

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Doyet A. Early, III, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAMES PATRICK SMITH,

APPELLANT

APPELLATE CASE NO. 2014-000921

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,) TRANSCRIPT
PLAINTIFF,) OF
vs.) RECORD
JAMES PATRICK SMITH,) 2013-GS-42-3303
DEFENDANT.)

April 16th and 17th, 2014
Spartanburg, South Carolina

B E F O R E:
THE HONORABLE DOYET A. EARLY, III, Judge, and a jury.

A P P E A R A N C E S:
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P R O C E E D I N G S

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3

THE COURT: Bring the jury panel in please.

4

SOLICITOR GILMER: Thank you, Your Honor.

5

THE COURT: I need voir dire and witness lists please.

6

(WHEREUPON, a bench conference was held at this time.)

7

(Whereupon, the following takes place within the

8

presence of the entire jury panel.)

9

THE COURT: Good morning, ladies and gentlemen.

10

Ms. Gilmer, you may call your first case.

11

SOLICITOR GILMER: Thank you, Your Honor.

12

The State calls State of South Carolina versus James

13

Patrick Smith. Indictment 2013-GS-42-3303.

14

THE COURT: Mr. Poole, you ready to proceed?

15

MR. POOLE: Yes, sir, I am.

16

THE COURT: All right. Ladies and gentlemen, we're

17

about to commence the trial of the case of the State of

18

South Carolina versus James Patrick Smith.

19

He's been charged and indicted with the offense of

20

criminal domestic violence of a high and aggravated nature.

21

Mr. Smith has pled not guilty to this offense. By pleading

22

not guilty, he's presumed to be innocent and the State has

23

the burden of proving his guilt beyond a reasonable doubt to

24

a jury of 12 people.

25

So, in order to move forward, I need to strike this

1 jury. So, let me ask you some questions. They're similar
2 to the questions I've been asking all week, but I must ask
3 in each question (sic). So, please bear with me.

4 Is Ms. Page in the courtroom?

5 SOLICITOR GILMER: No, she's not currently, Your Honor.

6 THE COURT: Do I have any member of the jury panel who
7 is related by blood or marriage or do you now or have you in
8 the past had a close personal relationship with James
9 Patrick Smith or the alleged victim, Tammy Page, P-A-G-E, if
10 so, please stand.

11 (No response.)

12 THE COURT: The potential witnesses in the trial of the
13 case are as follows:

14 Sandra Hutchins.

15 Roger Hutchins.

16 Cindy Hall.

17 Jerry Petty.

18 Barbara Green.

19 Deputy Mark Ervin.

20 Officer M.S. Magaw, M-A-G-A-W.

21 Officer Tony Raines.

22 Sergeant Tony Snow.

23 Wendi Lively.

24 Elizabeth Starnes.

25 Any member of the jury panel related by blood or

1 marriage or do you now or have you in the past had a close
2 personal or social relationship with any of the potential
3 witnesses in the trial of the case, if so, please stand.

4 (No response.)

5 THE COURT: The lawyers in the case, the State will be
6 represented by Assistant Solicitor Meghan Gilmer.

7 Is that correct, Gilmer?

8 SOLICITOR GILMER: Yes, sir. Yes, Your Honor, that's
9 correct.

10 THE COURT: And Mr. Roger Poole will be defending the
11 defendant, Mr. Smith.

12 Any member of the jury panel now or in the past have
13 had legal services performed by either of these two lawyers?

14 (No response.)

15 THE COURT: Any member of the jury panel related by
16 blood or marriage or are you now or have you in the past had
17 a close personal or social relationship with any of the
18 lawyers, if so, please stand.

19 (No response.)

20 THE COURT: This case involves an incident or alleged
21 incident, allegations that, here in Spartanburg County, on
22 or about February 9 of last year, of 2013, that the
23 defendant, Mr. Smith, James Patrick Smith, injured one Tammy
24 Page.

25 And this occurred where, ma'am?

1 SOLICITOR GILMER: In Spartanburg County in Landrum,
2 Your Honor.

3 THE COURT: Do you have a specific address in Landrum?

4 SOLICITOR GILMER: Your Honor, it occurred along
5 Shamrock Avenue.

6 THE COURT: Sam Ott, O-T-T?

7 SOLICITOR GILMER: Shamrock.

8 THE COURT: Shamrock. I'm sorry.

9 SOLICITOR GILMER: Shamrock and Randolph Avenue.
10 They're several streets in that vicinity, Your Honor. It
11 was in Landrum.

12 THE COURT: An event that occurred in Landrum where it
13 is alleged Mr. Smith injured Ms. Page on January 9, 2013.

14 Anybody know anything at all about this case, read
15 about it, seen anything in the newspapers, television,
16 Internet, social media, media, anything about these
17 allegations or this event, if so, please stand.

18 (No response.)

19 THE COURT: Ladies and gentlemen, I've asked this
20 question all week and unfortunately somebody did not -- was
21 not honest with me in answering this question, and I will
22 deal with that later, one of my jurors, but I've asked this
23 question each time.

24 The question is does anybody know of any reason
25 whatsoever why he or she should not serve as a juror in this

1 case?

2 Do I have anybody, because of religious, personal,
3 political, or any other type beliefs, can not participate in
4 your duties as a juror, which means that you have to sit and
5 listen and determine what the true facts are, apply those
6 true facts to the law in the case, and be able to render a
7 verdict, which means voting either whether you're guilty or
8 not guilty?

9 If there is anybody who can not do that other than one
10 potential witness and juror -- and you do not have to stand
11 up. I'm gonna deal with you later.

12 Does that apply to anyone?

13 (No response.)

14 THE COURT: Anybody not able to perform their civic
15 duty of deciding whether or not the state's able to prove
16 this case beyond a reasonable doubt, if so, please stand.

17 (No response.)

18 THE COURT: I need to know now, and the reason for
19 that, these cases are hugely important to both sides, the
20 state and the defendant. A lot of time and effort and
21 resources go into trying these cases. Police officers have
22 to come into the courtroom. Court reporters, judges come
23 from other parts of the state. Other jurors come in here.

24 So, if you can't vote not guilty or guilty I need to
25 know now.

1 (No response.)

2 THE COURT: Anybody know of any reason why you can not
3 serve as a juror in this particular case with particular
4 emphasis being placed on your ability to be fair both to the
5 state and to the defendant, if so, please stand.

6 (No response.)

7 THE COURT: Have any member of the jury panel---

8 (Juror responds.)

9 THE JUROR: Your Honor, my wife---

10 THE COURT: Name?

11 Name?

12 THE JUROR: Yes, sir.

13 THE COURT: Your name please?

14 THE JUROR: John Smith. I am Juror 140. My wife has
15 been a victim of criminal domestic violence, but it should
16 not affect my judgment, you know, as far as to be fair or
17 unfair.

18 THE COURT: You can listen and you can decide what's
19 true and apply those facts and vote yes or no?

20 THE JUROR: Yes, sir.

21 THE COURT: Guilty or not guilty?

22 THE JUROR: Yes.

23 THE COURT: That's all I ask. That's all anybody asks
24 and I thank you for standing. Appreciate it.

25 So, let me ask you a few---

1 (Juror stands.)

2 THE COURT: Yes, ma'am.

3 THE JUROR: I've spoken to you. I'm Juror Number 28,
4 Mary Crisp. I spoke with you yesterday about---

5 THE COURT: You did and I will, I will not make you
6 serve since this is a domestic relations type case.

7 THE JUROR: Okay.

8 THE COURT: I will dismiss -- I will hold you out on
9 this one. The next one's an easy one. It's a forgery case.
10 So, that shouldn't bother you.

11 (Juror responds.)

12 THE COURT: Yes, ma'am, your name again?

13 THE JUROR: My name is Cindy Williams and I'm Juror
14 Number 169. I do know a Tammy Page, but she is a white
15 female.

16 THE COURT: Is that her?

17 SOLICITOR GILMER: Yes, Your Honor, she is a white
18 female. Your Honor, she was right outside. I don't mind
19 bringing her in.

20 THE COURT: Please do so we can all look at her.

21 SOLICITOR GILMER: Thank you, Your Honor.

22 If I may step out?

23 THE COURT: Yes, ma'am, your name again.

24 THE JUROR: Lonnie Robinson, 124. I spoke with you
25 yesterday.

1 THE COURT: You did, Ms. Robinson. I will dis -- not
2 disqualify you, but I will excuse you from the trial of this
3 case. Stick with me. We're gonna draw a second jury.

4 THE JUROR: Okay.

5 THE COURT: Mr. Poole, remind me -- actually remind me
6 to put on the record what they told me.

7 MR. POOLE: Pardon me, Your Honor?

8 THE COURT: Remind me to put on the record the reasons
9 why I'm disqualifying -- not -- I'm excusing those two
10 jurors.

11 MR. POOLE: Yes, sir, I will.

12 THE COURT: Come forward please, ma'am.

13 (Ms. Page complies.)

14 THE COURT: Good morning. How are you?

15 MS. PAGE: Fine.

16 THE COURT: Page, Tammy Page?

17 SOLICITOR GILMER: Yes, sir.

18 MS. PAGE: Yes, sir.

19 THE COURT: Turn around for me and face the jury panel.

20 (Ms. Page complies.)

21 THE COURT: Thank you.

22 All right. Just have a seat right over there please,
23 ma'am.

24 Is this the lady, ma'am?

25 THE JUROR: No, sir.

1 THE COURT: Thank you.

2 Do I have any member of the jury panel, other than
3 those who have already stood, who have been victims of some
4 type of criminal domestic violence, if so, please stand.

5 (Jurors respond.)

6 THE COURT: Yes, ma'am, in the white blouse, shirt,
7 jacket, sweater.

8 THE JUROR: Ashley Vinesette, 158. I was the victim of
9 assault and battery.

10 THE COURT: Yes, ma'am, we discussed that yesterday and
11 you told me that that would not preclude you from being fair
12 and impartial, is that correct?

13 THE JUROR: Correct.

14 THE COURT: Thank you. You may be seated.

15 Yes, ma'am, in the black jacket.

16 THE JUROR: Sassy McDowell, Juror Number 88, and I'm
17 the victim of criminal domestic violence high and aggravated
18 nature.

19 THE COURT: And would that, in anyway, ma'am, preclude
20 or keep you from being fair and impartial in the trial of
21 this case?

22 THE JUROR: Yes.

23 THE COURT: All right. I will not make you serve on
24 this jury.

25 Take her name out.

1 Yes, ma'am, your name?

2 THE JUROR: Dorothy Kellett, 23.

3 Could I speak with you?

4 THE COURT: You may. Come forward.

5 (WHEREUPON, a bench conference was held with the juror
6 at this time.)

7 THE COURT: Ma'am, what was your number?

8 Ma'am, in the red jacket, red sweater, ma'am?

9 THE JUROR: 23.

10 THE COURT: 23?

11 THE JUROR: Yes, sir.

12 THE COURT: All right. She will remain with us. I
13 will share with y'all what she said.

14 You want to talk to me in private?

15 THE JUROR: Belinda Thompson, 150, yes sir.

16 (WHEREUPON, a bench conference was held with the juror
17 at this time.)

18 THE COURT: 153 -- 150, right?

19 THE JUROR: Yes, sir.

20 THE COURT: Yesterday she informed us she has some
21 issues with the detectives who were in that particular case,
22 but not the law enforcement officers in this case.

23 Is that correct, ma'am?

24 THE JUROR: Yes, sir.

25 THE COURT: And you can be fair and impartial?

1 THE JUROR: Yes, sir.

2 THE COURT: Thank you.

3 Anyone -- yes, ma'am, your name?

4 THE JUROR: Kathy Hill, 153.

5 THE COURT: You want to speak to me in private, ma'am?

6 THE JUROR: Yes, sir.

7 (WHEREUPON, a bench conference was held with the juror
8 at this time.)

9 THE COURT: This lady works for the City of Spartanburg
10 victim rights and victim coordinators and just wanted to
11 advise me of that. Would not affect her she says.

12 I normally don't ask this question, but in light of
13 what happened yesterday I am gonna ask it.

14 Do I have any member of the jury panel that does not
15 recognize the government of the United States or the State
16 of South Carolina, if so, please stand.

17 (No response.)

18 THE COURT: Have any member of the jury panel, you or
19 your immediate family, is employed with law enforcement or
20 with SLED, FBI, Spartanburg County, Sheriff's Office, or any
21 other type of law enforcement, if so, please stand.

22 (Jurors responds.)

23 THE COURT: Yes, ma'am, your name?

24 THE JUROR: Sonya Fowler, Number 40.

25 THE COURT: And?

1 THE JUROR: It's my brother-in-law.

2 THE COURT: Brother-in-law works with?

3 THE JUROR: Spartanburg County Sheriff's Department.

4 THE COURT: Is this a Sheriff's Department case, ma'am?

5 SOLICITOR GILMER: Yes, Your Honor. It is.

6 THE COURT: All right. We will disqualify you from
7 this case. Please have a seat.

8 Sir, in the back, in the red.

9 That's a Carolina shirt?

10 THE JUROR: Yes, sir. John Good, 29. I have a cousin
11 that's a deputy sheriff in Union, Your Honor.

12 THE COURT: Union County?

13 THE JUROR: Yes, sir.

14 THE COURT: The fact that you have a cousin who's a
15 deputy sheriff, sheriff in the next county, Union County,
16 would that in anyway preclude you, sir, from being fair and
17 impartial?

18 THE JUROR: No, it wouldn't.

19 THE COURT: Thank you for telling us that.

20 Is any member of the jury panel who is a member of or a
21 contributor to organizations who have their principal
22 purpose, purpose is the advocacy of rights of victims of
23 crimes such as Citizen Against Violent Crimes, Students
24 Against Drunk Driving, MADD, Mothers Against Drunk Driving,
25 MADD, if so, please stand.

1 (Jurors respond.)

2 THE JUROR: Contributed to Safe Home Rape Crisis.

3 THE COURT: And your name, sir?

4 THE JUROR: Alan Michaels, 77.

5 THE COURT: would that, in anyway, preclude or keep you
6 from being fair and impartial in the trial of the case?

7 THE JUROR: Absolutely not.

8 THE COURT: Thank you very much for telling me.

9 Yes, ma'am, your name?

10 THE JUROR: Vickie Willis, 172. I have volunteered at
11 Safe Homes in Greenville.

12 THE COURT: Shelter for abused---

13 THE JUROR: Shelter for Abused---

14 THE COURT: And the fact that you have volunteered, and
15 we all do volunteer work, would that, in anyway, would keep
16 you from being fair and impartial, ma'am?

17 THE JUROR: No, sir.

18 THE COURT: Thank you. Thank you for sharing that with
19 us.

20 Anyone else?

21 (No response.)

22 THE COURT: Any additional questions by the State?

23 SOLICITOR GILMER: No, Your Honor.

24 THE COURT: By the defendant?

25 MR. POOLE: No, sir.

1 THE COURT: All right. We're gonna do five and five.
2 Give me a panel please.

3 Y'all look right here a second please.

4 (Whereupon, a bench conference was held out of the
5 hearing of the jury at this time.)

6 (WHEREUPON, a jury panel was selected at this time.)

7 THE CLERK: This will be for the alternate.

8 THE COURT: I need two alternates in this case please.

9 (WHEREUPON, an alternate juror was selected at this
10 time.)

11 THE COURT: All right. Give me one more please.

12 (WHEREUPON, the second alternate juror was selected at
13 this time.)

14 THE COURT: Any motions by the State or the defendant
15 in connection with the selection of the jury?

16 SOLICITOR GILMER: None from the State, Your Honor.

17 MR. POOLE: No, sir.

18 THE COURT: All right. Ladies and gentlemen of this
19 jury panel, we're gonna start this case at 2:15. So, please
20 be back in your jury room at 2:15 to be ready to commence
21 your -- go with the bailiffs.

22 Mr. Miller, Kevin Miller, let me see you up here
23 please.

24 Y'all walk up here.

25 (WHEREUPON, a bench conference was held at this time

1 and a recess was taken at this time in this case.)

2 THE COURT: All right. Is there anything I can do for
3 you?

4 MR. POOLE: I wish you could, judge, but I think we'll
5 be back here at 2:15.

6 THE COURT: All right. Is he out on bond or what's his
7 situation?

8 MR. POOLE: He is completely incarcerated, and one
9 issue about the arraignment remains.

10 THE COURT: All right. Come forward.

11 (Parties comply.)

12 THE COURT: Mr. James Patrick Smith, good morning.
13 How are you?

14 THE DEFENDANT: All right. How are you, sir?

15 THE COURT: Doing well.

16 would you raise your right-hand for me please?

17 (WHEREUPON, the defendant was placed under oath at this
18 time.)

19 THE COURT: All right. You can put your hand down.

20 Mr. Smith, this stage of the trial is called the
21 arraignment. Just one small phase of a, of a -- all the
22 long, the long criminal process. But you have been charged,
23 and a true bill has been issued in Indictment 13-GS-42-3303,
24 and that's an indictment for criminal domestic violence of a
25 high and aggravated nature.

1 Do you understand what you're charged with?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And how do you wish to plead, not guilty or
4 guilty?

5 THE DEFENDANT: Not guilty.

6 THE COURT: Do you wish to be tried by the jury that
7 we've just---

8 THE DEFENDANT: Yes, sir.

9 THE COURT: ---selected?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Counsel, you ready for trial?

12 MR. POOLE: Yes, sir, I am.

13 THE COURT: All right. Thank you.

14 MR. POOLE: Thank you.

15 THE COURT: Anything else we need to do?

16 You want to put your motion in limine on the record?

17 SOLICITOR GILMER: I can, Your Honor.

18 THE COURT: All right. while Mr., while Mr. Smith is
19 present, let's do that.

20 Have a motion in limine that we discussed in chambers.

21 SOLICITOR GILMER: Yes, Your Honor.

22 THE COURT: One of them was that, that he was initially
23 charged with the offense of CDV second offense, but indicted
24 for CDV ABHAN, high and aggravated nature, and the other one
25 was that any reference to the third party guilt, unless it

1 becomes a pertinent or relevant issue in the trial of the
2 case, and that defense counsel would advise me before that,
3 and we can do something outside the presence of the jury so
4 we would not taint this trial in regards to that.

5 Is that basically where we are?

6 SOLICITOR GILMER: Yes, Your Honor. That's where we
7 are.

8 THE COURT: And I think, Mr. Poole, you agreed in
9 chambers that you would not proceed in any of those unless
10 something came up in the trial that you felt like it was
11 necessary, and, if that happens, then you would advise me
12 and we would do an in camera or out of the presence of the
13 jury proffer to see how he stood on it?

14 Is that fair?

15 MR. POOLE: That's currently my understanding as it was
16 previously. I don't think we need to certainly taint the
17 jury with an accusation of a CDV second offense, and that,
18 likewise, with the first.

19 THE COURT: All right. And if that becomes apparent
20 that it needs to be addressed, let's do it the -- outside
21 the presence of the jury.

22 MR. POOLE: Yes, sir.

23 THE COURT: It will not be mentioned until we address
24 it outside the presence of the jury.

25 MR. POOLE: Yes, sir.

1 THE COURT: Fair enough?

2 Anything else, ma'am?

3 SOLICITOR GILMER: Thank you, Your Honor. That's all
4 for now.

5 THE COURT: All right. I will see y'all at 2:15.

6 (WHEREUPON, Court was in recess for the lunch break.)

7 THE COURT: Ms. Gilmer, are you ready?

8 SOLICITOR GILMER: Yes, Your Honor, we are.

9 THE COURT: Mr. Poole, you ready?

10 MR. POOLE: Yes, sir.

11 (Pause.)

12 THE COURT: All right. We ready?

13 MR. POOLE: Yes, Your Honor.

14 THE COURT: Bring the jury in.

15 (WHEREUPON, the following takes place within the
16 presence of the jury.)

17 THE COURT: All right. Ladies and gentlemen of the
18 jury, the first thing we have to do, in order to move
19 forward, is to be sworn in for this particular case.

20 So, if you'd stand please and the clerk will administer
21 the oath.

22 (WHEREUPON, the jury was placed under oath at this
23 time.)

24 THE COURT: All right. Ladies and gentlemen of the
25 jury panel, please let me remind you of the fact that

1 Mr. Patrick Smith has been charged and indicted for the
2 offense of criminal domestic violence of a high and
3 aggravated nature. He's pled not guilty to that and that
4 plea of not guilty puts the burden on the State of South
5 Carolina to prove his guilt to you beyond a reasonable
6 doubt. He has the Constitutional presumption of innocence
7 and that stays with him unless the state is able to meet
8 their burden.

9 Since the State has the burden of proof in this case,
10 the way that we will go this afternoon is this. The State
11 goes first. They will present their witnesses, their
12 testimony, followed by the defendant's testimony or
13 witnesses if they choose to put up anything. Once we've
14 completed all the testimony, then the lawyers will make a
15 final argument and then I will instruct you on the law and
16 you'll be in a position to deliberate the case.

17 Before we do anything of that nature though we have
18 opening statements where the lawyers will tell you what the
19 case is about. Sort of give you a roadmap of what the case
20 is, what they intend to prove, what they ask you to listen
21 for. That is not evidence in the case.

22 The only evidence that you can consider comes from the
23 witness stand and/or exhibits that are introduced during the
24 trial of the case. As I told you several times this week,
25 some of you have been on the juries and have listened to me,

1 others during jury qualification, but you and I have two
2 separate functions to perform. My position makes me the
3 judge of the law in the case. Therefore, I instruct you
4 what the law is. You have to accept the law as I give it to
5 you.

6 More importantly, though, you are the judges of the
7 facts in the case, and if this case is like so many of them
8 that I try, you will hear different versions of the facts.
9 It will be up to you to determine what the true facts are
10 and you take those true facts and apply it to the law and
11 you'll be in a position to render a verdict in the case.
12 So, I ask that you pay close attention to the evidence so
13 you'll be in a position to fulfill your duties as the judges
14 of the facts in the case.

15 I will try to run an efficient courtroom. We try to
16 start on time. We try to make the lawyers, one witness
17 after the next, so we can be efficient in the use of our
18 time. But on the other side of the coin, I'm not trying to
19 run a race up here. So, at anytime during the trial of the
20 case you become uncomfortable, you need to use the restroom,
21 you need to take a break, you need something to drink,
22 whatever your reasons are, please don't get uncomfortable.
23 Raise your hand, and once you raise your hand, I will
24 address your needs and make sure that you are comfortable.

25 I will ask you, each time we take a break, please do

1 not deliberate. Do not talk about the case until all the
2 evidence is in, the lawyers have made their arguments, and
3 I've charged you on the law. So, it's not proper to speak
4 about the case until we're completely finished with it.

5 I will ask you this afternoon, when we take our first
6 break or afternoon break, I need a foreperson. That's a
7 person to serve as a spokesperson for the jury panel, head
8 up the deliberations, and keep me informed if there's any
9 problems with the deliberations or any other concerns that
10 you may have. So, I need you to select that person out of
11 the 12 regular jurors excluding the two alternates.

12 We're gonna start now in just a few minutes with the
13 lawyers making their opening statements, and we will move
14 forward with the testimony this afternoon and see how far we
15 can get.

16 Any objections to my opening remarks by the State?

17 SOLICITOR GILMER: No, Your Honor.

18 THE COURT: By the defendant?

19 MR. POOLE: No, sir.

20 THE COURT: Ma'am, you may make your opening statement.

21 SOLICITOR GILMER: Thank you, Your Honor.

22 May it please the Court?

23 THE COURT: Yes, ma'am.

24 SOLICITOR GILMER: Counsel.

25 Ladies and gentlemen of the jury, on February,

1 February 9th, 2013, Tammy Page and her live-in boyfriend,
2 the defendant, James Patrick Smith, had a disagreement as a
3 lot of couples do. However, on that date that agreement
4 escalated into criminal domestic violence.

5 Ladies and gentlemen, on that date the defendant did
6 not just have a verbal disagreement with the victim. He
7 proceeded to strike her, kick her, strangle her, and
8 threaten her with a knife.

9 Ladies and gentlemen, as the judge told you earlier, my
10 name is Meghan Gilmer. I'm assistant solicitor with the
11 Spartanburg County Solicitor's Office and I prosecute crimes
12 against women, domestic violence included.

13 Ladies and gentlemen, a lot of people have preconceived
14 notions of domestic violence when they come in here into the
15 courtroom or just out in the community. The State does not
16 have to prove there was any type of pattern of abuse. We do
17 not have to prove why the victim stayed in the relationship
18 or why she didn't stay in the relationship.

19 What I submit to you that we will prove in this case
20 that, on that evening, the defendant did inflict domestic
21 violence or inflict physical injury and made verbal threats
22 against the victim, Tammy Page. I'm gonna ask you to use
23 your common sense in this case. Leave those preconceived
24 notions, those misconceptions at the door when you go to
25 deliberate in this case. I submit to you that, at the end

1 of this case, once you hear all the evidence, you see the
2 evidence, that you will find the defendant guilty of
3 criminal domestic violence of a high and aggravated nature.

4 Now, while you're listening to this case I urge you to
5 listen for a couple of things. High and aggravated nature,
6 it's a little bit of legalese, but basically what that means
7 is that there were threats to use a weapon or the defendant
8 did use a weapon or that there was significant injury,
9 physical injury in this case.

10 So, I want you to listen to those two things, and I
11 submit to you that, at the end of this case, the State will
12 have proved to you each of those elements. We don't have to
13 prove both, but I will submit to you that we have done that.

14 You can expect to hear in this case from the victim
15 herself. She is here today. I ask you to bear with her.
16 This can't be an easy thing to have to get in front of, in
17 this case, 14 people who you don't know, and, one, tell the
18 personal details of your life and things that have happened.
19 So, I ask you to have patience with her and understand that.

20 Again, I ask you to use your common sense when
21 listening to this case. I ask you to give each of the
22 witnesses your full attention, and, again, use your common
23 sense.

24 You're also gonna hear from the law enforcement
25 officers that day that had, that had dealt, dealt with this

1 case or had dealings in this case from the Sheriff's Office,
2 the Spartanburg County Sheriff's Office, as well as the
3 Landrum Police Department. This did happen in about the
4 area of Landrum, South Carolina. So, you're gonna hear from
5 both agencies in that matter.

6 The Landrum police officers had some dealings with the
7 defendant. They're gonna tell you about that, and the
8 Sheriff's Office is the one that actually handled this case.
9 So, you're gonna hear from both of those today. You're also
10 gonna hear from some witnesses who were neighbors who
11 resided in the area that can tell you a little bit about
12 what they saw, what they know about this case.

13 Ladies and gentlemen, I submit to you that, at the end
14 of this case, after you hear everything, you hear the
15 evidence, you see the evidence, that you will find one
16 person responsible and hold him accountable for what he did
17 to Tammy Page on that date on February 9th of 2013. I
18 submit to you that one individual is James Patrick Smith,
19 and I'm gonna ask you, at the end of this case, to find him
20 guilty of criminal domestic violence of a high and
21 aggravated nature.

22 Thank you.

23 MR. POOLE: May it please the Court?

24 THE COURT: Yes, sir.

25 MR. POOLE: Solicitor.

1 Good afternoon. I am Roger Poole. I represent James
2 Patrick Smith, and I disagree basically with most of what
3 Ms. Gilmer said.

4 That's why we're here. We're here for a trial, and
5 all -- most cases are disposed of in General Sessions Court,
6 that is in Criminal Court, by guilty pleas.

7 Mr. Smith is sitting over there beside me. He is
8 innocent and he's presumed innocent until the state proves
9 his guilt of each and every element of the crime of criminal
10 domestic violence of a high and aggravated nature beyond a
11 reasonable doubt.

12 There is legalese language in there, and the judge,
13 whose domain is the law, Judge Early will tell you, at the
14 end of the case, what the elements are, and you will have
15 heard the facts as presented through exhibits or through
16 testimony by that time, and you will see -- you will have to
17 apply the law to the facts to determine whether or not the
18 state has proven its case beyond a reasonable doubt.

19 I do know also that some of you have served on a jury
20 before. So, this is really nothing new. So, I am saying
21 this for the benefit of those who -- of you who have not
22 been on a jury.

23 Mr. Smith is innocent. He did not commit this crime,
24 and I will also ask you -- I will join in with Ms. Gilmer is
25 asking you to use your common sense. That's obvious. You

Tammy Page - Direct examination
by Solicitor Gilmer

1 serve on juries because you're citizens of this state and of
2 this country, and it's a duty to serve on the jury if you
3 are a citizen in good standing.

4 So, I'm asking you to do that. But as you listen to
5 the evidence and look at the exhibits, if there are any, I'm
6 asking you to also consider what is not stated because the
7 totality of circumstances consists of what is presented and
8 what is not presented.

9 Mr. Smith has no burden whatsoever. He does not have
10 to take the witness stand if he so desires, and that can not
11 be held against him. The State has to prove its case beyond
12 a, beyond a reasonable doubt, and before you can return a
13 verdict of not guilty, then, or guilty, you have to see that
14 the State has carried the burden to prove that he is guilty.

15 You've been picked through a process that has been
16 designed to allow both the State and the defense to select
17 you. You've been selected for a reason, and the reason that
18 you're selected is to be fair. But in the opening of what
19 Ms. Gilmore stated, we totally disagree with her rendition
20 of the facts.

21 So, here we go. The evidence is coming to you.

22 Thank you for being here. Thank you for your patience.

23 THE COURT: You may call your first witness, Ms.

24 Gilmer.

25 SOLICITOR GILMER: Thank you, Your Honor.

Tammy Page - Direct examination
by Solicitor Gilmer

1 The State calls Tammy Page.

2 TAMMY PAGE, being first duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION

5 BY SOLICITOR GILMER:

6 Q Will you please state your name for the record?

7 A Tammy Renee Page.

8 THE COURT: Ms. Page, speak up for me.

9 A Tammy Renee Page.

10 Q Ms. Page, how old are you?

11 A Forty-two.

12 Q And, Ms. Page, did you live in Landrum, South Carolina
13 back in February -- back on February 9th of 2013?

14 A Yes, ma'am.

15 Q Okay. And where did you live in Landrum?

16 A With James Patrick Smith. With James Patrick Smith.

17 Q Okay. Where did you live with him?

18 What was the address?

19 A [REDACTED].

20 Q And how long did you live with him at that location?

21 A Three years.

22 Q And were the two of you in a romantic relationship?

23 A Yes.

24 Q What would you -- how would you consider him?

25 Was he your husband, fiance, boyfriend?

Tammy Page - Direct examination
by Solicitor Gilmer

- 1 A Boyfriend.
- 2 THE COURT: I'm sorry. I can't hear you.
- 3 THE WITNESS: Boyfriend.
- 4 THE COURT: Thank you. I have to hear you and the
5 jurors have to hear you. So speak up please.
- 6 Q I understand this is difficult for you.
7 Okay. Just make sure you speak up.
8 All right?
- 9 A (Witness nods affirmatively.)
- 10 Q When you lived with him was there anyone else that
11 lived in the home with you?
- 12 A His mom and daddy lived there.
- 13 Q And how long did you -- the two of you live at that
14 location?
- 15 A Three years.
- 16 Q Three years.
17 Was that the extent of your relationship?
18 Did you -- how long have you known him?
- 19 A I've known him like ten years.
- 20 Q On February 9th of 2013, did you and James Patrick
21 Smith have an argument?
- 22 A Yes.
- 23 Q And how did -- what do you know him by?
24 what, what did you call him?
- 25 A Beaver.

Tammy Page - Direct examination
by Solicitor Gilmer

1 Q Okay. Beaver?

2 A Beaver.

3 Q Did everybody call him Beaver or was there another name
4 he went by?

5 A Nickname, yeah.

6 Q And do you see Beaver in the courtroom here today?

7 A Yes.

8 Q Where do you see him?

9 Will you point to him and describe an article of
10 clothing?

11 A Purple shirt.

12 Q The what shirt?

13 A The purple shirt.

14 Q The purple shirt?

15 Is it a blue shirt?

16 A Blue. It looks purple to me.

17 Q He's sitting here behind the -- beside Mr. Poole?

18 A Yes.

19 SOLICITOR GILMER: Your Honor, if the record could
20 reflect the witness is identified the defendant?

21 THE COURT: Yes, ma'am.

22 SOLICITOR GILMER: Thank you, Your Honor.

23 Q Ms. Page, you said that you had a disagreement with the
24 defendant that night.

25 Did it escalate into a physical---

Tammy Page - Direct examination
by Solicitor Gilmer

1 A Yes.

2 Q Okay. Tell us about that.

3 How, how did it start?

4 A He called me to come and talk to him at his mother's
5 and I went down there and he started saying that I'd been
6 cheating on him --

7 Q Okay.

8 A -- with Jerry Petty and he wanted me to tell him. He
9 already knew. He wanted me to tell him out of my mouth and
10 I was like no, no, no, and he just started beating me in my
11 head.

12 Q Had you been cheating on him with Jerry Petty?

13 A No.

14 Q You said he started beating you in your head.

15 Where did it start?

16 A We were up -- we were standing on the back porch.

17 Q At [REDACTED] --

18 A Yes.

19 Q -- where you two lived together?

20 A Yes.

21 Q Did he say anything when he started beating you?

22 A He just kept saying why did you do it, why did you do
23 it, and then he had -- he had his knife out trying to stab
24 me in my stomach, and I kept pushing it away. Then he gave
25 me the knife and told me if I didn't cut him he was gonna

Tammy Page - Direct examination
by Solicitor Gilmer

1 kill me. I throwed it down. Then he got it back up and
2 started cutting my clothes off.

3 THE COURT: started cutting what?

4 THE WITNESS: My clothes off.

5 Q Make sure you speak real slowly for us.

6 Okay?

7 A Okay.

8 Q So we can hear and understand.

9 Your Honor, if I may approach the witness and Madam
10 Reporter?

11 SOLICITOR GILMER: Thank you, Your Honor.

12 (WHEREUPON, seven photographs were marked as State's
13 Exhibit Nos. 1 through 7 for identification purposes only at
14 this time.)

15 Q Okay. Ms. Page, I'm showing you what's been marked as
16 State's Exhibit 5.

17 Do you recognize this?

18 A Yes, ma'am.

19 Q Okay. And what is this that you're looking at?

20 A A picture of me.

21 Q And do you know when it was taken?

22 A February 9th.

23 Q Okay. of 2013?

24 A Yes, ma'am.

25 Q Okay. Was -- would this have been before or after the

Tammy Page - Direct examination
by Solicitor Gilmer

1 defendant started beating you --

2 A After.

3 Q -- in the head?

4 THE COURT: What's the exhibit number?

5 SOLICITOR GILMER: No. 5, Your Honor.

6 Q And is this a fair and accurate depiction of what you
7 looked like after the offense?

8 A Yes, ma'am.

9 SOLICITOR GILMER: Okay. Your Honor, at this time I
10 would move to enter into evidence what's been previously
11 marked as State's Exhibit 5.

12 THE COURT: Any objection?

13 MR. POOLE: No, sir.

14 THE COURT: Without objection.

15 SOLICITOR GILMER: Thank you, Your Honor.

16 (WHEREUPON, State's Exhibit No. 5 was received into
17 evidence at this time.)

18 SOLICITOR GILMER: Do you need to see it, Your Honor?

19 (The Court nods negatively.)

20 Q Okay. What kind of pants do you have on?

21 A They're like---

22 THE COURT: In the photo, right?

23 SOLICITOR GILMER: In the photo, yes, Your Honor.

24 A They're like capris pants.

25 Q Okay. And this shirt, is this the shirt that you were

Tammy Page - Direct examination
by Solicitor Gilmer

1 wearing when the defendant started beating you?

2 A Yes.

3 Q Okay. And is there anything significant about the
4 shirt that sticks out from that photograph?

5 A It's just where he cut it right there. I had to tie it
6 to so it'd stay on.

7 Q Okay. And where -- which -- where exactly?

8 Are you talking about the right side, the left side?

9 A (Witness points.)

10 Q Okay. So, if you're looking at the picture---

11 A The left.

12 Q ---you're pointing at the right side?

13 A Yes.

14 SOLICITOR GILMER: Okay. Your Honor, at this time I
15 would ask to publish to the jury.

16 THE COURT: Yes, ma'am.

17 SOLICITOR GILMER: Thank you.

18 Your Honor, would you like me -- for me to continue or
19 wait?

20 THE COURT: Yes, ma'am, please.

21 Q Okay. All right. Ms. Page, I am showing you what's
22 been previously marked as State's Exhibit 7.

23 what is that?

24 A Mud.

25 Q Okay. And---

Tammy Page - Direct examination
by Solicitor Gilmer

1 THE JUROR: It's what?

2 I'm sorry.

3 THE WITNESS: Mud and blood probably.

4 Q And what is, what is this blue that we're looking at in
5 the photo?

6 A The blue's my pants.

7 Q Your pants.

8 Okay. And were those the pants that you were wearing
9 on the evening of February 9th?

10 A Yes, ma'am.

11 Q Okay. And do you know when this photograph was taken?

12 A February 9th.

13 Q Okay.

14 A 2013.

15 Q Before or after the offense?

16 A After.

17 Q Okay. Is this a fair and accurate representation of
18 your clothing that evening?

19 A Yes, ma'am.

20 SOLICITOR GILMER: Your Honor, at this time I would
21 move to enter into evidence what's been previously marked as
22 State's Exhibit 7.

23 THE COURT: Any objection?

24 MR. POOLE: No, sir.

25 THE COURT: Without objection.

Tammy Page - Direct examination
by Solicitor Gilmer

1 SOLICITOR GILMER: Thank you, Your Honor.

2 (WHEREUPON, State's Exhibit No. 7 was received into
3 evidence at this time.)

4 SOLICITOR GILMER: Ask to publish to the jury.

5 THE COURT: You may.

6 SOLICITOR GILMER: Thank you.

7 Q Okay. Ms. Page, you said that you thought it was mud
8 or blood on the -- on your pants.

9 At what point did you get that on your clothing?

10 A I think it was when he knocked me down on the ground
11 and started cutting my clothes off. It was muddy.

12 Q Okay. And that was when you were still at the Randolph
13 residence---

14 A Yes.

15 Q ---where you lived?

16 A Yes.

17 Q And you said before that he started beating you.

18 A Yes.

19 Q How, how was he beating you?

20 A It was his -- with his fist in my head.

21 Q Did the two of you stay at [REDACTED]?

22 A Yes.

23 Q You did stay there.

24 Let me repeat or refresh that, rephrase that.

25 Did the two of you stay there -- when he started

Tammy Page - Direct examination
by Solicitor Gilmer

1 beating you, did you stay there at the [REDACTED] residence?

2 A Was I living there?

3 Q No.

4 Did you -- were you there at the point or did you go,
5 leave there---

6 A Oh, yeah.

7 Q ---and go somewhere else?

8 A Yeah, we was at 714.

9 Q Okay. Did you ever, that night, leave that residence?

10 A Yes.

11 Q All right. Tell me about that.

12 A After he cut my clothes he told me to leave. So, I
13 started walking and then a few minutes later he was right
14 behind me.

15 Q And were you walking -- what street were you walking
16 down?

17 A [REDACTED].

18 Q And what street were you walking towards?

19 A I was walking straight up [REDACTED] to my mother's. She
20 lives on [REDACTED] too.

21 Q Okay. Where on [REDACTED] does your mother live?

22 A [REDACTED], [REDACTED].

23 Q All right. Did the defendant follow you?

24 A Yes.

25 Q Okay. Did he have any contact with you while you were

Tammy Page - Direct examination
by Solicitor Gilmer

1 walking?

2 A Yes.

3 Q Okay. And what did he do?

4 A He was just -- I went to---

5 THE COURT: Speak up.

6 A I went to the neighbors at the top of the hill. She
7 was outside and I asked her if I could use her phone cause
8 he was trying to kill me. She said hold on a minute. She
9 went in the house. I turned around and saw him---

10 Q Saw---

11 A ---and he said -- him.

12 Q Are you talking about the defendant?

13 A Yes. He said keep walking, you're not using their
14 phone. So, I keep walking. He walks me over to the next
15 street and the next street, which is Shamrock, where Jerry
16 Petty lives. He was taking me to confront him, and he was
17 beating me the whole way there. I was jumping out in front
18 of cars and everything. They wouldn't stop or nothing. I
19 was hollering and nobody helped. So --.

20 Q What type of neighborhood is [REDACTED] and Shamrock?

21 Are there subdivisions?

22 Are there trailers?

23 Are there a lot of people around?

24 A Pretty much, yeah.

25 Q Which one that is---

Tammy Page - Direct examination
by Solicitor Gilmer

- 1 A There's a lot of people around.
- 2 Q Describe it for me.
- 3 Okay. So, you said you got to Jerry -- let me back up.
- 4 You said before that you stopped at the neighbor's.
- 5 what neighbor was that?
- 6 A Barbara Green.
- 7 Q Barbara Green.
- 8 Okay. And were you able to use her phone?
- 9 A No.
- 10 Q Why not?
- 11 A I was down the road and she was walking into her house.
- 12 She said she had to go in and get it. By the time she come
- 13 back out he was behind me. He said keep walking, you're not
- 14 using the phone.
- 15 Q Okay. He meaning who?
- 16 A James Smith.
- 17 Q Where did you go after Ms. Green's house?
- 18 A We kept walking up [REDACTED]. We took a right. We
- 19 passed over 176 I think, 176 is the highway, on to Church --
- 20 I mean Shamrock.
- 21 Q Was the defendant walking with you?
- 22 A Yes.
- 23 Q Okay.
- 24 A Beating me the whole time in my head.
- 25 Q Did he kick you at any point?

Tammy Page - Direct examination
by Solicitor Gilmer

1 A Yes.

2 Q When did he kick you?

3 A When we got to Jerry's on his porch.

4 Q And where does Jerry live?

5 A He lives on Shamrock. I don't know the number.

6 Q That's okay.

7 But he lives on Shamrock?

8 A Yes.

9 Q And does Jerry live in a house, an apartment, a
10 trailer, mobile home?

11 A A trailer.

12 Q Okay. And you said you were up on the porch.

13 What was he doing to you -- the defendant doing to you
14 on the porch?

15 A He was knocking on the door at first to see if Jerry
16 was home. Jerry wasn't home. So, he just started beating
17 me again, and knocked me on the porch, stomping me in my
18 ribs, in my mouth, and finally just walked away and left me
19 laying there.

20 Q Okay. And I need you to tell me exactly what he said
21 if he said something.

22 Did the defendant make any statements to you during
23 this time?

24 A Yeah.

25 Q What was he saying to you, and I understand -- but I

Tammy Page - Direct examination
by Solicitor Gilmer

1 need to know specifically what he said, language and all.

2 A He said you're going to hell or jail tonight, bitch.

3 You're gonna die. You ain't shit. You never been shit.

4 You never will be shit.

5 Q Once you got to Jerry Petty's, was Mr. Petty home?

6 A No.

7 Q Okay. What did you do after that?

8 A After he left?

9 Q Well, what happened when you're on Jerry Petty's porch?

10 A He's -- James is knocking on the door. Nobody comes to
11 the door. Then he just starts beating me again. Knocks me
12 down on the porch, kicking me, stomping me. Then he walks
13 off.

14 Q And what do you do?

15 A I get up after a few minutes and walk to the neighbors
16 right next door in the trailer.

17 Q Do you know who lived there at the neighbors?

18 A Mr. and Mrs. Hutchins.

19 Q And once you got to their house, did you tell them what
20 was going on?

21 A Yes.

22 Q Did you ask to use the phone?

23 A Yes.

24 Q Were you able to use the phone?

25 A No.

Tammy Page - Direct examination
by Solicitor Gilmer

1 Q Okay. What did you do at that point?

2 A At that point I -- the police station is straight up
3 the road. They were telling me just walk to the police
4 station. I said I'll never make it. He'll catch me before
5 I get there. But anyway, I start walking and I turn around
6 and he's behind me again. So, I take the first right and
7 run up to this old lady's house and run in and use her phone
8 and called 9-1-1.

9 Q Do you know who lived there at the residence?

10 A I don't know her first name, but Ms. Hall.

11 Q But you did call 9-1-1?

12 A Yes, ma'am.

13 Q Okay. Did the police come out and speak with you?

14 A Yes.

15 Q And did you give a written statement to the police?

16 A Yes.

17 Q Okay. And did you tell them what happened?

18 A Yes.

19 Q All right. Did you have any injuries after all of
20 this?

21 Did you have any injuries?

22 A Yeah.

23 Q What type of injuries?

24 A I mean -- I didn't go to the hospital. I should of,
25 but I couldn't roll over for like a month. My ribs. My

Tammy Page - Direct examination
by Solicitor Gilmer

1 mouth was out to here for like two months. I thought he
2 done knocked my teeth out.

3 SOLICITOR GILMER: Your Honor, if I may approach the
4 witness?

5 A Just scars and scratches and --.

6 Q Okay. Ms. Page, I'm showing you what's been marked as
7 State's Exhibit 1, 2, 3, 4, and 6.

8 Do you recognize these?

9 A Yes.

10 Q How do you recognize them?

11 A Cause that's what he done to me on February the 9th,
12 2013.

13 Q Okay. And did law enforcement take those photographs?

14 A Yes.

15 Q And are they a fair and accurate representation of your
16 injuries that evening?

17 A Yes, ma'am.

18 MR. POOLE: No objection.

19 SOLICITOR GILMER: And I would ask to move -- to enter
20 them into evidence, Your Honor.

21 THE COURT: Without objection.

22 SOLICITOR GILMER: Thank you, Your Honor.

23 (WHEREUPON, State's Exhibit Nos. 1, 2, 3, 4, and 6 were
24 received into evidence at this time.)

25 SOLICITOR GILMER: I would ask to publish to the jury.

Tammy Page - Direct examination
by Solicitor Gilmer

1 THE COURT: You may.

2 SOLICITOR GILMER: And I'm sorry, Your Honor, may I
3 publish to the jury?

4 THE COURT: You may.

5 SOLICITOR GILMER: Thank you.

6 Q Ms. Page, this knife that you told us about that the
7 defendant had, what did it look like?

8 A I have no idea really. It was dark.

9 THE COURT: I'm sorry. I can't hear you.

10 THE WITNESS: I have no idea really. It was dark and
11 when he gave it to me I just slung it.

12 Q Okay. Did you know what kind of knife it was?

13 A No.

14 Q Did it fold or did -- was it just a straight knife like
15 a steak knife?

16 A It folded I think.

17 SOLICITOR GILMER: Okay. If I may have one moment,
18 Your Honor?

19 (Pause.)

20 Q Ms. Page, were you scared that night?

21 A Yes, ma'am.

22 Q Are you scared today?

23 A Yes, ma'am.

24 SOLICITOR GILMER: I have no further questions at this
25 time, Your Honor. Thank you.

Tammy Page - Cross-examination
by Mr. Poole

1 MR. POOLE: Please the Court.

2 CROSS-EXAMINATION

3 BY MR. POOLE:

4 Q Ms. Page, you stated that you have been -- you had been
5 in a romantic relationship with Mr. Pat -- Mr. Smith for a
6 period of three years?

7 A Yes, sir.

8 Q Is that right?

9 And [REDACTED], who lives at that house?

10 A His mom and daddy.

11 Q His mother and father?

12 A Yes.

13 Q And this is where the incident began at that address?

14 A Yes, sir.

15 Q Was his mother and father at that residence?

16 A Yes, sir.

17 Q His mother and father were there?

18 A Yes.

19 Q And so they obviously saw all this, did they not?

20 A No.

21 Q Okay. How big is that house?

22 A Four rooms.

23 Q Four rooms.

24 And does it -- is it surrounded by other houses?

25 A No.

Tammy Page - Cross-examination
by Mr. Poole

1 Q And was Mr. Smith there when you got there?

2 A Yes.

3 Q He called you up?

4 A Yes.

5 Q And have you been drinking that day?

6 A No.

7 Q You had not been drinking at all?

8 A Nope.

9 Q Is it not the case that you and Mr. Smith had drank
10 together on several previous occasions?

11 A Yes, sir.

12 Q And that you were an alcohol abuser?

13 SOLICITOR GILMER: Objection, Your Honor. Relevance.

14 THE COURT: I'll allow it.

15 Answer it.

16 A Yes.

17 Q Okay. So -- but you say you were not drinking on this
18 day?

19 A No, sir.

20 Q Had you seen him earlier in the day?

21 A I saw him earlier for five minutes.

22 Q Okay. What was that encounter like?

23 A Not good. I told him to leave.

24 Q Okay. And, again, did you live at this house?

25 A Yes.

Tammy Page - Cross-examination
by Mr. Poole

1 Q And you -- all four of you lived there for a period of
2 three years?

3 A Yes.

4 Q That is his mother, father---

5 A Yes.

6 Q ---and this man right here?

7 A Yes.

8 Q And you?

9 A Yes.

10 Q For a period of three years?

11 A Yes.

12 Q And you went down there voluntarily and you stated in
13 your answers to the solicitor that you had known him for ten
14 years, right?

15 A Yes.

16 Q And that when you got there he started beating you and
17 your head on the back porch?

18 A Yes.

19 Q Is that right?

20 A Yes.

21 Q And you gave us the impression that this was a very
22 violent occurrence, is that right?

23 A Yes.

24 Q And it was loud?

25 A Yes.

Tammy Page - Cross-examination
by Mr. Poole

1 Q Violent and loud?

2 A Yes.

3 Q And then he pulled his knife out?

4 That's your testimony?

5 A Yes.

6 Q And he pulled his knife out and tried to cut you on
7 your stomach?

8 A Yes.

9 Q Those are your words, are they not?

10 A Yes.

11 Q And how did you avoid the cutting on your stomach?

12 A I just kept pushing him back. It was like that. I
13 just kept pushing him back.

14 Q So, he was trying to stab you with a knife?

15 A Uh-huh. (Affirmative).

16 Q You kept pushing him back?

17 A Yes.

18 Q Therefore, avoiding getting stabbed?

19 A Yes.

20 Q And then you further said he gave you the knife?

21 A Yes.

22 Q And asked you to cut him?

23 A Yes.

24 Q Now, why didn't you cut him?

25 A Because I told him he wasn't worth me going to prison

Tammy Page - Cross-examination
by Mr. Poole

1 over, and I threw it---

2 Q Okay. So, you---

3 A ---on the ground.

4 Q Okay. At this point in time you're standing on the
5 back porch, you have the weapon that he produced, and you
6 don't do anything to defend yourself, and you don't run away
7 with that knife?

8 A No.

9 Q You do not?

10 A No.

11 Q Why not?

12 A Scared.

13 Q Well, if you're scared, don't you run away from
14 whatever you're fearing?

15 A Usually. But I knew he would catch me and it'd be
16 worsser.

17 Q Are you sure you weren't drinking that day?

18 A Promise.

19 Q Okay. And then you stated that there were -- there was
20 this journey from the back porch down the road where he
21 constantly and continually beat you as you were going from
22 house to house seeking aid?

23 A Yes.

24 Q Was it loud?

25 A No.

Tammy Page - Cross-examination
by Mr. Poole

1 Q Was it violent?

2 A Yes.

3 Q And no one saw it?

4 No one saw any of this?

5 A Cars saw it passing cause I was jumping out in front of
6 them trying to stop them. They wouldn't even stop.

7 Q Okay. But, again, you did not leave that back porch
8 when you had the knife in your hand?

9 A No.

10 Q Okay. And what did you do with knife?

11 A I just threw it on the ground.

12 Q All right. Your statement was that, on direct
13 testimony, that he was walking and he was beating you --

14 A Yes.

15 Q -- as you were walking?

16 A Yes.

17 Q And then you stated that he told you something to the
18 effect that you're going to hell or jail or you're going to
19 die?

20 A Yes.

21 Q Okay. And he did not have the knife, did he?

22 A Not at the time.

23 Q Because you'd thrown it away?

24 A I threw it down. I don't know if he picked it up or
25 what.

Tammy Page - Cross-examination
by Mr. Poole

- 1 Q You threw it down?
- 2 A Yes, on the ground.
- 3 Q You didn't throw it far away from him?
- 4 A I was standing on the porch. I slung it pretty far,
5 yes.
- 6 Q Okay. And you don't know if he had, he had a knife on
7 him at that time or not, right?
- 8 A At what time?
- 9 Q When he was walking you down the road and beating you?
- 10 A No, I don't know.
- 11 Q And you did not go to the hospital at all?
- 12 A No.
- 13 Q Well, why not?
14 I mean obviously you're injured?
- 15 A I just didn't.
- 16 Q Why?
- 17 A I just didn't.
- 18 Q Just didn't?
- 19 A I should of.
- 20 Q I know it's your option.
- 21 A I should of, but I didn't.
- 22 Q But I'm just -- okay. All right. May I approach the
23 witness, Your Honor?
- 24 THE COURT: You may.
- 25 Q Did you give a statement to the police that night?

Tammy Page - Cross-examination
by Mr. Poole

- 1 A Yes.
- 2 Q Is that your signature there?
- 3 A Yes.
- 4 Q Did you -- is it -- is this your handwriting?
- 5 A Yes.
- 6 Q Okay. Would you read this sentence right here starting
7 with when?
- 8 A When I got there he was drunk and put a knife to my
9 neck.
- 10 Q And continue please.
- 11 A He said he was gonna kill me.
- 12 Q Okay. Did you make any remark in that statement about
13 him giving the knife to you?
- 14 A No.
- 15 Q Why not?
- 16 A I didn't want the knife.
- 17 Q You were given an opportunity to give this statement,
18 right?
- 19 A Yes.
- 20 Q But you admitted to the fact that he gave the knife to
21 you---
- 22 A Yes.
- 23 Q ---in the statement, is that right?
- 24 A Yes.
- 25 Q It's not on there?

Tammy Page - Cross-examination
by Mr. Poole

1 THE COURT: Speak up please.

2 A No, I didn't put that part on there.

3 Q Why not?

4 A I forgot.

5 Q You forgot?

6 A (Witness nods affirmatively.)

7 Q But you remember now?

8 A (No response.)

9 Q Is that correct, ma'am?

10 A Yes.

11 Q And then -- would you read this statement beginning
12 right here with he?

13 A He beat me the whole way there, and then said he had a
14 gun and was gonna kill me tonight.

15 Q Okay. When you were testifying earlier, in answer---

16 THE COURT: Mr. Poole.

17 Q When you were testifying earlier in response to the
18 solicitor's questions---

19 THE COURT: Mr. Poole, back up.

20 Q ---did you testify about anything about a knife?

21 I mean -- not a knife. About a gun.

22 Did you, did you say anything about a gun a while ago?

23 A No.

24 Q But he didn't have a gun with him -- on him, did he?

25 A He said he had a gun. I never saw a gun.

Tammy Page - Cross-examination
by Mr. Poole

1 Q Okay. Excuse me. Then you testified that he kicked
2 you in your ribs?

3 A Yes.

4 Q And where did that occur?

5 A On Jerry Petty's porch.

6 Q Did anybody witness that?

7 A Not that I know of. Unless the neighbors saw it.

8 Q Did you not, in your statement, state that he cut your
9 bra and shirt off?

10 A Yes.

11 Q Did he cut your bra and shirt off in fact?

12 A Totally?

13 Q Yes.

14 A Not totally off. He cut my bra off. I had to tie my
15 shirt together.

16 Q He cut your bra off or are you talking about your bra
17 strap?

18 A Uh-huh. (Affirmative).

19 Q Okay. And then you stated further in your statement
20 that you had to run away almost naked?

21 A Yes, because I -- my shirt was just hanging. He took
22 my shoes and socks off, tried to cut my pants off. I was
23 holding them up.

24 Q Okay. But in the pictures that we see today, we -- you
25 are wearing a, a shirt and capris pants I believe?

Tammy Page - Cross-examination
by Mr. Poole

1 A Yeah, I tied it together, yes, sir.

2 Q Is that right?

3 A (Witness nods affirmatively.)

4 MR. POOLE: Bear with me please, Your Honor.

5 (Pause.)

6 Q Ms. Page, did you not plead guilty to a charge of
7 burglary in the first degree in 2000---

8 SOLICITOR GILMER: Objection, Your Honor.

9 THE COURT: The objection's what?

10 SOLICITOR GILMER: That -- Your Honor, he's misstating
11 the, the charge.

12 MR. POOLE: Oh, excuse me. I apologize.

13 Did you not plead guilty to burglary in the second
14 degree in the year 2005?

15 A Yes, sir.

16 Q A crime that's punishable---

17 A Yes, sir.

18 Q ---for more than -- greater than one year?

19 A Yes, sir.

20 Q Did you not also plead guilty to burglary in the second
21 degree in the year 2006, a crime that's punishable for more
22 than one year?

23 A Yes, sir.

24 Q Thank you, ma'am.

25 THE COURT: Redirect.

Tammy Page - Redirect examination
by Solicitor Gilmer

1 SOLICITOR GILMER: Yes, Your Honor. Thank you.

2 REDIRECT EXAMINATION

3 BY SOLICITOR GILMER:

4 Q Ms. Page, while we're on that, you did have a little
5 bit of trouble with the law back in '05 and '06?

6 A Yes, ma'am.

7 Q Does that have anything to do with what happened back
8 on February 9---

9 A No, ma'am.

10 Q ---of 2013?

11 This statement that Mr. Poole showed you that you gave
12 to police -- if I may approach the witness, Your Honor?

13 THE COURT: Yes, ma'am.

14 Q I'll let you look at that one more time.

15 Does that statement -- and let me know if you're ready,
16 when you're ready.

17 A Okay.

18 Q Does that statement say anything about you specifically
19 went to Ms. Hall's house and called 9-1-1?

20 A No.

21 Q Okay. Does it specifically say anything about you
22 going to Mr. and Mrs. Hutchins house to call 9-1-1?

23 A No.

24 Q But did you, in fact, do both of those things?

25 A Yes, ma'am.

Tammy Page - Redirect examination
by Solicitor Gilmer

1 Q How long of an event would you say, when you first were
2 on the porch with the defendant, when he first started
3 beating on you up until you finally called 9-1-1?

4 How much time would you say passed?

5 A An hour.

6 Q How far is it from -- excuse me.

7 From [REDACTED] where you resided with the
8 defendant, how far from that location to Ms. Hall's
9 residence?

10 A It's just---

11 Q would you estimate?

12 A I have no clue. It's just right at the top of the
13 hill.

14 Q Okay. Mr. Poole asked you about the hospital.

15 Do hospitals cost money?

16 A Yes.

17 Q Do ambulances cost money?

18 A Yes.

19 Q Was the defendant drinking on February 9th of 2013?

20 A Excuse me?

21 Q Was the defendant drinking alcohol on February 9th of
22 2013?

23 A Yes.

24 Q The gun that Mr. Poole mentioned to you, did you ever
25 see a gun?

Tammy Page - Redirect examination
by Solicitor Gilmer

1 A No.

2 Q What weapon did you see?

3 A Just the knife.

4 Q And Mr. Poole is asking about when he cut your
5 clothing.

6 Tell us, again, exactly what did he cut on your
7 clothing.

8 A He cut my bra, both straps. We were just -- they were
9 just hanging. Then he cut my shirt almost all the way off.
10 I was trying to hold it up where he couldn't cut it off so I
11 could at least tie it together.

12 Q And the shirt that we saw in these photographs was the
13 shirt that you were wearing at the time?

14 A Yes, ma'am.

15 Q Is that correct?

16 A Yes.

17 Q Did you try to run away from or get away from the
18 defendant on that evening?

19 A Yes.

20 Q Did the defendant follow you?

21 A Yes.

22 Q At what point did he finally stop following you?

23 A When I run in Ms. Hall's house and called 9-1-1.

24 Q Were you trying to get people to help you that night?

25 A Yes.

Tammy Page - Redirect examination
by Solicitor Gilmer

1 Q Were you having trouble finding somebody to help you?

2 A Yes.

3 Q Do you recall -- when you gave that statement, were you
4 given any guidance on what to write?

5 A No, they just told me to write what happened and I was
6 really so tore up. That's why I forget pieces of it.

7 Q Okay. Just because that's not in the statement, does
8 it mean it didn't happen?

9 A No.

10 SOLICITOR GILMER: If I could have one moment, Your
11 Honor?

12 (Pause.)

13 SOLICITOR GILMER: I have no further questions at this
14 time.

15 THE COURT: You may step down.

16 SOLICITOR GILMER: Thank you, Your Honor.

17 THE COURT: Next witness.

18 SOLICITOR GILMER: Thank you, Your Honor.

19 The State calls Deputy Mark Ervin.

20 THE COURT: Come up, deputy.

21 MARK ERVIN, being first duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY SOLICITOR GILMER:

25 Q would you please state your name for the record?

Mark Ervin - Direct examination
by Solicitor Gilmer

1 A Deputy Mark Ervin.

2 Q Deputy Ervin, where are you employed?

3 A Spartanburg County Sheriff's Office.

4 Q And how long have you been with the Sheriff's Office?

5 A For 12 years.

6 Q And what type of training have you had to become a law
7 enforcement officer?

8 A I was in law enforcement in North Carolinas also. I
9 went to the North Carolina Justice Academy and came to South
10 Carolina in 2000. In 2000 I went through the South Carolina
11 Criminal Justice Academy and approximately 13 weeks. Left,
12 went overseas for two years, and then went back through the
13 academy again. So, I had two stints to the South Carolina
14 Criminal Justice Academy.

15 Q To be a law enforcement officer, a police officer, do
16 you have to continue with your education and training?

17 A Yes, ma'am, we have in-service once a year and, and to
18 refresh us on the laws and things that have changed in the
19 legal system.

20 Q During your time with the Sheriff's Office, have you
21 had the opportunity to respond to and/or investigate
22 domestic violence cases?

23 A Yes, ma'am.

24 Q And have you been dealing with those the duration of
25 your 12 years?

Mark Ervin - Direct examination
by Solicitor Gilmer

1 A Yes, ma'am.

2 Q On February 9th of 2013, did you respond to the area
3 of [REDACTED], Shamrock Avenue in Landrum?

4 A Yes, ma'am, South Church I think is where, where we
5 were -- I received a call to assist with Landrum Police
6 Department with a domestic violence that occurred in, inside
7 the county.

8 Q And you said it was on Church Street?

9 A Uh-huh. (Affirmative).

10 Q Did you know where you were responding?
11 Was it a residence?

12 A I didn't know exactly, but the, the -- just kind of
13 vague. The officer was actually out with the victim on the,
14 on the side of the road, and so it's not very long. The
15 street's not very long. So, I just started at one end and
16 started down the other and they were located right down from
17 the police department not far at all. Maybe two blocks from
18 the police department.

19 Q Did you determine where any offense had taken place?

20 A I -- at that time I didn't know where the, the offense
21 had occurred. I had not spoken with her or the officer.
22 Once I got there and I spoke with them, and we came to the
23 conclusion that it actually had occurred on [REDACTED]
24 and proceeded to where she was at.

25 Q Is that location---

Mark Ervin - Direct examination
by Solicitor Gilmer

1 A It's in Spartanburg County.

2 Q ---in Spartanburg County?

3 A Yes, ma'am.

4 Q The officers that you referred to that were there, were
5 they officers with the Sheriff's Office or a different
6 agency?

7 A Landrum Police Department.

8 Q Landrum Police Department.

9 Did you determine, when you made contact with the
10 victim, was she at someone's residence?

11 A At the time when I arrived she was with the officer,
12 with the Landrum officer on the street on South Church.

13 Q Did you have an opportunity to speak with the victim?

14 A Yes, ma'am.

15 Q And what -- what's her name?

16 A Tammy Page and -- oh, sorry.

17 Q No, you're fine.

18 Go ahead.

19 A And she was just very upset and, and trying to calm her
20 down. Physically, she was -- her clothes were, like she was
21 saying, were hanging off of her and we were trying to fasten
22 her clothes so, you know, cause -- I mean she was
23 embarrassed and -- cause of her clothing and just trying to
24 comfort her to let her know that -- and try to assist her as
25 much as we can, and it's just -- that was -- at the time she

Mark Ervin - Direct examination
by Solicitor Gilmer

1 was basically so scared. She seemed like that she didn't
2 want -- she was scared, where, where's he at. I don't
3 know -- want, you know, and that was more her demeanor in
4 public. You know, I don't, I don't want him to come back.
5 That was---

6 MR. POOLE: Your Honor, I object to anything that he's
7 saying about what the defendant said.

8 A She didn't say it. I was just---

9 Q You were just saying what she said to you?

10 A Uh-huh. (Affirmative).

11 THE COURT: I'll allow it.

12 Q In her excited state, did she tell you who did this to
13 her?

14 A Yes, ma'am.

15 Q Who did she say?

16 A James Smith or Beaver. We, we know -- sorry. She---

17 Q Were you able to determine that he---

18 A Yes, ma'am, I knew who---

19 Q ---was James Patrick Smith?

20 A Yes, ma'am. Yes, ma'am.

21 Q Did she have on any shoes when you met with her?

22 A I don't -- just a pair of Capris pants and top that was
23 kind of hanging off of her. I recall that.

24 SOLICITOR GILMER: Your Honor, if I may approach the
25 witness?

Mark Ervin - Direct examination
by Solicitor Gilmer

1 THE COURT: (Nods affirmatively.)

2 SOLICITOR GILMER: Thank you.

3 Q Deputy Ervin, I'm showing you what's been previously
4 marked as State's Exhibit 1 through 7 I believe. Yes, 1
5 through 7.

6 If you'll just take a few moments to look through those
7 please.

8 A (Witness complies.)

9 Q Do you know who took those photographs?

10 A Officer Garcia with the Spartanburg County Sheriff's
11 office.

12 Q And did those photographs depict what Ms. Page looked
13 like when you made contact with her on that evening?

14 A Yes, ma'am.

15 Q Did you notice any injuries to her?

16 A The obvious injuries were the, the swollen lip. Her
17 lip was very distended, swollen, her top lip, and abrasions
18 and a bluish eye that was swollen, bumps on her head, and
19 obvious knots on her head and abrasions on her neck or on
20 her chest, and her, and her clothing. It was just kind of
21 hanging off of her, of her.

22 Q Okay. Did she appear intoxicated?

23 A No, ma'am.

24 Q Under the influence of alcohol?

25 A No, ma'am.

Mark Ervin - Direct examination
by Solicitor Gilmer

1 Q Did you smell an odor of an alcoholic beverage on her?

2 A No, ma'am.

3 Q Did the Landrum Police Department assist you in
4 locating the defendant?

5 A Yes, ma'am, as I was speaking with her and she was
6 giving me a statement, I had word that, the next street
7 over, that they had located the subject that was in question
8 as far as what happened.

9 Q Did Ms. Page tell you about any weapons that the
10 defendant may of had?

11 A She told me that he had pulled a knife on her and,
12 and -- during the altercation.

13 Q Okay. Did you take a statement from Ms. Page?

14 A Yes, ma'am.

15 Q And typically when you give a witness a statement to
16 fill out, what do you tell them?

17 A Just -- and understanding their condition, we try to
18 calm them to give us a statement about what happened as, as
19 accurately as they can and to try to calm them down because
20 sometimes they are very emotional. Just to get all the
21 facts at the time, but it's sometimes we -- it's -- because
22 of the situation, you just try to make them feel at ease as
23 much as you can, but that -- certain situations it's really
24 hard.

25 SOLICITOR GILMER: If I could have just one moment,

Mark Ervin - Direct examination
by Solicitor Gilmer

1 Your Honor?

2 (Pause.)

3 SOLICITOR GILMER: I have no prior -- no more questions
4 at this time, Your Honor.

5 THE COURT: Cross-examine please.

6 MR. POOLE: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. POOLE:

9 Q As I understand it, Officer Ervin, you were not the
10 initial responder to this incident?

11 A No.

12 Q Is that right?

13 A No, sir, I was not.

14 Q Who was the initial responder?

15 A Landrum Police Department. Officer Snow I believe.
16 I'm not sure, but I think it was Officer Snow.

17 Q Officer Snow?

18 A Yes, sir.

19 Q Could you speak with him?

20 A Yes, sir, I did.

21 Q Okay. Were any other Landrum police officers involved?

22 A - Not at that scene. There -- at the next street over
23 there were some officers involved with Mr -- sorry. Beaver.
24 we the -- okay.

25 Q All right. Do you know the names of those officers?

Mark Ervin - Cross-examination
by Mr. Poole

1 A I do not. I -- unfortunately -- and we don't get a
2 good chance to interact that much with the outer agencies,
3 we're pretty busy, and I wasn't familiar with the officers.

4 Q Were you the only Spartanburg County officer involved?

5 A Other than our ID officer, yes, sir.

6 Q And is the ID officer here?

7 A No, sir.

8 Q And what is the purpose of an ID officer?

9 A ID officer takes photographs of injuries and collects
10 evidence in the case.

11 Q The ID officer --

12 A It was---

13 Q -- takes photos?

14 A Yes, sir.

15 Q And collects evidence?

16 A Yes, sir.

17 Q Thank you, sir.

18 A Yes, sir.

19 THE COURT: Redirect, if any.

20 SOLICITOR GILMER: No, Your Honor.

21 THE COURT: All right. You may step down.

22 May he be excused?

23 SOLICITOR GILMER: Yes, Your Honor.

24 MR. POOLE: Sure.

25 THE COURT: All right. Next witness please.

M.S. Magaw - Direct examination
by Solicitor Gilmer

1 Thank you, officer.

2 THE WITNESS: Yes, sir.

3 SOLICITOR GILMER: Your Honor, the State calls Officer
4 M.S. Magaw.

5 THE COURT: Come around please, sir.

6 M.S. MAGAW, being first duly sworn,
7 testified as follows:

8 DIRECT EXAMINATION

9 BY SOLICITOR GILMER:

10 Q Would you please state your name for the record?

11 A Officer Scott Magaw.

12 Q And how are you employed?

13 A I'm employed with the City of Landrum Police
14 Department.

15 Q And how long have you been with the Landrum Police
16 Department?

17 A I've been with Landrum Police Department for two years
18 and I've been a municipal officer for 20 years.

19 Q Have you had any law enforcement training to become a
20 municipal court, municipal officer and an officer for
21 Landrum?

22 A Yes, through the South Carolina Criminal Justice
23 Academy to be a police officer.

24 Q And do you have to keep up with your education?

25 A We do. Every year we have a -- legal updates with

M.S. Magaw - Direct examination
by Solicitor Gilmer

1 updates of the laws, and we have to have 40 hours every
2 three years of continuing education.

3 Q In your experience as an officer, have you dealt with
4 domestic violence investigations?

5 A Yes, ma'am.

6 Q Okay. Obviously we're talking about an incident that
7 happened on February 9th of 2013.

8 Was Landrum Police Department called to an incident
9 there?

10 A We were.

11 Q And what was it regarding?

12 A We were dispatched to a disturbance in the roadway at
13 South Shamrock, which is a block away from Church Street.
14 We don't know who dis -- who called in the 9-1-1 call at
15 that time, probably a passerby, and I was the first one in
16 the area on South Shamrock.

17 Q Okay. Was this considered a Landrum Police Department
18 case?

19 A Yes, South Shamrock, the area we were dispatched to, is
20 actually in the city limits of Landrum.

21 Q Is that in Spartanburg County?

22 A It is in Spartanburg County.

23 Q And did the Spartanburg County Sheriff's Office assist
24 you or take over this case because it was in Spartanburg
25 County?

M.S. Magaw - Direct examination
by Solicitor Gilmer

1 A Once we discovered that the, the incident occurred just
2 outside of the city limits at a residence that's in the, in
3 the county, we have no jurisdiction in the county cause it's
4 outside the city, and that's why we, we requested the
5 assistance of a -- of the Sheriff's Office.

6 Q What was your involvement in this case?

7 A When I was patrolling the area of South Shamrock upon
8 being called to a dispatch or a disturbance in the roadway,
9 as I was riding through trying to find what, what this
10 disturbance was, I witnessed the defendant running from my
11 right to left across South Shamrock. I saw him, I saw him
12 running. He ran into -- there's a parking lot next to a
13 business that's a dirt parking lot, a gravel parking lot,
14 and some trees. Church Street is right on my right of
15 Shamrock where I saw him.

16 So, coming from that direction, he crossed Shamrock and
17 I saw him running into the parking lot area and I pulled my
18 car in right behind him. As I pulled in, I saw him stop at
19 the edge of the woods. At the edge of the parking lot
20 there's some trees before you go to the railroad tracks. I
21 shined my spotlight for my patrol car and told him to stop,
22 which he did.

23 Q When you came across him, was he standing up?

24 A When I, when I -- when he ran at the edge of the woods
25 as I pulled my car in, he laid down at the edge of the woods

M.S. Magaw - Direct examination
by Solicitor Gilmer

1 in a little, a little ditch before it goes up the hill
2 towards the railroad tracks, there's some trees, and he laid
3 down in a hiding position when I put my spotlight, spotlight
4 on him. At that time I had no idea what the disturbance
5 was. I just saw someone running. So -- and when he hid, I
6 put the light on him and told him to stay there.

7 Q But you knew there was a disturbance at the time?

8 A I knew there was a disturbance, correct.

9 Q Were you able to identify him as the defendant, James
10 Patrick Smith?

11 A Yes, ma'am, I was.

12 Q And do you recall what he was wearing?

13 A I do not.

14 Q Do you recall his demeanor?

15 A He was fairly cooperative. I told him to stop and he
16 did. He was slightly agitated, but, as I said, he, he
17 followed my commands.

18 Q Did he make any statements to you?

19 A Well, we first -- as I---

20 MR. POOLE: Objection, Your Honor. I'm not sure about
21 whether or not this is getting a Miranda issue.

22 THE COURT: Come forward up here please, ma'am.

23 (WHEREUPON, a bench conference was held out of the
24 hearing of the jury at this time.)

25 Q Did he appear to be under the influence of anything?

M.S. Magaw - Direct examination
by Solicitor Gilmer

1 A He was actually holding a can, open can of beer in his
2 hand at the time.

3 Q Did he appear to have been drinking alcohol?

4 A Yes, and I could smell the odor of alcohol.

5 Q All right. Was there any other officers with you?

6 A Officer Raines pulled up right about the time that I
7 radioed that I had saw a person running. He was not far
8 behind me. As I pulled into the parking lot Officer Raines
9 pulled in as well.

10 Q And Officer Raines, what agency is he with?

11 A He's with the City of Landrum as well.

12 Q Were there any weapons located on the defendant?

13 A While the defendant stood up and was talking to myself
14 and Officer Raines, I was on the defendant's, defendant's
15 left side. Officer Raines was on the, on the defendant's
16 right side, and Officer Raines discovered, on the right side
17 of his person in the pocket, a small medium sized folding
18 knife that was partially opened.

19 THE COURT: Partially what?

20 THE WITNESS: Opened.

21 Q Do you recall what color the knife was?

22 A I believe it was dark in color, but I couldn't say.

23 Q All right. How long would you say the knife was?

24 A Oh.

25 Q Would you estimate?

M.S. Magaw - Direct examination
by Solicitor Gilmer

1 A Probably closed, about that long, and opened, double
2 that. You know, it wasn't just a small little pocketknife.
3 It wasn't a large hunting knife either.

4 Q Okay. For purposes of the record, when you said it
5 was -- how long was it when it was closed would you
6 estimate?

7 A Closed, probably three and a half, four inches closed.

8 Q And what about opened?

9 A Probably five to six inches opened.

10 Q Okay. Did you turn the defendant over to the deputy
11 with the Sheriff's Office?

12 A We did. When -- what happened, we were talking to the
13 defendant. He, he said to me he had---

14 THE COURT: No, you can't talk about that.

15 THE WITNESS: I can't say -- okay. I won't.

16 We did. When it was discovered that the incident
17 originally occurred outside of our jurisdiction, we had no
18 charges other than him drinking a beer in public in the
19 city. We weren't able to investigate the case further
20 because the event occurred outside of the city limits. So,
21 at that time we called for the Sheriff's Office to assist.
22 And in-between that time, while we were talking -- right as
23 I was getting out with him pulling up, we got a second call
24 from Church Street, which is also in the city limits. So,
25 we actually had two calls come in from 9-1-1.

M.S. Magaw - Direct examination
by Solicitor Gilmer

1 The first disturbance on Shamrock, and then in the
2 midst of all this occurring, we got the second 9-1-1 call
3 from Shamrock, and the other officers in Landrum, Officer
4 Snow, responded to Shamrock or Church Street while I was on
5 Shamrock.

6 Q Okay. And these were regarding the same disturbance?

7 A I discovered later it was the same disturbance.

8 SOLICITOR GILMER: Okay. I have no further questions
9 at this time, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. POOLE:

12 Q Officer, is [REDACTED] Street within the city
13 limits of Landrum?

14 A No, sir.

15 Q It's not?

16 A It is not.

17 Q Okay. How far is it from---

18 A There's a, there's a field and some trees between that,
19 that address.

20 Q Uh-huh. (Affirmative).

21 A And then there's some apartment complex. So, probably
22 a hundred feet or so.

23 Q Okay. And you stated that, when you saw Mr. Smith, he
24 had an open container of beer?

25 A He did.

M.S. Magaw - Cross-examination
by Mr. Poole

- 1 Q And I believe he was charged with---
- 2 A He was charged with---
- 3 Q ---the city ordinance?
- 4 A Correct. Yes, sir.
- 5 Q Landrum city ordinance?
- 6 A That's right.
- 7 Q Because he had that beer on Landrum jurisdiction?
- 8 A Correct.
- 9 Q And he was holding it in his hand I guess?
- 10 He had possession of it, didn't he?
- 11 A That's right.
- 12 Q All right. And he, he said -- you said he ran and he
- 13 was fleeing from you---
- 14 A (Witness nods affirmatively.)
- 15 Q ---or he was running?
- 16 He was running?
- 17 A Right.
- 18 Q Did you see him holding -- having this beer?
- 19 A Well, I saw -- when I saw the shower running I didn't,
- 20 but when he was sitting down --.
- 21 Q Uh-huh. (Affirmative).
- 22 A -- hiding in the bushes or laid down hiding in the
- 23 woods, he was holding it, and when he got up he was holding
- 24 it.
- 25 Q Uh-huh. (Affirmative).

M.S. Magaw - Cross-examination
by Mr. Poole

1 A In fact, when he stood up he took another drink of it.

2 Q Okay.

3 A Cause he thought -- he said he wanted to finish his
4 beer I guess so he continued to---

5 Q And so, therefore, there was---

6 A Matter of fact---

7 Q ---beer in the can that he drank---

8 A Yes, sir.

9 Q ---even after he was surrounded by law enforcement?

10 A Yes, sir.

11 Q All right. And in his pocket he had a small to medium
12 sized knife and you say it was partially opened?

13 A It was partially opened. It was a folding knife, but
14 it wasn't closed. It wasn't all the way opened, but it
15 wasn't all the way closed either.

16 Q Right.

17 And that's often the case that a knife can be partially
18 opened within someone's pocket?

19 A I suppose it could be.

20 Q Is that right?

21 A That's right.

22 Q Okay. Well, thank you very much.

23 THE COURT: Redirect.

24 SOLICITOR GILMER: Just one, Your Honor.

25 REDIRECT EXAMINATION

M.S. Magaw - Redirect examination
by Solicitor Gilmer

1 BY SOLICITOR GILMER:

2 Q So, the defendant had pockets on his pants?

3 A Yes, ma'am.

4 SOLICITOR GILMER: Okay. No further questions, Your
5 Honor.

6 THE COURT: You may step down.

7 Everybody okay?

8 We're gonna take one afternoon break. It's 3:30.

9 We're going till about 5:00. This is a good time to take
10 it---

11 THE JUROR: Yes, sir.

12 THE COURT: ---or you want to do one more?

13 Good time to take it?

14 THE JUROR: Yes, sir.

15 THE COURT: Okay. Please do not discuss the case. Do
16 not deliberate. Please select me a foreperson among the 12
17 of you, and we'll crank it back up in about 15 minutes.

18 Everybody else remain seated please.

19 (WHEREUPON, the following takes place outside the
20 presence of the jury.)

21 THE COURT: Anything from the State before we take a
22 break?

23 SOLICITOR GILMER: No, Your Honor.

24 THE COURT: By the defendant?

25 MR. POOLE: No, sir.

1 THE COURT: Thank you.

2 All right. We'll stand at ease for 15 minutes.

3 (WHEREUPON, a short recess was taken at this time.)

4 THE COURT: Anything for the record, gentleman, ladies?

5 SOLICITOR GILMER: No, Your Honor.

6 MR. POOLE: None from here, Your Honor.

7 THE COURT: All right. Bring the jury in please.

8 SOLICITOR GILMER: Your Honor, my second witness I'm
9 gonna call, he's a little hard of hearing. So, if I'm
10 speaking loudly --.

11 (WHEREUPON, the following takes place within the
12 presence of the jury.)

13 THE COURT: We have a foreperson?

14 THE FOREMAN: Yes, sir.

15 THE COURT: Your name?

16 THE FOREMAN: Carry Laycock, Juror Number 71.

17 THE COURT: Thank you, sir. Appreciate you agreeing to
18 serve.

19 You may call your next witness.

20 SOLICITOR GILMER: Thank you, Your Honor.

21 The State calls Sandra Hutchins.

22 SANDRA HUTCHINS, being first duly sworn,
23 testified as follows:

24 DIRECT EXAMINATION

25 BY SOLICITOR GILMER:

Sandra Hutchins - Direct examination
by Solicitor Gilmer

1 Q Would you please state your name for the record?

2 A Sandra Jean, Sandra Jean Hutchins.

3 Q Mrs. Hutchins, where do you reside?

4 A [REDACTED], Landrum.

5 Q And how long have you been living there?

6 A Oh, for years. All my life.

7 Q And are you married?

8 A Yes.

9 Q Who are married to?

10 A My husband's name is Roger Dale Hutchins.

11 Q And does he reside there with you?

12 A Uh-huh. (Affirmative).

13 We've been married 41 years.

14 THE COURT: Speak up for me please.

15 THE WITNESS: We've been married 41 years. I'm sorry.

16 THE COURT: No problem.

17 Q And were you and Mr. Hutchins living on [REDACTED] in
18 Landrum back on February 9th of 2013?

19 A Yes, we certainly were.

20 Q Do you know Tammy Page?

21 A Yes, I've known her all my life.

22 Q All your life?

23 A All my life because she, you know, we both grew up in
24 Landrum.

25 Q On the evening of February 9th of 2013, did you see

Sandra Hutchins - Direct examination
by Solicitor Gilmer

1 Tammy Page?

2 A Yes. What -- wait a minute.

3 You didn't say February the 9th?

4 Q Uh-huh. (Affirmative).

5 A The---

6 Q This incident that we've been -- we're talking about.

7 Did you see Tammy Page that night?

8 A Can you please repeat what date you're referring to?

9 Q On February 9th of 2013.

10 A Yeah, yeah. I just wanted to be sure I had the right
11 date.

12 Q That's okay. I'm sorry.

13 A Absolutely. I never will forget it.

14 Q Okay. You never will forget it.

15 Why does it stand out in your mind?

16 A Because me and my husband were watching TV. He's hard
17 of hearing. I had my TV real real loud, and I can usually
18 vent out the neighbor's dogs, whatever. This we were --
19 this evening, all of a sudden, I heard a great big
20 commotion, and he don't -- he can't hear anything unless I
21 tell him, and I jumped up and ran to the hallway. I told my
22 husband something's wrong. I hear this great big -- what in
23 the world was that.

24 THE COURT: Slow down a little bit for me.

25 THE WITNESS: Okay.

Sandra Hutchins - Direct examination
by Solicitor Gilmer

1 And I said what in the world is that. I ran to my hall
2 window, I looked out, and I saw what that, what was that.
3 It was Tammy. I didn't know it was her at the time though.
4 She kept -- later when she came to, to get help from us
5 later, but we didn't have a phone, and it -- all I saw was
6 over on the porch in front of me -- we sit sideways and I
7 have a mobile home in front of me that sits sideways in
8 front of us, and I was looking directly on to the next
9 porch, and I saw one person attacking another person,
10 bending them all the way over. Like this is the front of my
11 rail, my porch rail, this is the side rail over there and
12 both porches go the same way. He had, had her---

13 THE COURT: Slow down. Slow down. Slow down.

14 A He had her bent all the way, I mean way over the side
15 rail or every bit -- I don't know. It could of been a man
16 or woman. Somebody was attacking somebody and had then bent
17 all the way over the side rail and they were, it looked
18 like, choking them and---

19 Q What do you mean choking?

20 A ---she was -- oh, I left out what the noise was. She
21 was screaming he's gonna kill me, he's gonna kill me, he's
22 gonna kill me at the top of her voice, and I heard that much
23 from in the living room before I went to the house, and she
24 just kept screaming, and I -- when I got up and I started
25 getting upset and I said Roger.

Sandra Hutchins - Direct examination
by Solicitor Gilmer

1 He came to the hall to be with me cause I was real --
2 I'm real sick. I've got lupus. I've had lupus for 24 years
3 now and I'm real real nervous because of it, and he -- I'm
4 being treated for my nerves too, and he came in there beside
5 me, and he started watching what I was watching, and I said
6 we're, we're gonna stand here -- I got so upset I shouted
7 louder than I meant to, and I said we're gonna stand here
8 and see Jerry, our neighbor, get murdered cause I thought it
9 was him, but he, he had went off and I didn't know that.
10 So---

11 Q And why did you think it was Jerry?

12 THE COURT: Slow down a little bit please, ma'am.

13 A Because I thought he was at home and it---

14 Q And that was his residence---

15 A Yeah.

16 Q ---directly across from you?

17 A Yeah, yeah, Jerry. Jerry Petty is my neighbor.

18 Q So, you thought someone was attacking Jerry?

19 A Yes, and we're good friends, and I didn't want
20 somebody, anybody murdered in front of my own eyes, and so
21 then, when I said that, my voice tended to do like right
22 now, rise up and get real louder, and the attacker looked
23 over towards us and saw us looking and thought he was gonna
24 get identified. So, he ran and he went the other way. Then
25 she came towards our -- my husband---

Sandra Hutchins - Direct examination
by Solicitor Gilmer

1 Q Who's she?

2 A Oh, Tammy, Tammy. After she got to my porch I knew it
3 was Tammy, but not at the time I didn't know who it was. I
4 hollered. I told my husband. He went back to the living
5 room, and I said Roger, it's a woman. It's not, it's not
6 Jerry. It's a woman, woman that was being attacked,
7 attacked, and I said she's headed this way, and the reason I
8 knew, her hair was flying out behind her as she ran to my
9 mobile home.

10 THE COURT: Slow down. Slow down.

11 A And -- I'm trying my best.

12 THE COURT: No problem.

13 A I took four, took four---

14 THE COURT: Let me tell you why.

15 A ---four pain pill pills---

16 THE COURT: Hold on. My court reporter has to take it
17 all down and she's fast, but she's not that fast.

18 THE WITNESS: Well, I'm sorry. I'm sorry. I had a
19 drug, drug addict try to kill me one time. So, I'm sorry.
20 I'm doing the best I can.

21 THE COURT: Yes, ma'am.

22 A And so, anyway, and where did I get to?

23 I lose my train of thought too cause I'm so nervous.

24 Q You're okay. Just let -- just take a deep breath.

25 You're fine.

Sandra Hutchins - Direct examination
by Solicitor Gilmer

1 THE COURT: Okay. Go ahead.

2 A You'll have to remind me where I was at. My, my---

3 Q You said that Ms. Page---

4 A I'm trying to think---

5 Q You knew it was Ms. Page cause her hair. You saw her
6 hair cause she was---

7 A I didn't at that time. I told Roger it was a woman.
8 When Roger heard the word woman, he wants to help anybody
9 intend that, you know, that, that, what do you call it, in
10 the -- at the time of need.

11 So, he went to the door. She knocked on the door. He
12 went to the door, thank you, and, and when I said it's a
13 woman, she -- about that time she knocked -- opened the door
14 to ask what he could do for her, and at that time we saw her
15 because the living -- kitchen light was the only light on,
16 but it was shining on her face. Then we knew it was her,
17 Tammy Page, and she asked if she could borrow the phone. We
18 did not have any kind of -- even cell phones at that time.
19 My daughter got us phones after this incident because she's
20 worried about us, and we told her we didn't have one. We
21 had to go -- I had to go across the street and my brother
22 comes everyday to my, my mobile home to check on me and I
23 use his phone and I said I'm sorry.

24 Well -- and Roger didn't want to get involved enough to
25 take her back to her mother's where she lived, and so he

Sandra Hutchins - Direct examination
by Solicitor Gilmer

1 didn't. And so we, we just told her we didn't know what to
2 tell her, and so Roger ended up telling her he run that way,
3 you go that way, and you go as fast as you can.

4 Q So, Roger told her that---

5 A The only thing he could tell her was that he saw him
6 running that way, so she needed to go that way, opposite,
7 and just go as fast as she could. She wasn't too far away.
8 It's, like I said, Shamrock is like here and Randolph is the
9 next street.

10 THE COURT: Slow down please.

11 A And [REDACTED] is the next street over where her
12 mother lives, and that's where she wanted to go she said.

13 Q Is there a police department nearby as well?

14 A Yes, it was -- it's straight up the road from me.

15 Q Is that the Landrum Police Department?

16 A Uh-huh. (Affirmative).

17 Q what -- what was her emotional state when she came?

18 A Oh, she's all over the place like I am right now.

19 Q So, do you mean very excited?

20 A You look at me and you'll know.

21 Q Was she excited?

22 A (Witness nods affirmatively.)

23 Q Was she upset?

24 A Very. Very. Very.

25 Q Okay. Did she tell you what happened?

Sandra Hutchins - Direct examination
by solicitor Gilmer

1 A Yes.

2 Q What did she tell you?

3 A She was---

4 MR. POOLE: Objection, Your Honor, to hearsay.

5 THE COURT: It's what -- that's the victim. She's
6 already testified.

7 Go ahead.

8 SOLICITOR GILMER: Thank you, Your Honor.

9 What did she tell you?

10 A She told me -- told us that she needed to call 9-1-1 to
11 call the police because she was about to be murdered.

12 Q Okay. Did she tell you who had done it?

13 A Yeah, she -- I mean she named a name, Beaver, like the
14 police said. But I don't know any Beaver. I never knew any
15 person -- I mean, you know, I'm 60 years old and I've never
16 known a person that had a nickname named Beaver. I don't
17 know by his real name or nickname or nothing else. I
18 couldn't point him out.

19 Q Okay. Thank you, Mrs. Hutchins.

20 A I just know what she told me.

21 Q Did you notice any injuries on her?

22 A Yes, her face was real real red and her neck was real
23 purple.

24 Q When you say purple, you mean bruising or---

25 A Like it -- she been choked, choked---

Sandra Hutchins - Direct examination
by Solicitor Gilmer

1 Q Okay.

2 A ---is what I'd say.

3 THE CLERK: Okay. I, I have no further questions at
4 this time, Your Honor.

5 MR. POOLE: No questions of this witness.

6 THE COURT: Okay. Be careful stepping down.

7 THE WITNESS: I can get down?

8 THE COURT: Yes, ma'am, you can.

9 THE WITNESS: Thank you.

10 THE COURT: Be careful. Thank you for coming.

11 THE WITNESS: Uh-huh. (Affirmative).

12 Thank you.

13 SOLICITOR GILMER: Your Honor, may I have just one
14 moment to address defense counsel?

15 THE COURT: (Nods affirmatively.)

16 (Pause.)

17 SOLICITOR GILMER: Your Honor, State calls Roger
18 Hutchins.

19 Mr. Hutchins.

20 ROGER HUTCHINS, being first duly
21 sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY SOLICITOR GILMER:

24 Q Mr. Hutchins, you let me know if you can't hear me.

25 Can you hear me okay?

Roger Hutchins - Direct examination
by Solicitor Gilmer

1 A Yeah. Yes, ma'am.

2 Q would you please state your name for the record?

3 would you tell us your name?

4 A Roger Dale Hutchins.

5 Q Okay. And where do you live?

6 A [REDACTED].

7 Q Okay. And that's with Mrs. Sandra Hutchins who just
8 testified?

9 A Yes, ma'am.

10 Q Okay. And she's your wife?

11 A Yes, ma'am.

12 Q Okay. Is what she just told us what you know to have
13 happened that night?

14 A well, see, I, I was -- all -- I just looked out the
15 curtain for a second and then I come back to sit down on the
16 couch.

17 Q Okay. what do you remember?

18 what do you remember about this night?

19 A I just seen two people over there fighting and I
20 thought it was my neighbor and I was gonna go help him, and
21 then she said it's a woman. So, I went back over there and
22 sit down.

23 Q Okay. was the woman -- did you -- were you -- did you
24 know who she was?

25 A No, ma'am, I couldn't see her.

Roger Hutchins - Direct examination
by Solicitor Gilmer

1 Q Okay. When she came over to your house, did you know
2 her?

3 A Yeah, I did then when she come to the house.

4 Q Okay. Did she ask for help?

5 A She asked for a phone and I told her I didn't have one.

6 Q Okay. Did you notice any injuries to her?

7 A Well, she -- her face was red and her neck was red.

8 That's all I noticed.

9 Q Okay. Was she upset?

10 A Yes, ma'am.

11 Q Okay. And did she stay at your residence or did she
12 leave?

13 A Ma'am?

14 Q Did she leave your residence or did she stay there?

15 A She left.

16 Q Okay. Do you know where she went?

17 A No, ma'am.

18 Q Okay. Did you tell her to go a certain place?

19 A Yes, ma'am.

20 Q Where did you tell her to go?

21 A I asked her which way did he go, and she said that way,
22 and I told her you go up that way, the police station is
23 right up there.

24 SOLICITOR GILMER: I have no further questions at this
25 time, Your Honor.

Tony Raines - Direct examination
by Solicitor Gilmer

1 Thank you, Mr. Hutchins.

2 THE WITNESS: You welcome.

3 MR. POOLE: No questions.

4 THE COURT: You may step down.

5 Next witness.

6 SOLICITOR GILMER: Officer -- State calls Officer Tony
7 Raines, Your Honor.

8 TONY RAINES, being first duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 BY SOLICITOR GILMER:

12 Q would you please state your name for the record?

13 A Tony Raines.

14 Q And how are you employed?

15 A I'm employed with the Landrum Police Department.

16 Q How long have you been with the Landrum Police
17 Department?

18 A I been with the Landrum Police Department since 2012.
19 Been in law enforcement since 1994.

20 Q Okay. What was your prior law enforcement involvement?

21 A I worked for Campobello Police Department at one time.
22 I worked for Landrum Police Department back in the early
23 nineties, and I did contract work overseas.

24 Q And did you have any special training to become a law
25 enforcement officer?

Tony Raines - Direct examination
by Solicitor Gilmer

1 A Through the South Carolina Criminal Justice Academy and
2 classes after it.

3 Q Okay. Do you keep up with your education through the
4 police department?

5 Are you required to go to classes to maintain your law
6 enforcement status?

7 A Yes, ma'am.

8 Q And during your time as a law enforcement or a police
9 officer, have you been involved in domestic violence
10 investigations?

11 A Yes, ma'am.

12 Q Okay. On February 9th, 2013, obviously the date
13 we're talking about here, were you employed with the Landrum
14 Police Department?

15 A Yes, ma'am.

16 Q And were you working that date?

17 A Yes, ma'am.

18 Q And were you called out to the area of [REDACTED],
19 [REDACTED], Church Street on that evening?

20 A Yes, ma'am, we were.

21 Q Okay. And what was that regarding?

22 A We were dispatched to -- for a female and a male
23 arguing, and then more information came in as a female
24 screaming for help.

25 Q And what was your involvement in the case?

Tony Raines - Direct examination
by Solicitor Gilmer

1 A My involvement, I was in the area looking to see where
2 the disturbance was to see if we could locate these people.
3 I think we received a couple of calls in reference to the
4 screaming and yelling. I was just pretty much in the area
5 looking to see if I could find out who was causing the
6 disturbance.

7 Q Okay. Were you able to locate anyone?

8 A I, I didn't locate them. Officer Magaw, who also works
9 for the Landrum Police Department, located James Patrick
10 Smith at the Shamrock Mills, which is off of Shamrock
11 Avenue---

12 Q Okay.

13 A ---and I went to assist him.

14 Q So, you had contact with the defendant?

15 A That's correct.

16 Q Okay. What was your contact with him?

17 What did you observe when you came upon him?

18 A As I came out, Officer Magaw was already out with him.
19 Mr. Smith was -- seemed very agitated, a lot of cussing, and
20 had a beer. He did take a drink of some beer while we was
21 there and he just was very agitated. Officer Magaw, I
22 think, asked him about the incident involving a female and
23 told him why we were there, why we were talking to him, and
24 he just seemed very agitated with us.

25 Q Did he appear under the influence of alcohol?

Tony Raines - Direct examination
by Solicitor Gilmer

1 A Had the smell of alcoholic beverages.

2 Q Okay. Were any weapons located on the defendant?

3 A Yes, ma'am, I conducted a pat down search due to him
4 not wanting to be still. He was like -- again, very
5 agitated and moving a lot. Conducted a pat down search on
6 him, on his person. In his left front pocket there was an
7 open knife. This knife was a type of knife that was not a
8 locking knife or not a spring loaded knife. It's one that
9 had to be manually opened, and it was opened inside his left
10 front pocket.

11 Q Do you recall how large the knife was?

12 A I would say it was probably four, five inches or so.

13 Q Did you have any other involvement in the case?

14 A No, we, we just were detaining him at that time waiting
15 for the county to arrive. He did tell me---

16 THE COURT: No, no. Don't talk about what he said.

17 THE WITNESS: Okay. I'm sorry, sir.

18 A No, we were just detaining him waiting for the county
19 to arrive since the incident occurred in the county.

20 SOLICITOR GILMER: All right. I have no further
21 questions at this time, Your Honor.

22 THE COURT: Mr. Poole.

23 CROSS-EXAMINATION

24 BY MR. POOLE:

25 Q Were you in the courtroom when Officer Magaw testified?

Tony Raines - Cross-examination
by Mr. Poole

1 A No, sir, I was not.

2 Q You were not?

3 A No, sir.

4 Q You stated that he had an opened can of beer in his
5 hand?

6 That is, Mr. Smith, the---

7 A Yeah.

8 Q Not Officer Magaw.

9 A No, I, I don't know if Mr. -- Officer Magaw stated that
10 or not, but he did have an open beer in his hand.

11 Q Okay. And he took a drink?

12 A Yes, sir.

13 Q All right. Thank you. That's all.

14 A You welcome.

15 THE COURT: Redirect.

16 SOLICITOR GILMER: I just have one question.

17 REDIRECT EXAMINATION

18 BY SOLICITOR GILMER:

19 Q At the point that he took a drink was he within
20 Landrum's -- was he within the county jurisdiction at that
21 point?

22 A He was inside the city limits of Landrum at that time.

23 Q All right.

24 THE COURT: All right. You may step down.

25 Next witness.

1 SOLICITOR GILMER: Thank you, Your Honor.

2 Your Honor, the State rests at this time.

3 THE COURT: All right. Mr. Foreman, ladies and
4 gentlemen of the jury, that concludes the State's case. I
5 need to spend about five, maybe ten minutes with the
6 lawyers. So, y'all step back in the jury room. We'll start
7 right back up in just a few minutes.

8 Do not deliberate or talk about the case.

9 Thank you.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: Any motions by the defendant?

13 MR. POOLE: Your Honor, at this time, at my client's
14 request and on his behalf, I would move for a, a directed
15 verdict of not guilty on the charge that he is faced with in
16 that there is not any evidence in the record as to the
17 actual introduction of a knife or a photograph of it, and,
18 therefore, we ask the Court to dismiss this charge. At the
19 very most, we -- it's our position that this is a basic
20 criminal domestic violence case.

21 THE COURT: Ma'am.

22 SOLICITOR GILMER: Thank you, Your Honor.

23 Your Honor, in viewing the evidence in the light most
24 favorable to the State we would ask the Court to deny the
25 defendant's motion. Your Honor, we submit that we have

1 established a prima facia case of criminal domestic violence
2 of a high and aggravated nature.

3 As far as the, the elements of CDVHAN, Your Honor, they
4 can be as to injury as well as to a weapon being used.
5 There has been testimony by two officers that they found a
6 knife. There has been testimony by the victim that she
7 located on the defendant. There's been testimony by the
8 victim that the defendant did threaten her with a knife and
9 also use the knife against her, Your Honor.

10 We do not have to bring in a gun or weapon or knife
11 into the courtroom to show the jury. There's not -- there's
12 no requirement that there has to be a photograph or that
13 there has to be that physical evidence. The State has
14 presented testimony in the form of multiple witnesses, Your
15 Honor, as to a weapon was involved.

16 Your Honor, also to the fact of -- the fact that the
17 defendant continued to strike the victim. There was
18 testimony that a witness saw strangulation or choking as she
19 called it, Your Honor. Your Honor, we would submit that
20 those are -- that's evidence as to the severity of the
21 injury that could have been caused by the defendant's
22 actions in this case.

23 Again, Your Honor, we would just ask the Court to deny
24 the defendant's motion.

25 THE COURT: All right. I respectfully deny the motion

1 for directed verdict. Obviously I'm not concerned with the
2 weight of the evidence. I'm concerned with the existence of
3 the evidence at this point in the game, and obviously there
4 is testimony from the victim that a knife was used, pulled,
5 testimony that he cut her clothing with it cutting her with
6 it, and testimony from the police officers that they found a
7 knife on the defendant. So, I think there's ample evidence
8 in the record, if the jury believes it, that they could find
9 him guilty of the offense of assault and battery, which
10 involves the use of a deadly weapon, or, in the other, the
11 alternative, that she received serious bodily injury.

12 Looking at the pictures, the description of the
13 injuries, to me it would be a question of whether or not the
14 jury found it to be serious enough.

15 So, I respectfully deny your motion.

16 Anything else?

17 MR. POOLE: Thank you, Your Honor.

18 THE COURT: All right.

19 MR. POOLE: May we approach the bench for a moment?

20 THE COURT: Yeah. Yes, sir, you may.

21 (WHEREUPON, a bench conference was held at this time.)

22 THE COURT: Mr. Smith, would you stand for me please?

23 (Defendant complies.)

24 THE COURT: Raise your right hand.

25 Raise your right hand for me please.

1 (WHEREUPON, the defendant was placed under oath at this
2 time.)

3 THE COURT: You may sit down.

4 Mr. Smith, we've reached the stage in your trial now
5 where you can present your side of the story or, as we call
6 it, legally your defense, and then in that opportunity or by
7 you exercising that opportunity, you have the right to call
8 any witnesses you wish to call to testify in your defense.
9 You have the right to introduce any relevant exhibits that
10 you may have and you have the right to get on that witness
11 stand and tell your side of the story, testify in your own
12 defense.

13 THE DEFENDANT: Am I allowed to ask you anything?

14 THE COURT: Yes, sir, I'll let you ask me something.
15 You can ask me in just a few minutes. Let me explain it and
16 then you can ask me.

17 THE DEFENDANT: Okay.

18 THE COURT: Fair enough?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If you take the witness stand you will be
21 subjected to the same rules of cross-examination like
22 everybody else is. You can be cross-examined on any
23 relevant subject. You also have a prior record dealing with
24 offenses that carry more than one year. Failure to stop for
25 a blue light and discharging a weapon -- discharge of a

1 firearm, those, that record can be introduced, but only for
2 the use of what we call attacking your credibility or your
3 believability and I would instruct the jury that was the
4 only reason -- that's the only consideration they can give
5 it if they give it any at all. They couldn't use the prior
6 record to decide whether you're guilty or not guilty in this
7 case.

8 You understand that?

9 THE DEFENDANT: Uh-huh. (Affirmative).

10 Yes, sir.

11 THE COURT: Now, on the other side of the coin is you
12 have, like anyone else who's charged with a crime, you have
13 the protections guaranteed to you by the Fifth Amendment to
14 the Constitution of the United States which says nobody can
15 be compelled to testify in a case where a charge is pending
16 against them. You have the right to remain silent. And if
17 you exercise your right to remain silent, then I will
18 instruct the jury that you have an absolute right to remain
19 silent.

20 You don't have any burden of proof. You don't have
21 anything to prove. The State has the burden of proof, and
22 that -- it's a Constitutional right that everybody has, and
23 that by exercising it they can not infer anything from the
24 fact that you didn't testify, and I would further instruct
25 them that they can't even consider, talk about, mention

1 anything that you didn't testify when they deliberate your
2 guilt or innocence. That would be something that they
3 should not consider, not think about, not talk about,
4 shouldn't be entered into their minds when they decide your
5 guilt or innocence.

6 Now, do you understand your rights to trial?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand your right to testify and
9 your right to remain silent?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: That obviously is your personal right. You
12 can discuss it with your lawyer or whoever else you'd like
13 to discuss it with, but ultimately, when it comes down to
14 the bottom line, it's your decision.

15 You understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: So, I'll need to know now because we're
18 getting ready to go into that phase of the trial.

19 Do you wish to testify?

20 You don't have to answer quite yet, but answer this.

21 Did you understand my explanation?

22 THE DEFENDANT: Somewhat.

23 THE COURT: well, tell me what, what, what you don't
24 understand so I can try to answer the questions.

25 THE DEFENDANT: If I felt like testifying I can

1 testify. If I didn't I didn't have to.

2 THE COURT: That's exactly right. If you testify
3 you'll be subject to cross-examination --

4 THE DEFENDANT: Right.

5 THE COURT: -- and that prior record could be brought
6 out.

7 (Pause.)

8 THE DEFENDANT: I'm not gonna testify.

9 THE COURT: Okay. Do you have any other witnesses?

10 MR. POOLE: No, sir.

11 THE COURT: All right. It is 4:15.

12 Y'all want to try to finish it up or come back in the
13 morning or I can ask the jury what they want to do?

14 SOLICITOR GILMER: Your Honor, I'm fine -- I'm sorry.

15 THE COURT: Go ahead.

16 SOLICITOR GILMER: I'm fine with finishing it up, but
17 obviously if the jury doesn't feel their attention span is
18 where it needs to be --.

19 MR. POOLE: Whatever the Court wants to do.

20 THE COURT: Well, here's what I think. It's 4:15. I'm
21 gonna ask them what they want to do, and then we had one
22 other discussion up here. We discussed the request to have a
23 charge for criminal domestic violence, which is a lesser
24 included of criminal domestic violence of a high and
25 aggravated nature and we discussed it at the, at the bar up

1 here, and I think both of you agreed that we would do that,
2 and I will do so.

3 so, there will be a verdict form of we find the
4 defendant guilty or not guilty of criminal domestic violence
5 of a high and aggravated nature. we find him not guilty.
6 Then you would be asked to consider the lesser included
7 offense of criminal domestic violence. Not guilty or guilty
8 as far as the forms of the verdict.

9 The charge would be duties of judge and jury,
10 presumption of innocence, credibility of witnesses, failure
11 of the defendant to testify, prior record of a witness, and
12 then just the statute on CDVHAN, criminal domestic violence
13 of a high and aggravated nature, and criminal domestic
14 violence, just the statute, unanimous verdict.

15 Anything else you want?

16 SOLICITOR GILMER: No, Your Honor.

17 MR. POOLE: That covers it.

18 THE COURT: All right. Ma'am, bring the foreperson out
19 for me.

20 THE BAILIFF: Yes, sir.

21 THE COURT: Ms. Gilmer, you ready to argue?

22 SOLICITOR GILMER: I am, Your Honor.

23 THE COURT: Are you ready?

24 MR. POOLE: Yes, sir.

25 THE COURT: And I would suspect about ten minutes,

1 fifteen minutes at the most?

2 SOLICITOR GILMER: I think so, Your Honor. I think
3 I'll be probably not too long winded. I may actually do
4 it---

5 (WHEREUPON, the following takes place within the
6 presence of the foreperson.)

7 THE COURT: Mr. Foreman, just come -- stand up here and
8 let me talk to you a minute.

9 We are -- we have -- and I want you to take this
10 message back to your jurors and then I'll let y'all make a
11 decision.

12 We have completed all the testimony, and what is left
13 is for the lawyers to make their final arguments, and then I
14 would instruct or charge you on the law. I would suspect we
15 could do the arguments and the charge within about 45
16 minutes. It may be a little bit less than that. It may be
17 just a tab more. That takes us to five o'clock, and then
18 y'all will get the case to start deliberating. You
19 deliberate until you got finished. I don't know if that
20 would take five minutes or five hours. You just never know.
21 That's just it.

22 So, my question is do you think your jury wants to
23 complete it tonight or we can stop right now and we can come
24 back in the morning and say at 9:30. Everybody will be
25 fresh. Argue and charge in the morning. And once you

1 finish that, then I will dismiss this jury panel, your 12
2 jurors and two alternates. You would not have any further
3 responsibility for the rest of the week.

4 so, would you walk back there and give them those two
5 options and come back out and tell me which way y'all want
6 to go.

7 THE FOREMAN: Yes, sir.

8 (WHEREUPON, the following takes place outside the
9 presence of the foreman.)

10 THE COURT: Any objection by the State or the
11 defendant?

12 SOLICITOR GILMER: No, Your Honor.

13 MR. POOLE: No, sir.

14 (Pause.)

15 (WHEREUPON, the following takes place within the
16 presence of the foreman.)

17 THE FOREMAN: We just wanted clarification.

18 was the release if we -- if everything was finished
19 tonight, would that be a release tonight also?

20 THE COURT: A release?

21 THE FOREMAN: For the rest of the week?

22 THE COURT: Yes.

23 THE FOREMAN: So, I think it's gonna be go with that
24 way then.

25 THE COURT: Unless you want to come back tomorrow. I

1 can invite you back.

2 THE FOREMAN: Probably not.

3 (Pause.)

4 (WHEREUPON, the following takes place within the
5 presence of the foreman.)

6 THE COURT: Yes, sir.

7 THE FOREMAN: It didn't go as expected. They said they
8 don't want to be here late tonight. They want to come back
9 in the morning.

10 THE COURT: That's why I put it in y'all's hands. So,
11 y'all come on back -- bring them all back in now for me
12 please.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE COURT: All right. Mr. Foreman, ladies and
16 gentlemen of the jury, I assume the foreman has told you
17 that we have completed and concluded all the testimony in
18 the trial of the case. What we have left is the closing
19 arguments by the solicitor and the defense counsel followed
20 by my instructions to you, and then once that is complete,
21 then you'll be in a position to receive the case and start
22 deliberating.

23 Mr. Foreman told me that y'all would like to start in
24 the morning.

25 Is 9:30 in a position -- okay with everybody?

1 (Jurors nods affirmatively.)

2 THE FOREMAN: Sounds good, yes, sir.

3 THE COURT: Got a yes from everyone.

4 So, let's be here ready to go at 9:30. I suspect
5 you'll probably have the case -- once I suspect something it
6 won't happen. But 9:30 -- 10:30 at the latest, maybe
7 earlier than that, then obviously y'all can deliberate at
8 your own pace, and if we see that we go into lunch time,
9 I'll order your lunch. You may be through before that. I
10 don't know. That's up to y'all.

11 I would ask that you do not discuss the case tonight.
12 Do not let anyone discuss it with you. Please do not
13 type -- do any type of research regarding the charges of --
14 involved in the case or anything else by way of Internet,
15 books, social media, et cetera.

16 I hope you have a very pleasant evening, and I will
17 look to be with you tomorrow morning bright and early. We
18 still got some work to do. We've got another jury drawn,
19 and we're bringing the big panel back in. We're gonna try
20 to squeeze in a couple more small cases. It's tough to
21 start cases this late in the week because we don't know what
22 may happen and go beyond the timeframe. But anyway, we're
23 gonna try to continue to work hard and get this, this docket
24 down as much as we can.

25 But I have promised you that, once you finish tomorrow,

1 whatever time you finish your deliberations, then whatever
2 your verdict may be, I will release you for the balance of
3 the week. So, this will be your last involvement with us.

4 I thank you. You've all paid very close attention and
5 we'll go from there.

6 Everybody remain seated and my jury panel is excused.
7 My jury is excused to go for the evening.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: All right. We will stand at ease until --
11 we'll start right at 9:30 in the morning.

12

13 (WHEREUPON, Court was in recess for the evening.)

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Thursday, April 17th, 2014

THE COURT: I've got one juror missing. I told them to give me -- if he's not here in about two minutes I'm gonna use one of the alternates. So, randomly select one of the alternates in the event I need him. This first juror I think would be -- just do it randomly.

Anything for the record before we start, by the State?

SOLICITOR GILMER: No, Your Honor.

THE COURT: By the defendant?

MR. POOLE: Nothing here, Your Honor.

THE COURT: All right. Y'all look at this verdict form.

THE COURT: who did you select?

THE CLERK: Juror Number 5.

THE COURT: Laura Andrews?

THE CLERK: Yes, sir.

THE COURT: All right. Laura Andrews, if I need her, has been selected randomly by the clerk.

Any objections by the State?

SOLICITOR GILMER: No, Your Honor.

THE COURT: By the defendant?

MR. POOLE: No, sir.

THE COURT: Thank you.

(WHEREUPON, the following takes place within the

1 presence of the jury.)

2 THE COURT: We still missing one?

3 THE FOREMAN: Yes, sir.

4 THE COURT: Mr., Mr. Miller did not show up?

5 THE BAILIFF: No, sir.

6 THE COURT: All right. I'll deal with that later.

7 Ms. Andrews, raise your hand.

8 (Juror complies.)

9 THE COURT: I am going to elevate -- we randomly
10 selected between you and Mr. Tucker, and you've been
11 elevated to the regular jury panel. I now only have one,
12 one alternate. So, you will be a member of the regular jury
13 panel.

14 All right. We've reached the stage of the trial --
15 first of all, good morning, how are you?

16 (Jurors respond good morning.)

17 THE COURT: I'm sorry.

18 We've reached the stage of the trial where we're gonna
19 do the final arguments. Like I told you yesterday, the
20 State goes first followed by the defendant. Please bear in
21 mind that the final arguments is not evidence. It's --
22 obviously you've heard all the evidence. These lawyers will
23 be arguing the evidence in the light most favorable to their
24 side. Obviously they're adversaries for their clients or
25 the State. But that is not evidence. You already heard all

1 the evidence. But please pay close attention to the
2 arguments, and then once they complete that, I will instruct
3 you on the law dealing with this particular offense.

4 Ma'am.

5 SOLICITOR GILMER: Thank you, Your Honor.

6 May it please the Court?

7 Counsel.

8 Members of the jury, before I became a prosecutor I can
9 not imagine some of the unspeakable acts that people commit
10 against other people, and it's hard to believe that people
11 actually do these things to other people. Especially the
12 people that they're suppose to love. Sometimes on my rough
13 days I think well, ignorance is bliss and it gets better to
14 just turn the other cheek and not, not worry about and not
15 see what other people do -- the bad things that other people
16 do to people.

17 But ignorance is not bliss, ladies and gentlemen. We
18 have laws in this society that have to be followed to help
19 protect members of this society from harm and from those bad
20 acts that other people commit.

21 Ladies and gentlemen, I am asking you to hold one
22 person accountable for these crimes that were -- this crime
23 was committed against Tammy Page back on February 9th of
24 2013. I'm asking you to hold James Patrick Smith
25 accountable for what he did to Tammy Page on that night.

1 Ladies and gentlemen, I anticipate the judge is going
2 to instruct you on beyond a reasonable doubt, what that
3 means. The State has the burden of proof in this matter.
4 That is why we went first yesterday to put up the evidence
5 that we had to prove, in this case, that James Patrick Smith
6 committed criminal domestic violence of a high and
7 aggravated nature against Tammy Page.

8 Now, I want -- and I anticipate the judge is going to
9 tell you that beyond a reasonable doubt is not beyond all
10 doubt. It's not beyond all possible doubt. To get to
11 beyond all doubt a person would actually have to be there
12 and see what happens. That's the only way to get around all
13 doubt. So, don't hold the State to that standard that we do
14 not have to get to. It is beyond a reasonable doubt.

15 Now, I want to give you a scenario in thinking about
16 this case and going through the evidence when you go back in
17 that jury room to deliberate. This scenario, say one
18 morning you get up, you're getting ready for let's say work.
19 You go and watch the news report. The newscaster is calling
20 and saying there's gonna be rain that day, predicting rain.
21 When you go out of your house to go to work it's a little
22 bit overcast, but it's not raining. You go in, let's say,
23 your office building. You're there. During the day --
24 don't take lunch that day. So, you're there all day long.

25 But around lunchtime you see people coming in from

1 outside and they have umbrellas, open umbrellas. They put
2 them, put them at the front away from everything.

3 Later, when you go out to the parking lot to go out to
4 your car, you notice that all the cars are wet. There's sun
5 shining, but all the cars are wet in this concrete parking
6 lot.

7 well, ladies and gentlemen, putting all that together,
8 putting all those pieces together, you understand that it is
9 rained. When you've been cooped up in the office and
10 working all day that day it has rained. You know that
11 because the newscaster told you that morning that it was
12 gonna rain. You saw people coming in at lunchtime with the
13 wet umbrellas, and then, when you go out to your car later
14 that day, all the cars are wet. So, putting all that
15 together, you know it's rained. Even though you haven't
16 seen it yourself, you put all those pieces together.

17 Ladies and gentlemen, I'm gonna ask you to do that with
18 this case. I submit to you that the State has given you all
19 those pieces that you need to put together to determine that
20 this defendant is guilty of criminal domestic violence of a
21 high and aggravated nature.

22 Now, I told you yesterday that there are two ways that
23 you can find this defendant guilty of that offense. There's
24 the injury portion and then there's a weapon was used, and,
25 later on, the judge is going to instruct you specifically on

1 what the law says. But just to give you the generalities of
2 it right at this point, as I told you yesterday, the first
3 part is the state has to prove injury. Serious bodily
4 injury is what the State has to prove. That either that
5 occurred or the victim was in fear by the acts of the
6 defendant that she was going to receive either serious
7 bodily injury or death.

8 Okay. Ladies and gentlemen, you saw the photos. We
9 submitted those yesterday into evidence. The photos that
10 you saw, the abrasions, the bruises to Tammy Page's face and
11 head. You saw also the, the redness, the bruising to her
12 neck, the abrasion to her neck and right to her chest where
13 her clavicle would be. You saw all of that.

14 Ladies and gentlemen, she told you about the repeated
15 blows that this defendant inflicted upon her, on her head,
16 on her body when it first started off at the location where
17 they lived together and continued on up until Ms. Page
18 finally got away when she went into Ms. Hall's residence to
19 call 9-1-1. She told you about all of that, and she didn't
20 tell you that, that she went to the hospital. I don't have
21 to prove that she went to the hospital.

22 Ladies and gentlemen, they're a lot of factors that
23 come into play when people decide whether to get medical
24 treatment or not, and, unfortunately, in this case, Ms. Page
25 told you that hospital costs money, and ambulances cost

1 money.

2 The second way, as I told you, the State can prove is
3 that a weapon was involved. I told you about a knife. We
4 had Ms. Page tell you that there was a knife, and I told you
5 that two officers, two officers said that they located a
6 knife on the defendant. So, that, I submit to you, that's
7 the second way the State has to prove that this defendant
8 committed criminal domestic violence of a high and
9 aggravated nature.

10 As I said yesterday, we don't have to prove both, but I
11 did prove both yesterday. The State has shown that there
12 was serious bodily injury, the victim feared that there
13 would be further serious bodily injury, and a knife was
14 involved against her.

15 Let's talk about the victim's testimony yesterday. She
16 took the stand. It's not easy. As I told you yesterday,
17 please have patience with her. But she had to take the
18 stand and tell you about what happened that day.

19 She told you that she and the defendant lived together
20 for three years at his parent's residence. They lived there
21 with his mom and dad. They were in an intimate relationship
22 as well as a romantic situation. This was a
23 boyfriend/girlfriend intimate relationship. They lived
24 there together.

25 She said that, on that night, they got into an

1 argument, called her to the house, she came over, he had
2 been drinking. She said that, at that point, he became
3 upset with her, started accusing her of cheating on him,
4 which she said was not true. He then proceeded to start
5 beating her about the head, and she told you about that.

6 She told you that it continued for a period of time as
7 they continued up the street. He told her we're going to
8 Jerry Petty's house and I'm gonna talk, I'm gonna talk to
9 him. I'm gonna prove to you that you are cheating on me,
10 and she said, no, I'm not cheating on you.

11 So, they walk up. They're going up the street.
12 They're in Landrum in Spartanburg County. They're
13 continuing up the road. He's continuing to beat her, to hit
14 her, to strike her. And that's after, ladies and gentlemen,
15 on the porch when she told you -- that's after he pulled a
16 knife on her. He was trying to cut her with a knife. She
17 said she took the knife away from him, and Mr. Poole
18 yesterday made -- wanted to make a big deal about so, you
19 didn't stab him back. You didn't run away with the knife.

20 Well, first, stabbing him back?

21 Hindsight is 20/20, ladies and gentlemen.

22 Okay. We can't sit here and Monday morning quarterback
23 and say well, she should have stabbed him back or she should
24 have done this with a knife. When she was in the heat of
25 the moment there when this was going on she did the best

1 thing she could do. She decided that the only thing I could
2 do, the best decision, at that point, is just to throw the
3 knife away. Get the knife away from her so he could not do
4 any further harm to her with the knife, and get the knife
5 away from him. So, she threw the knife. Mr. Poole wants to
6 make a big deal about that.

7 Ladies and gentlemen, this man was attacking her. So
8 she's just gonna say okay, let me sit here for a second and
9 think about what my best options are with this knife. If
10 she took it with him, she knew he would just follow her and
11 probably get the knife back, and so we know he did follow
12 her. She tried to go up the street and he kept after her.
13 He kept following her. She did the best thing she could at
14 that time when this was happening to her. She was getting
15 beat in the head. All she could do was just get the knife
16 away from him.

17 Ms. Page continued up the road. He continued striking
18 her, and -- until she tried to go to one residence, couldn't
19 get in, and then she finally went to the Hutchins residence.

20 Now, the Hutchins, both of them came here yesterday and
21 told you that night that Ms. Page came to their residence.
22 They didn't have a phone for her to use. So, Mr. Hutchins
23 said he just ran that way, you run that way down the road to
24 the police department. So, that's what she did.

25 They corroborated -- and remember what Mrs. Hutchins.

1 told you yesterday. Mrs. Hutchins said that we were at
2 home. She had the TV up loud because her husband couldn't
3 hear. She had the TV up loud and she heard a commotion
4 outside. She said she heard this loud commotion over the
5 TV.

6 She looked outside and she saw, across the road at
7 Jerry Petty's house, there was a -- someone attacking
8 someone else. She said she couldn't see who it was. She
9 didn't know who it was at that point. But she saw one
10 person with another person bent over the railing and she
11 actually kind of drew out the railing here at the witness
12 stand, and she said she bent -- the other -- the one person
13 bent the other person over and had their hands around the
14 neck, around that person's neck choking them, strangling
15 them.

16 She then said that that person ran across the road.
17 She didn't know who it was at first, but then she saw the
18 hair flying back as the person was running, and she realized
19 it was Tammy Page, the woman that she knew. She said Tammy
20 came in. She said she saw bruising to her neck, to her
21 face, she was upset, she was distraught, and she asked to
22 use the phone, she needed to call the police, and she told
23 them Beaver had done this to her. They didn't have a phone
24 at the time. So, they sent her on the way. As Mr. Hutchins
25 said, run up the road. He ran that way. Run down to the

1 police department.

2 Mr. Hutchins told you the same thing. She came to the
3 door. He couldn't hear. He really didn't know what was
4 going on cause he couldn't hear, but he knew when this woman
5 came to the door. He recognized Tammy Page and he saw the
6 redness to her neck and the injuries to her face, and he
7 told you exactly what Mrs. Hutchins said. The guy ran this
8 way. He told her to run up the road to the police
9 department because we didn't have a phone.

10 All of those little things corroborate what Ms. Page
11 said on that date. She told you he started beating me. I
12 ran up the road. I was looking for help. Nobody was
13 helping until I got to the Hutchins house and they somewhat
14 helped. They didn't have a phone. But they helped a little
15 bit, and then she finally ran down the road to another
16 residence, Ms. Hall's residence, where she called 9-1-1, and
17 the police officers told you they were dispatched out
18 because of a 9-1-1 call to the area and before this, this
19 disturbance. They didn't really know what was going on.
20 They knew it was a disturbance.

21 The police officers that testified yesterday, both
22 of -- three police officers testified.

23 First, Deputy Ervin, who's the case officer on this
24 case. He testified that, when he got to the scene, he made
25 contact with Ms. Page. He talked about how he noticed her

1 clothing was cut, how they were -- had to tie her clothing
2 to keep it together because it was falling off cause it had
3 been cut, and, ladies and gentlemen, I urge you to look at
4 those pictures. Look at those photographs again and you'll
5 see the cut place on the shirt and where it's been tied.

6 I also want you to pay attention to the pants, the
7 capris pants that the victim was wearing in those photos.
8 They have dirt on the knees. Look also -- I want you to
9 take a very careful look at those photos and look at her
10 feet. She's not wearing any shoes or socks. This is in
11 February. And she told you how the defendant made her take
12 off her shoes and socks, and here she is running down a
13 street barefoot as this guy's beating her.

14 All of those little things tell you that Ms. Page, what
15 she told you, is exactly what happened on February 9th.
16 I'm asking you to put all those pieces together. All of
17 that corroborates and substantiates what she said happened
18 on that day. Put it altogether.

19 Now, let's talk about the officer's testimony
20 regarding, Landrum officers, when they made contact with the
21 defendant, Mr. Smith. The officers said that -- first it
22 was Officer Magaw. He testified first. He said that he
23 made contact. He saw an individual running, a male running
24 from the location where this disturbance was called out
25 from, running. He said he then went after the person and

1 the person attempted to hide. He found him lying down
2 trying to hide in a wooded area.

3 So, he came across this person, the defendant, who he
4 identified as the defendant, who had run from the scene. He
5 knew what he did was wrong and he ran to get away. So, he
6 finally got him to stop. He stopped, was trying to hide in
7 the wooded area, and Officer Magaw came and made contact
8 with him.

9 He said that then Officer Raines came out, and Officer
10 Raines told you how the defendant was intoxicated. He had
11 been consuming alcohol, he smelled alcohol on him, and they
12 found him with an open container of beer, and the officers
13 told you he took a sip of the beer.

14 why did he take a sip of the beer in front of officers?

15 Because he didn't think he was in Landrum's
16 jurisdiction. He had run one way or the other not far
17 enough and didn't think the Landrum officers could touch
18 him. Couldn't give him a ticket for open container. So, he
19 took a sip of that beer right there in front of the officers
20 showing his state of mind that he was riled up, nobody can
21 touch me, my adrenaline is pumping because I just beat up my
22 girlfriend. Nobody can touch me.

23 That was his state of mind at that time. He was
24 cursing at the officers, belligerent. He then made contact
25 with them.

1 Now, very big important thing about the officer's
2 testimony is both of them testified to the knife that was
3 located on the defendant. This folded knife -- they said it
4 was a folded type knife. One said black and I think one
5 said dark in color, and then there was -- they gave
6 estimations about how large it was. They said it was about
7 three or four inches closed, and then open it would be
8 doubled that.

9 Now, they both said that knife was still opened in the
10 pocket. It was a folding knife. It was not completely
11 closed and it was one you had to mainly open to get opened.
12 It was -- I think one of the officers said not a spring,
13 spring loaded knife. So, it was opened in his pocket.

14 The officers testified that they located that in the
15 defendant's pocket. Both officers told you that.

16 Now, Mr. Poole may get up here and make a big deal
17 about the State doesn't have that knife. We didn't bring in
18 the knife to show you.

19 Ladies and gentlemen, I'm not required to do that. The
20 State is not required to do that. Law enforcement officers
21 are not required to collect the knife or the weapon used.
22 So, I don't want you thinking, just because you weren't
23 physically able to see the knife, that that means that you
24 can't find the defendant guilty of criminal domestic
25 violence of a high and aggravated nature. It's just not so.

1 But, ladies and gentlemen, as I said before, all the
2 signs point to the knife. Ms. Page told you about the
3 knife. When Deputy Ervin came to her and she made a report
4 of the crime, she told Deputy Ervin there was a knife. She
5 wrote about the knife in her written statement, and Officer
6 Magaw and Officer Raines located a knife on the defendant.
7 You have the evidence that they're cut clothing of the
8 victim right there. Look where she's tied it together. All
9 consistent with what she told the officers and heard.

10 Officer Ervin told you -- we'll talk about the victim's
11 demeanor. He told you that she was very distraught, very
12 excited, very distraught, upset. He said that they had to
13 calm her down. She was fearful. She told you yesterday
14 that she was fearful that night as anybody would be.

15 He told you how he had to calm her down. She said
16 where is he, where is he wanting to know where the defendant
17 was and he couldn't, in fact, harm her any further.

18 Excuse me.

19 He told you -- the officers told you, he told you,
20 Deputy Ervin told you, he did not smell alcohol on the
21 victim. She did not appear to be drinking alcohol, did not
22 appear to be under the influence of alcohol.

23 The Landrum officers told you the defendant had been
24 drinking alcohol. Drank alcohol in front of them. Smelled
25 of alcohol. But the victim had not.

1 Ladies and gentlemen, I'm not gonna take up too much
2 more of your time. I just want you to take your common
3 sense with you back in that jury room. Bad things happen in
4 this world and we don't want to believe that they do happen.
5 But they do. Strange things happen and we don't want to
6 believe they happen. But they happen.

7 This case is a perfect example of that. The victim
8 called 9-1-1 from the neighbor's house. She was distraught.
9 She was scared. Deputies -- a deputy came out, saw her torn
10 clothing, saw her dirty clothing, saw her upset, fearful.
11 She told them what happened. They observed these abrasions,
12 these bruises. One of them said her lip was swollen out.
13 They observed all that injury to the victim.

14 Two officers came out. Saw a male fleeing the scene.
15 They stopped him. He's belligerent. He's riled up. He's
16 cursing. He's yelling. Nobody can touch me. They find a
17 knife on him, a knife that the victim said he had earlier
18 used against her.

19 Mr. Poole may get up here and ask you to find him
20 guilty of a lesser offense, of just criminal domestic
21 violence.

22 Ladies and gentlemen, this isn't just a routine case of
23 criminal domestic violence. This isn't he pushed her, he
24 slapped her. This is heat. It is heat. He repeatedly beat
25 her about the body and the head. He strangled her, which

1 was corroborated by what Mrs. Hutchins saw that night,
2 someone who has no dog in this fight, and officers who
3 located the knife on the defendant.

4 This is a case of criminal domestic violence of a high
5 and aggravated nature. He used a weapon and he caused or
6 could have caused serious bodily injury to the victim. It's
7 not going to be tolerated, and I'm asking you to hold him
8 accountable for what he did to her.

9 I know this is a case that people don't want to believe
10 these types of things happen but they do. And what's even
11 sicker is that it happens against someone that someone is
12 suppose to love being in a relationship with.

13 I'm asking you to use your common sense. When you go
14 back in that jury room, you think about all the pieces of
15 the puzzle that you were given yesterday. Think about all
16 those pieces, all those little things that help show that
17 what Tammy Page told the police on that date happened, and
18 what Tammy Page told you yesterday what happened, that all
19 of those things show that she is telling the truth and that
20 is what happened on February 9th of 2013.

21 Ladies and gentlemen, I am asking you to hold the
22 defendant accountable. I'm asking you to find him guilty of
23 criminal domestic violence of a high and aggravated nature.

24 Thank you.

25 MR. POOLE: May it please the Court?

1 THE COURT: Yes, sir.

2 MR. POOLE: Ms. Gilmer.

3 Good morning, Mr. Foreman, ladies and gentlemen.

4 This has been a short case and thank you for your
5 attention to everything that's been said and everything
6 that's been presented. I appreciate it. You are not here
7 by choice. I know that. But you're here by selection also,
8 as I mentioned yesterday, and I can't think of any better
9 jury to hear this case than the, than y'all, and thanks a
10 lot for your service and thanks for being here and thanks
11 for paying attention.

12 The solicitor made several remarks about what I was
13 going to say, and I agree with her about 100 percent. She
14 said that I was gonna talk -- she wanted to talk about the
15 victim's testimony. I want to do that too. I certainly do.

16 She said that I'm going to make a big deal out of Ms.
17 Page's testimony. I will and I'm going to do that.

18 She said that what Ms. Page told you is exactly what
19 happened, and that's why I'm going to talk about her
20 testimony because what she told you can't be what exactly
21 happened, and she also stated that law enforcement officers
22 are not required to procure the knife and bring it into
23 evidence, and I disagree with that, and I'm gonna talk about
24 that.

25 She said that the testimony was that Mr. Smith was

1 cursing and yelling when he was apprehended and arrested by
2 law enforcement. My recollection of Officer Magaw's, I
3 believe that officer, he stated that he was fairly
4 cooperative, and he was just standing there and, in fact,
5 took a sip of beer for which he was charged under some sort
6 of Landrum city ordinance.

7 When I'm not inside I like to be outside. And if I'm
8 outside I like to be deep in the woods, you know, away from
9 people, away from homes, and other things. So, that's the
10 way I restore myself, and I hope a lot of you are the same
11 way, and sometimes, when I go there, I have a field guide.
12 If I'm interested in trying to locate or identify a
13 particular bird, I have a field guide that allows me to use
14 that. Peterson's Field Guide to Southeastern Birds, and it
15 has about everything we got around here, and birds are
16 identified by their -- the way they walk, the way they
17 perch, the way they fly, their silhouettes. All these
18 characteristics make up a species, and over there at the
19 edge of my desk is a book and it's called Criminal Offenses
20 of South Carolina, and it is sort of like the field guide to
21 the courthouse, General Sessions criminal division.

22 In it it has enumerated all the offenses that have been
23 codified by the South Carolina Legislature, and it
24 identifies species of crimes by certain elements and
25 Mr. Smith -- now what, what does all this, that have to do

1 with this case?

2 Now, Mr. Smith is charged with criminal domestic
3 violence of a high and aggravated nature. Judge Early is
4 going to give you the elements of that crime. He's also
5 going to give you the elements of another crime called
6 criminal domestic violence, and they will speak for
7 themselves, but he's the instructor and his domain is the
8 law and yours is of the facts.

9 So, I'm not gonna talk a lot about beyond a reasonable
10 doubt except for the fact that the State has not proved this
11 case against him. That is criminal domestic violence of a
12 high and aggravated nature against Mr. Smith beyond a
13 reasonable doubt. It has not occurred. It has not occurred
14 because the facts do not fit.

15 This case is sort of bookended like from the beginning
16 to the end over here and it's bookended by when Ms. Page
17 came to the house where she lived, her own testimony, to the
18 apprehension of Mr. Smith over here, and the testimony and
19 all the evidence was given is sort of like the continuum of
20 the events as they allegedly occurred.

21 I'm gonna have to refer to my notes because I have
22 certain enumerated points that begin with Ms. Page's
23 testimony.

24 She stated that she and Mr. Smith had known one another
25 for ten years. They had a romantic relationship for the

1 last three of those years. So, she knew Mr. Smith pretty
2 well, okay, and he knew her pretty well.

3 She lived at this residence on [REDACTED], [REDACTED]
4 [REDACTED], along with Mr. Smith and his mother and
5 father. He called her up. She went down there and then her
6 testimony is that he jumped on her and started beating her
7 about the head, and this was on the backyard -- back porch
8 of a four room house where Mr. Smith's mother and father
9 were inside. She testified that it was loud, it was
10 violent, and that it was just a major, major assault.

11 It involved a knife. This knife was produced by
12 Mr. Smith. He attempted to kill her with it. He attempted
13 to stab her in the stomach with it, and then curiously he
14 gives the knife to her and says cut me.

15 All right. Right off, right out of the gate, this is,
16 this is the very beginning right here of this case.

17 Now is that believable?

18 I submit to you it is not.

19 Not only was Ms. Page able to successfully defend
20 herself against the attempted stabbings toward her stomach,
21 she was given the knife. She did not take it. She was
22 given the knife by Mr. Smith with the instruction to cut me
23 and she slung it.

24 This is not the action of someone that's in fear of the
25 well being or safety. This is, this is a conscious rational

1 action and she testified that's what she did, and then she
2 did not leave. She did not leave the residence.

3 She did leave, but after she slung the knife away. She
4 left and she said that Mr. Smith continued to beat me in my
5 head and kept walking and this is where they walked down --
6 oh, it's got to be past houses. It's got to be past
7 residences. It's got to be past a certain amount of
8 distance. We don't really know and so Mr. Smith is
9 following her and continuing to beat her.

10 Now, at one time, you know, she gave a statement, and
11 that statement was not all inclusive. It didn't cover
12 everything. In fact, some was added and some was deleted.
13 For instance, in the statement that she gave, she made no
14 mention about, you know, being stabbed or the knife being
15 slung away by her, and in the statement she said that
16 Mr. Smith had a gun. Well, there's not been any testimony
17 about her even seeing a gun.

18 So then he continues to beat her and following her for
19 some distance and then telephone calls are made, law
20 enforcement arrive, and she had these injuries, but didn't
21 go to the hospital.

22 Now, we're talking about serious bodily injury when
23 you're talking about criminal domestic violence of a high
24 and aggravated nature, and, I don't know, I've never seen a
25 case like this before where the facts are such as this, and

1 you're being asked to believe all of them with the charge of
2 criminal domestic violence of a high and aggravated nature.

3 sure it costs to go to the hospital. Sure medical
4 expenses are high. Often times unwarranted. Sure these are
5 the hard times when people can't afford to get medical
6 attention when they most need it. But surely, and moreover,
7 if somebody is really seriously hurt, all those factors are
8 outweighed by your own well being and you need to get
9 medical attention.

10 I don't understand it. I don't understand it at all
11 and I further don't understand the solicitor's remark that
12 we don't have to produce the knife.

13 well, how about a photo?

14 wouldn't it be nice to have something about this knife?
15 we just got the testimony about it.

16 If we don't have the knife, couldn't we have a photo?

17 Do you remember there was an officer who stated, I
18 think it was Deputy Ervin, said there was an ID officer on
19 the scene?

20 I asked him, I said, what does an ID officer do?

21 He says he collects, procures, paraphrasing, he
22 collects evidence.

23 well, isn't this knife, knife evidence?

24 Isn't it?

25 why isn't it here?

1 I don't know. I don't know.

2 We have testimony about a knife that, as I understand
3 it, was not a fit -- you know, the -- you men probably know
4 about knives. You know you got the fixed blade, which is
5 just a straight knife. You got a folding knife. Then when
6 it folds out, it locks. And then you got the type of knife
7 that is a switch blade, you know, where you push the button
8 and the blade emerges. And, as I understand it, this type
9 of knife was one of those knives that, if you fold it out,
10 it doesn't lock. In other words, it's got play in it
11 between the blade and the handle.

12 The officer testified that it is not unusual for
13 someone to have that type of knife in their pant, in their
14 pants, which Mr. Smith did have this knife on him, and it
15 was partially opened, and that's not unusual. The officer
16 said that. Law enforcement said that.

17 But, again, we have to talk about it, but we don't have
18 the knife itself nor a photo even though an ID officer was
19 there, and it could of been easily taken into evidence.

20 If the man was charged with drinking a beer within the
21 city limits of Landrum, on a relatively minor charge like
22 that, shouldn't we have a knife?

23 Shouldn't we have a photo of it at least in evidence on
24 a serious charge like this?

25 I don't know what's going on, but was it because law

1 enforcement didn't think it was important enough?

2 So, yeah, I've got to make a big deal, about as much as
3 I can, because I want you to do justice. That's all that
4 you're asked as human beings, plus a few other things, is to
5 act justly, and I'm asking you to do the same thing.

6 At the very end of this episode where Mr. Smith was
7 caught, and he should of been, when he was caught, he had an
8 open beer. Now, he surely didn't find it in the woods. So,
9 if he had an opened beer of which he took a drink, he was
10 able to carry on this assault, again on the back porch of a
11 four room house, that had two other residents in it that
12 didn't do anything about nothing, and then beat her,
13 assaulted her with a knife, continue beating her through a
14 neighborhood, continue to beat her while carrying both the
15 knife and an open beer in his hand and not spilling a drop.

16 Come on. Think about it.

17 Ms. Page's testimony, as given, doesn't hold water.
18 So, there's an old argument that says that if you got a hole
19 in your, a bucket with holes in it, it doesn't hold water,
20 but, if you get several buckets with holes in it, then, if
21 you get enough of them, you might get enough water to get
22 something.

23 Well, I don't care how many buckets they got, that is
24 the state, none of them holds any water. Whatever version
25 of the facts you want to look at, what it was that --

1 whatever Ms. Page said or whatever it -- she didn't say,
2 this is not assault and battery. This is not criminal
3 domestic violence of a high and aggravated nature.

4 Now, let me say this briefly. Ms. Gilmer, in her good
5 and accurate anticipation of what I was going to say, said
6 that I may talk a little bit about criminal domestic
7 violence. Well, I am. If you feel that Mr. Smith is guilty
8 of something, then whatever species of crime that is in the
9 field manual, it says it should be criminal domestic
10 violence. But I'm saying to you that it's not even that.

11 What went on, I do not know. I was not there. I did
12 not want to be around it. Nobody else was there. But
13 you've got the evidence before you. You've got to put it
14 back together. You got to figure out how the facts square
15 with the law and what is the appropriate verdict.

16 Tell you what the appropriate verdict is, and that
17 comes from the Latin meaning something that speaks the
18 truth, veredicto. The appropriate verdict is not guilty.
19 But I can't read your minds. I don't know what you're
20 thinking. If you feel that he has to be guilty of
21 something, you will be given that option of finding him
22 guilty of criminal domestic violence. It's up to you.

23 I can't tell you what to do. The only thing I can do
24 is sit here, stand here, and try to present my client's case
25 the best way I can and I've done that.

1 So, you got a job to do. Thank you for your time once
2 again. I'm asking you to return a verdict of not guilty on
3 all charges, but if you feel that there is enough smoke to
4 find him guilty of something, I submit to you the proper
5 finding along that line is criminal domestic violence and
6 thanks a lot. Thank you for listening to me.

7 THE COURT: Mr. Foreman, ladies and gentlemen, my
8 instructions are probably about ten to fifteen minutes at
9 the most.

10 Everybody okay?

11 You need a bathroom break?

12 (Jurors respond in the negative.)

13 THE COURT: In this case the defendant has been
14 indicted with the charge of criminal domestic violence of a
15 high and aggravated nature. I remind you the fact that the
16 defendant has been arrested, charged, and indicted in the
17 case is not evidence in the case and can not be considered
18 by you as evidence of guilt in this case. Nor does it
19 create any presumption or inference of guilt. The
20 indictment is simply the formal document by which this case
21 is brought into the courtroom.

22 To the charges of criminal domestic violence of a high
23 and aggravated nature, the defendant has pled not guilty,
24 and that plea of not guilty obviously puts the burden on the
25 state of South Carolina to prove his guilt to you beyond a

1 reasonable doubt.

2 A person charged with committing a criminal offense in
3 our state is never required to prove himself innocent. I
4 charge and instruct you that it is an important
5 constitutional rule of law that a defendant, in a criminal
6 trial, no matter how serious the crime may be, will always
7 be presumed to be innocent of the crime for which the
8 indictment was issued unless guilt has been proven by
9 evidence satisfying you of that guilt beyond a reasonable
10 doubt.

11 Now, the presumption of innocence does not stop when
12 you begin your deliberations, but it stays with the
13 defendant throughout the trial until you reach a verdict of
14 guilt based on evidence satisfying you of that guilt beyond
15 a reasonable doubt.

16 The presumption of innocence is not a mere legal
17 theory. It's not a legal phrase. It is a substantial
18 constitutional right to which every defendant is entitled
19 unless you, the jury, are satisfied, satisfied, from the
20 evidence, of the defendant's guilt beyond a reasonable
21 doubt.

22 Now what is a reasonable doubt?

23 Our Courts have defined a reasonable doubt as the kind
24 of doubt that would cause a reasonable person to hesitate to
25 act. Proof beyond a reasonable doubt is proof that leaves

1 you firmly convinced of the defendant's guilt. Obviously
2 they're very few things in the world that we know with
3 absolute certainty, and, in criminal cases, the law does not
4 require proof that overcomes every possible doubt. If,
5 based on your consideration of the evidence, you are firmly
6 convinced that the defendant is guilty of the crime charged,
7 then you must find him guilty. If, on the other hand, you
8 think there's a real possibility that he is not guilty, then
9 you must give the defendant the benefit of doubt and find
10 him not guilty.

11 As I told you at the beginning of the case, my job is
12 to instruct you on the law. Your job is to determine what
13 the true facts are in the case and apply those true facts to
14 the law as I give it to you, and, therefore, to do that,
15 obviously you have to determine the credibility of the
16 witnesses who have testified in the case. Credibility
17 simply means believability. It becomes your duty, as
18 jurors, to analyze and to evaluate the evidence and
19 determine which evidence convinces you of its truth.

20 Now, in doing that, you have the right to believe one
21 witness over several, several over one. You can disbelieve
22 everything a witness says. You can believe everything he
23 says. You can believe a little bit and disregard the rest.
24 So, it's up to you to determine what the true facts are and
25 I suggest you deal with husbands, wives, children,

1 employees, employers, friends day in and day out. You know
2 how to judge when someone is telling the truth. Use that
3 experience in determining the credibility or the
4 believability of the witnesses who have testified in this
5 case. You may consider whether any witness has exhibited to
6 you any interest, bias, prejudice, or other motive in the
7 case, and you can also consider how the witness appeared on
8 the witness stand.

9 Anyone charged with a crime has the constitutional
10 right to remain silent. So, therefore, I charge you and
11 emphasize that the fact that, in this case, the defendant
12 did not testify is not a factor to be considered by you in
13 anyway in your deliberations and in your consideration on
14 the question of the guilt or innocence of the defendant. It
15 should not be considered in any manner whatsoever. A
16 defendant has the Constitutional right to remain silent, and
17 the assertion of this right must not be considered by you in
18 your deliberations.

19 So please do not draw any conclusion from the fact that
20 he did not testify. The fact that he did not testify should
21 not be discussed at all in your deliberations. It should
22 not be considered at all when you determine the question of
23 guilt or innocence.

24 The defendant is not required to prove his innocence.
25 The burden of proof remains on the State of South Carolina

1 to prove guilt to you beyond a reasonable doubt.

2 In the trial of this case one witness testified who had
3 a prior criminal record. A person who has a past criminal
4 record is competent to testify during a trial. A past
5 record does not affect the ability of that witness to
6 testify. The past record may only be considered by you, if
7 at all, in determining the witness' believability or
8 credibility. You are the sole judges of the facts and the
9 believability of any and all the witnesses is up to you to
10 determine.

11 Now, Mr. Foreman, ladies and gentlemen, that's sort of
12 a general overview of the general principles of law that we
13 charge in all criminal cases. Let's turn to the, the law in
14 this case that we're dealing with.

15 As I told you, the defendant is charged with the
16 offense of assault, strike that, criminal domestic violence
17 of a high and aggravated nature. That is set out in our
18 Code of Laws in Section 16-25-65, and that is in the section
19 of the Code of Laws that deal generally with criminal
20 domestic violence, and, under our laws, dealing with
21 criminal domestic violence, we have various degrees of
22 criminal domestic violence. In this case the State has
23 indicted the defendant with criminal domestic violence of a
24 high and aggravated nature.

25 Now, to prove that the State must prove, beyond a

1 reasonable doubt, that the defendant committed an assault
2 and battery on the victim which involved the use of a deadly
3 weapon or which resulted in serious bodily injury to the
4 victim.

5 Now, you have to sort of go and look at the just
6 regular criminal domestic violence, and that -- in that
7 situation our law says it is unlawful to cause physical harm
8 or injury to a person's own household member. To elevate it
9 to criminal domestic violence of a high and aggravated
10 nature, that injury to the persons, someone in their own
11 household, has to involve the use of a deadly weapon or
12 result in serious bodily injury to the victim. That's the
13 difference between criminal domestic violence and criminal
14 domestic violence of a high and aggravated nature.

15 Now, our law says that an assault, when you talk about
16 assault and battery, that occurs when a person unlawfully
17 attempts to or offers to commit an injury upon another
18 person and had the presentability to complete the attempted
19 injury. The battery is the unlawful touching of another
20 person who has committed the assault.

21 So, a lot of times you can illustrate that by the
22 assault is to draw back to hit someone or to shoot someone
23 or to stab someone. That's the assault. The battery is
24 when you hit them. You physically hit them. So, that's the
25 assault and battery.

1 So, criminal domestic violence is causing physical harm
2 to someones -- a person of someone's own household. An
3 assault and battery -- strike that. A criminal domestic
4 violence of a high and aggravated nature, that's when the
5 injury or the assault and battery involves the use of a
6 deadly weapon or results in serious bodily injury to the
7 victim or simply an assault, which means battery, with or
8 without the accompanying battery, which would reasonably
9 cause a person to fear immanent serious bodily injury or
10 death.

11 Now, to make it a criminal domestic violence case, the
12 victim must be a household member, and our State defines a
13 household member as a male and female who are cohabitating
14 or formerly have cohabitated or lived together.

15 So, what you have to do in the jury room, you'll have a
16 verdict form, and that verdict form says we will consider
17 the offense of criminal domestic violence of a high and
18 aggravated nature. In other words, you have -- the State
19 has to show by, beyond a reasonable doubt, that physical
20 injury or an assault and battery occurred which involved the
21 use of a deadly weapon or resulted in serious bodily injury
22 or which would reasonably cause a person to fear serious
23 bodily injury or death. If you find that it was not
24 accompanied by a deadly weapon or that it did not result in
25 a serious bodily injury, then you would be asked to consider

1 whether or not the State is proven by, beyond a reasonable
2 doubt, that simply the physical harm or injury occurred to a
3 person's own household member.

4 So, you'll be -- the verdict form will be, as to the
5 offense of criminal domestic violence of a high and
6 aggravated nature, we find the defendant not guilty or
7 guilty. That means you have -- you're considering whether
8 or not the assault and battery involved the use of a deadly
9 weapon or resulted in serious bodily injury. If you find
10 that the physical injury was not used or involved the use of
11 a deadly weapon or it did not result in serious bodily
12 injury, then you would obviously mark not guilty, and then
13 you would have to consider the lesser included offense of
14 criminal domestic violence, which simply means that they
15 have to prove, beyond a reasonable doubt, that physical harm
16 or injury was caused to a member or a person's own household
17 member. If you find that the State has not proven that, you
18 find that also not guilty and would bring it back.

19 So, if you find him guilty of assault and battery of a
20 high and aggravated nature, you stop. If you find him not
21 guilty, you have to consider the lesser included offense,
22 and then guilty or not guilty on that or guilty or not
23 guilty.

24 Your verdict must be unanimous. All 12 of you must
25 agree. You're here today to reach your decision after you

1 determine what the true facts are based on the evidence that
2 you've heard. You're not here to reward any friends or
3 punish any enemies. We're here to make a careful
4 deliberation of the evidence and based on the law as I've
5 given it to you.

6 Mr. Foreman, if you have any questions during your
7 deliberations that you need to ask me, the protocol is to
8 write it out on a slip of paper, knock on the door, give it
9 to the bailiff. She will give it to me. Sometimes I can
10 answer it. Sometimes I can't. I will send you my best shot
11 back there to the jury room. If you need to review anything
12 that we've done in here, just let me know and I'll try to
13 make that available.

14 You will have with you the exhibits that have been
15 introduced in the trial of the case. Once you've reached a
16 unanimous verdict, please fill out the verdict form
17 accordingly, and knock on the door, and we'll receive you
18 back in the courtroom with your verdict.

19 I'm gonna ask you now to step back to the jury room.
20 Please separate the alternate, and do not start
21 deliberating. I have to ask the lawyers if I've left
22 anything out, I need to add anything to it. That won't take
23 me just a few minutes, and then they'll bring the verdict
24 forms and the exhibits back. You may start your
25 deliberations.

1 (WHEREUPON, the following takes place outside the
2 presence of the jury.)

3 THE COURT: Any objections, requested additions, or
4 deletions to the charge by the State?

5 SOLICITOR GILMER: Your Honor, I just have one concern.
6 When you went over the instructions or the charge when you
7 were specifically addressing CDVHAN, you did tell them that
8 there could be an assault without an accompanying -- with or
9 without a battery which would reasonably cause a person to
10 fear a serious or violent injury. But when you were going
11 over the jury form, and I may have missed it, but it sounded
12 like you just said either a weapon or there had to be
13 serious bodily injury, and I just want the jury to
14 understand that there could also just be that fear of
15 immanent serious bodily injury.

16 THE COURT: Okay. I recall specifically charging --
17 reading 16-25-65(a)(2). I read it verbatim. An assault
18 with or without an accompanying battery. I'll stand by the
19 charge on that.

20 Anything else?

21 SOLICITOR GILMER: That's all, Your Honor.

22 THE COURT: Sir?

23 MR. POOLE: Nothing here, Your Honor.

24 THE COURT: Thank you.

25 All right. Gather up the exhibits. Make sure they're

1 all accounted for. Look at the verdict form. Please come
2 do that so I can send it back to the jury.

3 (Pause.)

4 THE COURT: Let the record reflect they reviewed all
5 the exhibits in order along with the verdict form. It will
6 be sent to the jury at 10:35.

7 SOLICITOR GILMER: Thank you, Your Honor.

8 (WHEREUPON, the jury began deliberations at 10:35AM and
9 returned with a verdict at 10:50AM.)

10 THE COURT: Are you getting the jury?

11 (WHEREUPON, the following takes place within the
12 presence of the jury.)

13 THE COURT: You still got the alternate back here?

14 THE BAILIFF: We didn't have no alternate. You made
15 the alternate with this --.

16 THE OFFICER: She's gone to get him.

17 THE COURT: We did have an alternate.

18 THE BAILIFF: Well, I didn't know about him then.

19 THE COURT: Mr. Foreman, have y'all reached a verdict?

20 THE FOREMAN: Yes, Your Honor. We have.

21 THE COURT: Pass it to the bailiff please.

22 (Foreman complies.)

23 THE COURT: You read it?

24 THE CLERK: Yes, sir.

25 State of South Carolina, County of Spartanburg, in the

1 Court of General Sessions, Indictment Number
2 2013-GS-42-3303, the State of South Carolina versus James
3 Patrick Smith, as to the offense of criminal domestic
4 violence of a high and aggravated nature, we, the jury, find
5 the defendant guilty.

6 It is signed by the foreperson and dated today's date.

7 Ladies and gentlemen of the jury, if this is your
8 verdict and still your verdict, please raise your
9 right-hand.

10 (WHEREUPON, all jurors raise their hands at this time.)

11 THE CLERK: So say you-all.

12 THE COURT: Thank you.

13 Let the record reflect all hands were raised.

14 (WHEREUPON, the jury panel was dismissed at this time.)

15 THE COURT: Mr. Poole, anything for the record?

16 MR. POOLE: Your Honor, I would simply ask the Court
17 to -- for a new trial based on my previous motion for a
18 directed verdict and the grounds stated at the end of the
19 State's case.

20 THE COURT: Very well. Thank you. Respectfully
21 denied. Obviously there was, in my opinion, ample evidence.
22 If I were the finder of fact I would of made the same
23 decision. There was ample evidence in the record for that
24 decision to be made and to be based upon the photographs
25 were overwhelming showing serious injury. There was

1 testimony of a weapon. Obviously they perhaps believed that
2 or either serious injury. So, I -- the evidence was there,
3 and I respectfully deny your motion.

4 MR. POOLE: Thank you.

5 (Pause.)

6 MR. POOLE: May I approach?

7 THE COURT: Madam Solicitor, you ready for sentencing?

8 SOLICITOR GILMER: Yes, sir, Your Honor.

9 THE COURT: All right. Mr. Smith, if you'll come
10 forward please.

11 (Defendant complies.)

12 THE COURT: All right. Madam Solicitor, as I
13 understand it, his record, prior record includes a failure
14 to stop for a blue light, discharge of a weapon.

15 When was that weapons charge?

16 SOLICITOR GILMER: It was in 2007, Your Honor.

17 THE COURT: And what was the disposition of that?

18 SOLICITOR GILMER: Looks like he received a fine is
19 what was on his NCIC, Your Honor.

20 THE COURT: Okay. And he also had a CDV, is that
21 correct, criminal domestic violence?

22 SOLICITOR GILMER: Yes, Your Honor, in---

23 THE COURT: When was that?

24 SOLICITOR GILMER: 2012.

25 THE COURT: 2012.

1 When in 2012?

2 SOLICITOR GILMER: Let's see. The disposition of that
3 was May 23rd of 2012.

4 THE COURT: And this happened on or about?

5 SOLICITOR GILMER: February 9th of 2013.

6 THE COURT: Was it the same victim?

7 SOLICITOR GILMER: Yes, Your Honor, it's my
8 understanding and---

9 THE COURT: Is that correct, Mr. Poole?

10 MR. POOLE: Yes, sir.

11 THE COURT: What was that disposition?

12 SOLICITOR GILMER: If I could have one moment, Your
13 Honor?

14 (Pause.)

15 SOLICITOR GILMER: Thirty days jail and, Your Honor, he
16 does also have other of a prior record. Those were just his
17 impeachable offenses.

18 THE COURT: What is the other record?

19 SOLICITOR GILMER: 1986 stealing.

20 1989 DUS. '89 DUI.

21 '90, distribution of cocaine, HTO.

22 '96, unlawful weapon. Also, in '96, three counts of
23 possession of crack.

24 '99, open container, DUS, public intoxication, PDC,
25 petty larceny.

1 2000, DUS, HTO, another count of DUS and HTO.

2 2001, HTO, DUS.

3 2002, DUS, open container, and purse snatching.

4 2004, failure to stop that's been mentioned.

5 2007, violation of county noise ordinance and

6 discharging a firearm that's been mentioned.

7 2011, PDC.

8 2012, PDC. The 2012 CDV first. He has a petty larceny
9 conviction out of North Carolina in 2001 and a '97
10 conviction out of Georgia for giving false information to
11 law enforcement.

12 THE COURT: So, a rather extensive record, but with
13 nothing real major, but all sorts of -- CDV back in 2012,
14 less than a year before this, and with the same victim.

15 SOLICITOR GILMER: Yes, Your Honor.

16 THE COURT: Basically correct?

17 SOLICITOR GILMER: Yes, Your Honor.

18 THE COURT: Mr. Poole.

19 Anything else you want to tell me, ma'am?

20 SOLICITOR GILMER: Your Honor, with any sentence, we're
21 just asking for no contact with the victim provision.

22 THE COURT: Well, I'm not gonna -- he's not gonna get a
23 probationary sentence. So --.

24 SOLICITOR GILMER: Yes, Your Honor. I just -- just for
25 the record.

1 THE COURT: Thank you.

2 Mr. Poole.

3 MR. POOLE: Mr. Smith, Your Honor, is 49 years of age.
4 He has a ninth grade education. By trade he is a brick
5 layer, and he has a child that is grown. Of course, you've
6 heard his record. I will point out to the Court that
7 Mr. Smith has been incarcerated since the date of this
8 incident, since February 9th of 2013, for a total of 431
9 days. I'd ask the Court give him credit for---

10 THE COURT: Absolutely.

11 MR. POOLE: ---that time.

12 THE COURT: Certainly.

13 Mr. Smith, anything you want to tell me?

14 THE DEFENDANT: No, sir.

15 THE COURT: The victim, anything you want to tell me?

16 MS. PAGE: No, sir.

17 THE COURT: All right. Sentence of the Court is you be
18 committed to the State Department of Corrections for a
19 period of nine years.

20 Good luck to you.

21 SOLICITOR GILMER: Thank you, Your Honor.

22

23

24 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

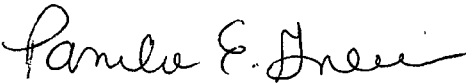
25

C E R T I F I C A T E

1
2
3 I, Pamela E. Green, Official Court Reporter for the
4 Seventh Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate and
6 complete Transcript of Record of the proceedings had and
7 evidence introduced in the trial of the captioned case,
8 relative to appeal, in the Court of General Sessions for
9 Spartanburg County, South Carolina, on the 16th and 17th day
10 of April, 2014.

11 I do further certify that I am neither of kin, counsel
12 nor interest to any party hereto.

13
14
15
16 August 5th, 2014
17
18

19 
20 _____

21 PAMELA E. GREEN, Court Reporter
22
23
24
25

To: 918037341397-08852 P. B/10

596 3600

JUN-24-2014 13:41 From: FILE ROOM 154

SENTENCE ALIEN
WITNESSES
 REPORT ENDED
 SPARTANBURG COUNTY SHERIFF'S OFFICE
 ARRESTED DEFENDANT'S
 ARRESTED SIGNATURE
 ARRESTED DATE
 ARRESTED VIOLATION COPY

DOCKET # **13-GS-42-3303**

The State of South Carolina
 County of Spartanburg
BARRY BARNETTE, SOLICITOR
 COURT OF GENERAL SESSIONS
 JUL 27 2013
 TERM

FILED
CLERK OF COURT
 SPARTANBURG COUNTY
2013 JUL 23 AM 11:29
M. HOPE BLACKLEY

ARREST WARRANT NUMBER

Direct Indictment (2013A4210200533)

ACTION OF GRAND JURY

True Bill JUL 19 2013
Handwritten Signature
 Foreperson of Grand Jury
 Date

THE STATE

vs.

JAMES PATRICK SMITH

VERDICT

Handwritten
 Foreperson of Petit Jury
 Date: **4-17-14**

Indictment for
**CRIMINAL DOMESTIC VIOLENCE OF
 A HIGH AND AGGRAVATED NATURE**

SC Code: 16-25-65
 CDR Code: 2988
 Class FEL/UNC

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

101 7 9 2013

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

**CRIMINAL DOMESTIC VIOLENCE OF A
HIGH AND AGGRAVATED NATURE**

That James Patrick Smith did, in Spartanburg County on or about February 9, 2013, intentionally commit an assault and battery against the victim, Tammy Page, which involved the use of a deadly weapon or resulted in serious bodily injury, and/or he did intentionally commit an assault, with or without an accompanying battery, which would reasonably cause a person to fear imminent serious bodily injury or death, to wit: by striking the victim about the face and/or body and/or kicking the victim and/or holding a knife about the victim's neck and/or threatening the victim with a knife, all in violation of §16-25-65, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976)*, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

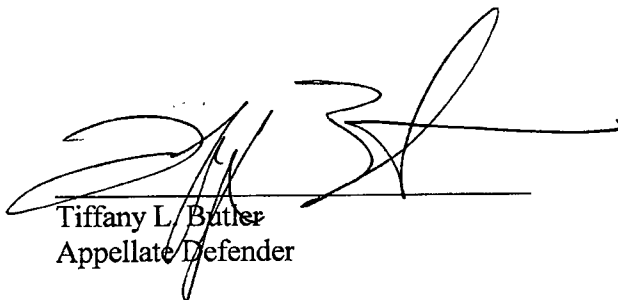


ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 9, 2015



Tiffany L. Butler
Appellate Defender

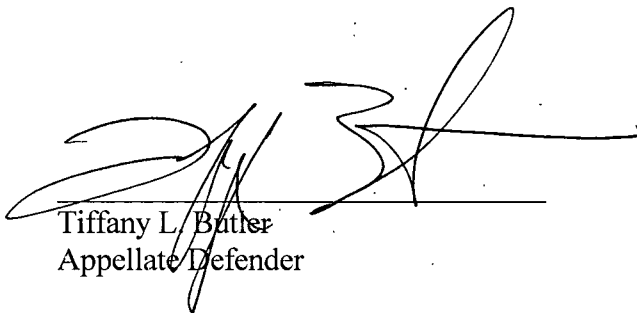
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

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February 9, 2015



Tiffany L. Butler
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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Columbia, S. C. 29211-1589
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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Spartanburg County
Doyet A. Early, III, Circuit Court Judge

RECEIVED

FEB 09 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

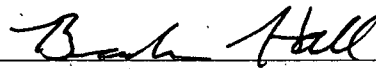
JAMES PATRICK SMITH,

APPELLANT

APPELLATE CASE NO. 2014-000921

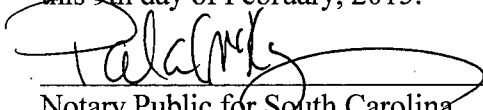
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of February, 2015.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 9th day of February, 2015.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022