
17 got somebody that you need to get up today before we
18 adjourn?

19 MS. JOYNER: No, sir, I think we can wait until
20 tomorrow.

21 THE COURT: Mr. Foreman, ladies and gentlemen of
22 the jury panel, it's almost five after five. We are going
23 to go ahead and recess for the afternoon.

24 I'm going to ask you, if you will, to be back in
25 the jury room ready to go in the morning at 9:30. At 9:30.

1 On the overnight recess I would remind you,
2 please, not to discuss the case among yourselves or with
3 anyone else, including your family and friends. Please do
4 not read, listen to, or watch any media account. Please do
5 not go on the Internet to try to find out anything about
6 your case from any source.

7 Please have a pleasant night tonight and be back
8 at 9:30. Thank you.

9 (The following takes place outside the presence of
10 the jury panel)

11 THE COURT: Okay. Any matter we need to take up
12 out of the presence of the jury at this time from either
13 side?

14 MS. JOYNER: Not from the State, Your Honor..

15 MS. INZERILLO: No, Your Honor.

16 THE COURT: All right. Counsel, we will adjourn
17 then. I'll be here, of course, before 9:30, if something
18 comes up you need to address, but other than that we will
19 start at 9:30.

20 MS. JOYNER: Thank you.

21 Whereupon, proceedings were adjourned to August
22 10, 2011)

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 ROBERT HOOKER,) 2011-GS-46-01837
7 DEFENDANT.) 2011-GS-46-01838
) 2011-GS-46-01839
) AUGUST 10, 2011
) YORK, SOUTH CAROLINA

8
9 (VOLUME II)

10 B E F O R E:

11 THE HONORABLE LEE S. ALFORD, JUDGE. ; And a Jury.
12
13

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

15 ERIN JOYNER, ASSISTANT SOLICITOR
16 JENNIFER COLTON, ASSISTANT SOLICITOR
17 ATTORNEYS FOR THE STATE

18 MELISSA INZERILLO, ASSISTANT PUBLIC DEFENDER
19 AMY SIKORA, ASSISTANT PUBLIC DEFENDER
20 ATTORNEYS FOR THE DEFENDANT

21 MICHAEL R. WATTS
22 CIRCUIT COURT REPORTER
23
24
25

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1 (PROCEEDINGS, AUGUST 10, 2011)

2 THE COURT: All right, counsel, why don't we do
3 this. If the State is going to rest when the jury comes
4 back in --

5 Well, let me address any motions that you would
6 like to put on the record and they would be considered
7 timely made, even though they are resting. They are resting
8 in front of the jury when the jury comes in.

9 MS. INZERILLO: Your Honor, at this time, just for
10 the record, we would make a motion for a directed verdict,
11 and we would renew all previous motions and objections made.

12 I make this -- I know we discussed earlier
13 yesterday that the State intended to go forward on the
14 malicious injury indictment at the lowest level indictment.
15 So if that's the understanding, that I make the directed
16 record for the verdict. Mr. Hooker was actually indicted
17 for a higher level, but if that's not their intent, then we
18 would make another directed verdict motion on that.

19 MS. JOYNER: Your Honor, we intend -- we did not
20 introduce any values. Your Honor, we believe that the
21 damage was less than 2,000, so we go forward on the
22 malicious injury --

23 THE COURT: Well, we can talk more about that. I
24 might submit it back to the jury on the verdict form and --
25 I hadn't really decided on that yet, but I want to talk to

1 you all first about that, but I think I'm going to simply --
2 when I instruct the jury, I'm going to instruct them if they
3 find less than \$2,000 and let them make a finding on that
4 basis. It's less than 2,000, correct?

5 MS. JOYNER: Yes, sir, he was indicted as more
6 than 2,000, but we didn't present any evidence because the
7 estimates came up under 2,000.

8 THE COURT: Make a finding on under \$2,000, so it
9 would be -- if the jury were to convict him on that, he
10 would only be faced with whatever penalties are under \$2,000
11 for that offense. We wouldn't submit the greater offense to
12 them at all. Then we can talk more about that.

13 All right. Does the State wish to be heard on the
14 motions?

15 MS. JOYNER: Is she making a motion as to the
16 stalking and burglary?

17 THE COURT: Yeah, the motions are directed on all
18 of them.

19 MS. JOYNER: Yes, Your Honor, then we would submit
20 that as to malicious injury under \$2,000, there is
21 sufficient evidence as to support the evidence of the damage
22 to the property, to the house, which is real property. So
23 the issue of willfulness or maliciously of the intent, which
24 would be a matter for the jury.

25 As to stalking, we think the evidence viewed in

1 the light most favorable to the State clearly shows a
2 pattern of words or conduct encompassed under the time
3 period alleged in the indictment of October through February
4 28th. Certainly from the testimony of the victim there were
5 phone calls coming to the house and breaking into the house.
6 None of those in the light most favorable to the State serve
7 any legitimate purpose. But from the phone calls, most in
8 particular, but also in other actions. For instance,
9 beating the victim's new boyfriend in her presence certainly
10 shows his pattern of words or conduct which intended to
11 cause great bodily injury, or death, or bodily injury, or
12 damage to property. And the damage to property, certainly
13 those are or's, but damaged property could be argued from
14 his prior conduct of breaking other things in her house.

15 She testified that she was afraid of the
16 defendant, satisfying that element.

17 And I think the fifth element, would a reasonable
18 person fear. And I think that in the light most favorable
19 to the State, a reasonable person would fear sum or all of
20 those things from his conduct.

21 And, finally, burglary in the first degree. There
22 is -- I don't think there is any dispute from any of the
23 witnesses that he was clearly inside the dwelling. It was
24 at night. That comes from multiple witnesses, Your Honor.
25 Ms. Graham did not give him consent. I think that's evident

1 from her testimony and from the nature of entry, that he
2 clearly didn't have a key or otherwise have permission.

3 The intent to commit a crime therein, the
4 indictment alleges stalking, harassment, malicious injury,
5 or other crimes. And I think there is more than sufficient
6 evidence from which the jury could determine that he
7 continued -- that he intended to stalk her, harass her.
8 They could find he committed assault, he committed assault
9 and battery against her, but there is certainly evidence of
10 his intent, and that would be a question for the jury.

11 So we submit that we have satisfied our standard
12 of proof for the directed verdict motion.

13 THE COURT: Let me ask you, on the burglary
14 charge, I seem to recall within the last couple of years,
15 either the appeals court or a Supreme Court decision, I
16 think it was appeals court decision, which said even
17 trespass; if you enter a house without consent with the
18 intent to commit a crime, that trespass is a crime which
19 would be sufficient to establish that.

20 MS. JOYNER: There is a case that alludes to that,
21 Your Honor, and that is -- if I can find that. I think that
22 comes, Your Honor, from McMillan v. State of South Carolina,
23 383 S.C. 480, and that's a Supreme Court opinion from 2009,
24 and that is in the discussion, Your Honor, at the very end
25 of a PCR case, and they -- it's not the direct issue of the

1 case, but they do say in that case "moreover, if we
2 interpret McMillan's argument as being that counsel was
3 ineffective because she referred to unlawful trespass and he
4 did not meet the elements of unlawful trespass," they say
5 they tend to indicate inferentially that trespass could form
6 the basis.

7 THE COURT: Well, I think there is a case where
8 somebody -- there was a woman's son -- she inherited the
9 house, and she indicates -- I'm thinking about it and I
10 don't have it in front of me. I don't have a clerk, so I
11 haven't tried to pull it, but the case where the son did not
12 live in the house with the mother, but he inherited an
13 interest in the house, it seems like to me, but his mother
14 had control and living in the house. He was not living
15 there and he came there and broke in. And there wasn't any
16 evidence I think of other crimes, but I think they said it
17 was sufficient that he was breaking -- he was trespassing.
18 He entered the house with the intent to commit a trespass.

19 I think in this case the facts show that the
20 defendant, in fact, was put on notice for trespass. He was
21 not supposed to be there, and to be there was a trespass,
22 and certainly to go into a house would be a trespass so --
23 and I'm bringing this up because you said other crimes, and
24 I think having been put on notice of trespass not to come
25 there any more by the police, according to the testimony of

1 the police officer, and that this -- that being on the
2 property without consent would be a trespass. So to
3 enter -- that would be so issue on the burglary first degree
4 was whether he entered the house without consent and with
5 the intent to commit a crime therein. And you -- of course,
6 you can look at the malicious injury to property, because he
7 allegedly -- and these are all allegations of the facts, but
8 he's cut a hole in the wall with a screwdriver to go in, do
9 damage to the house when he went in. He, of course, used --
10 I guess you could say used power if he was drying something,
11 washing and drying clothes and cooking. He had to be
12 cooking something in there. And so -- so that would be in a
13 sense a theft, even though you charged other crimes, but it
14 would also be a trespass, it appears to me, trespass with
15 notice, which is a violation of the law itself. So -- and
16 that, along with the continued stalking, which is charged in
17 this case, was an effort to stalk and put in fear. So I
18 think -- and that is the only issue on the burglary first
19 degree, whether he entered with an intent to commit a crime
20 therein, and the intent -- in any event, I find that --

21 In looking at a motion for a directed verdict I'm
22 required to look at the evidence in the light most favorable
23 to the party against whom the motion is being made. In this
24 case, looking at the evidence in the light most favorable to
25 the State, I find there is substantial evidence from which

1 the jury could infer the State had proven the elements of
2 burglary first degree beyond a reasonable doubt. It's up to
3 the jury to weigh the evidence and make that determination,
4 but I think there is sufficient evidence to submit it to the
5 jury and for them to make a decision on burglary first
6 degree.

7 As to malicious injury to property, again, I find
8 there is substantial evidence from which the jury could
9 infer that the State had met its burden of proving the
10 elements of that offense beyond a reasonable doubt.

11 And as to the stalking, there is substantial
12 evidence on which the jury could infer that the State has
13 proven all of the elements of that offense beyond a
14 reasonable doubt.

15 And, so, therefore, I find it's a jury issue. The
16 court would, therefore, deny your motion for directed
17 verdict on each of these three charges and submit it to the
18 jury.

19 Anything else?

20 MS. INZERILLO: Your Honor, I would -- at this
21 point my client has informed me he does not wish to testify,
22 but I would ask the court to voir dire him.

23 THE COURT: Sure. Please bring him around and
24 let's put him under oath and let me question him about that
25 right now.

1 ROBERT T. HOOKER, having been first duly sworn,
2 testified as follows:

3 THE COURT: Sir, for the record, you are Robert T.
4 Hooker, is that right?

5 THE DEFENDANT: Roger that, Your Honor.

6 THE COURT: Sir?

7 THE DEFENDANT: Roger that, Your Honor. Yes, sir.

8 THE COURT: Did you say that roger that?

9 MS. INZERILLO: Yes, sir. He's been in the army.
10 I apologize.

11 THE COURT: How about just answer my questions, if
12 you will, because we are on the record and I want the record
13 to be clear as to this.

14 Now, Mr. Hooker, we have reached the stage of your
15 trial where you may present your defense.

16 You have the right to testify in your own behalf.
17 However, no one can make you testify.

18 In the event you have a record for any conviction
19 involving dishonesty or false statement or for a crime
20 punishable by imprisonment for more than one year and this
21 court determines that the probative value of admitting this
22 evidence outweighs its prejudicial effect to you, the
23 solicitor will be able to introduce this record for
24 impeachment purposes to attack your credibility.

25 If you elect not to take the stand, I would charge

1 the jury that they are not to give the fact that you did not
2 testify any consideration whatsoever, and there is to be
3 absolutely no prejudice to you because you did not testify.

4 It is left entirely up to you whether you or not
5 you testify. You may talk with your attorney, your family
6 and friends, or anyone else, but the ultimate decision is
7 left entirely up to you.

8 Do you understand that it is your decision as to
9 whether you will or will not testify in your case?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Have you discussed the advantages and
12 disadvantages of testifying with your attorney?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And do you wish to testify in your
15 case, sir?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Is that your decision, sir?

18 THE DEFENDANT: My decision, Your Honor.

19 THE COURT: Thank you. You may return to your
20 seat.

21 MS. INZERILLO: Thank you, Your Honor.

22 May we approach just briefly?

23 THE COURT: Yes, sir.

24 (Whereupon, the lawyers approached the bench for
25 an off-the-record discussion)

1 (Whereupon, proceedings were recessed)

2 (Whereupon, proceedings were reconvened)

3 THE COURT: Counsel, let's go on the record.

4 The defense has requested that I instruct the jury
5 with regard to inconsistent statements, and I have listened
6 to counsel on this issue at length. We have done that in
7 chambers. We discussed the charge, and I will be glad to
8 let you briefly put your position on the record, the defense
9 first, put your position on the record first.

10 MS. INZERILLO: Thank you, Your Honor.

11 Your Honor, the defense did request an
12 inconsistent statement charge from the court. Based on the
13 testimony that was elicited initially by the State in
14 regards to the victim, wherein -- I'm sorry, elicited by the
15 defendant, wherein Mr. Hooker was at Ms. Graham's house
16 earlier on the day of his arrest, the alleged burglary, and
17 subsequent questioning elicited from the victim by the
18 defense indicated that at a prior time, after Mr. Hooker's
19 arrest that night, at the -- when he was arrested for the
20 alleged burglary, that she gave a sworn statement to
21 Detective Dugan, in that sworn statement did indicate that
22 they dated until -- December of 2010. "I have not dated him
23 or seen him since this date." And she did acknowledge on
24 the record that in signing that statement that she
25 acknowledged that the statement indicated it was a -- the

1 statement was true, the whole truth, and nothing but the
2 truth, which was similar to the oath that she had taken
3 yesterday and testified before the jury. It was the
4 defense's position that that did constitute an inconsistent
5 statement that she did acknowledge on the stand under oath
6 that she had, in fact, seen Mr. Hooker earlier that day and
7 had interacted with him.

8 THE COURT: Thank you.

9 MS. JOYNER: And the State's position is that the
10 absence from the statement of the fact that she had seen Mr.
11 Hooker is not an inconsistent statement at all. Your Honor,
12 she gave a statement as to the events that night.

13 The reference to "I have not seen" -- or, "I have
14 not dated him or seen him since then," the victim explained
15 on the stand was her attempting to say I have not been with
16 him in a romantic way since that time. She was able to
17 explain it, Your Honor. I don't think that it is a
18 blatantly inconsistent statement. I don't think it's
19 inconsistent at all with her statement to her testimony.
20 She explained it in a perfectly logical way.

21 Your Honor, we believe that the charge that the
22 defense is asking for may be appropriate in situations where
23 you have an obviously blatantly inconsistent statement, but
24 this is not a blatantly or obviously inconsistent statement.
25 We don't think it's inconsistent at all.

1 The credibility charge that Your Honor commonly
2 uses; and I believe will use today; does touch on all the
3 points that regarding, you know, the consistency of the
4 witnesses and their testimony and so forth, and I believe it
5 adequately covers that, but to interject into the jury's
6 consideration inconsistent statements, when there haven't,
7 in fact, been any inconsistent statement would be very, very
8 confusing and prejudicial to the State.

9 THE COURT: I have weighed it very carefully and
10 listened to it and, you know, I might would give the charge
11 if I didn't think it was prejudicial to one side or the
12 other and was based on a real inconsistent statement, but
13 the court agrees with the State that this is not an
14 obviously inconsistent statement, and the defense tried to
15 make it that way. But, I mean, to say she's given a
16 statement to the police officers as to what happened and she
17 says "I gave the statement to what happened that night when
18 I found him inside my apartment." The fact that she didn't
19 say "he came there to give my son a toy earlier in the day,"
20 and go through that exercise, she didn't put that in her
21 statement, but she testified to that that's what happened
22 that day. And she said "I told him what happened that
23 night." She didn't go into what happened before, and "I
24 didn't -- "I couldn't put everything -- "I didn't put
25 everything in the statement that happened, because that

1 would require me to write a book." That was her testimony.

2 And her testimony was what she meant by not dating
3 him or having seen him in a romantic contact, having any
4 kind of relationship with him after December. And so
5 obviously --

6 And the court takes note of the fact that when
7 persons are talking about seeing someone, that they often
8 mean dating that person or having some kind of romantic
9 relationship with them, ongoing relationship. In this case
10 the words "seeing him" taken right after the words "dating
11 him" or "seeing him" in that context would mean that she did
12 not have any kind of romantic relationship with him in the
13 form of seeing him.

14 Now, you know, there are police reports where she
15 called the police. And, in fact, she had seen him on a
16 couple of occasions, said the police had come out, some of
17 the same police officers at the scene of this, the police
18 had come out and had found him there hiding in a ditch in
19 January and issued a no trespass order to him at that time.
20 Obviously she saw him on that occasion.

21 A report was made that he punched out this
22 neighbor, broke his nose on a separate occasion and a report
23 was made of that; that she was sitting in the car when this
24 fight was going on. Obviously she saw him on that occasion
25 and the police had a report of that.

1 So, I mean, it's kind of -- to me it's kind of
2 absurd to say that she meant she hadn't seen him since
3 December, when it's obvious the two police reports where she
4 made where she did actually see him, he was present and she
5 saw him, because that makes no sense to the court at all.

6 So I don't think it's an inconsistent statement at
7 all taken in the context of all the testimony and evidence
8 in this case and what she meant and in the wording of the
9 statement itself, not dating or having seen him since
10 December what she meant. She explained that in the record.

11 Now, of course, the defense can argue whatever you
12 want to about that, but I'm not -- for me -- you could take
13 a position that -- the defense could take a position that it
14 was not a true statement. The State can take a position
15 that it was a true statement taken in the context. But for
16 the court then, the only testimony that's been put up in
17 this case is by the State. So, therefore, for the court to
18 give that instruction to the jury about inconsistent
19 statement of the witness is almost, you know, a comment on
20 the facts of the case by the court, and it is certainly
21 prejudicial to the State far more any than probative to the
22 defense at all, when it's obviously was the testimony and
23 evidence that's in.

24 So I think it would be prejudicial to the State
25 for me to give that statement, and basically for the

1 court -- the court then would take an opinion about whether
2 that statement was inconsistent or not inconsistent, to
3 require the court to take the position on that before the
4 jury. But, in any event, I don't find it's an inconsistent
5 statement that's made.

6 I will give the jury my usual instruction about in
7 considering the believability of a witness, they consider
8 whether their testimony in evidence is consistent or
9 inconsistent with their own testimony or other things. I
10 will give them that. You can argue that to the jury, but I
11 just don't think it's a --

12 The court is not satisfied it's an inconsistent
13 statement. I do not find it's an inconsistent statement. I
14 do find it's prejudicial to the State, should I give it, and
15 essentially amounts to the position of the court as to
16 whether it's consistent or inconsistent statement or not.
17 I'm not going to do that.

18 Now, in chambers for the first time what I'm
19 getting ready to charge the jury, the defense requests for
20 the first time that the State charges the lesser included
21 offense of harassment first degree and harassment second
22 degree of the lesser included offense of stalking. This is
23 a novel issue in South Carolina. Neither of the parties
24 have been able to find any authority on it, any precedent
25 for it, and the court in its own research. While the jury

1 is cooling its heels for the last two hours we have been
2 doing some research on it. The court has not been able to
3 find anything on point with regard to that.

4 But the court, looking at the facts and -- and I'm
5 required to look at the facts and the inferences that could
6 be drawn from those facts by the jury, I'm required to look
7 at that, and in this case I have to look at it from the eyes
8 of the defense in determining whether the elements of
9 harassment first degree and second degree are lesser
10 included offense of stalking. And, frankly, the test is, of
11 course, whether the greater offense includes all of the
12 elements of the lesser offenses -- or whether the lesser
13 offenses do not include any element which are not included
14 in the primary offense or the greater offense. And in
15 looking at it, obviously it's a different wording, but the
16 court cannot -- it does not find that the -- or does find
17 that harassment first and second do include elements which
18 are also included in stalking. The court does not find that
19 harassment first degree or second degree include any
20 elements which -- separate elements which are different from
21 the greater offense of stalking. Therefore, I think the
22 court has to submit them as a lesser included offense and
23 charge the jury as to harassment first and second degree is
24 lesser included offenses of stalking. We don't have any
25 precedent on this. I have to look at the general precedent,

1 what's generally done in making that determination. And,
2 frankly, you know, it would depend on how the jury finds the
3 facts in this case and the elements -- the facts are subject
4 to more than one interpretation as to intent and the State
5 of mind of defendant -- excuse me, of the victim. And
6 because of all of that, I think I got to submit it to them
7 and I'm going to submit it to them. All right. I'll just
8 put my position on the record, much to the State's mis-like
9 about it, but I'm going to have to do it. If I didn't do it
10 and the appellate court would disagree with me, obviously it
11 would be reversible and sent right back, any time that you
12 don't include lesser included offenses, if the facts support
13 it, it is reversible.

14 All right. Is there anything else we need to
15 address now?

16 Now, any other requests to charge or anything else
17 you want to discuss with the court?

18 MS. JOYNER: No, sir, Your Honor.

19 MS. INZERILLO: No, Your Honor.

20 THE COURT: All right. Then when the jury comes
21 in the State will rest.

22 Then the defense will rest.

23 And then we will go straight into final argument.

24 Now, of course, the defense didn't put up any
25 testimony or evidence, so they will get the final argument.

1 The State will open and the defense will close.

2 All right. Please bring the jury in.

3 (The following takes place in the presence of the
4 jury panel)

5 THE COURT: Good morning, ladies and gentlemen of
6 the jury panel.

7 Let me begin, I hope you had a pleasant night last
8 night and I'll begin by apologizing for the long delay in
9 keeping you in the jury room. I assure you that that would
10 not have been done if it was not absolutely necessary, but
11 some issues came up this morning that needed to be resolved.
12 One of them was a very novel issue that was very important
13 that had to be resolved and had no real precedent following,
14 so we had to give a good bit of study. So that's the
15 reason for the delay. We have to get that issue right, but
16 we are ready now to resume with the trial.

17 Is the State ready to proceed?

18 MS. JOYNER: The State is ready, Your Honor.

19 THE COURT: Yes.

20 MS. JOYNER: At this time the State rests.

21 THE COURT: Counsel?

22 MS. INZERILLO: And, Your Honor, the defense
23 rests.

24 THE COURT: All right. Ladies and gentlemen of
25 the jury panel, the State and defense have now both rested,

1 which means that there will be no more testimony and
2 evidence taken in the case, and so we are to that part of
3 the trial where counsel will make their final arguments to
4 you, after which I will address you as to the charges in
5 this case and the law that applies to the issues in this
6 case.

7 What I would ask you to do at this time is to
8 listen attentively as counsel address you in final argument.

9 MS. JOYNER: May it please the court?

10 THE COURT: Solicitor.

11 MS. JOYNER: Madam Clerk, could you dim the
12 lights?

13 The defendant, Robert Hooker, is a man who likes
14 to send messages. He likes to give messages. He likes to
15 have the final word.

16 In October, when his relationship started to
17 disintegrate and he could feel Shanna Graham drifting away,
18 the calls started. Frequently, frequent calls, messages,
19 texts, coming over uninvited when he wasn't wanted, jimmying
20 her back door and coming into her house. This is a person
21 that she had dated for over a year and I'm sure it wasn't an
22 easy decision for her to reach, but these conditions were
23 simply intolerable. She made the decision that any person
24 would make, and she made the decision to end their
25 relationship.

1 In December she told him "I don't want to be with
2 you any more," and the defendant didn't accept it. The
3 calls came more frequently. The messages, the texts, the
4 pleading phone calls "please, please, take me back."

5 He kept coming to the house. He never stopped
6 coming to the house, and he kept going into the house,
7 figuring out a way to get in that back door, when she didn't
8 know how he was getting in, and coming into her apartment,
9 and there she would find him, drunk.

10 What would he do when he left the messages? He
11 would be drunk. This drunk defendant was scary to this
12 victim. He wouldn't leave her alone. He wouldn't stop
13 coming over.

14 In January it got no better, and for the first
15 time she reached out to law enforcement on January 3rd
16 making a phone call, "I'm getting harassing calls from this
17 defendant."

18 On January 29th he continued to come to her house,
19 he continued to call her, he continued to break into her
20 house, until she figured out a way to lock him out and she
21 called the police again, "please put him on trespass
22 notice," and they came out. At one o'clock in the morning
23 she called "he's here," and they go out and they find him.
24 Police officer, Officer Slawson, walks into her house, walks
25 into her kitchen and sees the defendant standing at that

1 same sliding glass door, that back of the house that he
2 liked so much. And when he sees the police officer, does he
3 stay? Because he's got a right to be there, right? Isn't
4 that what he tells the police later on the 28th? Does he
5 stay? No. He runs. He runs and he hides in a creek bed,
6 until the officers pull him out of the creek bed and takes
7 him to a friend's house and they tell him not to come back.
8 And that should be enough, shouldn't it? That should be all
9 the message that you need that "you are not wanted here any
10 more. This is over. This is done." But not for Mr.
11 Hooker.

12 February. February gets worse. He's still
13 calling. He is still coming by. He can't get into the
14 house any more, but his behavior is more angry. His phone
15 calls are more angry. He's aggressive. He can't get in, so
16 he sits on her front stoop. And when she comes home and she
17 calls the neighbor, calls the new boyfriend, "please come
18 help me. Come get him to leave." He doesn't leave until he
19 breaks -- breaks the neighbor's nose. Breaks it right in
20 front of Ms. Graham, right in front of the woman that he
21 won't leave alone, the woman he keeps showing up at her
22 house. What is she to think? What has he shown her he's
23 capable of? It used to just be throwing stuff in the house.
24 That's what she meant when she talks about him being
25 violent, throwing things and breaking furniture. And now

1 he's going to go break someone's nose who is just walking
2 over and saying "man, can't you go? Why can't you go?"
3 Right in front of her.

4 And that's not it for February. She goes out of
5 town. She's got a right to go out of town. He doesn't own
6 her. She's broken up with him. She's done everything that
7 she could do to make him leave her alone, and she can't even
8 go out of town and find a few moments of peace, because when
9 she goes her phone blows up with messages and calls, and she
10 sends back texts. She sends back texts just trying to buy
11 herself the peace that she deserves. "I'm out of town."
12 And what kind of response does she get, ladies and
13 gentlemen? It's horrible. You heard State's Exhibit 1 and
14 State's Exhibit 2. She testified those were the calls that
15 she got -- some of the calls, some of the calls she got
16 while she was out of town. State's Exhibit 2, did it send
17 chills up your spine?

18 Now, she gets a lot of grief on cross-examination
19 for why she doesn't call the police more. Why she doesn't
20 call the police? And she tried to explain it to you. She
21 dated this man for a long time. She didn't hate him. She
22 wasn't this vindictive witness up there. She wasn't a
23 vindictive person. She wanted him to leave her alone.

24 She did everything she could do to send him the
25 message. Sometimes she called the police. Sometimes she

1 called his mother. Sometimes they texted his mother begging
2 his mother to help her. Sometimes she called his friend.
3 Sometimes she called her own family members. Sometimes she
4 called her neighbor that she was seeing. She tried
5 everything. And she gets a lot of flack for not calling the
6 police more often, but, ladies and gentlemen, she wasn't out
7 to get him. She just wanted to live her life.

8 But February 27th came and those messages came and
9 she came back in town and she did call the police. She did
10 make a report. She made a report about those phone calls.
11 And after the defendant, even after making such horrible,
12 horrible and scary phone calls, he still shows up at her
13 house the next day.

14 But I want to remind you first about the calls,
15 because the calls were kind of hard to understand. The
16 defendant is intoxicated. He's slurring a little bit. Some
17 stuff I submit to you is just completely inaudible. We will
18 never know what he was saying, but some of the stuff we
19 will, and I want to remind you these seven calls, they are a
20 sampling. She received hundreds of messages over this
21 period of time. Hundreds. And I think this is a really
22 good illustration of the way that this situation escalated
23 to where it was.

24 Call number -- State's Exhibit 3. It's a very
25 short call. He sounds like he's crying, "I love you and I

1 want to be with you." He also says "I don't know what the F
2 to do" and he hangs up. And she testified she's not sure
3 when that call was made, but it was made sometime during the
4 breakup, and that was kind of like than one of those
5 pleading calls that she talked about, those calls when they
6 first broke up.

7 And then you have calls like State's Exhibit 4,
8 and a lot of it is hard to hear, but I submit you go back in
9 that jury room and you listen, you will hear "I know you
10 ain't home. I have traced your phone. I know where you are
11 at. Huh." She doesn't know where exactly that call was
12 made, but that's indicative of some of the calls that she
13 would receive during the course of this breakup.

14 What on earth was the purpose of that call, except
15 to say "I know that you don't want to be with me and I know
16 that you won't answer your phone, but I want to keep that
17 grip on you. Here is the message that I send to you, you
18 can't get rid of me. I'm everywhere." Isn't that what that
19 says? "I'm watching you."

20 State's Exhibit 7. This is a particularly hard
21 call to understand. Go back and listen to it. "Guess what.
22 This is going to be bad," and then he starts talking about
23 some incident and he is alleging that she left her four year
24 old son outside unattended. And he said "isn't that child
25 neglect? I can take you to court."

1 He goes on later in the conversation and he says
2 that he lives in that neighborhood for five years. I know
3 when you are there and when you aren't," again, sending that
4 message "I'm everywhere. You can't get away from me. If
5 you don't answer your phone, that's okay, because I'm
6 everywhere and I'm watching you. I know where you are.
7 Will you get a grip? You are pissing me off."

8 Let's go to State's Exhibit 6. That's when we get
9 into some of the February calls. Now, when we were doing --
10 when Ms. Inzerillo was doing cross-examination and she asked
11 her specifically about the incident where the defendant
12 broke the neighbor's nose, with the lack of a police report.
13 Well, ladies and gentlemen, you don't need a police report
14 to know what happened, because the defendant says it
15 happened and he said it in a phone call that was designed to
16 intimidate and threaten the victim. "Now David has got the
17 damn picture, got his little nose broken. I wasn't even
18 trying to swing on him. Why don't you pick a real man?"
19 What does that say to you? Even before -- he never knew far
20 back she was dating Mr. Bruton, but he always suspected.
21 Even before she ever wasn't even a thought in her mind, his
22 jealous controlling mind thought that that was her new
23 boyfriend. And when he came over to help her he broke his
24 nose. So you don't need a police report to know that
25 happened, ladies and gentlemen.

1 Let's talk about what else he said in State's
2 Exhibit 6, and pardon my language. "I see you with another
3 man, you're fucked." What does that mean? Well, that means
4 he's going to make her pay for being with another man.

5 "I am going to beat his GD ass. Yeah, I am going
6 to be leaving. I probably won't be f'ing around, but let me
7 catch him with you. One day you go to Wal-Mart and there I
8 am. Guess who is getting their ass beat." He was sending
9 another message, wasn't he? "I'm everywhere. You can't
10 escape from me. You think you are going to go to Wal-Mart
11 and you are going to be safe, because you are not, because
12 I'm going to be there. You can't have another relationship.
13 You can't have another life. You can't move past me,
14 because I'm not going to let you go."

15 And this is, "you keep playing games with me
16 little girl." She's not playing games, ladies and
17 gentlemen. She is trying. She's trying to move on with her
18 life. She's trying to tell him in every way that she can,
19 every message that she can send him to leave her alone. And
20 what does he think? He thinks it's a game. He thinks this
21 is a big game. It's a competition. She is some kind of
22 prize. She can't get away.

23 And then he goes on to tell her how lucky she is,
24 "let me tell you how your life is, because you don't know
25 nothing."

1 And here is the -- here is the statement that says
2 it all to let you know that he knew -- he knows, he
3 understands completely that she doesn't want to be with him
4 any more, but he doesn't care. "A man loved you and he can
5 love you again and this is a real man." He is talking about
6 himself. He's not accepting this breakup. He's not going
7 to let her go.

8 State's Exhibit 5. This is sometime in February,
9 she testified. "Remember the sound of this voice. You
10 remember my name, because this will come back to haunt you.
11 You will cry every day of your life that you met me and you
12 did this to me. You understand? This is where I come from.
13 You brought me out of it and I'm going back in. This is
14 what I do. Bitch, you are fixing to pay for her mistakes
15 and yours." Whatever that means, whatever it means, it's
16 scary. It is designed to be scary. This isn't the pleading
17 "I love you, take me back" phone call any more. This is
18 just scary. "Ha, ha, ha." He's sending a message.

19 "I f'ing hate you. Die you stupid bitch. You
20 keep the stuff I gave you just to remind you how stupid your
21 f'ing life is. You are fixing to lose your GD son. You'll
22 be alone when you f'ing die." She's a young woman, it
23 appears very healthy to me," so I can't imagine any reason
24 to talk about her death, except to insinuate what he's going
25 to say more outright in later calls.

1 State's Exhibit 1. This is phone call left while
2 she's out of the town. Right before she's comes back in
3 town, right before he breaks into her house, "why won't you
4 talk to me? I get back and you are f'ing going out of town.
5 I just want to talk with you. I just want to talk with
6 you." He understands, ladies and gentlemen, she's not
7 talking to him and he cannot handle it. He's going to send
8 her a message.

9 "You make your bed. You lie in it, you stupid
10 bitch." What does that mean? What is the purpose of saying
11 that, but to make her afraid, but to send her the message
12 "you won't talk to me? You will talk to me."

13 State's Exhibit 2, and this is the call that
14 sends -- I'm sure sends chills down your spine, and I'm
15 not -- there is a word in here that I just don't feel
16 comfortable saying, so I'm going to edit this a little bit.
17 "Why did he tell you something, you stupid C. When you come
18 home I'm going to kill you and him. You understand that?
19 You are dead, you stupid C. I'm going to end your f'ing
20 life. I'm going to end his. It's over."

21 It doesn't just stop there. He reminds her. He
22 reminds her he's going to take her away from her child, or
23 worse, I don't know. "You understand there is no more time
24 with me? There is no more time with his f'ing daughter."
25 He just learned of David Bruton with the four year old

1 daughter across the street. "You are dead. You understand
2 that, dead? I hope you a nice little weekend. You are
3 f'ing dead, you dumb C. I'm telling you play with me again.
4 Send me one text. You are out of town. I'll show you the f
5 out of town. I'll be there when you get back. You think
6 I'm f'ing playing you're dead. I'm coming and hell is
7 coming with me. I love you. I'm going to f'ing kill you.

8 Go back and listen to the calls. I know they are
9 hard to hear and I know you might have to put your ear close
10 to that speaker, and you are going to hear -- you are going
11 to hear horrible things that the defendant said.

12 I'm going to February 28th. After leaving
13 horrible messages like that, after telling somebody on
14 multiple, multiple times in just one message that he's going
15 to kill her, he shows up at her house that morning, and he's
16 sober. As she explained, he's not afraid of sober, sober
17 Robert Hooker. Drunk Robert Hooker is the one that calls
18 her and tells he's going to kill her. He shows up at her
19 house and breaks in, head butts the new boyfriend breaks and
20 his nose. He throws things around her house. Just
21 generally volatile and scary. And she doesn't want to get
22 him arrested because she's vindictive.

23 He shows up. She knows he can't get in the house.
24 She's not comfortable, but he's there, but there he is.
25 Before she even knows it he's come over with a brand new

1 toy, shows it to a four year old and asks the four year old
2 to open the door: Shanna Graham won't let him in the house
3 any more, so he resorts to trying to manipulate a four year
4 old, because, again, he's a man with a message. "You can't
5 get away from me. You try and get away from me, I'm going
6 to take your son, and now I'm going to manipulate your son
7 into getting inside your house." She didn't let him in.
8 She left -- he left. Eventually she left.

9 But one thing that is very, very significant about
10 that day, and I want you to think back to State's Exhibit 6.
11 This is her last ditch effort. When breaking up with him
12 didn't work; when sometimes appeasing him by taking his
13 calls didn't work; when calling his friends and family; when
14 texting his mother or calling on the phone; when calling the
15 police; when getting and putting him in the back of the
16 patrol car and taking him somewhere on a trespass notice;
17 when all those things didn't work, she tried one more thing:
18 "I'm seeing somebody else," and she hoped, and she hoped
19 that that would finally be the thing that would get through
20 to him.

21 You remember hearing those text messages that Ms.
22 Graham read from the stand back and forth between her and
23 Mr. Hooker's mother? She told his mom "please come get him.
24 Please come get him." The mom is saying "he's never going
25 to leave you alone. You have got to get the message to

1 him." All she has been trying to do was get a message to
2 her for months.

3 But she leaves the house and he's gone and she
4 thinks everything is fine, until she gets another text
5 message, because remember, Mr. Hooker likes to send
6 messages. And this one is a message to taunt her, as he
7 says, "I see you have a new comforter on your bed." And
8 when she texted back "are you in my house?" He says, "no,
9 but I was." She comes home and it's dark outside, and
10 thankfully she leaves her son in the car, and she walks in
11 the door and she finds Mr. Hooker. And when she says "what
12 are you doing in here," he says "I live here" and he starts
13 to walk towards her. This is the drunk man, this is the
14 same drunk man who called her two days earlier, State's
15 Exhibit 2, and said "you are f'ing dead, you dumb C. When
16 you come home I'm going to kill you and I'm going to kill
17 him. No more time with your son." This is the man that
18 she's afraid of, and walked towards her. He comes towards
19 her and she runs. And when she gets in her car he runs out
20 of the house after her and he slams himself down on the hood
21 of her car also she's driving away. Should she have called
22 the police? Sure, probably. Was she thinking about in the
23 moment? Was she thinking about whether she was going to
24 make the best case for the State? No. She has never been
25 out to get him arrested. She only wanted him to leave her

1 alone. She was scared. Her instinct was flight and she
2 made flight. Her instinct was to call for help and she
3 called for help, to try to get him out of her house that
4 night and he wouldn't leave.

5 But let's talk about how Mr. Hooker got in the
6 house. He went to her back porch, that same sliding glass
7 door he loved so much, that he couldn't get little Gabe to
8 answer or open earlier in the day, that he couldn't jimmy
9 open any more to get into her house. And so instead of that
10 he hoists himself up into the rafters. Hoists himself.
11 It's a lot of effort, a lot of thought involved on how you
12 are going to get into that house. And then we theorize that
13 he would have had to perch somewhere, so I guess he's
14 perched right here. And then he burrowed a hole from the
15 outside, through the outer wall, through the inner wall into
16 her second floor bedroom and pulled himself through that.
17 That's how much he wanted to get into her house, because,
18 again, Mr. Hooker likes to send messages - "you can't get
19 away from me. I'm everywhere. I'm entitled to be here."
20 Isn't that what he told the police later when they got
21 there? "I'm entitled to be here and you cannot lock me out
22 and you cannot stop me."

23 And I'm going to show you this picture and maybe
24 tell you why this picture is important. This is the wrapper
25 of a screwdriver that was found on the back deck, the same

1 back deck that he would have accessed this utility closet.
2 It's not Ms. Graham's screwdriver. She didn't have the
3 screwdriver wrapper out there earlier in the day, she
4 testified to that, and she hadn't bought a screwdriver
5 recently.

6 Mr. Hooker brought the tool with him. Let's go
7 back and look at this. That hole has got something blocking
8 it there. When they took a she already put something up to
9 block her four year old son from coming through, but look at
10 that hole. That hole took a lot of work, ladies and
11 gentlemen. It wasn't done by hand. He needed help and he
12 brought himself a tool, or he left and bought himself a tool
13 and brought it back. He wasn't going to take no for an
14 answer. He was going to get into this house.

15 And when Shanna Graham came back to the house with
16 a her dad and her stepmom, they leave the stepmom
17 downstairs, Ms. Broome. She's an older lady. Not nearly so
18 young as the defendant and probably not nearly as in such
19 good shape. While Shanna and her dad go upstairs to try to
20 figure out where on earth how he got in the house, what is
21 going on in there, Mr. Hooker starts to fight and here is
22 what he said. "I'm going to kill Shanna. I'm going to kill
23 her." And then he throws Gabe into the mix, because Gabe is
24 the little kid he likes so much, right, that he brought a
25 little toy to earlier in the day? Is nothing sacred,

1 because now you are talking to the mean drunk, the scary
2 guy, he says "I'm going to kill Gabe. I'm going to kill
3 Gabby. I'm going to kill Gabby," using his nickname.

4 And then this the man who has never actually
5 physically hit Shanna, has now escalated to the point of not
6 just saying he's going to do stuff, right, not just throwing
7 stuff, because we already know he's hit David Bruton in
8 front of her just to send a message. Now he's going to take
9 a swing on an older woman, swing and a push, after he says
10 "I'm going to kill your stepdaughter and I'm going to kill
11 your grandson." And Mr. Graham has to come downstairs and
12 hold him down. When the police get there he's still saying
13 "I live here. I live here." He has never lived there. He
14 has not been wanted there. He has been taken away by the
15 police. He has been told not to come back. He has never
16 ever lived there. But again, again, in his mind he's
17 entitled to be there and that's what he tells the police,
18 "I'm entitled to be here."

19 Nothing in the last three months have shaken his
20 conviction that he was entitled to be there. Nothing has
21 shaken his conviction that Shanna Graham was not entitled to
22 move on, was not entitled to do what was good for her and
23 her son, because he would not let go. Even being arrested,
24 ladies and gentlemen, the next day or two days later,
25 transported to Moss Justice, he's still telling Officer

1 Slawson "I was allowed to be there." He was not allowed to
2 be there, ladies and gentlemen.

3 He's charged today with malicious injury to
4 property. I'm not going to spend too long on this.

5 Here are the elements:

6 Willfully, maliciously, number one.

7 Number two: Cut, mutilate, deface, or otherwise
8 injure.

9 Three: A tree, house, outside fence, fixture, or
10 commit any other trespasses on real property.

11 Real property: A house, a building.

12 And in this case you know that he burrowed a hole
13 from the outside wall into the inside wall. Clearly this is
14 a house, ladies and gentlemen.

15 What does willfully mean? Willfully means
16 purposefully.

17 What does maliciously mean? Maliciously means
18 with a wicked heart is one of the definitions.

19 Ask yourselves did he cut into the house? Did he
20 do it on purpose? Did he have a wicked heart when he did
21 it? I submit to you that he did and I ask you to find him
22 guilty.

23 I want to talk to you about stalking.

24 Stalking has got five elements.

25 Number one: A pattern of words or conduct.

1 Number two: It serves no legitimate purpose.

2 Number three: It is intended to cause the
3 targeted person, in this case that's Shanna Graham, intended
4 to cause Shanna Greer fear, death, assault, bodily injury,
5 damage to property, among other things.

6 Four: It does cause Shanna Graham to fear those
7 things.

8 And five: It would cause a reasonable person to
9 fear assault, death, bodily injury, or damage to property.

10 Well, ladies and gentlemen, I want to tell you,
11 the indictment alleges that this occurred from October
12 through February 28th. This might seem a little confusing
13 to you, because the relationship did not end until --
14 officially end until December of 2010, but October it was
15 sort of the beginning of the end. October was the beginning
16 of the strange behavior. October was the beginning of the
17 repeated unwanted phone calls, the coming to the house, the
18 breaking into the house. And this is behavior that
19 intensified when she broke up with him, and escalated all
20 the way to what you see happening in the last few days of
21 February of 2011.

22 I think there is no question, ladies and
23 gentlemen. There should be no question in your mind his
24 pattern of words or conduct served no legitimate purpose.
25 The visits to the house that were unwanted, there was no

1 legitimate purpose in those. The breaking into the house
2 the number of times that he did, coming in when he wasn't
3 supposed to be there, it served no legitimate purpose. So
4 those phone calls. Those phone calls served absolutely no
5 legitimate purpose, except the only purpose for those phone
6 calls was to insult, belittle, intimidate, and threaten.

7 Intended to cause the targeted person to fear
8 death, assault, bodily injury, or damage to property. So
9 many of those phone calls that you heard expressly stated
10 the threats - her death, assault, bodily injury. You have
11 heard those. State's Exhibit 2, State's Exhibit 5 and 6,
12 those are outright statements that either "I'm going to hurt
13 you, kill you, kill him, or look, ha-ha, look what I already
14 did. I broke his nose; or, if I catch you dating somebody
15 else, you are f'd." Does cause or does cause the targeted
16 person to fear.

17 Shanna Graham, I submit to you, is a stoic kind of
18 person. She doesn't display a great deal of emotion, but
19 listening to those phone calls, I want you to think back and
20 I want you to remember, I want you to remember her face and
21 I want you to think in particular to when she heard State's
22 Exhibit 2, the "die you stupid C." That is the call that
23 brought her to tears, and she said to you "I was scared to
24 death. I was scared to death."

25 And five, would it cause a reasonable person to

1 fear. Would a reasonable person who has made -- who had
2 ended a relationship, who've made three police reports, who
3 has had somebody escorted away from her home and put on
4 trespass notice, who has seen the defendant break the nose
5 of somebody that came to her aid, who has received those
6 phone calls, would a reasonable person fear? And they
7 would, ladies and gentlemen. A reasonable person would
8 fear.

9 When we talk about stalking, the judge is going to
10 charge you on what are known as lesser included offenses,
11 two lesser included offenses, and they are, one, harassment
12 in the first degree. And I'm sorry I don't have a power
13 point for this, but harassment in the first degree is one.
14 It's a pattern of intentional, substantial, and unreasonable
15 intrusion into the private life of the targeted person.
16 That's the first element of harassment in the first degree.

17 It serves no legitimate purpose.

18 And it causes the person to suffer mental or
19 emotional distress, and it would cause a reasonable person
20 to suffer mental or emotional distress.

21 The statute goes on to say that harassment in the
22 first degree may include, but is not limited to these
23 examples:

24 Following the targeted person as he moved from
25 location to location;

1 Visual or physical contact is initiated,
2 maintained, or repeated after a person has been provided
3 oral or written notice that the conduct is unwanted, or
4 after the victim has filed an incident report to the law
5 enforcement agency.

6 Three: Surveillance of or maintenance of a
7 presence to the targeted person's residence, place of work,
8 school, or any other place regularly occupied or visited by
9 the targeted person.

10 And four: Vandalism and property damage.

11 I submit to you, ladies and gentlemen, that the
12 defendant committed the crime of stalking. But if you --
13 once you consider the lesser included offense of harassment
14 in the first degree, I want you to think about this. That
15 same period of time, that October through February 28th, and
16 really more so December 1st through February 28th, there was
17 a pattern of intentional, substantial, and unreasonable
18 intrusion into Shanna Graham's private life. He came by
19 when he wasn't supposed to. He was never supposed to. He
20 came into her house. He broke into her house. He watched
21 her, or so he said. He said "I know where you are at. I
22 traced your phone." And then there was the phone call and
23 it's been evidenced where -- it's really hard to understand,
24 but he's talking about watching her son to be out in front
25 of the house. And if you listen very closely to that call,

1 he says "I have got a video of it." So there's substantial
2 intrusion into her private life.

3 And like the stalking, there is no, there is no
4 legitimate purpose to anything that he did to Ms. Graham.
5 Nothing. The purpose of everything that he did was to send
6 a message to her that it wasn't over, that he didn't accept
7 it that she was his.

8 And certainly, ladies and gentlemen, I submit to
9 you that she suffered fear, but certainly lesser than that
10 you could find that she suffered mental or emotional
11 distress. She clearly did. This was a horrible, horrible
12 situation for her and for her son. He evidenced in his
13 phone calls to her that he followed her from location to
14 location. Whether he did or not, he still represented to
15 her; and that he conducted surveillance of her house. In
16 fact to that phone call about the video. And that's the
17 phone call "I have been watching you. I know when you are
18 there and when you are not."

19 The judge is also going to charge you on
20 harassment in the second degree, which sounds a whole lot
21 like harassment in the first degree.

22 And the elements of that are that the pattern of
23 intentional, substantial, and unreasonable intrusion into
24 the private life of the targeted person, just like
25 harassment in the first degree.

1 That it serves, number two, no legitimate purpose.
2 Again, causes the person to fear mental or
3 emotional distress, and would cause a reasonable person.
4 And this may include, but it is not limited to written,
5 verbal, or electronic contact that is initiated, maintained,
6 or received.

7 I submit to you that he did, in fact, commit the
8 crime of stalking. But if you choose to find him guilty of
9 harassment, I ask for you to find him guilty of harassment
10 in the first degree.

11 Now, finally he's charged with burglary in the
12 first degree. And burglary in the first degree is very easy
13 to understand, not as complicated as to stalking or the
14 harassment, it's very straightforward. Enters a dwelling,
15 without consent, with the intent to commit a crime therein,
16 and he enters it at the nighttime.

17 So I submit to you that elements one, two, and
18 four are answered by everything the State has put up
19 absolutely.

20 He enters into the dwelling. He's caught by
21 multiple people in the dwelling. He was clearly there
22 without consent, and he was clearly there in the nighttime.

23 But I submit to you also that element number
24 three, intent to commit a crime therein, is just as clear.
25 And Ms. Inzerillo told you in her opening that it wasn't,

1 but, ladies and gentlemen, I want you to think about
2 everything that you have seen and heard here today.

3 Now, the indictment alleges that he intended to
4 commit the crime of harassment, or stalking, or malicious
5 injury, or other crimes. You can decide that he intended to
6 do a whole range of things in order to find him guilty of
7 burglary in the first degree.

8 Think back to his history of this case. Think
9 back to everything that he did and everything that he said.
10 He wasn't going to take no for an answer. She broke up with
11 him and that didn't stop. She tried to distance herself
12 from him and that didn't work. She tried to call his family
13 and that didn't work. Even that day tried to call his
14 family and that didn't work. She tried to call her family
15 and sometimes they could help her get him away for a day,
16 but he never stayed away, ladies and gentlemen. Listen to
17 those phone calls. He knew. He knew that she didn't want
18 to be with him. Beyond a shadow of a doubt he knew. He
19 suspected her of being with other people, and he told her
20 "why won't you talk to me? Why won't you talk to me?" And
21 that phone call, "a man loved you once and he can love you
22 again." He knew. He knew she didn't want to be around him,
23 but he didn't care.

24 Earlier that day she wouldn't let him in the
25 house. He liked to send messages, but he wouldn't listen to

1 anybody else's. Her messages should have been loud and
2 clear to anybody else. He wouldn't listen and he came in.
3 And he came in, his intent on doing what he had been doing
4 for months and months and months; insulting, belittling,
5 intimidating, threatening her, causing her fear.

6 He wasn't supposed to be there in the first place.
7 He was trespassing, number one. Police Officer Slawson told
8 you that. A month earlier they pulled him out of a ditch
9 hiding from the police officer and he told him not to come
10 back. So number one, he went there and he was trespassing.

11 Number two, there was no legitimate purpose for
12 him to be there, except to harass her, to stalk her.
13 Well -- and, heck, let's think about his phone calls. He
14 told her he was going to kill her. He told her he was
15 going to kill her two days before this. And then when her
16 stepmother is left downstairs with him and he begins to say
17 these things again, "I'm going to kill her. I'm going to
18 kill her and I'm going to kill Gabby." What did he intend
19 to do, ladies and gentlemen? He intended to do nothing
20 good. He intended to commit a crime. He may have even
21 intended to commit multiple crimes.

22 Now, the judge is going to tell you that what a
23 person intends to do is a matter for you to decide, because
24 intent is rarely susceptible to direct proof. You got to
25 look at people's actions and then you have to figure out,

1 you have to use your common sense. You have to use all the
2 skills that you use in life to determine what he intended to
3 do. He made his intent very clear every day that he stalked
4 her, every day that he called her, every day that he came to
5 her house. He made it clear in the phone calls, and he made
6 it clear two days earlier. He made it clear in State's
7 Exhibit 6 when he says "I catch you with another man, he's
8 fucked." What had she just told him that day as a last
9 ditch effort to get him to leave her alone? She said "I'm
10 with somebody else." And he broke into her house and what
11 did he do?

12 (Whereupon, the audiotape was played to the jury
13 panel)

14 MS. JOYNER: Ladies and gentlemen, those are his
15 own words, and those are the words that were spoken to the
16 victim two days before she found him in her house. Those
17 are the words of a drunk defendant. Those are the words of
18 the man that she found standing in her kitchen; the man that
19 was so irrational and delusional that he believed he lived
20 there; the man that was so irrational and delusional that he
21 would say to her stepmother "I'm going to kill her and kill
22 a four year old." Sure, she could have called the police
23 other times, but, ladies and gentlemen, she called the
24 police this night and she reached out for help, and she had
25 been reaching out for help. She wanted nothing but him to

1 leave her alone and he wouldn't stop. What he intended to
2 do that night, anybody's guess, but I submit to you that he
3 intended to probably do a lot of things, and maybe he
4 intended to do what he said he was going to do. Maybe he
5 intended to beat her. Maybe he intended to kill her.
6 Certainly he intended to harass her. He certainly intended
7 to stalk her. He certainly intended to trespass.

8 Ladies and gentlemen, find him guilty. Find him
9 guilty of malicious injury; find him guilty of stalking; and
10 find him guilty of burglary. Thank you.

11 MS. INZERILLO: May it please the court?

12 THE COURT: Counsel.

13 MS. INZERILLO: Ladies and gentlemen, why didn't
14 Shanna Graham call the police? Why didn't she call the
15 police when he trespassed? Why did she return to her house
16 the night of February 28th after she knew he had been in it?
17 And when she called her parents, why did she return with her
18 parents and not call the police? Ladies and gentlemen, it's
19 because she wasn't afraid. She was not afraid of Robert
20 Hooker.

21 And fear is a very central component in this case.
22 You heard the phone calls. Where are those phone calls?
23 Like the solicitor, there are several words there I will not
24 say in a crowded room, and I'm sure from any of the
25 gentleman in this room they wouldn't say those words in

1 mixed company.

2 You heard the last phone call he left. The State
3 is arguing that was his intent, he wanted her to know he was
4 going to kill her. I don't know how much more plain in the
5 State's side that would be. "I am going to kill you."

6 So what does she do? When he comes by the next
7 morning she talks to him. She had annoyance from the stand
8 that he brought a toy for her child, but she also testified
9 that he sat the toy down and he walked away and she opened
10 the door, picked up the toy unhindered. He didn't jump out
11 at her. He didn't jump into the house. He didn't threaten
12 her from out there. She talked to him through the door.

13 And what does she say? "Robert, I am dating someone else."

14 Now, we just heard all these phones calls played,
15 and what does he say? "I'm going to kill you if you date
16 someone else." So why in the world do you tell someone who
17 has just threatened to kill you if you date someone else
18 "I'm dating someone else"? You do that when you are not
19 afraid that he's going to kill you.

20 She said from the stand "oh, it was okay that I
21 talked to him that morning because he was sober." Because
22 he was sober? She's testified "this man has threatened to
23 kill me. He's threatened to kill my child, my four year old
24 child, but that fear goes away when he's sober?"

25 This is not a case of Dr. Jekyll and Mr. Hyde;

1 ladies and gentlemen. She wants you to believe she felt a
2 visceral fear because he threatened her and her child. And
3 he tells her on these tapes "the next time I see you I am
4 going to kill you." The next time he sees her she takes a
5 toy from him. She talks to him through the door.

6 She's not afraid of him, ladies and gentlemen.
7 And nothing exemplifies that more than her actions
8 throughout the course of this I'm going to say five month
9 period, if we are starting from October 1st to essentially
10 the last day in February. Over five months Ms. Graham got
11 hundreds of phone calls, hundreds of messages. She told you
12 they got worse, and what are her actions? She does not call
13 the police until January 3rd.

14 Officer Slawson took the stand and said "I just
15 took the report over the phone." She didn't even want a
16 police officer to come to her house. And you heard Officer
17 Slawson say "she just wanted it to be recorded."

18 Now, framing that against what Ms. Graham
19 testified, things were getting worse. We are now two months
20 into a five month period. Things are getting worse. The
21 messages are getting worse. He is no longer pleading. Now
22 he is threatening. And yet what does she do when she calls
23 the police? She jets wants a record made of it.

24 The next time she calls the police is three weeks
25 later. Now, in her testimony she got calls all the time,

1 she got messages all the time, but she doesn't call the
2 police until three weeks later, January 29th.

3 She gets a trespass notice put on him on January
4 29th. For the next 28 or 29 days never enforced the
5 trespass notice. When he comes to her house on February
6 28th she never enforces the trespass notice. Officer
7 Slawson also told you "I tell people when they get a
8 trespass notice, that means that you can call the police and
9 have them arrested." So she takes out a trespass notice and
10 then she never enforces it.

11 He tells her he's going to kill her and she let's
12 him come by the house.

13 MS. JOYNER: Objection. That misstates the facts,
14 Your Honor. She did not let him come by the house.

15 THE COURT: Stay within the record, please,
16 counsel.

17 MS. INZERILLO: She interacts with him when he
18 comes to the house.

19 The State talks to you about messages. The
20 message Shanna Graham was sending Robert Hooker was
21 conflicting: I'm going to call the police because I don't
22 want you at my house in January, but when you come by my
23 house the morning of February 28th, I won't call the police.
24 That was a message he got.

25 She testified that it was a February day. It was

1 wet outside when she got inside her house. He was in his
2 boxers.

3 What else was he doing? He was drying his
4 clothes. He was listening to music. He has the oven on to
5 heat up the house. He was in the house. There is no
6 denying that. And as I told you at the beginning of this
7 case, there is no denying that, but that is not enough. He
8 wasn't laying in wait for her. He wasn't hiding behind
9 furniture, blockading doors. He wasn't doing anything that
10 showed he was there to assault her, or harass her, or put
11 her in fear, because she wasn't afraid.

12 It's important, ladies and gentlemen, to keep the
13 timeline of this case in your mind, because we didn't hear
14 all the voice messages that Ms. Graham had, and she
15 indicated to you from the stand "no, I didn't bring them
16 all." She chose a sampling. So what we are hearing, ladies
17 and gentlemen, is a sampling of her choice that she wanted
18 you to hear. But what's in that random sampling, she told
19 you in February things got worse, things got more violent.
20 His voice messages got worse, and she told you from the
21 stand that she was scared.

22 Actions, ladies and gentlemen, they speak louder
23 than words. On February 27th a message comes in to her from
24 Robert Hooker threatening to kill her.

25 The morning of February 28th she interacts inside

1 her house. More importantly, ladies and gentlemen, with an
2 active working cell phone she does not call the police. She
3 doesn't call the police to say "he's back. I have got a
4 trespass notice on him. Please help me." No, she texted
5 his mother "he's here." What does Robert Hooker's own
6 mother say? "Call the police. Call log his number. Call
7 the police." And yet, ladies and gentlemen, she doesn't
8 call the police.

9 When she gets a text later on that day where he
10 says "nice comforter." She says "are you in my house?" He
11 says "I was." Having just gotten that phone call he
12 threatened to kill her the next time he sees her, what does
13 she do? She goes to the house. That visceral fear that you
14 have in your gut when you think is this it; he's threatened
15 to kill me, now he's been in my house, and that little ball
16 that comes in your gut at the thought of that. She didn't
17 have it, because she went to the danger. She went to the
18 house. She didn't call the police and say "I don't know if
19 he's still there, that he might be, and he threatened me, so
20 can you go out and check?"

21 When she goes there and he is still there, she
22 leaves, she gets her daddy. She probably should have called
23 the police, but she got her daddy. That's not a bad
24 alternative. And what do they do? They go to the house.
25 They don't call the police.

1 And I don't know if you noticed Ms. Broome's
2 demeanor on the stand, but when she was talking about Robert
3 "yeah, he was there." There is no fear.

4 They go to the house where they now know he is.
5 What do they do when they get in the house? He's in the
6 house, he's in his boxers, he's heating up the apartment.
7 They leave her stepmother in a room with him while she and
8 her father go upstairs to survey the damage. Does that show
9 fear? Does that action show that she was afraid that Robert
10 Hooker was going to do something to her, the one she loved?

11 The State's argued a big deal about this fight
12 between Mr. Hooker and David Bruton, but the victim
13 testified it was a fight. "I was in my car. Mr. Hooker
14 lunged for him. They got in a fight. The next thing I know
15 David Bruton has a broken nose." This wasn't a fight to
16 show her he's in charge. He didn't break David Bruton's
17 nose and say "this is what's going to happen to you." It
18 was a fight between two men in a parking lot. A fight, I
19 might add, that didn't rate any comment from her to the
20 police. She was not afraid of him, and fear is an integral
21 element of stalking.

22 You have seen the elements that the State put them
23 on the wall. It's not enough that it would make a
24 reasonable person be scared. She had to be scared herself.
25 It's not enough that he be in fear. She had to be scared.

1 And, ladies and gentlemen, she was not scared. None of the
2 actions she did within the five month period indicated she
3 was scared. She took great pains to say from the stand that
4 she's a very nice person, she wouldn't want to be
5 vindictive. She didn't want Mr. Hooker to go to jail. The
6 state has to prove that she was afraid of him. The State
7 wants you to believe that Mr. Hooker threatened her life and
8 her child's life to the extent that she was terrified. And
9 yet even from the stand yesterday she explained she didn't
10 really want him to go to jail during this period.

11 She took the stand yesterday and testified "he was
12 at my house earlier that morning." Yesterday she said that,
13 six months later, but a very short time afterwards, in
14 talking to Detective Dugan, she doesn't tell him that. She
15 tells him "I met with Detective Dugan. I gave a statement.
16 I said it was the truth, the whole truth, and nothing but
17 the truth." And what does she say in the statement? "We
18 broke up in December of 2010, and I have not dated or seen
19 him since."

20 "Or seen him since."

21 We know she saw him on January 29th, because she
22 got a trespass notice. We know that she saw him the morning
23 of this because she told you from the stand, under, ladies
24 and gentlemen, the same oath that she took.

25 Three hours after she found the man who said he

1 was going to kill her in her house, she doesn't just say
2 "Detective Dugan, he's going to kill me. Let me tell you
3 soup to nuts, you have to know everything because I'm
4 terrified." She says, "no, I just told him what happened
5 that night." That doesn't show fear, ladies and gentlemen.
6 Even that night, even close to this event, as we can see,
7 she told you "I just told the detective what happened that
8 night. I didn't tell him everything that happened up to
9 that point."

10 She told you from the stand that Mr. Hooker
11 routinely threw things in the house, busted up the walls,
12 and yet there is no police report made of it.

13 She's had at least three interactions with the
14 police that we know; January 3rd, January 29th and February
15 27th. Actually maybe four or five; when the officers come
16 to her house February 28th, and when she meets with
17 Detective Dugan sometime over that night, maybe early the
18 next morning. At no time does she say at any time to the
19 patrol officer at her house "let me show you this busted up
20 wall. Let me show you what he broke over here." Obviously
21 the investigators did their job, because they have pictures.
22 They went to the house and they took pictures of the damage.
23 There is no documentation, no indication from any
24 independent police report of any of this damage. But from
25 the stand now she is saying "well, he used to do this all

1 the time." But then later on she would say "well, what I
2 mean violent, I don't mean he would come after me. I don't
3 know think he would attack me," because again we also know,
4 and that never complained to the police about him attacking
5 her, attacking her son. "Oh, no, when I mean violent, I
6 just mean he would threaten me, he would leave these phone
7 calls."

8 MS. JOYNER: I object. That's not -- that was not
9 in the testimony, Your Honor.

10 THE COURT: Counsel, please stay within the
11 record, please. The jury heard the testimony.

12 MS. INZERILLO: This is not fear, ladies and
13 gentlemen.

14 And after numerous interactions with the police,
15 none of this extra damage is documented. When she had spoke
16 to Detective Dugan, she didn't go through any of this,
17 because she was not afraid.

18 And, again, it's not enough the reasonable person
19 would be afraid. It's not enough that he would even intend
20 to hit her. She has to actually be afraid.

21 Now, let's go back to him being in her house. She
22 gets home. She sees he is in the house. The end of
23 February, raining outside, he's wearing boxers, he's
24 listening to the radio, and he's drying his clothes. It's
25 easy to look at the facts and infer that's his intent. "I

1 was wet outside. I came inside and I dried my clothes."

2 The actions match.

3 He didn't intend to stalk her or harass her in the
4 house. He was in the house drying his clothes, listening to
5 the radio. I think there was some testimony there was some
6 beer in the house. That's not burglary, ladies and
7 gentlemen.

8 Again, the State showed you the elements of
9 burglary. It's not enough that he's in the house. He needs
10 to be there without consent. He needs to be there with the
11 intent to commit a crime therein.

12 We heard her testimony that she talked to him when
13 he came out of the house. There has been no testimony that
14 he threatened her as soon as she walked in the house.
15 Again, there has been no testimony that he was lying in
16 wait. I mean, he's doing his laundry, for crying out loud,
17 on a wet February day. That's not burglary, ladies and
18 gentlemen.

19 I hit on these points because sometimes outside of
20 this room we use words like stalking and burglary as part of
21 our every day language. Unfortunately those definitions
22 stop at this door.

23 The judge will tell you, like he told you at the
24 beginning, he will charge you as to what the law is. In
25 this room, ladies and gentlemen, burglary has specific

1 elements that have to be proven beyond a reasonable doubt by
2 the State.

3 Stalking also has specific elements that have to
4 be proven beyond a reasonable doubt by the State.

5 Those words we use outside the door are different
6 here.

7 As the jury, you have to find beyond a reasonable
8 doubt every single element of every single charge that the
9 State has charged Mr. Hooker. One of those elements is
10 fear. There is no fear.

11 One of those elements is intending to commit a
12 crime once you enter someone's house. There was no intent
13 to commit a crime.

14 When you were first sworn yesterday, it's kind of
15 a long oath, but you heard the clerk tell you that your job
16 is well and truly try the case based upon the facts and the
17 evidence that have been presented. It might be pretty easy
18 to sit there and hate Mr. Hooker, to not like the language
19 that he used, to not like the voicemails that you heard, but
20 as jurors your job is to well and truly try the case based
21 on the evidence and the facts that have been presented. You
22 don't have to like him, you don't have to not like him, but
23 the twelve jurors in this case are charged with considering
24 the evidence, determining if the State has met their burden
25 beyond a reasonable doubt. And I would argue, ladies and

1 gentlemen, the State has not, and I would ask the jury to
2 find him not guilty. Thank you.

3 (Whereupon, at 12:43 p.m., the Court instructed
4 the jury panel)

5 THE COURT: All right, ladies and gentlemen of the
6 jury panel, you have heard final arguments from counsel.
7 Now it's time for me to charge or instruct you with regard
8 to the law that applies to the issues in this case. I will
9 ask you to listen very carefully as I go through these
10 instructions to you. You will not have these instructions
11 written down for you back in the jury room, so you will have
12 to call on your collective memories as to what I instruct
13 the law is. Although, once you begin your deliberations, if
14 you are confused or not sure about what the law is, upon
15 your request I'll bring you back out and recharge you on any
16 part of the law that you wish me to recharge you on. What I
17 would ask you to do now is to listen carefully as I go
18 through this, particularly with regard to the elements of
19 some of the offenses, the greater and lesser offenses and
20 that sort of thing. There are several differences between
21 them, but important differences, but you need to listen very
22 carefully to see or what the elements are and what needs to
23 be proven.

24 Now, in this case the defendant, Robert Terrance
25 Hooker, is charged with three offenses. He's charged with

1 malicious injury to real property in an amount less than
2 \$2,000. He's charged with burglary first degree, and he's
3 charged with stalking.

4 To these charges the defendant has pled not
5 guilty, which then places upon the State the burden of
6 proving him guilty of each of the these charges beyond a
7 reasonable doubt.

8 A person charged with committing a criminal
9 offense in South Carolina is never required to prove himself
10 innocent. I charge you that it is a vital important rule of
11 law that a defendant in a criminal trial must always be
12 presumed innocent until his guilt has been proved beyond a
13 reasonable doubt.

14 This presumption of innocence remains with the
15 defendant at all times throughout the trial and is only
16 removed when and if the State has proved the guilt of the
17 defendant beyond a reasonable doubt.

18 It is your solemn duty, ladies and gentlemen, if
19 not clearly convinced of guilt beyond every reasonable doubt
20 to the contrary, to find the defendant not guilty.

21 Mr. Foreman, ladies and gentlemen of the jury
22 panel, I instruct you and emphasize to you that the fact
23 that a defendant does not testify in his own behalf in a
24 criminal trial is not a factor to be considered by you in
25 any way in your deliberation. You must not consider the

1 fact that the defendant has chosen not to testify when you
2 determine the guilt or innocence of the defendant. It must
3 not be considered by you in any manner whatsoever either
4 against or for the defendant. A defendant has the
5 Constitutional Right to remain silent. The assertion of
6 that Constitutional Right cannot and must not be considered
7 by you in your deliberations. Under your oath then you are
8 to reach no inference, drawn no conclusion whatsoever from
9 the fact that the defendant did not testify. The fact that
10 the defendant did not testify should not even be discussed
11 in your jury room.

12 The burden of proof, as I have stated to you, is
13 upon the State. It is not the burden of the accused to
14 prove his innocence. The burden of proof remains upon the
15 State to prove guilt beyond every reasonable doubt. So the
16 State has the burden of proving the defendant guilty beyond
17 a reasonable doubt.

18 What is a reasonable doubt? Some of you may have
19 served as jurors in civil cases where you were told it is
20 only necessary to prove a fact is more likely true than not,
21 such as by the greater weight or preponderance of the
22 evidence. However, in criminal cases the State's proof must
23 be more powerful than that. It must be beyond a reasonable
24 doubt.

25 Ladies and gentlemen, proof beyond a reasonable

1 doubt is proof that leaves you firmly convinced of the
2 defendant's guilt. There are very few things in this world
3 that we know with absolute certainty, and in criminal cases
4 the law does not require proof that overcomes every possible
5 doubt.

6 A reasonable doubt may also be described as the
7 kind of doubt that would cause a reasonable person to
8 hesitate to act. If you have such a doubt as to the guilt
9 of the defendant, then he would be entitled to a verdict of
10 not guilty.

11 Reasonable doubt may arise from evidence which is
12 in the case, or from the absence or lack of evidence in the
13 case.

14 If, based on your consideration of the evidence,
15 you are firmly convinced that the defendant is guilty of the
16 crimes charged, you must find him guilty.

17 If, on the other hand, you think there is a real
18 possibility that he is not guilty, you must give him the
19 benefit of the doubt and find him not guilty.

20 You alone must make the determination of whether
21 or not reasonable doubt exists as to the guilt of the
22 defendant.

23 Mr. Foreman, ladies and gentlemen of the jury
24 panel, there are two types of evidence which are generally
25 presented during the trial; direct evidence and

1 circumstantial evidence.

2 Direct evidence is the testimony of a person who
3 asserts or claims to have actual knowledge of a fact, such
4 as an eyewitness.

5 Circumstantial evidence is proof of a chain of
6 facts and circumstances indicating the existence of a fact.

7 The law makes absolutely no distinction between
8 the weight or value to be given to either direct or
9 circumstantial evidence, nor is a greater degree of
10 certainty required of circumstantial evidence than of direct
11 evidence.

12 You should weigh all the evidence in the case.
13 After weighing all the evidence, if you are not convinced of
14 the guilt of the defendant beyond a reasonable doubt, you
15 must find the defendant not guilty.

16 Mr. Foreman, ladies and gentlemen of the jury
17 panel, under the Constitution of South Carolina you are the
18 finders of the facts in this case. I do not have the right
19 to pass upon the facts or even to express any opinion I
20 might have as to the facts, nor may I suggest in any way
21 what I may think about the guilt or innocence of the
22 defendant. You should form no opinion in that regard from
23 anything that I may have said or any ruling I have made
24 during the course of the trial.

25 As the sole judges of the facts in this case you

1 are also necessarily the sole judges of the credibility or
2 believability of each of the witnesses that have testified
3 during the course of the trial.

4 There are a number of factors which you may
5 consider in arriving at your assessment as to a particular
6 witness' credibility or believability. Some factors I'm
7 going to list for you, and should you think of other factors
8 that you believe also ought to be considered when you go
9 back into your jury room on the question of credibility,
10 then you should consider those factors as well. But you may
11 consider the demeanor of the witness from the witness stand.
12 What was that witness' manner of appearance? Was the
13 witness straightforward in answering questions or hesitant
14 in responding to questions? Simply put, do you believe that
15 the witness was telling the truth or not telling the truth?
16 Did you believe that the witness knew of what that witness
17 testified or did not know of what that witness testified?

18 You may consider whether or not the testimony of a
19 witness is consistent or inconsistent with that witness' own
20 testimony or with other testimony or evidence presented
21 during the course of the trial.

22 You may also consider how the witness came to know
23 the facts to which he or she testified.

24 You may consider the opportunity that a witness
25 had to observe or hear, that is, to perceive the existence

1 of a fact by means of their senses.

2 You may also consider whether or not a witness is
3 biased or prejudiced. That simply means do you find that a
4 particular witness had some reason to come into court and
5 testify one way or another to help or hurt one side or the
6 other.

7 You may also consider whether or not the testimony
8 of a witness was strengthened or weakened by other testimony
9 or other evidence presented during the course of the trial.

10 Now, you as the finders of facts in this case and
11 you as the judges of the credibility or believability of
12 each of the witnesses that have testified may believe as
13 much or as little of what a witness testifies to as you deem
14 appropriate. You may believe all of what a witness says,
15 you may believe none of what a witness says, or you may
16 believe only part of what a witness says.

17 Mr. Foreman, ladies and gentlemen of the jury
18 panel, the same Constitution that makes you the finders of
19 the facts makes me the sole and only instructor in the law.
20 You must accept as correct the law that I charge and apply
21 to the law the evidence as you find it and reach your
22 verdict. Put aside any conceptions you may have had as to
23 the law before coming here today and accept the law as I
24 instruct it to be. You, for purposes of your duty as jurors
25 today, should not be concerned about what the law ought to

1 be, but what I will charge you the law is now in this state.

2 Mr. Foreman, ladies and gentlemen of the jury
3 panel, I charge you with regard to criminal intent.
4 Criminal intent is a necessary element of each crime that
5 must be proved by the State beyond a reasonable doubt.
6 Criminal intent is always a matter that must be determined
7 by the jury from the circumstances surrounding the
8 situation. There is no way to prove intent to a
9 mathematical certainty. There is no way medical science can
10 dissect a person's brain and determine what he had in mind,
11 so the law says that criminal intent may be inferred from
12 the circumstances shown to have existed. This is how the
13 jury makes a determination of whether or not the element
14 requiring intent was present.

15 Criminal intent is a state of mind, which operated
16 jointly with an act, is the commission of a crime. Criminal
17 intent is a mental state a conscious wrongdoing.

18 So it is up to you, the jury, to determine what
19 the defendant intended to do based on the circumstances
20 shown to have existed.

21 I tell you that the State must prove criminal
22 intent beyond a reasonable doubt, just as the State must
23 prove every element beyond a reasonable doubt.

24 It is not necessary to establish intent by direct
25 and positive evidence, but intent may be established by

1 inference, in the same way as any other fact, by taking into
2 consideration the acts of the parties and all of the facts
3 and circumstances of the case.

4 While the State might prove motive, it is not
5 necessary that the State do so. However, the State must
6 prove intent.

7 Mr. Foreman, ladies and gentlemen of the jury
8 panel, I charge you that mere presence is not enough. A
9 defendant cannot be found guilty on any charge solely
10 because he was merely present at the scene of a crime.

11 To be found guilty, a person must personally
12 commit the crime, or be present at the scene and
13 intentionally take a role in the commission of a crime.

14 Mr. Foreman, members of the jury panel, I charge
15 you with regard to voluntary intoxication. I charge you
16 that voluntary intoxication is never an excuse for or a
17 defense to a crime, regardless of whether the crime is one
18 involving general or specific intent. A person who
19 voluntarily renders themselves intoxicated is no less
20 responsible for his acts while in such condition.

21 If one voluntarily drinks intoxicating liquors,
22 wine, or beer and becomes intoxicated to whatever degree,
23 and if while in that condition commits an act which would be
24 a crime if it had been committed by a sober person, the fact
25 of drunkenness would not relieve the intoxicated person from

1 responsibility.

2 Mr. Foreman, ladies and gentlemen of the jury
3 panel, I charge you now with the specific charges against
4 the defendant today. I would ask you again that you listen
5 very carefully, that you listen carefully to the elements of
6 each offense and what the State must prove.

7 With regard first to malicious injury to real
8 property in an amount less than \$2,000. There are various
9 degrees of malicious injury to real property. In this case
10 the defendant is charged with malicious injury to real
11 property in an amount less than \$2,000, which is the lesser
12 degree of that offense.

13 The defendant is charged with malicious injury to
14 real property. The State must prove beyond a reasonable
15 doubt that the defendant willfully and maliciously cut,
16 mutilated, defaced, or otherwise injured a tree, house,
17 outside fence, or fixture of another person, or committed
18 any other trespass on the real property of another person.

19 Willfully means voluntarily and intentionally with
20 the specific intent to do something the law forbids.

21 Maliciously means involving malice. Malice is
22 hatred, ill will, or hostility towards another person. It
23 is the intentional doing of a wrongful act without just
24 cause or excuse and with an intent to inflict an injury or
25 damage or under certain circumstances that the law will

1 infer an evil intent.

2 Malice may be express or inferred. These terms
3 express and inferred do not mean different kinds of malice,
4 but merely the manner in which malice may be shown to
5 exists; that is, either by direct evidence or by an
6 inference from the facts and circumstances which are proved.

7 Express malice is shown when a person speaks words
8 which express hatred or ill will for another, or when the
9 person prepared beforehand to do the act which was later
10 accomplished. For example, lying in wait for a person, or
11 any other acts of preparation going to show that the deed
12 was within the defendant's mind, would be expressed malice.

13 The State must also, of course, prove that --
14 well, I have told you the amount was less than \$2,000 in
15 this case.

16 Now, I charge you next with regard to burglary
17 first degree.

18 Under Section 16-11-311 of the Code of Laws of the
19 State of South Carolina, burglary in the first degree is
20 defined as the entering of the dwelling house of another
21 without consent, with the intent to commit a crime therein.
22 And also it must be shown that the defendant entered or
23 remained in the house at night.

24 The nighttime is that period between sunset and
25 sunrise during which the face of a person cannot be

1 discerned by the light of the sun.

2 There are four essential elements to the
3 requirement that the defendant did enter into the dwelling
4 house of another, without consent, with the intent to commit
5 a crime. They are as follows:

6 First, there might be an entering. The State must
7 prove that there was a entering; that is, the defendant
8 actually went inside the house, or some part of it. It is
9 not necessary, however, to establish the entire body enter
10 the house. The smallest entry is sufficient, and it may be
11 any part of the body - the hand, or a foot, or even an
12 implement, such as a hook, or other instrument. No force
13 need be used to gain entry.

14 Entry must be without consent. Aside from the
15 usual and normal understanding of the phrase without
16 consent, the term entry also means to enter a building by
17 using deception, artifice, trick, or misrepresentation to
18 gain consent to enter from the person in lawful possession.

19 The place entered must be a dwelling house.

20 The term dwelling house means any building
21 inhabited by a person, or persons, and in which they
22 customarily sleep.

23 The defendant must have an intent to commit a
24 crime. Mere entry into a dwelling house without consent is
25 not a violation of this burglary statute. It is only where

1 there is an intent to commit a crime, whether it be a felony
2 or a misdemeanor, that the crime is complete. Proof of
3 intent necessarily rests on inference from conduct.

4 It is essential that the felonious intent exists
5 at the time of the entry. It is not sufficient that the
6 felonious intent is formed afterward. A person's actions
7 after he entered the dwelling may be considered as evidence
8 of his intent in entering the building.

9 To recap these elements, there must be four
10 elements.

11 The first element, a person must enter a dwelling.

12 Second element, without consent.

13 Third element, with the intent to commit a crime
14 therein.

15 And the fourth element, the entering or the
16 remaining therein occurs in the nighttime.

17 Now, Mr. Foreman, ladies and gentlemen of the jury
18 panel, I'm going to charge you with regard to stalking.

19 Under the South Carolina law and under the legal
20 theory that the greater offense also includes the lesser
21 offense, I'm going to charge you not only as to stalking,
22 but also to possible lesser included offenses of harassment
23 first degree and harassment second degree. And, as I say,
24 there are some subtle differences between the two, but the
25 important difference -- between the three, subtle

1 differences, but important differences between the three,
2 and you need to listen very carefully to discern that.

3 Under Section 16-3-1700 of the South Carolina
4 Code, stalking is described means a pattern of words,
5 whether verbal, written, or electronic, or a pattern of
6 conduct that serves no legitimate purpose and is intended to
7 cause and does cause a targeted person and would cause a
8 reasonable person in the targeted person's position to fear
9 one of the following:

10 Death of the person or a member of the person's
11 family;

12 Assault upon the person or a member of the
13 person's family;

14 Bodily injury to the person or a member of the
15 person's family;

16 Criminal sex contact on the person or with a
17 member of the person's family;

18 Kidnapping of the person or a member of the
19 person's family;

20 Or damage to the property of the person or a
21 member of the person's family.

22 Now, pattern is defined as two, or more, acts
23 occurring over a period of time, however short, evidencing a
24 continuity and purpose.

25 Family means a spouse, child, parent, sibling, or

1 a person who regularly resides in the same household as the
2 targeted person.

3 Electronic contact means any transfer of sign,
4 signals, writings, images, sounds, data, intelligence, or
5 information of any nature transmitted in whole, or in part,
6 by any device, system, or mechanism, including, but not
7 limited to, a wire, radio, computer, electromagnetic,
8 photoelectric, or photo optical system.

9 Now, I'll also instruct you again with the lesser
10 included offense in this case of harassment in the first
11 degree.

12 Harassment first degree means a pattern of
13 intentional, substantial, and unreasonable intrusion into
14 the private life of a targeted person that serves no
15 legitimate purpose and causes the person and would cause a
16 reasonable person in that person's position to suffer mental
17 or emotional distress.

18 Harassment in the first degree may include, but is
19 not limited to the following:

20 Following the targeted person as he or she moves
21 from location to location;

22 Visual or physical contact that is initiated,
23 maintained, or repeated after a person has been provided
24 oral or written notice that the contact is unwanted, or
25 after the victim has filed an incident report with a law

1 enforcement agency.

2 Third, surveillance of or the maintenance of a
3 presence near the targeted person's residence, place of
4 work, school, or another place regularly occupied or visited
5 by the targeted person;

6 And vandalism and property damage.

7 As to harassment in the second degree, it means a
8 pattern of intentional, substantial, and unreasonable
9 intrusion into the private life of a targeted person that
10 serves no legitimate purpose and causes the person and would
11 cause a reasonable person in his or her position to suffer
12 mental or emotional distress.

13 Harassment in the second degree may include, but
14 is not limited to, verbal, written, or electronic contact
15 that is initiated, maintained, or repeated.

16 Mr. Foreman, ladies and gentlemen of the jury
17 panel, I have charged you with regard to the greater offense
18 and the lesser offense. After considering the testimony and
19 evidence in this case, if you have doubt as to whether the
20 defendant is guilty of a greater offense or a lesser
21 offense, you have a doubt as to that, you would give the
22 defendant the benefit of the doubt and find him guilty of
23 the lesser offense.

24 Of course, you wouldn't find him guilty of any
25 offense, unless you found the State had proven the elements

1 of that offense beyond a reasonable doubt.

2 In this case the defendant is charged with three
3 offenses. You are to consider each charge separately and
4 consider the evidence separately for each offense.
5 Therefore, if the evidence warrants it, you may convict the
6 defendant on all counts, on one and not the other, and so
7 on, or you can find the defendant not guilty on all counts.

8 You will write a verdict of guilty or not guilty
9 to each charge alleged in the indictments.

10 Mr. Foreman, ladies and gentlemen of the jury
11 panel, nothing that I may have said or done during the
12 course of this trial has been in any way intended to express
13 or suggest a view of the case, an opinion as to the facts,
14 the weight of the evidence, or the credibility of the
15 witnesses. If any of my actions or words have seemed to so
16 indicate, you will disregard such and form your own opinion
17 as to these matters.

18 You have been selected as fair and impartial
19 jurors, sworn to impartially try and determine the facts of
20 this case. And when you comply with your oath to do so, no
21 one will have a right to criticize your verdict and you will
22 have fully discharged your duty as jurors.

23 You are to decide this case according to the
24 testimony you have heard from the lips of the sworn
25 witnesses along with other evidence introduced during the

1 course of the trial.

2 I charge you that as jurors you must decide the
3 issues in this proceeding without bias and without prejudice
4 to any party. Do not allow yourselves to be governed by
5 sympathy, by prejudice, by passion, by public opinion, or
6 any other arbitrary factor. Both the State and the
7 defendant have the right to expect that each of you will
8 carefully and impartially consider all of the evidence in
9 the case and you will follow the law as I have explained it
10 to you.

11 Mr. Foreman, ladies and gentlemen of the jury
12 panel, whatever your verdict in this case, it must be your
13 unanimous verdict. All twelve jurors must agree on the
14 verdict which the foreperson will be authorized to write on
15 behalf of the jury.

16 Mr. Foreman, I charge you that once you begin your
17 deliberations, that you maintain some order in those
18 deliberations, that all who wish to participate and to be
19 heard in the deliberations be allowed to do so.

20 If for any reason any members of the jury panel
21 should take a break from deliberations, all should take a
22 break. By that I mean all twelve jurors should be present
23 and deliberating when deliberations are going on.

24 Now, we have taken the liberty -- because of the
25 late hour, it's already after one o'clock, I have asked the

1 clerk to go ahead and order some food for you. The only
2 thing we can get within a reasonable amount of time is
3 pizza, so I hope you like pizza. We have already ordered
4 that. I'm not sure when it will get here, but it should be
5 not much longer.

6 I'm going to ask you, if you will, at this time
7 now to retire to the jury room. Do not yet begin your
8 deliberations. I have to give counsel an opportunity to
9 request additional instructions on the law. If additional
10 instructions are requested and I deem them necessary, I will
11 bring you back out and give you those additional
12 instructions. It follows then that you should not begin
13 deliberations until all instructions are complete.

14 If no additional instructions are necessary, I
15 will send to you by means of the bailiff the verdict forms.
16 I need to go over those with you as well. Let me do that
17 now.

18 But, at any rate, I'll send the verdict forms and
19 all exhibits which have been admitted into the record with
20 instructions to begin deliberating. Please do not begin
21 deliberating until you get that instruction.

22 Let me go over the verdict forms with you briefly.
23 They are pretty self-explanatory, Mr. Foreman, but I'm going
24 to go over them.

25 First I'm going over is the burglary in the first

1 degree. There are two possible verdicts which appear on the
2 verdict form. They are also follows:

3 We, the jury, find the defendant Robert Terrance
4 Hooker guilty of burglary in the first degree;

5 Or, we find the defendant Robert Terrance Hooker
6 not guilty.

7 As to the malicious injury to real property, the
8 possible verdicts on the verdict forms are:

9 We, the jury, find the defendant Robert Terrance
10 Hooker guilty of malicious injury to real property in an
11 amount less than \$2,000;

12 Or, we, the jury, find the defendant Robert
13 Terrance Hooker not guilty.

14 As to the charge on stalking, which includes the
15 lesser offenses, it read as follows:

16 We, the jury, find the defendant Robert Terrance
17 Hooker guilty of stalking.

18 The second possible verdict: We, the jury, find
19 the defendant Robert Terrance Hooker guilty of the lesser
20 included offense of harassment, first degree;

21 Or, we, the jury, find the defendant Robert
22 Terrance Hooker guilty of the lesser included offense of
23 harassment second degree;

24 Or, we, the jury, find the defendant Robert
25 Terrance Hooker not guilty.

1 Now, Mr. Foreman, ladies and gentlemen of the jury
2 panel, in preparing the verdict forms I have to put the
3 possible verdicts on the form in some order. I do it the
4 same way every time, but the order in which the possible
5 verdicts appear on the verdict form means absolutely nothing
6 and you should infer nothing from it.

7 What you should do, Mr. Foreman, the jury should
8 deliberate on each of these charges separately. Consider
9 the facts and evidence separately on each charge.

10 Once the jury has reached a unanimous verdict as
11 to that charge, you would simply go to the verdict form,
12 find the verdict on the verdict form which corresponds to
13 the verdict reached by the jury. You will put a check mark
14 in the blank beside that particular verdict. Sign your name
15 on the line above the word foreperson's signature and date
16 it.

17 Once you have done that as to all three of these
18 charges, you will simply then knock on the door, let the
19 bailiff know that you have reached a verdict. The bailiff
20 will let me know and I will bring you back out into the
21 courtroom to receive those verdicts...

22 If you become divided somehow during your
23 deliberations, Mr. Foreman, and -- you can advise me that
24 you are divided, but please do not give me any numbers. I
25 do not wish to know how you are divided. So if you tell me

1 if you are divided and haven't been able to reach a verdict
2 and you are still -- you are deliberating and you haven't
3 been able to reach a verdict, please do not give me numbers,
4 you know, which -- I do not want that information. Thank
5 you.

6 Please retire to the jury room, all except the
7 alternate. Sir, I'll ask you at this time not to go into
8 the jury room, but wait just outside the courtroom door for
9 further instructions.

10 Thank you.

11 (Whereupon, at 1:10 p.m., the jury panel retired
12 to the jury room, awaiting instructions to begin
13 deliberating)

14 THE COURT: Exceptions or additional requests to
15 charge, from the State?

16 MS. JOYNER: Not from the State, Your Honor.

17 THE COURT: From the defense?

18 MS. INZERILLO: No, Your Honor.

19 THE COURT: All right. Counsel, if you will check
20 the exhibits and make sure only those that are actually
21 admitted into evidence go back.

22 (Off the record)

23 (Back on the record)

24 THE COURT: Okay. You can tell them they can
25 begin deliberating and ask the alternate to come in.

1 (Whereupon, at 1:12 p.m., the jury panel was
2 instructed to begin deliberations)

3 (Whereupon, the alternate juror was brought into
4 the courtroom)

5 THE COURT: Mr. Baker, you can stand right there,
6 if you will. As it turns out we have made it through the
7 trial without an emergency developing with regard to one of
8 the first twelve jurors chosen, so it will not be necessary
9 for you to participate in deliberations to reach a verdict,
10 so we are going to go ahead and excuse you at this time.
11 And what I would ask you to do is -- of course, you are
12 welcome to stay, if you would like, but you are also -- I'll
13 allow you to be excused and call in tonight after seven
14 o'clock to your voicemail number and you will get
15 instructions then.

16 ALTERNATE JUROR: Okay.

17 THE COURT: Okay. All right. Thank you very much
18 for your service thus far this week and your patience.

19 (Whereupon, the alternate juror was discharged)

20 THE COURT: All right, we will be at ease and
21 everybody get some lunch.

22 (Whereupon, at 1:14 p.m., proceedings were
23 adjourned, pending the verdict of the jury panel)

24 (Whereupon, at 2:32 p.m., proceedings were
25 reconvened)

1 THE COURT: I plan to reinstruct them on stalking,
2 harassment first degree and second degree, only read
3 definition to them.

4 Please bring them in.

5 (Whereupon, at 2:35 p.m., the jury panel returned
6 to open court)

7 THE COURT: Mr. Foreman, ladies and gentlemen of
8 the jury, we didn't respond right away is because some of
9 the lawyers had gone out to get a sandwich and come back,
10 and I knew you were getting your lunch as well, so we held
11 off on that just a little bit.

12 In any event, what you have requested there was
13 the jury request a copy of the text messages of February the
14 28th. There were no copies admitted into evidence, so we
15 don't have a copy to submit back to you, but what we are
16 going to do is -- it came out in the testimony about the
17 February 28th texts, and so what we are going to do is the
18 court reporter has located that in the testimony of Shanna
19 Graham, and what he's going to do is he has located them
20 now, and that took a little bit of time, but he's located
21 them. He's going to read the testimony concerning those
22 text messages on the 28th. So if you will listen, he's just
23 going to read those to you.

24 (Whereupon, the court reporter re-read the
25 requested testimony back to the jury panel)

1 THE COURT: They are referring to text messages in
2 the testimony, but there was nothing entered into evidence,
3 other than the testimony, so that's why it can't be
4 produced. Only that was admitted into evidence as part of
5 the record.

6 Now, you requested -- in the second note that I
7 got from you requested I reinstruct you with regard to
8 stalking and the lesser included offenses of harassment
9 first and second degree and I'm going to do that at this
10 time.

11 Again, please listen carefully as I go through it.
12 I know it not easy to understand, but I'm going to go back
13 through it fairly slowly and hopefully you can understand
14 it.

15 All right. As to stalking, stalking means a
16 pattern of words, whether verbal, written, or electronic, or
17 a pattern of conduct that serves no legitimate purpose and
18 is intended to cause and does cause a targeted person and
19 would cause a reasonable person in a targeted person's
20 position to fear the following, one of the following, one,
21 or more, of the following:

22 Death of the person or a member of his or her
23 family;

24 Assault upon the person or a member of his or her
25 family;

1 Bodily injury to the person or a member of the
2 person's family.

3 Criminal sexual contact on the person or a member
4 of the person's family;

5 Kidnapping of the person or a member of the
6 person's family;

7 Or damage to the property of the person or a
8 member of his or her family.

9 Pattern is defined as two, or more, acts occurring
10 over a period of time, however short, evidencing a
11 continuity or purpose.

12 Family means a spouse, child, parent, sibling, or
13 a person who regularly resides in the same household as the
14 targeted person.

15 Electronic contact means any transfer of signs,
16 signals, writings, images, sounds, data, intelligence, or
17 other information of any nature transmitted in whole or in
18 part by any device, system, or mechanism included, but not
19 limited to, a wire, radio, computer, electromagnetic,
20 photoelectric, or photo optical system.

21 Now, harassment in the first degree means a
22 pattern of intentional, substantial, and unreasonable
23 intrusion into the private life of a targeted person that
24 serves no legitimate purpose and causes the person and would
25 cause a reasonable person in his or her position to suffer

1 mental or emotional distress.

2 Harassment in the first degree may include, but is
3 not limited to, the following:

4 Following the targeted person as he or she moves
5 from location to location;

6 Visual or physical contact that is initiated,
7 maintained, or repeated after a person has been provided
8 oral or written notice that the contact is unwanted or after
9 the victim has been filed an incident report with a law
10 enforcement agency;

11 Surveillance of or the maintenance of a presence
12 near the targeted person's residence, place of work, school,
13 or another place regularly occupied or visited by the
14 targeted person;

15 And vandalism and property damage.

16 Harassment in the second degree means a pattern of
17 intentional, substantial, and unreasonable intrusion into
18 the private life of a targeted person that serves no
19 legitimate purpose and causes the person and would cause a
20 reasonable person in his or her position to suffer mental or
21 emotional distress.

22 Harassment in the second degree may include, but
23 is not limited to, verbal, written, or electronic contact
24 that is initiated, maintained, or repeated.

25 All right. That concludes the re-instruction.

1 I'll ask you now please to return to the jury room and
2 resume your deliberations. If you have another question,
3 let me know.

4 (Whereupon, at 2:45 p.m., the jury panel returned
5 to the jury room to continue deliberations)

6 THE COURT: Exceptions from the State?

7 MS. JOYNER: No, sir, Your Honor.

8 THE COURT: From the defense?

9 MS. INZERILLO: No, Your Honor.

10 THE COURT: All right. We will make these court
11 exhibits then.

12 (Jury Note marked as Court's Exhibit No. 3 for
13 identification)

14 (Jury Note marked as Court's Exhibit No. 4 for
15 identification)

16 (Whereupon, at 2:46 p.m., proceedings were
17 adjourned, pending the verdict of the jury panel)

18 (Whereupon, at 3:08 p.m., proceedings were
19 reconvened)

20 THE COURT: Please bring the jury in. We have got
21 everybody here.

22 (Whereupon, at 3:09 p.m., the jury panel returned
23 to open court to report its verdict)

24 THE COURT: Mr. Foreman, have you and the jury
25 reached a unanimous verdict in these cases?

1 JURY FOREMAN: We have, sir.

2 THE COURT: Please hand the verdict forms up to
3 the bailiffs, if you will.

4 The clerk will please publish the verdicts.

5 THE CLERK: In the case of Robert Terrance Hooker,
6 with Indictment 2011-GS-46-1837, malicious injury to real
7 property, we, the jury, find the defendant Robert Terrance
8 Hooker guilty of malicious injury to real property in an
9 amount less than \$2,000. Signed by the foreperson this day.

10 2011-GS-46-1838, burglary in the first degree, we,
11 the jury, find the defendant Robert Terrance Hooker guilty
12 of burglary in the first degree. Signed by the foreperson
13 this day.

14 2011-GS-46-1839, stalking, we, the jury, find the
15 defendant Robert Terrance Hooker guilty of stalking. Signed
16 by the foreperson this day.

17 If this so be your verdict, so say you all by
18 raising your right hand.

19 Let the record show all affirmed.

20 THE COURT: Any questions of the jury panel from
21 the State?

22 MS. JOYNER: Not from the State, Your Honor.

23 THE COURT: From the defense?

24 MS. INZERILLO: No, Your Honor.

25 THE COURT: All right. Ladies and gentlemen of

1 the jury panel, this will complete your service on this
2 case. What I'm going to ask you to do is -- we are
3 already -- we are starting another case in here. They
4 finished up one in the other courtroom. They are starting
5 another one this afternoon, so what I'm going to do is go
6 ahead and excuse you for the afternoon.

7 What I will ask you to do is -- I'm not sure where
8 we are going to be tomorrow, so I'm going to ask you to call
9 in tonight after seven o'clock. Anytime after seven o'clock
10 and you will get voicemail instructions as to when you need
11 to either call back or report back or maybe not report back.
12 We will see how things go.

13 I want to thank you for your service thus far and
14 also thank you for your patience this week thus far and
15 appreciate your sacrifices this week.

16 You are free to go at this time. Please call in
17 tonight after seven o'clock. Thank.

18 All except the foreperson. Sir, I'll ask you to
19 come up and sign the indictments for us.

20 (Whereupon, at 3:11 p.m., the jury panel was
21 discharged)

22 THE COURT: Counsel, I'll give you an opportunity
23 to make any motions that you wish to make at this time.

24 MS. INZERILLO: Yes, Your Honor. Thank you.

25 At this time we would renew all previous motions

1 and objections and move for a new trial, for the record.

2 THE COURT: Thank you.

3 Well, I find the verdicts in this case were
4 supported by substantial evidence on the record, looking at
5 the evidence in the light most favorable to the State. And,
6 therefore, I would deny your motions. It's a matter for the
7 jury to determine. Thank you.

8 Do you have your sentencing sheets ready?

9 MS. JOYNER: I do, Your Honor. I forwarded them
10 to the defense.

11 THE COURT: Solicitor.

12 MS. JOYNER: Your Honor, may it please the court,
13 I believe you are aware of his prior record from our
14 pretrial hearing. I'm only aware as to the defendant having
15 a conviction for DUI first, DUI second, resisting police in
16 Rock Hill Municipal Court, and a Georgia conviction for
17 criminal trespass. I don't know -- I believe he was placed
18 on unsupervised probation for that offense and I believe
19 he's on probation currently for the DUI second.

20 And the victim does not wish to address the court
21 any further.

22 THE COURT: Is he on probation here? Did you all
23 know about that? Did they tell you?

24 PROBATION AGENT: Just now.

25 THE COURT: Well, do you want to try to deal with

1 that now, or -- I don't know if you all want to get his
2 stuff, something paperwork?

3 PROBATION AGENT: No.

4 THE COURT: Okay. Deal with it a later time, I
5 guess.

6 Does anyone want to speak on behalf of the victim?
7 Does anyone want to speak on her behalf?

8 MS. JOYNER: No, sir, Your Honor. She's present
9 and she indicated that she's testified already and she
10 understands the sentence exposure that he's facing and
11 doesn't wish to address the court.

12 THE COURT: Counsel?

13 MS. INZERILLO: Thank you, Your Honor.

14 May it please the court, I have provided the court
15 several letters written on behalf of Mr. Hooker by friends
16 and family. I believe the court can see that the common
17 theme in those letters has been a problem with drinking.
18 Certainly there was a lot of testimony during the court -- I
19 mean during the trial of him drinking excessively and how
20 that sort of flowed through a lot of the events that
21 happened. And, of course, the court can see that, you know,
22 the defendant's prior record obviously there is a drinking
23 issue there as well.

24 I have discussed this extensively with his family.
25 I know that they have for awhile wanted to do something

1 about it, but were unable to.

2 Despite this, Your Honor, Mr. Hooker was working
3 as a commercial fisherman. He would go out on trips for
4 five or ten days and then come back in.

5 Also my understanding is he has been reporting to
6 probation. I did check my notes and I believe he's only got
7 six months hanging over his head on the DUI, so nothing that
8 would really impact any potential sentences in this case.

9 Your Honor, we are aware that these are very
10 serious charges and very serious allegations and I won't
11 rehash any of them. We would just ask the court to consider
12 sentencing Mr. Hooker to the minimum; certainly not as a
13 sign that any of his actions were okay, or even would be
14 tolerated by the court, but in taking into consideration
15 that he does have a minimal prior record. Really with the
16 exception of any county time he's done, either pre-detention
17 or, you know, perhaps minimal county time on the chain gang,
18 that's the extent of any time he's been in prison. So
19 certainly a 15 year sentence that is not parolable is an
20 extensive amount of time.

21 Again, Your Honor, we are not perceived that this
22 is a light situation and we certainly aren't asking for the
23 minimal sentence to minimize what the court has heard and
24 the charges against Mr. Hooker, but we would ask the court
25 to take that into consideration. He hasn't done any

1 extensive jail time before.

2 He has done 160 days pretrial detention in this
3 case.

4 And if the court would allow, his mother, Lori
5 Starnes, wishes to address the court.

6 THE COURT: Okay.

7 LORI STARNES: Lori Starnes.

8 THE COURT: Yes, ma'am.

9 LORI STARNES: I'm just begging for mercy and
10 please take into consideration at least the letters.

11 THE COURT: Thank you, ma'am.

12 Mr. Hooker, do you have anything that you want to
13 say to the court?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: Does the State wish to be heard on the
16 sentencing?

17 MS. JOYNER: No, sir, Your Honor, we will leave it
18 to the court's discretion.

19 THE COURT: I have read the letters in support of
20 Mr. Hooker. I have just read those before we got started
21 and certainly am considering that.

22 Mr. Hooker, you know, you seem to be -- it just
23 doesn't seem to be all that serious at first. I'm sure you
24 didn't think it was too serious, apparently, would seem to
25 be just glancing at it, at the facts of this case, but I

1 have been around for awhile and I know that these things
2 escalate when somebody will not take no for an answer in a
3 relationship and they keep on and on and on and it keeps
4 getting worse and worse. And I have presided over trials in
5 at least two or three cases where somebody did, in fact,
6 kill their girlfriend; because they didn't -- it eventually
7 wound up, it got worse and worse and they eventually killed
8 them, because they wouldn't take no for an answer. I have
9 seen them go -- I have sentenced them to prison for twenty
10 years, or more, for assault and battery with intent to kill
11 and other reasons when they wouldn't take no for an answer.
12 They absolutely refused to accept no for an answer. But
13 everybody is a person. Everybody has a right to make their
14 own decisions, live their own lives. No other person is a
15 slave of another person. No other person owns another
16 person. And you have to be able to accept no as an answer
17 for that person. Things wouldn't be normal to have some
18 regrets about a situation like that and be hurt by it and
19 that, but it's not a normal situation to keep on and on and
20 making threats to the extent that you have.

21 Whatever Shanna Graham's feeling are in this, the
22 court would certainly be concerned that they would be some
23 physical harm to her if this was allowed to continue,
24 because I have seen it too many times when it just escalates
25 and escalates when somebody will not except no for an

1 answer. I don't know why you couldn't do that in this case.
2 I don't understand. Be that as it may, that's where we are.

3 And when you break into somebody's home, there is
4 usually -- and under these circumstances burglary first
5 degree is the offense. And burglary first offense does not
6 allow for a sentence of less than fifteen years, no parole.
7 That's the minimum sentence that you could get. You had a
8 chance to get better than that, you should have taken it.

9 Case number 2011-GS-46-1838, Robert Hooker, having
10 pled guilty (sic) to burglary first degree, the sentence of
11 the court is to be committed to the State Department of
12 Corrections for a determinate term or fifteen years, which
13 this is a no-parole offense.

14 This sentence, he's given credit for 160 days of
15 jail time.

16 One thing that you can do, when you have served
17 eighty-five percent of this sentence you will be eligible
18 for community service probation. When you get out and if
19 you violate, then you can be sent back to finish up the rest
20 of your fifteen year term.

21 I'm making this a condition of your community
22 supervision probation that you not have any contact with the
23 victim. So if you get out after you have served this twelve
24 plus years, you get out on community supervision, you
25 contact her in any way, you are going to go back to serve

1 the rest of it. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Sir?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Case number 2011-Gs-46-1839, Robert
6 Hooker, having pled guilty (sic) to stalking, the sentence
7 of the court is to be committed to the State Department of
8 Corrections for a determinate term of five years.

9 He's given credit for 160 days of jail time.

10 This sentence to run concurrent.

11 Case number 2011-GS-46-1837, Robert Hooker, having
12 pled guilty (sic) to malicious injury to property in an
13 amount less than \$2,000, the sentence of the court is to be
14 committed to the State Department of Corrections or county
15 detention center for a determinate term of thirty days.

16 He's given credit for time served.

17 This is to run concurrent with the other
18 sentences.

19 Mr. Hooker, you could have gotten life without
20 parole in this case on the burglary first. And if you run
21 these all consecutive, you could have gotten life plus, so
22 I'm giving you the minimum sentence, but it's a substantial
23 sentence.

24 (END OF REQUESTED TRANSCRIPT OF RECORD)

25

CERTIFICATE

1
2 I, the undersigned, Michael R. Watts, Official Court
3 Reporter for the Sixteenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate and complete Transcript of Record of the
6 proceedings had and the evidence introduced in the trial of
7 the captioned case, relative to appeal, in the Court of
8 General Sessions for YORK County, South Carolina, on the 9th
9 and 10th days of August, 2011.

10 I do further certify that I am neither of kin, counsel
11 nor interest to any party hereto.

12
13
14 DECEMBER 4, 2011
15
16

17 Michael R. Watts

18 Michael R. Watts
19 Circuit Court Reporter
20
21
22
23
24
25

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

June 1, 2012



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THE STATE OF SOUTH CAROLINA
SUPREME COURT

APPEAL FROM YORK COUNTY

John C. Hayes, Circuit Court Judge

Case No. 2014-001163

Robert Hooker #00347354, Petitioner,

v.

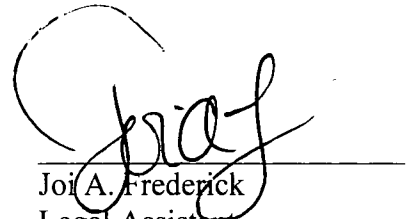
State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

I certify that I have served the Supplemental Appendix to the following recipient by depositing a copy of it in the United States Mail, postage prepaid, on February 9, 2015, addressed to:

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February 9, 2014



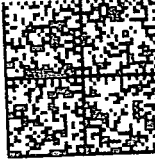
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EP-14

