

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lancaster County

William Jeffrey Young, Circuit Court Judge

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

JABARRIE BROWN,

PETITIONER

APPENDIX

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Jabarrie Brown, Appellant.

Appellate Case No. 2012-210387

Appeal From Lancaster County
W. Jeffrey Young, Circuit Court Judge

Unpublished Opinion No. 2015-UP-150
Submitted February 1, 2015 – Filed March 18, 2015

AFFIRMED

Appellate Defenders Breen Richard Stevens and
Benjamin John Tripp, both of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Senior
Assistant Deputy Attorney General Salley W. Elliott, and
Senior Assistant Attorney General David A. Spencer, all
of Columbia; and Solicitor Douglas A. Barfield, Jr., of
Kershaw, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Franks*, 376 S.C. 621, 624, 658 S.E.2d 104, 106 (Ct. App. 2008) ("An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion."); *State v. Tyndall*, 336 S.C. 8, 21, 518 S.E.2d 278, 285 (Ct. App. 1999) (stating "it is not error to refuse to charge the lesser included offense unless there is evidence tending to show the defendant was guilty only of the lesser offense"); *State v. Morgan*, 352 S.C. 359, 365, 574 S.E.2d 203, 206 (Ct. App. 2002) ("The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible."); *id.* at 365-66, 574 S.E.2d at 206 ("All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute."); S.C. Code Ann. § 16-25-20(A) (Supp. 2014) (providing criminal domestic violence (CDV) occurs when a person "(1) cause[s] physical harm or injury to a person's own household member; or (2) offer[s] or attempt[s] to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril"); S.C. Code Ann. § 16-25-10(3) (Supp. 2014) (stating a household member includes individuals who have a child in common); S.C. Code Ann. § 16-25-65(A) (Supp. 2014) (stating a person who commits CDV accompanied by "an assault, with or without an accompanying battery, which would reasonably cause a *person* to fear imminent serious bodily injury or death" is guilty of criminal domestic violence of a high and aggravated nature (CDVHAN) (emphasis added)); *State v. Murphy*, 322 S.C. 321, 325, 471 S.E.2d 739, 741 (Ct. App. 1996) ("Assault is an unlawful attempt or offer to commit a violent injury upon another person, coupled with the present ability to complete the attempt or offer by a battery."); *id.* ("Assault differs from assault and battery in that there is no touching of the victim in an assault."); *State v. Golston*, 399 S.C. 393, 397-98, 732 S.E.2d 175, 178 (Ct. App. 2012) ("In most prosecutions for CDVHAN, there will be evidence the defendant committed acts which constitute only CDV in addition to acts which constitute CDVHAN. . . . However, the mere existence of evidence that [the defendant] committed these acts in addition to other acts which could constitute CDVHAN . . . does not warrant a jury charge on simple CDV. Rather, to warrant a jury charge on the lesser offense, the evidence viewed as a whole must be such that the jury could conclude the defendant is guilty of the lesser offense *instead* of the indicted offense. In other words, the existence of evidence that [the defendant] committed simple CDV in addition to CDVHAN does not warrant the charge. There must be evidence from which the jury could

conclude the defendant committed only the lesser offense." (internal citations and quotation marks omitted)).

AFFIRMED.¹

FEW, C.J., and HUFF and WILLIAMS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

JABARRIE BROWN,

APPELLANT

APPELLATE CASE NO. 2012-210387

Appeal from Lancaster County

William Jeffrey Young, Circuit Court Judge

Opinion No. 2015-UP-150 (Filed March 18, 2015)

PETITION FOR REHEARING

Appellant respectfully petitions the Court for a rehearing of the case decided in its Unpublished Opinion No. 2015-UP-150 pursuant to Rule 221(a), SCACR based upon the following points overlooked or misapprehended by the Court.

The Opinion cites *State v. Golston*, 399 S.C. 393, 397-98, 732 S.E.2d 175, 178 (Ct. App. 2012) for the proposition that “the mere existence of evidence that [the defendant] committed [acts constituting CDV] in addition to other acts which could constitute CDVHAN . . . does not warrant a charge on simple CDV. . . . [T]he existence of evidence that [the defendant]

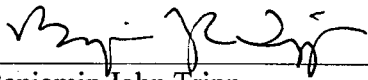
committed simple CDV in addition to CDVHAN does not warrant the charge. There must be evidence from which the jury could the defendant committed only the lesser offense.” The Court fails to properly distinguish the facts of *Golston* and misapplies this proposition.

In *Golston*, the Court reasoned that the defendant’s admission to slapping the victim logically dictated that he caused the serious bodily injury amounting to CDVHAN. The defendant suggested that his attack would not have led to her severe facial swelling. *Id.* at 396-98, 732 S.E.2d at 177. However, the Court stated that because no evidence showed “anyone else caused the injury to the victim . . . if the State proved *Golston* committed CDV, he was necessarily the person whose attack caused all of the victim’s injuries.” *Id.* at 398-99, 732 S.E.2d at 178-79. In that sense, the defendant’s testimony that he merely slapped the victim did not warrant a charge on simple CDV because the jury would have had to logically conclude that his attack resulted in her serious bodily injury; no evidence allowed the jury to conclude the defendant committed CDV by slapping the victim but did not thereby cause the serious injury aggravating the offense to CDVHAN.

In this case, however, the evidence allowed the jury to logically conclude that Appellant was either guilty of CDV or CDVHAN. If the jury concluded Appellant touched the victim with the gun or reasonably caused a person in the victim’s position to fear injury by the gun, he would be guilty of CDVHAN. However, if the jury concluded he did not touch the victim with the gun and did not reasonably cause a person in the victim’s position to fear injury from it, he would not be guilty of an aggravating circumstance and would only be guilty of CDV. Unlike in *Golston*, no logical computation dictated that Appellant could not be guilty of CDV and not simultaneously be guilty of CDVHAN. The decision of whether Appellant was guilty of CDV or

CDVHAN was a factual one for the jury based on evidence in the record supporting either conclusion.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

This 20th day of March, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lancaster County
William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

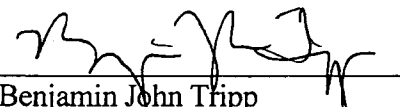
JABARRIE BROWN,

APPELLANT

APPELLATE CASE NO. 2012-210387

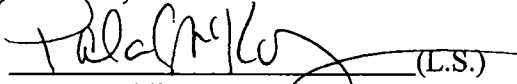
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of March, 2015.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 20th day
of March, 2015.


(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

The South Carolina Court of Appeals

The State, Respondent,

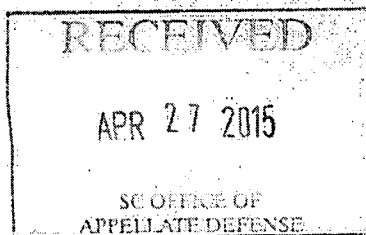
v.

Jabarrie Brown, Appellant.

Appellate Case No. 2012-210387

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



John Cannon Jr C.J.
Thomas E. Luff J.
H. B. W. Jr J.

Columbia, South Carolina

cc: Breen Richard Stevens, Esquire
Benjamin John Tripp, Esquire
David A. Spencer, Esquire
Douglas A. Barfield, Jr., Esquire
The Honorable W. Jeffrey Young

FILED

April 24, 2015

23373

ANDERS
No Respondent's Brief Filed

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LANCASTER COUNTY

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JABARRIE BROWN,

APPELLANT

APPELLATE CASE NO. 2012-210387

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF GENERAL SESSIONS
SIXTH JUDICIAL CIRCUIT
2007-GS-29-1338, 1339

State of South Carolina)
vs)
Jabarrie Brown)

Transcript of Record

March 31, April 1, 2010
York, South Carolina

B E F O R E:

The Honorable Jeffrey Young

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

Curtisha Mingo, Assistant Solicitor
Lancaster, South Carolina

Attorney for the State

Mark Grier, Assistant Public Defender
Lancaster, South Carolina

Attorney for the Defendant

SHIRLEY G. BROOM
CIRCUIT COURT REPORTER
SIXTEENTH JUDICIAL CIRCUIT

I N D E X

WITNESS	DIRECT	CROSS	RE-DIRECT	RE-CROSS
Cortney Mackey				
By Ms. Mingo	30			
By Mr. Grier		35		
Cortney Mackey				
By Ms. Mingo	52			
By Mr. Grier		65		
By Ms. Mingo			71	
By Mr. Grier				75
Stanley Brown				
By Ms. Mingo	76			
By Mr. Grier		84		
Mike Adams				
By Ms. Mingo	86			
By Mr. Grier		96		

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1 The Court - We are getting ready to strike
2 another case. Madam Solicitor, are you ready to call the
3 case?

4 Ms. Mingo - Your Honor, the State calls State
5 vs. Jabarrie Brown.

6 The Court - Okay. Could I have the indictments?

7 Ms. Mingo - I believe the Clerk has the
8 indictments.

9 (Indictments handed up to the Court)

10 The Court - Mr. Grier, do you have something ---

11 Mr. Grier - Your Honor, I'd just like to reserve
12 issues until -- There may be some legal issues that we
13 need to be heard.

14 The Court - Yes, sir. We will certainly do
15 that. We'll go ahead and strike the jury.

16 Mr. Grier - Thank you, Your Honor.

17 The Court - All right, ladies and gentlemen, we
18 are going -- This is the case of State vs. Jabarrie Brown.
19 Mr. Clerk, would you please place the jury under oath.

20 (Whereupon, the jury is duly sworn by the
21 Clerk.)

22 The Court - Thank you, ladies and gentlemen. We
23 will conduct today like we did the other day. There's a
24 series of questions that I need to ask you and one of the
25 reasons that you're under oath is because the attorneys

1 are relying on your answers in building a jury for this
2 case. In this case Mr. Brown is charged under three
3 indictments which I will read to you. Under Indictment
4 Number 2007-GS-29-1338 it states that Jabarrie Brown did
5 in Lancaster County on or about 10-20-07 cause physical
6 harm or injury or offer or attempt to cause physical harm
7 or injury with apparent present ability under
8 circumstances reasonably creating fear of imminent peril
9 to Cortney Mackey, the defendant's own household member
10 and during the commission of the offense the defendant did
11 commit an assault and battery against the victim which
12 involved the use of a deadly weapon or which resulted in
13 serious bodily injury to the victim or the defendant did
14 commit an assault against the victim with or without an
15 accompanying battery which would reasonably cause a person
16 of fear -- to fear imminent serious bodily injury or death
17 in violation of the code of laws of the State of South
18 Carolina. Under count 2, Mr. Brown is charged with
19 unlawful conduct towards a child. It says that Jabarrie
20 Brown did in Lancaster County on or about 10-20-07 be the
21 parent or guardian or having charge or custody or being
22 responsible for the welfare of Child a child
23 one years of age, unlawfully and maliciously caused bodily
24 harm to the child so that the life or health of the child
25 was in danger or was likely to be endangered by Jabarrie

1 Brown in violation of the code of laws of the State of
2 South Carolina. And the third count under the indictment
3 is that Jabbarie Brown did in Lancaster County on or about
4 10-20-07 possess or visibly display a firearm during his
5 commission of a violent crime to which criminal domestic
6 violence of a high and aggravated nature in violation of
7 the code of laws of the State of South Carolina. Ladies
8 and gentlemen, as I told you before, the fact that the
9 defendant was charged, arrested and indicted on these
10 charges in no way to be an inference that he is guilty of
11 these charges. Again, these are merely the charging
12 documents that bring the case to Court. You will then
13 have an opportunity to hear all the evidence, but please
14 do not take any inferences because we are at the point
15 we're at now. Also, in South Carolina in certain
16 circumstances when a defendant fails to show for the
17 actual trial, we can still try him in his absence. Now,
18 the fact that he is not here does not in any way reduce
19 the State's responsibility to prove his guilt beyond a
20 reasonable doubt. Just like the defendant is not required
21 to testify during a trial, he does not have to be here
22 either and the State still has the burden of proving the
23 guilt beyond a reasonable doubt. Now, let me go ahead and
24 go through the series of questions and then we'll begin
25 the striking of the jury. The first question I have, has

1 anyone ever been related by blood or marriage to the
2 Defendant, Jabbarie Brown or the alleged victims, Cortney
3 Mackey and Child If so, please stand at this
4 time.

5 (No Response)

6 The Court - All right, no one standing. Thank
7 you. Has anyone ever had a close personal or social
8 relationship with either the Defendant, Jabbarie Brown, or
9 the alleged victims, Cortney Mackey or Child If
10 so, please stand.

11 (Juror stands)

12 The Court - Yes, ma'am?

13 Juror - I went to school with Cortney?

14 The Court - Okay. You went to school with
15 Cortney Mackey. Would the fact that you -- And state your
16 name, please.

17 Juror - Charlotte Mills.

18 The Court - And what number are you?

19 Juror - I don't ---

20 Clerk - 91.

21 Juror - 91.

22 The Court - You're number 91. Remember that.
23 Would the fact that you went to school with Ms. Cortney
24 Mackey make it so that you couldn't be fair and impartial
25 to the State or the defense in this case?

1 Juror - No, sir.

2 The Court - All right, thank you, ma'am. This
3 is a list of witnesses, potential witnesses, Cortney
4 Mackey, Stanley Brown and Investigator Mike Adams of the
5 Lancaster Sheriff's Office. Has anyone ever been related
6 by blood or marriage or had any social or business
7 relationships with either of these or any of these
8 witnesses except for the lady in the back who's already
9 spoken concerning that.

10 (Juror stands)

11 The Court - Yes, ma'am?

12 Juror - Stanley Brown was brother -- my
13 brother's girlfriend's dad.

14 The Court - Your brother's girlfriend's dad.

15 Juror - Yes. If it's the same Jabarrie ---

16 The Court - Once removed.

17 Juror - --- Brown that I know, my brother's
18 girlfriend is -- It's her brother, if it's the same
19 Jabarrie Brown.

20 The Court - All right, would the fact that you
21 have that relationship -- Or I'm not sure what
22 relationship it is ---

23 Juror - I know his sister.

24 The Court - Would the fact that you have that
25 relationship make it so that you couldn't be fair and

1 impartial to the State or the defense in this case?

2 Juror - No.

3 The Court - All right, thank you, ma'am.

4 Court Reporter - We need her name.

5 Mr. Grier - Judge, could we ---

6 The Court - Oh, yes, your name, please. I'm
7 sorry.

8 Juror - I'm 42, Kayla Evans.

9 The Court - All right, ladies and gentlemen, the
10 attorneys who will be trying this case are Ms. Curtisha
11 Mingo for the Solicitor's office and Mr. Mark Grier for
12 the defendant. Has any member of the jury panel ever been
13 represented by either of these attorneys or by their law
14 firms? If so, please stand.

15 (Attorneys stand)

16 The Court - Thank you.

17 (Juror stands)

18 The Court - Yes, ma'am?

19 Juror - My son's been represented by Mr. Grier.

20 The Court - Well, if you could state your name
21 and ---

22 Juror - Debra Mccowan, juror 82.

23 The Court - All right, and what's your
24 relationship with Mr. Grier?

25 Juror - My son has been represented by Mark

1 Grier.

2 The Court - Okay. Would the fact that your son
3 has been related -- or represented by Mark Grier make it
4 so that you couldn't be fair and impartial to the State or
5 the defense?

6 Juror - No.

7 The Court - All right, thank you, ma'am. All
8 right, has any member of the jury panel or their immediate
9 family ever been the victim of a crime of violence? If
10 so, please stand and tell us what type of crime it is.

11 (Jurors stand)

12 The Court - Yes, ma'am? Please state your name.

13 Juror - Well, it -- 148, Linda Wilson and my
14 first marriage was an abusive relationship.

15 The Court - Okay. The fact that you were in an
16 abusive marriage before make it so that you couldn't be
17 fair and impartial to the State or the defense in this
18 case?

19 Juror - No, sir.

20 The Court - Thank you, ma'am. Yes, ma'am?

21 Juror - Juror 55, Pamela Hassett. I was
22 involved in an abusive relationship when I was young and
23 it would not have ---

24 The Court - It would not have an effect. All
25 right, thank you.

1 Mr. Grier - Your Honor, was that number 55?

2 Juror - Pardon me?

3 The Court - What number were you?

4 Juror - 55.

5 The Court - 55. Yes, sir?

6 Juror - I'm Derek Smith, number 124 ---

7 Court Reporter - He needs to speak up.

8 The Court - You've got to speak up in count of
9 the air conditioner.

10 Juror - Can you hear me?

11 The Court - Yes, sir.

12 Juror - Derek Smith, 124, victim of an assault
13 and robbery about ten years ago. It would not affect ---

14 The Court - It would not affect your ability to
15 be fair and impartial. Thank you, sir. Has any member of
16 the jury panel or their immediate family been the victim
17 of domestic abuse? Now, I think two ladies have spoke
18 that it applies to you. Is there anyone else it would
19 apply to?

20 (No response)

21 The Court - All right, thank you. Does any
22 member of the jury panel or their immediate family belong
23 to any of the organizations whose primary purpose is the
24 furtherance of victim's rights which would be Mothers
25 Against Drunk Drivers, Students Against Drunk Drivers,

1 Citizens Against Violence Crime and any other such
2 organization? If so, please stand.

3 (No response)

4 The Court - All right, thank you. No one
5 standing. Is there any member of the jury panel who is a
6 member of the Grand Jury that actually issued the
7 indictment in this case? If so, please stand.

8 (No response)

9 The Court - All right, thank you. No one is
10 standing. Is there any member of the jury panel who is
11 aware of any bias or prejudice either towards the State or
12 the defendant in this case? If so, please stand.

13 (No response)

14 The Court - Thank you. No one is standing. Is
15 there any member of the jury panel formed an opinion in
16 any way concerning the issues in this case? If so, please
17 stand.

18 (No response)

19 The Court - Now, -- Thank you. No one is
20 standing. Now, does any member of the jury panel know of
21 any reason whatsoever why he or she should not serve as a
22 juror in this case with particular emphasis being placed
23 upon your ability to be fair and impartial to both the
24 State and the defendant? If so, please stand.

25 (No response)

13

1 The Court - Thank you, ladies and gentlemen. No
2 one is standing. Does the State have any additional voir
3 dire questions?

4 Ms. Mingo - No, sir, none from the State.

5 The Court - Does the defense have anything voir
6 dire questions?

7 Mr. Grier - No, sir, Your Honor.

8 The Court - All right, ladies and gentlemen, at
9 this time names will be called. If you would do like you
10 did the other day, come down, bring your personal items
11 with you, because if you are selected to be on the jury,
12 you will be separated from the rest of the folks. Are we
13 ready to proceed?

14 (Discussion is held between the Clerk and the
15 Court which was not reported.)

16 Mr. Grier - Your Honor, I checked the statute
17 and it is a five and five.

18 The Court - Yes, it five and five.

19 Mr. Grier - One alternate.

20 The Court - One alternate. And, again, ladies
21 and gentlemen, I just want to re-emphasize, if you're not
22 picked to be on a jury, please don't take it personally.
23 It's -- These attorneys have a strategy as to what jury
24 they're looking for and again they can strike you for any
25 reason or no reason except for race or gender. So don't

1 take it personally if you get stricken.

2 (Brief Pause)

3 The Court - Thank you.

4 Clerk - Juror 129, Preston Starkey. What say
5 the State?

6 Ms. Mingo - Please present the juror.

7 Clerk - Defendant?

8 Mr. Grier - Please seat the juror.

9 Clerk - Please have a seat in the jury box.

10 (Juror seated)

11 Clerk - Juror number 2, Tina Aeschbacher. What
12 say the State?

13 Ms. Mingo - Please present the juror.

14 Clerk - Defendant?

15 Mr. Grier - What number is that?

16 Clerk - Number 2.

17 Mr. Grier - Oh, okay. Please excuse Ms.
18 Aeschbacher.

19 Clerk - You're excused. Juror 144, Linda
20 Watson. What say the state?

21 Ms. Mingo - Please present the juror.

22 Clerk - Defendant?

23 Mr. Grier - Please swear the juror.

24 Clerk - Please have a seat in the jury box.

25 (Juror seated)

1 Clerk - Juror 117, Tommy Robinson. What say the
2 State?

3 Ms. Mingo - Please present the juror.

4 Clerk - Defendant?

5 Mr. Grier - Please swear the juror.

6 Clerk - Please have a seat in the jury box.

7 (Juror seated)

8 Clerk - Juror 68, Danny Killough. What say the
9 State?

10 Ms. Mingo - Please present the juror.

11 Clerk - Defendant?

12 Mr. Grier - Please excuse Mr. Killough.

13 Clerk - You're excused. Juror 17, Lucinda
14 Broughton. What say the State?

15 Ms. Mingo - Please present the juror.

16 Clerk - Defendant?

17 Mr. Mark - Please present the juror.

18 Clerk - Please have a seat in the jury box.

19 (Juror seated)

20 Clerk - Juror 137, Vonda Tidwell. What say the
21 State?

22 Ms. Mingo - Please present the juror.

23 Clerk - Defendant?

24 Mr. Grier - Please swear the juror.

25 Clerk - Please have a seat in the jury box.

1 (Juror seated)

2 Clerk - Juror 55, Pamela Hassett. What say the

3 State?

4 Ms. Mingo - Please present the juror.

5 Clerk - Defendant?

6 Mr. Grier - Please excuse Ms. Hassett.

7 Clerk - You're excused. Juror 124, Derek Smith.

8 What say the State?

9 Ms. Mingo - Please present the juror.

10 Clerk - Defendant?

11 Mr. Grier - Please swear the juror.

12 Clerk - Please have a seat in the jury box.

13 (Juror seated)

14 Clerk - Juror 22, Rhonda Caskey. What say the

15 State?

16 Ms. Mingo - Please present the juror.

17 Clerk - Defendant?

18 Mr. Grier - Please swear the juror.

19 Clerk - Please have a seat in the jury box.

20 (Juror seated)

21 Clerk - Juror 59, Tammy Hinson. What say the

22 State?

23 Ms. Mingo - Please excuse the juror.

24 Clerk - You're excused. Juror 48, Tonda Giles.

25 What say the State?

1 Ms. Mingo - Please present the juror.

2 Clerk - Defendant?

3 Mr. Grier - Please swear the juror.

4 Clerk - Please have a seat in the jury box.

5 (Juror seated)

6 Clerk - Juror 130, Timothy Staton. What say the
7 State?

8 Ms. Mingo - Please present the juror.

9 Clerk - Defendant?

10 Mr. Grier - Please swear the juror.

11 Clerk - Please have a seat in the jury box.

12 (Juror seated)

13 Clerk - Juror 100, Christine Organek. What say
14 the State?

15 Ms. Mingo - Please present the juror.

16 Clerk - Defendant?

17 Mr. Grier - Please excuse the juror.

18 Clerk - You're excused. Juror number 62, Glenn
19 Huffaker. What say the State?

20 Ms. Mingo - Please present the juror.

21 Clerk - Defendant?

22 Mr. Grier - Please swear the juror.

23 Clerk - Please have a seat in the jury box.

24 (Juror seated)

25 Clerk - Juror number 7, Scott Beckham. What say

1 the State?

2 Ms. Mingo - Please excuse the juror.

3 Clerk - You're excused. Juror 134, Maxine
4 Stradford. What say the State?

5 Ms. Mingo - Please present the juror.

6 Clerk - Defendant?

7 Mr. Grier - Please swear the juror.

8 Clerk - Please have a seat in the jury box.

9 (Juror seated)

10 Clerk - Juror 51, Howard Griffin. What say the
11 State?

12 Ms. Mingo - Please present the juror.

13 Clerk - Defendant?

14 Mr. Grier - Please swear the juror.

15 Clerk - Please have a seat in the jury box.

16 (Juror seated)

17 The Court - One alternate, one strike each.

18 Clerk - Juror 122, Matthew Sistare. What say
19 the State?

20 Ms. Mingo - Please present the juror.

21 Clerk - Defendant?

22 Mr. Grier - Please swear the juror.

23 Clerk - Please have a seat in the jury box.

24 (Juror seated)

25 Clerk - If I call your name, please raise your

1 hand. Preston Starkey, Linda Watson, Tommy Robinson,
2 Lucinda Broughton, Vonda Tidwell, Derek Smith, Rhonda
3 Caskey, Tonda Giles, Timothy Staton, Glenn Huffaker,
4 Maxine Stradford, Howard Griffin, alternate, Matthew
5 Sistare. Thank you.

6 The Court - Thank you. Ladies and gentlemen,
7 you have been selected for the jury in this case. I'm
8 going to dismiss you to the jury room for a few minutes.
9 We're going to have some other things that we need to take
10 up. Please do not discuss this case amongst yourselves
11 while you're back there. Thank you.

12 (Jury exits the courtroom)

13 The Court - Is there any objection to the jury
14 that has been selected and the manner in which it was
15 selected? Solicitor?

16 Ms. Mingo - Not from the State?

17 The Court - Mr. Grier?

18 Mr. Grier - None from defense, Your Honor.

19 The Court - All right, thank you. They will be
20 our jury for this case. Now, ladies and gentlemen, you
21 will not be needed for the balance of the day, and that's
22 I guess a good thing for y'all. We will be busy here
23 working throughout the day, but you will need to call back
24 after six o'clock tonight to see if your services will be
25 needed tomorrow. Thank you again for your service and

1 have a nice day. Be sure -- If says be here tomorrow
2 morning, you need to be here tomorrow morning, because
3 three other of your friends aren't going to find this to
4 be a pleasurable afternoon, so y'all have a nice day.

5 (Remaining jury members exit the courtroom)

6 The Court - Any matters we need to take up?

7 Mr. Grier - There are, Your Honor.

8 The Court - Yes, sir.

9 Mr. Grier - Just briefly may we approach?

10 The Court - You may.

11 (Bench conference was held which was not
12 reported.)

13 The Court - Let's bring the jury back.

14 (Jury returns to the courtroom)

15 The Court - Mr. Stanton, if you would sit in
16 this chair right here, please. You may be seated. All
17 right, madam Clerk, would you please swear the jury?

18 Deputy Clerk - Yes, sir.

19 (Whereupon, the jury is duly sworn by the Deputy
20 Clerk.)

21 The Court - Thank you, ladies and gentlemen.
22 And Mr. Stanton, I am going to appoint you as the
23 foreperson of this jury. The specific details of what
24 you're going to need to do I'll explain to you later, but
25 you will always sit in that seat. The rest of you can sit

21

1 wherever you want to. Now, ladies and gentlemen, we have
2 some things to take up with the attorneys before we begin
3 the trial. So what I am going to do is I'm going to go
4 ahead and dismiss you for lunch. At that point in time --
5 Well, I'm going to ask that you be back here at 2:00
6 o'clock when we're going to try the case. Now, you're
7 under oath as jurors, so you cannot talk to anyone about
8 this case. You cannot talk to each other about this case.
9 I'll direct you as to when you can start your
10 deliberations, but you're not to discuss it with each
11 other or anyone or do any research or anything like that
12 while you're on your lunch-break. Hopefully, this case
13 will not take that long to try, but we'll just have to see
14 how it goes, but we do have some things that we do need to
15 take up prior to your coming back at 1:00 o'clock. Y'all
16 have a nice lunch and I'll see you at 1:00 o'clock.

17 Juror - Did you say ---

18 Juror - One or two?

19 The Court - Did I say -- one, 1:00 o'clock.
20 We're early so we call this a country lunch.

21 (Jury exits the courtroom)

22 The Court - All right, are there any motions
23 from the State?

24 Ms. Mingo - Not from the State, Your Honor.

25 The Court - All right, any motions from the

1 defense?

2 Mr. Grier - Yes, Your Honor. Your Honor, as the
3 Court has noted, the defendant is not present and ---

4 The Court - Yes, sir.

5 Mr. Grier - --- I have not been able to
6 communicate with him directly about the circumstances that
7 have arisen which have put us in trial this week. Your
8 Honor, I am moving for a continuance. I would ask the
9 Court to consider that Mr. Brown does not have specific
10 notice that the case is going to be tried this week.
11 Judge, I would hand up a few cases that create a record of
12 -- I think the most probably recent cases in the line of
13 cases -- I've provided these with defense -- or with the
14 Solicitor rather, Your Honor, -- the Ravenell case. Of
15 course, that's the standard for -- and references other
16 cases that elude to the basis for the continuance of -- Of
17 course, you know there must be the finding that the
18 defendant received notice of his right to be present and
19 a warning that the trial would proceed in his absence. I
20 would note, Judge, in the case of -- of Danny Ellis and
21 generally the line of cases, Your Honor, where the Court
22 has not granted continuances that were requested by
23 defense, that there is some obviously conflict on the
24 issue out there, but most certainly an abundance of them
25 require specific notice that the defendant was going to be

23

1 on trial during the -- during the term where the case is
2 actually called, Your Honor, and Judge, I'm just -- I
3 apologize if I -- Your Honor, I would note on the second
4 page of the Danny Ellis trial, I think that's page 306, in
5 our Courts of General Sessions defendant's are the Courts
6 generally given notice of the term of Court in which they
7 will be tried. They do not know the exact date and time
8 of their trial until shortly before the trial begins. We
9 think the notice is sufficient to enable a defendant to
10 make a effective waiver of his right to be present at his
11 trial. Defendant admitted knowing which term of Court he
12 was scheduled to be tried in before he left to New
13 Orleans. The deliberate absence of the defendant who
14 knows that he stands accused in a criminal case and that
15 his trial will begin during a specific period of time
16 indicates nothing less than an intention to obstruct the
17 orderly process of justice, Your Honor, and I would
18 suggest that that -- that our Supreme Court through that
19 language has said that when a defendant specifically knows
20 that he's going to be tried, that in fact, in that case --
21 -

22 The Court - That case said he was on notice that
23 the trial could be called during a term of Court, that he
24 wasn't given specific notice, but he was given notice that
25 his case could be tried during the term, and that was

1 sufficient notice.

2 Mr. Grier - Yes, Your Honor, but he was present
3 during the term and left during the term as well, and
4 Judge and the facts in the Ravenell case, you know, the
5 defendant had received -- had actually been subpoenaed by
6 the -- by the prosecutors and had -- and most certainly he
7 had -- and he was present on the first day of his trial
8 and the jury was drawn and he absented himself and so,
9 Your Honor, there's certainly plenty of cases in the --
10 including in the Koontz case where -- where the defendant
11 received the actual notice, that he had an attorney that
12 had notified him and he voluntarily chose to absent
13 himself when he was told that the Court was going -- the
14 trial was going to be ---

15 The Court - Did you send him notice of this
16 trial?

17 Mr. Grier - Your Honor, I have -- we have --
18 Judge, our notice to -- last notice to Mr. Jabbarie Brown
19 from my office was sent dated March the 10th, 2010 to the
20 last -- the address that we have in the file stating that
21 your name's on the General Sessions trial list for the
22 week of March the 29th, 2010 through April 2nd, 2010 and
23 so yes, Your Honor.

24 The Court - All right, thank you. Ms. Mingo?

25 Ms. Mingo - Your Honor, I believe if a letter

25

1 has been sent from his attorney to his address and I
2 actually have a copy of Mr. Brown's bond paperwork, and
3 that address is listed as and I'm
4 assuming Mr. Grier sent a letter to that address.

5 The Court - Is that where it was sent to?

6 Mr. Grier - (Indicating yes)

7 The Court - All right.

8 Mr. Grier - Your Honor, let me double-check to
9 make sure that was not some error.
10 Lancaster, South Carolina, yes, Your Honor.

11 Ms. Mingo - Yes, sir. So I certainly believe
12 that could serve as appropriate notice. He's also aware,
13 according to the bond paperwork, that this trial would
14 proceed in his absence if he did not show up. He signed
15 the bond paperwork to indicate that.

16 The Court - Let me see the bond paperwork.

17 Ms. Mingo - Yes, sir.

18 (Document handed up to the Court)

19 The Court - Thank you.

20 Mr. Grier - Judge, I would like to just correct
21 something, because I had mis-stated to the Court that his
22 bond had been destroyed in the fire, which I had been told
23 while we were under the impression that ---

24 The Court - I knew the bondsman would still have
25 a copy.

1 Mr. Grier - And so I didn't want to -- That was
2 a mistake. I didn't realize that a bond existed. I
3 certainly wouldn't have said so if I had realized ---

4 The Court - Harmless error. Harmless error.
5 Don't ---

6 (Discussion is held between counsel which was
7 not reported.)

8 The Court - The original was destroyed in the
9 fire.

10 Mr. Grier - Yes, sir.

11 The Court - But the bondsman always has a copy.

12 Mr. Grier - Exactly.

13 The Court - I guarantee you the bondsman has a
14 copy.

15 Ms. Mingo - Your Honor, and that copy was
16 actually in the back of my file. Apparently I copied it
17 before the fire.

18 Mr. Grier - But I think I represented they
19 wouldn't be able to produce a bond, Your Honor, and so I -
20 - That's what I believed at the time that I said ---

21 The Court - Well, they did. And it's here. He
22 specifically signed. He says that he understands, he --
23 has a right -- an obligation to be present at trial and
24 should I fail to attend the Court, the trial would proceed
25 in my absence. Mr. Grier, you are a good member of the

1 South Carolina Bar. You sent a letter to your client as
2 every lawyer would do. You sent it to the right address.
3 The mere fact that your client has decided he wanted to do
4 something else today is not going to stop this trial, so
5 motion is denied. Thank you.

6 Mr. Grier - Thank you, Your Honor.

7 The Court - We may want to make that a part of
8 the record.

9 Ms. Mingo - Yes, sir.

10 The Court - Yes, let's make that a ---

11 Ms. Mingo - Should I make it an exhibit now.

12 The Court - Yes. That'll be Court's Exhibit
13 Number 1.

14 (Document marked as Court's Exhibit Number 1.)

15 Ms. Mingo - Your Honor, at this time I move in
16 to introduce Court's Exhibit Number 1 into evidence, Mr.
17 Brown's paperwork.

18 The Court - Any objection?

19 Mr. Grier - Your Honor, for the record I'll
20 object. I don't ---

21 The Court - All right, overruled. Court's
22 Exhibit Number 1 is admitted into evidence.

23 (Document marked into evidence as Court's
24 Exhibit Number 1.)

25 Mr. Grier - Your Honor -- Excuse me. May it

1 please the Court.

2 The Court - Yes, sir.

3 Mr. Grier - Your Honor, I had I think presented
4 defendant's motions in limine prior to the Court and ---

5 The Court - Let's put them on the record.

6 Mr. Grier - Yes, Your Honor. If we might, the
7 first motion and -- Defendant moves to require the State
8 to tell of any potential witnesses the State have given in
9 subsequent oral statements either to police or the
10 solicitor's officer or other law enforcement that differs
11 in any way from the written statements provided to the
12 defense. Your Honor, I just wanted to note -- have the
13 State ---

14 The Court - Okay. Ms. Mingo, do you have any
15 other statements to be admitted that have not been
16 revealed to Mr. Grier?

17 Ms. Mingo - No, sir, I do not.

18 The Court - All right. Thank you.

19 Mr. Grier - Thank you, Your Honor. Your Honor,
20 number 2 I would -- They have complied. I have a rap
21 sheet. Number 3, I've requested, and Judge, and if I
22 might -- Well, I think number 3 might be disposed of by a
23 subsequent one and so I'll come back to that if we're
24 going to do some -- I requested a -- And I moved for the
25 continuance so that's done. Your Honor, I'm moving to

1 request that the Court dismiss the charge of unlawful
2 neglect of a child on grounds that the allegations set
3 forth do not establish the requisite criminal intent
4 required to prosecute the defendant for that charge.
5 Judge, I ---

6 The Court - No evidence has been presented. I
7 mean I think that would be more ripe at the time of
8 directed verdict based upon ---

9 Mr. Grier - Your Honor, I would agree with you
10 under ordinary circumstances. My final motion would be,
11 you know, to -- to sever the trials, because I believe
12 that, you know, there's going to be prejudicial -- Your
13 Honor, the abuse of the child I think is in our society is
14 -- is at a different level I think and viewed by jurors
15 with a passion that creates a substantial likelihood of
16 some prejudice as to the other charge of criminal domestic
17 violence of a high and aggravated nature. Your Honor, if
18 all the evidence comes in for this child, there's going to
19 be pictures that the State's going to attempt to present
20 of this child and evidence that this child was injured
21 that, you know, I believe regardless of what their verdict
22 would be in -- with regard to the charge of unlawful
23 conduct towards a child, there'd be a substantial risk of
24 prejudice to the defendant merely by the presentation of
25 that evidence and a motion for a directed verdict at the

Cortney Mackey - Direct by Ms. Mingo

30

1 time, you know, the prejudice will have already occurred
2 and the defendant -- the jury will have been exposed to
3 the -- what the defendant alleges as prejudicial beyond
4 probative, and so I'm asking that the State be required to
5 proffer some evidence to establish intent so that the
6 Court could determine whether there's -- whether there is
7 any evidence of intent and whether that -- whether that
8 case should -- evidence of how the conduct towards the
9 child should even be presented to the jury.

10 The Court - Are you ready to proceed?

11 Ms. Mingo - Yes, sir.

12 The Court - All right, you may do so.

13 Ms. Mingo - State calls Cortney Mackey.

14 Cortney Mackey, after being first duly sworn,
15 testifies as follows -

16 Direct Examination

17 by Ms. Mingo -

18 Q State your name for the record, please.

19 A Cortney Neshawn (phonetic) Mackey.

20 Q Okay. Ms. Mackey, how do you know Jabbarie Brown?

21 A That's my boyfriend.

22 Q Okay. You have kids together?

23 A (Indicating yes)

24 Q Okay. Were the two of you dating back on October
25 20th, 2007?

Cortney Mackey - Direct by Ms. Mingo

31

1 A Yes.

2 Q And where were you staying during that time?

3 A McIlwain Road with my aunt.

4 Q Okay. Did an altercation occur on that day?

5 A Yes.

6 Q In your aunt's house?

7 A Yes.

8 Q Okay. I'm not going to ask you everything detail to
9 detail. How did it start?

10 A We were eating food from McDonald's and we got on the
11 subject of me not coming by his house last night, well,
12 that night, the night before, ---

13 Q Okay.

14 A --- and that's how it started.

15 Q Did anything happen after that?

16 A We were standing up and I know he pushed me on the
17 couch and I pushed him back.

18 Q Okay. So he pushed you down and you pushed him back.

19 A (Indicating yes)

20 Q Where was your son during this time?

21 A He was downstairs with us.

22 Q Okay. After the pushing match, what happened after
23 that?

24 A Then I went up the stairs and I took my son with me
25 and went into my bedroom.

Cortney Mackey - Direct by Ms. Mingo

32

1 Q Okay. Did you close the door behind you?

2 A I think I closed the door, but I don't think I locked
3 it or anything. I just closed it.

4 Q Okay. Did he eventually come in that room, in the
5 bedroom?

6 A Yes.

7 Q Okay. How did he get in?

8 A He walked in.

9 Q Okay. Did anything happen in the bedroom?

10 A Yes, that's when he pushed me on the bed and then I
11 punched him in his head, in the top of his head.

12 Q Okay. What happened after that?

13 A I'm not -- I don't really remember. I know I called
14 his dad and told him to come get him.

15 Q Okay.

16 A And maybe after I called I went -- I went into the
17 bathroom and that's when I seen the gun.

18 Q How did you see the gun?

19 A He pulled it out of his pocket.

20 Q Okay. And what did he do with the gun ---

21 A He pointed it at me.

22 Q --- when he pulled it out of his pocket?

23 A He pointed it at me.

24 Q Where at? At your head or where did he point it?

25 A He pointed it at my head.

Cortney Mackey - Direct by Ms. Mingo

33

- 1 Q Okay. And how close was he to you?
- 2 A Oh, it's a small bathroom.
- 3 Q Okay. Okay, and where was Derek during this time,
- 4 your son? Is that your son's name?
- 5 A He was like standing -- Yes, like standing in the
- 6 hallway.
- 7 Q Okay. What happened after that?
- 8 A Somehow we went back downstairs. We walked -- I
- 9 think we just went downstairs. I think by that time
- 10 Stanley was outside.
- 11 Q Who is Stanley?
- 12 A His dad.
- 13 Q Okay.
- 14 A Stanley was outside and then that's when -- Jabbarrie
- 15 was also outside, but when I stuck my middle finger up at
- 16 him, that's when ---
- 17 Q Well, when did Jabbarrie go outside? I'm sorry. Was
- 18 it --
- 19 A When we left -- We didn't know he was out there. We
- 20 just went down the stairs and when we got down the stairs,
- 21 Stanley was out there. Jabbarrie was outside with Stanley,
- 22 but Jabbarrie seen me stick my middle finger up at him and
- 23 then that's when he kicked the door.
- 24 Q Okay. Was the main door open or closed?
- 25 A You mean ---

Cortney Mackey - Direct by Ms. Mingo

34

1 Q He had to open the main door or was it already
2 opened?

3 A The main door was already open. It was like the
4 little storm door, that door was showing. It was closed.
5 You know how you have your main door open and your storm
6 door. He kicked the storm door.

7 Q Regular storm door, glass at the top and screen at
8 the bottom?

9 A No, it was a -- just plain glass.

10 Q Just a glass.

11 A Yes.

12 Q Okay. Where was your son standing, Child

13 A He was like coming from around behind the main door,
14 and when the glass fell in, it hit him.

15 Q Okay. Did Jabarrie -- Do you know if Jabarrie saw
16 Child

17 A No, I don't think he saw him.

18 Q You don't think he saw him.

19 A (Indicating no)

20 Q And you testified he came from around the main door
21 and walked in front of the screen door and at that time
22 that's when Jabarrie kicked the door?

23 A The door was already kicked. When it fell, it hit
24 him. It hit my son.

25 Q Okay. Okay. But previous to that he was standing

Cortney Mackey - Cross by Mr. Grier

35

1 behind the main door. Is that what you're staying?

2 A Yes, I -- Yes, I think so. He was coming down the
3 stairs with me and we were behind the door, but I walked
4 around the main door first and my son was behind me. When
5 I stuck my middle finger up, that's when he kicked the
6 door, and the door fell.

7 Q And one more time. I just want to make sure I'm
8 sure. Was Child in his view when he kicked that door?

9 A I don't think so, because the door -- the main door
10 is just this red wooden door. You can't like see through
11 it or see behind -- He was outside like kind of diagonal
12 and Child was real short, so I don't think he seen him.

13 Q And why was he trying to come back in?

14 A I mean I don't think he was trying to come back in.
15 I think he was just trying to do a scare tactic or
16 something, because he could've just walked through the
17 door, because the screen door wasn't locked.

18 Ms. Mingo - Answer anything Mr. Grier may have.

19 The Court - Mr. Grier?

20 Mr. Grier - Thank you, Your Honor.

21 Cross Examination

22 by Mr. Grier -

23 Q Ms. Mackey, as I understand your testimony, your son
24 was walking around the main door.

25 A Right, he was coming with me. Right.

Cortney Mackey - Cross by Mr. Grier

36

1 Q The main door is solid, and you can't see through the
2 main door.

3 A No.

4 Q Your son is walking around the door. Prior to him
5 coming around the door, Jabbarrie kicks the door and the
6 glass falls and so your son walks into the path of the
7 broken glass?

8 A Yes. Yes.

9 Q Is that correct?

10 A Yes.

11 Q So at the time that Jabbarrie kicked the door, your
12 son would've been behind the door and out of view from
13 Jabbarrie. Is that ---

14 A Yes.

15 Mr. Grier - Thank you. I have no further
16 questions.

17 The Court - Thank you. Any re-direct?

18 Ms. Mingo - No re-direct, Your Honor.

19 The Court - Thank you, ma'am. You may step
20 down. All right, under Sections 63-5-70(A)(2) it says it
21 is unlawful for a person who has charge or custody of a
22 child who is the parent or guardian of a child and who is
23 responsible for the welfare of the child as defined in
24 Section 63-7-20 and to do or cause to be unlawfully or
25 maliciously any bodily harm to the child so that the life

1 or health of the child is endangered or likely to be
2 endangered. Now, the question would come up to be, is it
3 unlawful toward the child to strike at the mother hurting
4 the child along the way. Had the testimony been that he
5 saw the child next to the mother and still kicked in the
6 door, then I would probably allow the charge to go
7 forward, but from her own testimony he did not know that
8 the child was there, so I don't think there's any unlawful
9 conduct towards the child, and so for that -- therefore on
10 that charge I am going to grant the defense motion, strike
11 that charge and any pictures that relate to that as well.
12 I think that will make it a much cleaner case from that
13 standpoint and it's the right charge on that.

14 Ms. Mingo - Yes, sir.

15 The Court - All right.

16 Mr. Grier - Thank you, Your Honor. Judge, that
17 deals with the pictures and that deals with all of my
18 motions. I would -- I have no further motions at this
19 time.

20 The Court - All right. So let me make sure
21 we're clear. The charge of unlawful conduct towards a
22 child is hereby dismissed. The two we will be going
23 forward on are the criminal domestic violence high and
24 aggravated and possession or displaying a firearm or a
25 knife during the commission of a violent crime.

1 Mr. Grier - Yes, sir.

2 The Court - Anything further?

3 Ms. Mingo - Nothing from the State, Your Honor.

4 The Court - I'll see y'all back here at 1:00
5 o'clock.

6 Ms. Mingo - Yes, sir. Court's adjourned until -

7 -

8 Mr. Grier - Your Honor, -- I believe I can ask
9 when we get back or it's really off the record, discussion
10 just briefly. I wanted to ask you about your charges
11 typically. We don't need to do it on the record, if we
12 thought we do, we can do it when we get back.

13 (Discussion is held off the record which was not
14 reported.)

15 (Lunch recess)

16 (Discussion is held between the Court and the
17 jurors who did not report for service which was not
18 reported.)

19 The Court - All right, please bring our jury in.

20 (Jury returns to the courtroom)

21 The Court - Ladies and gentlemen, I hope you had
22 a nice lunch. I hope don't spoil y'all with your employer
23 by giving you two-hour lunch-breaks all the time. I
24 understand that isn't how it is in the real world, but I
25 will tell you that after y'all left we had other work to

1 do here, so we didn't get a two-hour lunch-break. All
2 right, jury has been sworn. The foreperson has been
3 selected. Now, ladies and gentlemen, before we begin the
4 trial -- This is the case of the State vs. Jabbarie Brown
5 -- Before we begin this trial I want to tell you that this
6 trial will probably be different from what you might
7 expect. You know, many people never have the opportunity
8 or chance to actually attend a trial or Court session as
9 you're doing today. We may think from watching tv, movies
10 or reading books that trials are always full of high
11 drama, intense actions and riveting circumstances. Now,
12 while all these may be true at times, this trial is not
13 for entertainment. This is a real trial which is a real
14 fundamental part of our United States democracy. It is a
15 search for the truth in an effort to make sure that
16 justice is done and searching for the truth and ensuring
17 that justice is done is often a slow, deliberate and
18 repetitive task, the opposite of what you may have seen on
19 tv and movies or read in books. Now, this courtroom is a
20 place of honour that is dedicated to the protection and
21 the preservation of our citizens' rights through what has
22 been called the greatest justice system ever created. The
23 attorneys who are appearing before you are advocates for
24 the parties that they represent, but first and foremost
25 they are officers of this Court who are sworn to uphold

1 the integrity and the fairness of our judicial system and
2 to help you in your search for the truth. You should
3 expect them to be professional, competent and ethical in
4 the representation of their client's interest and
5 remember, ladies and gentlemen, just a little while ago
6 you also took an oath to listen to the evidence in this
7 case and to reach a just and fair verdict. You're also
8 expected to be professional, reasonable and ethical as
9 well. Again, let me thank you for accepting this
10 important responsibility of jury service and for your
11 contribution to our justice system today. Now, what I'm
12 going to tell you now is intended to serve merely as an
13 introduction to the trial of this case. These remarks are
14 not a charge on the law which I will give you at the end
15 of the case. This is merely an explanation of the
16 procedures that we will follow throughout the trial of
17 this case so that you may better understand what is going
18 on and what is happening at this time. Now, let me tell
19 you, during this trial you will not be able to take notes
20 and so therefore, it's very important that you listen
21 closely to the evidence and throughout this trial. Now,
22 the Defendant, Jabbarie Brown, is charged by indictments
23 filed in this Court with the crimes of criminal domestic
24 violence of a high and aggravated nature and possession of
25 a knife or a firearm during the commission of a violent

1 crime. The elements of these particular charges will be
2 explained to you later. Now, the indictments are simply
3 the documents by which the case is brought into Court and
4 is no way in any sense evidence of the allegations
5 contained therein. The defendant has pled not guilty to
6 the indictments, so the State therefore has the full
7 responsibility and the burden of proving all of the
8 elements of the charges on each indictment beyond a
9 reasonable doubt, and it will be your duty, ladies and
10 gentlemen, to decide whether or not the State has met that
11 burden. Ladies and gentlemen, also the defendant is not
12 present for this trial. In the State of South Carolina a
13 defendant can be tried in his absence, but that is to not
14 come into consideration as you do your deliberations
15 simply because that in no way reduces the State's burden
16 of proving his guilt beyond a reasonable doubt. Your
17 purpose as jurors is to determine the facts. The evidence
18 in this case will be presented to you by the sworn
19 testimony from this witness stand and by other items that
20 may be placed into evidence as exhibits or by stipulations
21 of counsel. You are to determine the facts from the
22 testimony and the other evidence introduced into Court and
23 it will be up to you, ladies and gentlemen, to determine
24 the inferences which you feel may be properly drawn from
25 the evidence that is presented. It is especially

1 important, ladies and gentlemen, that you perform your job
2 -- your duty diligently and conscientiously because
3 ordinarily there is no way to correct an erroneous
4 determination of facts by a jury. On the other hand and
5 with equal importance, the same law that makes you the
6 Judges of the facts makes me the Judge of the law. The
7 law as given by me to you is the only law that you may
8 consider. You must accept the law as I give it to you and
9 follow it even though you may disagree. I can't tell you
10 the jury what the facts are and you cannot disagree with
11 me about what the law is or should be. Your job is to
12 take the law as I give it to you and apply it to the facts
13 as you find them from the testimony of the witnesses and
14 any other evidence that is introduced. After hearing the
15 evidence, you will deliberate and render a true and just
16 verdict under the solemn oath that you just took as
17 jurors. Until I advise you to begin your deliberations at
18 the conclusion of this case you must not discuss the case
19 with anyone else including each other except when
20 authorized to do so by me. You may not use a computer or
21 cellular phone or other electronic device with
22 communications capabilities while in attendance here at
23 trial. Now, you may use these items if there's a lunch-
24 break or a overnight, but it cannot be used to disclose
25 any information concerning this trial which would include

1 any information about a party, a witness, an attorney or
2 another Court officer, any news accounts about this case,
3 information collected by a juror or research or any topic
4 raised by any of the testimony that's brought in or
5 offered by any witness or any information collected by a
6 juror research or anything you might think would be
7 helpful in deciding the case. After the case is submitted
8 to you, you must discuss it only in the jury room with
9 your fellow jurors. The attorneys and the parties have
10 been instructed that they are not to talk to you at all,
11 so if you see one of the attorneys or the witnesses in the
12 courthouse halls and they don't even say hello, well,
13 they're not being impolite. They're just following my
14 instructions. Now, ladies and gentlemen, it's very
15 important that you keep an open mind and not decide any
16 issue on this case until all of the evidence has been
17 presented, the attorneys have made their closing arguments
18 and I have instructed you on the law. It is your solemn
19 responsibility to determine the facts or the guilt or the
20 innocence of the defendant and your verdict must be based
21 solely on the evidence as it is presented to you here in
22 this trial and the law as I instruct you at the close of
23 the trial. Now, in just a moment the solicitor will make
24 what is called an opening statement in which she will
25 explain to you what she believes the issues are in this

1 case. The attorney for the defendant may also make an
2 opening statement, although he is not required to do so.
3 What the attorneys tell you during opening statements is
4 not evidence in any way whatsoever. It is only their
5 contention as to what they believe the issues are. Now,
6 from time to time during this trial you may hear one of
7 the lawyers say something like, Your Honor, I believe we
8 have a question of law or a matter of law to take up or
9 may we approach the bench, or I may find that it's
10 necessary to excuse you from the courtroom for a short
11 time so the attorneys and I can discuss a matter of law.
12 Now, the reason that you're being dismissed from the
13 courtroom as I have said, you are the Judges of the fact
14 and I am the Judge of the law and sometimes when I'm
15 discussing matters of law with the attorneys it may be
16 necessary for me to make reference to the facts in
17 connection with making that ruling. As I have said, since
18 I'm not supposed to tell you what the facts are, I don't
19 want you to think by anything that I say that would
20 influence you in any way whatsoever, so I will dismiss you
21 from the courtroom. Now, also during the trial you may
22 hear one of the attorneys make an objection to certain
23 evidence that's about to be presented. Whether I sustain
24 the objection or overrule the objection should not be
25 considered that I favor one side over the other. I do

1 not. Nor should you consider that the party who is making
2 the objection is trying to hide something from you. In
3 this courtroom as in all situations in life, there are
4 specific rules that must be followed. The attorneys are
5 merely trying to follow the rules of evidence in making
6 their objections and I am only ruling on what I believe
7 the law of this State to be concerning that evidence.
8 Now, in determining what the true facts are in this case,
9 you must decide whether or not the testimony of the
10 witness is believable. It will be my responsibility to
11 rule as a matter of law as to whether or not certain
12 testimony is admissible, however once the testimony is
13 admitted, whether or not you believe it is solely for you
14 to determine. In deciding whether to believe a witness,
15 you have a right to consider the interest of any witness,
16 the bias of any witness, the prejudice of any witness, the
17 opportunity for the witness to have observed the matters
18 and things about which the witness may testify and the way
19 the witness acts on the witness stand. You have a right
20 to consider anything that is in the record that will help
21 you evaluate the testimony of a witness. That means it is
22 your duty to pay close attention to the witnesses and to
23 observe the witnesses and to listen to the witnesses and
24 to pay close attention to the attorneys and to the Court.
25 Do not let your mind wander but give strict attention to

1 the testimony in this case so that at the end of all the
2 testimony, after the arguments of counsel and the charge
3 of the law by me you will then be in a position to
4 determine what the true facts are and to apply the law to
5 those facts and thus render a true and just verdict. Mr.
6 Foreman, in addition, you are to preside over the -- in
7 the jury room and you are to be the jury spokesperson here
8 in Court. It will also be your duty to write the verdict
9 down, but I'll give you further instructions on that at
10 the conclusion of the case. Now, in order to preserve
11 everyone's rights I will give the parties an opportunity
12 to object to anything that I have stated to you. Does the
13 State have any objections to what I stated to the jury?

14 Ms. Mingo - No, sir.

15 The Court - Does the defense have any
16 objections?

17 Mr. Grier - No, Your Honor.

18 The Court - Thank you. Ladies and gentlemen, we
19 will now hear the trial of this case. Madam Solicitor?

20 Ms. Mingo - May it please the Court. Mr. Grier.
21 Good afternoon. My name is Curtisha Mingo and I'm the
22 Assistance Solicitor. I want to begin by thanking you for
23 your time and your attention here today in this case.
24 You're here today because the Defendant, Jabarrie Brown,
25 committed the crime of criminal domestic violence of a

1 high and aggravated nature as well as possessing a firearm
2 during the commission of a violent crime. The victim in
3 this case is Cortney Mackey and Ms. Mackey is in the
4 courtroom, and you're going to hear from her a little
5 later on. But what she'll tell you is, back on October
6 21st of 2007 she and Mr. Brown were in a romantic
7 relationship. They had a one year old child at the time
8 and she was living out on McIlwain Road with her aunt. On
9 this particular day Mr. Brown comes to visit her. Only
10 Ms. Mackey, Mr. Brown and their one-year old child are
11 present. They're having dinner and at some point Mr.
12 Brown becomes angry about something that had happened the
13 night before. Ms. Mackey was supposed to go see him and
14 she didn't show up or something along those lines and he
15 got angry. He became irate eventually and then he pushes
16 her. In an effort to get away from him she goes upstairs,
17 closes the door, Mr. Brown, excuse me, follows her
18 upstairs, come into the bedroom, continues to assault her
19 and it culminates in Mr. Brown pointing a gun at her head.
20 Now, you're going to hear from Ms. Mackey and she's going
21 to give you a lot more details as to what happened in this
22 case. You're also going to hear from Investigator Adams
23 from the Lancaster County Sheriff's office who was also
24 involved in this matter. He actually went to the home of
25 Mr. Brown, investigated it, spoke with Mr. Brown and spoke

1 with his father, Stanley Brown, who was also a witness in
2 this case, and at that residence he locates the weapon
3 that is used during the altercation. As I stated before
4 you're going to hear from Investigator Adams. You're
5 going to hear from Ms. Mackey and you're also going to
6 hear from Stanley Brown, the father of the defendant.
7 Now, this isn't going to be a lengthy trial. I think we
8 anticipate being done today, but it's a very important
9 trial, important for the State of South Carolina as well
10 as for Mr. Brown. That was just my brief overview of what
11 the facts are in this case, and you're going to hear a lot
12 more from the witness stand. I just ask that you pay
13 attention, stay alert. We'll try not to put you to sleep,
14 and at the end of this case I'm going to come back to you
15 and I'm going to ask that you find him guilty of both
16 charges, criminal domestic violence of a high and
17 aggravated nature and possession of a firearm during the
18 commission of a violent crime. I believe you'll find the
19 State's witnesses to be consistent and compelling and
20 we're going to ask that you find him guilty. Thank you.

21 Mr. Grier - May it please the Court. Ms. Mingo.
22 Ladies and gentlemen of the jury, my name is Mark Grier,
23 and I represent Jabbarie Brown. Judge has I think told
24 everybody before this jury was chosen that he hopes that
25 folks who weren't chosen wouldn't take it personal that

1 they weren't chosen. I'm more worried about you taking it
2 personal that you were chosen and that you're having to
3 stay with us this afternoon, but of course both of the
4 attorneys, we think we know something about choosing
5 jurors. Okay? We're trained in choosing jurors and we
6 have all these -- all this information and these systems
7 for who, you know, for determining who we think might be -
8 - look at the evidence in a way that'd be most favorable
9 to our position. I don't know that it amounts to much,
10 but we think we know and that's how you got chosen. We,
11 of course -- I think it really boils down to using the
12 folks that you would prefer not be on your jury is really
13 where the choices are made that are of consequence. But
14 today we're here to determine the guilt or innocence of
15 Jabarrie Brown, and as you noticed Jabarrie Brown's not
16 here. Jabarrie Brown doesn't have to be here. The burden
17 of proof is on the State. Jabarrie Brown's chosen not to
18 be here, because he doesn't have to be here. The burden
19 of proof is on the State. They must prove that Jabarrie
20 Brown is guilty of criminal domestic violence of a high
21 and aggravated nature and possession of a firearm during
22 the commission of a violent crime and they must prove it
23 and they must prove all the elements of it beyond a
24 reasonable doubt. Now, you know, the reason that burden
25 falls on the State is because the State, of course, has

1 tremendous assets that defendants just ordinarily do not
2 have. If you're, you know, a wealthy defendant, then, you
3 know, you can spend tremendous amounts of money and
4 procure assets that your average person doesn't have, but
5 our system is designed to be a fair system that gives all
6 defendants a fair shot when they are accused of a crime,
7 because that's merely all that's gone on here is that
8 Jabbarrie Brown is accused of a crime at this point. He is
9 presumed innocent. I know, you know, you watch television
10 and you can't watch much television without watching some
11 shows that talk about presumption of innocence and burden
12 of proof, but the burden of proof is on the State to prove
13 that Jabbarrie Brown is guilty beyond a reasonable doubt
14 and he is presumed innocent and unless they meet their
15 burden of proof and prove that Jabbarrie Brown is guilty
16 beyond a reasonable of doubt, well you would have to find
17 that he is not guilty. Now, the -- This is a criminal
18 case of course and the -- as opposed to a civil case, and
19 so the State must not merely convince you perhaps that he
20 is more likely than not. That's -- If this case was about
21 money, well, the party bringing the suit would have to
22 show that, hey, it's more likely than not that -- that --
23 to prevail that he is guilty, but no, this is a criminal
24 case and they've got to show so much -- enough evidence
25 that would remove all reasonable doubt. Now, our -- Our

1 Supreme Court has said that a reasonable doubt is the kind
2 of doubt that would cause a reasonable person to hesitate
3 to act. I think the Judge will charge you that when
4 you're weighing this evidence today and determining
5 whether the State has met their burden of proof, they've
6 got to prove, you know -- they've got to prove their
7 evidence such that a reasonable person would not hesitate
8 to convict. Okay? The -- To find Mr. Brown guilty, you -
9 - It's not a question of whether he might be guilty. It's
10 not a question of whether he may be guilty. In fact, the
11 question is has the State presented enough evidence such
12 that you are firmly convinced of his guilt and that the
13 real possibility that he might be innocent does not exist,
14 so they've got to remove from your mind any real
15 possibility that he might be -- that he might be innocent
16 to -- to convict. Now, this case happened in October of
17 2007. These were, as the solicitor's told you folks that
18 were -- were boyfriend/girlfriend and in fact had a child
19 -- had two children in common and that, you know, they've
20 really moved on since -- you know, since this event
21 occurred, and this was a domestic dispute. Now, when the
22 Judge told you that, you know, you're going to have to
23 weigh the evidence and weigh what people say and why they
24 say it and such, I mean that's using your common sense
25 really. When people are fighting they say things that

Cortney Mackey - Direct by Ms. Mingo

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1 they maybe wish they hadn't said and sometimes they say
2 things that are not even true. And I submit to you that
3 a lot of that happened in October of 2007. I think you're
4 going to see that from the testimony that's going to be
5 presented to you, but in terms of the -- what you're
6 really going to be deciding today is whether this dispute
7 and this fuss between these two people resulted in the --
8 I say victims, the alleged victim of feeling that her life
9 was in jeopardy or she was in jeopardy of serious bodily
10 injury. It's really going to boil down to whether she was
11 placed in that position and I submit to you that after
12 you've heard all the evidence today that you will find
13 that, in fact, that the State has not met its burden of
14 proof, that the -- that Ms. Mackey, in fact, was never
15 placed in fear for her life or serious bodily injury and
16 that the defendant is not guilty. Thank you.

17 The Court - Thank you. Call your first witness.

18 Ms. Mingo - State calls Cortney Mackey.

19 Cortney Mackey, after being first duly sworn,
20 testifies as follows -

21 Direct Examination

22 by Ms. Mingo -

23 Q State your name, please.

24 A Cortney Neshawn (phonetic) Mackey.

25 Q And how old are you, Ms. Mackey?

Cortney Mackey - Direct by Ms. Mingo

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- 1 A Twenty-two.
- 2 Q You live in Lancaster?
- 3 A Yes.
- 4 Q Where do you live?
- 5 A Carolina Court.
- 6 Q Do you have any children?
- 7 A Two kids.
- 8 Q How old are your children?
- 9 A Four and One.
- 10 Q Are you married?
- 11 A Single.
- 12 Q Do you work anywhere?
- 13 A I work for Springs Memorial Hospital.
- 14 Q And what do you do at Springs Memorial Hospital?
- 15 A I'm a food service assistant.
- 16 Q Okay. Are you in school?
- 17 A Yes.
- 18 Q And where do you attend school?
- 19 A Here at USC-L.
- 20 Q Okay. How do you know the Defendant, Jabbarie Brown?
- 21 A That's my boyfriend, and we have two children
- 22 together.
- 23 Q Okay. And you said your children were how old?
- 24 A Four and one.
- 25 Q Both of these are his children?

Cortney Mackey - Direct by Ms. Mingo

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- 1 A Yes.
- 2 Q And how long have you known Jabarrie?
- 3 A Seven years.
- 4 Q Were you dating him back in October, 2007?
- 5 A Yes.
- 6 Q Particularly October 20th, 2007?
- 7 A Yes.
- 8 Q Okay. Did you see him on that day?
- 9 A Yes.
- 10 Q Okay. And where did you see him?
- 11 A At my aunt's house.
- 12 Q Okay. Why were you at your aunt's house?
- 13 A That's where I stayed at at the time and he was just
- 14 coming over to see me. We seen each other about every
- 15 day, so ---
- 16 Q Okay. Did he drive over there or how did he get to
- 17 your aunt's house?
- 18 A He got dropped off, but I don't remember who dropped
- 19 him off.
- 20 Q Okay. Can you describe your aunt's house briefly?
- 21 A It's a two bedroom apartment located at McIlwain
- 22 Road.
- 23 Q A two bedroom apartment.
- 24 A With a upstairs in it.
- 25 Q Okay. Other than you and your two children, did

Cortney Mackey - Direct by Ms. Mingo

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1 anyone else live there?

2 A It was just one child at the time.

3 Q Just one child at the time.

4 A Yes.

5 Q And how old would he have been then?

6 A A year old.

7 Q Okay. When Mr. Brown came over to visit, what did
8 you guys do on this particular day?

9 A Well, Jabbarie had left and he got the neighbor to
10 take him to McDonald's to get us something to eat, so he
11 came back and we were eating our meal and then that's when
12 we got in a argument about last night, well, the night
13 before about me not coming over to his house when I got
14 off of work.

15 Q And this is while you were eating?

16 A (Indicating yes)

17 Q Okay. Were you in the kitchen area?

18 A We were in the living room.

19 Q Okay. And where was your son?

20 A He was sitting in the floor eating.

21 Q So he got angry that you didn't come and see him the
22 night before and started questioning you about that. Is
23 that correct?

24 A Yes, ma'am.

25 Q Okay. And what happened after that?

Cortney Mackey - Direct by Ms. Mingo

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1 A Then he pushed me on the couch and then I got up and
2 pushed him back and I went upstairs into my bedroom.

3 Q Okay, hold on one second. You said he pushed you on
4 the cou -- Were you standing up?

5 A Yes, I was standing up then.

6 Q Okay. And this was in the living room area you said?

7 A Yes.

8 Q Okay. Pushed you on the couch and go on, I'm sorry.

9 A He pushed me on the couch. I got up and then I
10 pushed him like towards the tv.

11 Q And how did he push you? Where specifically did he
12 touch you?

13 A Just right here.

14 Q Okay.

15 A And so after I pushed him, I pushed him like that, I
16 went up the stairs. Well, I got my son and went up the
17 stairs into my bedroom and I closed the door and he came
18 up behind me and he ---

19 Q You said you closed the door. I'm sorry. Did you
20 lock the door?

21 A No.

22 Q You don't remember locking the door?

23 A No, I don't.

24 Q Okay, go ahead.

25 A And he came in -- He opened the door, came in and we

Cortney Mackey - Direct by Ms. Mingo

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1 were just like exchanging words and he pushed me on the
2 bed and then that's when I punched him in the head and so
3 I walked out of the bedroom. My son was like standing in
4 the hallway at this point, because when you come out the
5 bedroom, it's like the hallway, then the bathroom.

6 Q Okay, but you said when he -- you were in the
7 bedroom, you were standing up and he walked up to you and
8 pushed you on the bed?

9 A Yes, I was like -- We was like exchanging words like
10 face to face, he's saying stuff to me and I'm saying stuff
11 to him, so he just pushed me on the bed and that's when I
12 punched him. I got up and punched him in the head and so
13 I just walked into the bathroom. And my son is like
14 standing like in the hallway like I said.

15 Q Is this all upstairs? Is the bathroom upstairs?

16 A Yes. (Indicating yes) Yes. And so that's when he
17 was in -- Well, I was in the bathroom and then that's when
18 I had seen the gun.

19 Q Okay, you said you seen the gun when you was in the
20 bathroom.

21 A Yes. And then like he had pointed it at me.

22 Q Okay, where did this gun come from?

23 A I think he had it in his pocket.

24 Q It was in his pocket.

25 A I think that's where -- Yes, he pulled it out of his

Cortney Mackey - Direct by Ms. Mingo

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1 pocket.

2 Q Okay. And what did the gun look like? Do you
3 remember?

4 A It was a little grey gun.

5 Q Okay. What happened after he pulled the gun out of
6 his pocket?

7 A And then he like pointed it at me. It was like up
8 near my head area but it wasn't touching, and he was just
9 like I'll kill you B, but I was like you ain't going to do
10 nothing, you ain't going to do nothing, and I wasn't even
11 worried about it, so then we just -- So then he put the
12 gun away and we just walked downstairs, but I had called
13 his daddy to come get him.

14 Q Okay. When did you call his daddy?

15 A When I first got up the stairs to my bedroom.

16 Q Okay.

17 A I used my aunt's cell phone, because we didn't have
18 a cell phone. My aunt wasn't there. She always left her
19 phone there with me.

20 Q So you're saying in between going upstairs -- in
21 between being in the bedroom upstairs and walking to the
22 bathroom, that's when you make this phone call to his dad?

23 A When I first went upstairs into the bedroom.

24 Q Okay. When you first went upstairs into the bedroom

25 ---

Cortney Mackey - Direct by Ms. Mingo

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1 A Yes.

2 Q --- did he immediately follow you or ---

3 A No.

4 Q --- or was there some time lapse? Okay.

5 A No, he didn't immediately come up there. That's when
6 I called his dad, Stanley. After I had got off the phone,
7 maybe a couple of seconds later, Jabbarrie walked in, and
8 then that's when we were faced to face exchanging words
9 and then he pushed me on the bed and I got up and punched
10 him in the head, then I went inside the bathroom. That's
11 when he had the gun and he pointed it at me, and he was
12 like, I'll kill you B and I was like, you ain't going to
13 do s-h-i-t, and he put the gun back in his pocket and we
14 went downstairs. I grabbed my son and we went downstairs
15 and -- because I think I heard his daddy pull up so we
16 walked downstairs and Jabbarrie had walked outside with his
17 dad and when I stuck up my middle finger, that's what --
18 was when he kicked the door.

19 Q Okay. His dad -- Let me ask you this. How long did
20 this whole altercation last would you say approximately?

21 A Approximately ten to fifteen minutes.

22 Q About fifteen minutes tops.

23 A Yes.

24 Q Okay. After the altercation in the bathroom with the
25 incident where he pulls the gun and points it at your

Cortney Mackey - Direct by Ms. Mingo

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1 head, you stated y'all came downstairs. Who come
2 downstairs first?

3 A Him.

4 Q He went downstairs first.

5 A Yes.

6 Q You went downstairs ---

7 A After.

8 Q --- after he went downstairs.

9 A Yes, me and my son.

10 Q Okay. At what point did his dad get there? Was his
11 dad there when you got downstairs?

12 A He was outside. He was never in the house.

13 Q He never went in the house. Okay. Had he pulled up
14 before you went downstairs?

15 A Yes, he was out there when I went downstairs, so yes.

16 Q Okay.

17 A And Jabbarie went outside. I guess he was going to
18 get in the car and then he -- I stuck my middle finger up
19 at me (sic) -- at him and then that's when he kicked the
20 door.

21 Q Okay. He kicked the storm door?

22 A Yes.

23 Q Okay. Was the main door open, ---

24 A Yes.

25 Q --- all the way open?

Cortney Mackey - Direct by Ms. Mingo

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1 A Yes.

2 Q Okay.

3 Ms. Mingo - Beg the Court's indulgence for one
4 moment.

5 The Court - Yes, ma'am.

6 Q Cortney, about what time of day did this occur?

7 A It was -- It was in the afternoon. Had to be like
8 between -- I would say about 2:00 o'clock.

9 Q So it was daylight outside?

10 A Yes, he was bright outside.

11 Q Okay.

12 A Or maybe three.. I know it was real sunny though.

13 Q Okay. When his dad came, did he leave with his dad
14 willingly or how did he leave with his dad?

15 A Yes, he left with his dad. He got in the car with
16 him and they went home.

17 Q Was he still angry and threatening when his dad got
18 there?

19 A Yes, he was still angry, but he got in the car. I
20 mean I could tell he was still mad.

21 Q When he kicked the door in, how close were you, just
22 you standing to the door?

23 A I was standing at the tv, so say that that chair is
24 the door, I was standing probably right here, because the
25 door's like a long door, ---

Cortney Mackey - Direct by Ms. Mingo

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- 1 Q Okay.
- 2 A --- tall door.
- 3 Q And you state it fell in ---
- 4 A (Indicating yes)
- 5 Q --- into the house?
- 6 A Yes.
- 7 Q It came off the hinges completely?
- 8 A It just fell off the frame.
- 9 Q Okay, it fell off the frame.
- 10 A Yes.
- 11 Q Now, let's go back to when you were in the bedroom
- 12 and you said he pointed the gun at you.
- 13 A No, in the bathroom.
- 14 Q In the bathroom. I apologize. When you're in the
- 15 bathroom, did -- Where was your son standing this entire
- 16 time?
- 17 A In the hallway.
- 18 Q Did he ever come into the bathroom?
- 19 A No. He was just standing there looking.
- 20 Q And what did Jabbarrie say when he had the gun pointed
- 21 at you?
- 22 A He was like I'll kill you B and I was like, you ain't
- 23 going to do sh, but then he just put the gun away.
- 24 Q And the next thing you know dad's pulling up outside
- 25 and you go downstairs.

Cortney Mackey - Direct by Ms. Mingo

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- 1 A Yes.
- 2 Q Did you have a conversation with his dad?
- 3 A Nothing other than the phone conversation.
- 4 Q Okay. What did you tell his dad when you called him?
- 5 Or why did you call his dad?
- 6 A I was like, I told him, I said, Stanley, this is
- 7 Cortney, you need to come get Jabbarrie, because he's
- 8 starting to get angry is what I told him.
- 9 Q Okay. And you felt the need to have ---
- 10 A Yes.
- 11 Q --- someone else around.
- 12 A Yes.
- 13 Q Okay. Do you remember speaking with Investigator
- 14 Mike Adams from the sheriff's office?
- 15 A No. Is that the one that came to the hospital?
- 16 Q Yes, Investigator Adams.
- 17 A I remember seeing him, but that's it.
- 18 Q Okay. Do you remember telling Investigator Adams --
- 19 This is on October 21st, 2007 -- at the hospital that you
- 20 were fearful during this altercation?
- 21 A No, I mean I wasn't scared period. I didn't even
- 22 call him.
- 23 Q So you deny -- You deny telling him that?
- 24 A Yes, I didn't even write that in my statement that I
- 25 was scared.

1 Q Okay.

2 (Whereupon, gun was marked for identification as
3 State's Exhibit Number 1.)

4 Q Now, I'm going to -- I'm going to show you what's
5 been marked as State's Exhibit 1. Have you seen this
6 before?

7 A Yes, that little grey gun.

8 Q Okay. And where have you seen this little grey gun?

9 A It looks like the gun that I saw Jabarrie had.

10 Q Okay.

11 A I know it was a little grey gun though.

12 Q And it looks like this gun?

13 A Yes. It was little like that.

14 Q Was it put together when you saw it?

15 A Yes.

16 Q When did you next speak with Jabarrie after that
17 incident?

18 A The next day.

19 Q The next day?

20 A Yes.

21 Q And don't tell me exactly what the two of you talked
22 about, but what was your mood with -- or your attitude
23 towards him then?

24 A I was still -- I still had a attitude with him.

25 Q You were still upset about what happened?

Cortney Mackey - Cross by Mr. Grier

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1 A I wasn't like talking nice and freely like, hey,
2 baby, how you doing. It was just like, what you want.

3 Q Okay. Did the two of you eventually get back
4 together after that incident?

5 A Yes.

6 Q How soon thereafter?

7 A Um, it was real soon.

8 Q Okay. And what's the status of your relationship
9 with him now?

10 A We communicate daily. I would say -- I don't see him
11 that much, but we communicate daily.

12 Ms. Mingo - Beg the Court's indulgence?

13 The Court - Yes.

14 Q Did all this occur in Lancaster County?

15 A Yes.

16 Ms. Mingo - Answer anything Mr. Grier has for
17 you right now.

18 Ms. Mackey - Okay.

19 The Court - Mr. Grier?

20 Mr. Grier - Thank you, Your Honor.

21 Cross Examination

22 by Mr. Grier -

23 Q Ms. Mackey, you didn't call law enforcement as a
24 result of this dispute between you and Jabarrie, did you?

25 A No, sir.

Cortney Mackey - Cross by Mr. Grier

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1 Q And you -- But you eventually did speak with somebody
2 in law enforcement? Do you recall it at all?

3 A Yes, I spoke with him at the hospital.

4 Q Okay. And when -- And you and Mr. Brown consider
5 each other boyfriend and girlfriend still? Is that what
6 y'all's relationship is now?

7 A I do, yes.

8 Q Okay. Well, I mean is he -- do y'all -- You said you
9 communicate daily?

10 A (Indicating yes)

11 Q Are you talking about the kids? What are you talking
12 about?

13 A The kids and what am I doing or whatever, but I work
14 all the time.

15 Q Okay. Sounds like it. Do you -- How old are your
16 children?

17 A Four and one.

18 Q Okay.

19 A And when I'm not working, I'm at school so ---

20 Q So y'all don't get to see each other that much.

21 A Right.

22 Q Does Jabbarie spend time with the kids?

23 A Yes, but my aunt keeps them most of the time.

24 Q All right. Well, his dad's in the courtroom, too,

25 Mr. -- Jabbarie's dad? Is that him? Stanley Brown?

Cortney Mackey - Cross by Mr. Grier

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- 1 A Yes.
- 2 Q Now, does he -- Do they see the grandkids too, some?
- 3 A Yes, they -- Well, he works all the time, too, so
- 4 they usually see them on weekends.
- 5 Q All right. What kind of father is Jabbarie?
- 6 A I think he's a good father. I don't think he'd do
- 7 nothing to harm his kids, nothing like that or do nothing
- 8 to endanger them.
- 9 Q Well, this -- This incident happened about two and a
- 10 half years ago? October, 2007?
- 11 A (Indicating yes)
- 12 Q Had y'all been fussing prior to this incident? Or
- 13 had their been some other dispute or -- You testified that
- 14 this happened because of one incident the day before.
- 15 Were y'all ---
- 16 A Yes, that night.
- 17 Q --- on rocky terms and this just was ---
- 18 A No, it was just that incident is what caused it.
- 19 Q Okay. Now, did y'all speak on the phone and he just
- 20 said I'm coming over or how did he manage -- How did it
- 21 come about that he came over to see you?
- 22 A Well, he came to see me every day. If he didn't come
- 23 to my house, I was always at his house. I mean but we
- 24 seen each other every day.
- 25 Q Okay. Well, -- You testified that -- I think that he

Cortney Mackey - Cross by Mr. Grier

68

1 pushed you down on the couch. Were y'all have a verbal --
2 that's how -- that was the first thing that happened in
3 terms of putting ---

4 A (Indicating yes)

5 Q --- hands on hands.

6 A It started off verbal, verbally, and he pushed me on
7 the couch and I got up and pushed him back.

8 Q And then you went upstairs?

9 A Yes.

10 Q Okay. Left the door open, but he followed you up
11 there.

12 A Door was closed and he came in there.

13 Q I should've said he left -- you left the door
14 unlocked.

15 A Yes.

16 Q I said open, but I meant unlocked.

17 A Yes.

18 Q Right? Okay. Came up and still -- y'all still
19 yakking at each other.

20 A Yes.

21 Q It's verbal back and forth?

22 A Yes.

23 Q And he pushes you down on the couch -- on the bed.

24 A He pushed on the bed and I get up and I punched him
25 in the head.

Cortney Mackey - Cross by Mr. Grier

69

- 1 Q In the head?
- 2 A (Indicating yes).
- 3 Q Where'd you hit him?
- 4 A Right here.
- 5 Q Did he kind of lose it when you did that?
- 6 A No, I don't think so.
- 7 Q Well, after you hit him, is that when you went into
- 8 the bathroom?
- 9 A Yes, that's when I went in the bathroom.
- 10 Q He never struck you?
- 11 A (Indicating no) No, he just pushed me, that's it.
- 12 Q Okay. Well, you testified that he pulled a gun out.
- 13 A Yes.
- 14 Q Now, you were -- That didn't scare you?
- 15 A No, because I was just looking at it like, you wasn't
- 16 going -- he wasn't going to do nothing. I wasn't scared.
- 17 Q Well, in fact, y'all both went back down the stairs -
- 18 --
- 19 A Yes, because after that ---
- 20 Q --- after that?
- 21 A --- we just went downstairs calmly like nothing ain't
- 22 happened and then that's when his dad was outside and ---
- 23 Q Before you get outside again, let me ask -- I mean
- 24 did things kind of calm down ---
- 25 A Yes.

Cortney Mackey - Cross by Mr. Grier

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- 1 Q --- when you went downstairs for a while?
- 2 A (Indicating yes) When I stuck up my middle finger,
3 that's when you know he hit the door.
- 4 Q Okay. Well, let me get back to that. Now, did y'all
5 go back downstairs and then he's leaving, kind of going
6 outside ---
- 7 A Yes.
- 8 Q --- and then you stick your middle finger up at him?
- 9 A Yes.
- 10 Q Okay. Were you trying to provoke him or why'd you
11 stick your middle finger up at him? Were you still mad,
12 because ---
- 13 A Yes.
- 14 Q Okay. But you weren't scared?
- 15 A No.
- 16 Q You didn't think sticking your middle finger up would
17 provoke him and make him do something?
- 18 A I wasn't worried, no.
- 19 Q Okay. So you did not believe he, you know, might
20 shoot you and kill you or seriously injure you?
- 21 A No.
- 22 Q Have you forgiven Jabbarrie for that dispute?
- 23 A Yes.
- 24 Q Y'all forgiven each other apparently and y'all are
25 back together, huh.

Cortney Mackey - Re-Direct by Ms. Mingo

71

1 A Yes.

2 Mr. Grier - Okay. Thank you.

3 Ms. Mackey - You're welcome.

4 The Court - Any re-direct?

5 Ms. Mingo - Yes, sir.

6 Re-Direct Examination

7 by Ms. Mingo -

8 Q Ms. Mackey, did you give a statement to Investigator
9 Adams, a written statement?

10 A Yes.

11 Q I'm going to show you ---

12 Ms. Mingo - Mark this.

13 (Document marked for identification as State's
14 Exhibit Number 2.)

15 Mr. Grier - Your Honor, if I could -- a matter
16 of law.

17 The Court - Yes. Ladies and gentlemen, I'm
18 going to send y'all to the jury room for just a few
19 minutes. Please do not discuss -- And if they'd like to
20 get a coca-cola, they -- It's that time of day -- tend to
21 get dry -- give them a coke. Thank you.

22 (Jury exits the courtroom)

23 The Court - Yes, sir?

24 Mr. Grier - Judge, the solicitor I believe is
25 attempting to place a statement into evidence. I mean

Cortney Mackey - Re-Direct by Ms. Mingo

72

1 this is re-direct. I don't think anything was -- You
2 know, I think the appropriate time to put a statement into
3 evidence would've been ---

4 The Court - You trying to impeach your own
5 witness on re-direct?

6 Ms. Mingo - Yes, sir.

7 The Court - Why wouldn't you have done it on
8 direct?

9 Ms. Mingo - Your Honor, I certainly could have
10 and I'll tell you what it's about. Ms. Mackey testified
11 that she went upstairs and just closed the door. She
12 didn't lock the door. I believe Mr. Grier got up, he also
13 questioned her as to that. She gave a statement in which
14 she stated she went upstairs and locked the door behind
15 her, so that's the -- That's the inconsistency and that's
16 what I was seeking to introduce. Yes, sir, I think it
17 could've been brought up on direct. Mr. Grier also went
18 into that issue, so I thought I could possibly do it now
19 on re-direct, but ---

20 The Court - I think you're supposed to do it --
21 I know it's in my discretion, but you're supposed to do at
22 the time that it originally occurs. Let me take it under
23 advisement. Let me see y'all up here.

24 (Bench conference was held which was not
25 reported.)

Cortney Mackey - Re-Direct by Ms. Mingo

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1 The Court - All right, why don't we take a
2 recess as well for ten minutes. We'll come back about
3 2:00 o'clock. You can't discuss anything with your
4 attorney, but you may go to the restroom as well and get
5 something to drink.

6 Ms. Mackey - Okay.

7 (Recess taken)

8 The Court - Thank you. Please be seated. All
9 right, let's bring the jury back in.

10 (Jury returns to the courtroom)

11 The Court - Everybody a little refresher now?

12 All right, Ms. Mingo, for re-direct?

13 Ms. Mingo - Yes, sir.

14 Re-Direct (contd.)

15 by Ms. Mingo -

16 Q Ms. Mackey, do you recognize what's been marked as
17 State's Exhibit Number 2?

18 A Yes, this is the statement I wrote.

19 Q Did you sign this statement?

20 A Yes.

21 Q Have you had a chance to actually read it?

22 A I read it the other day.

23 Q All right. Well, take a look at it.

24 A (Witness complies) Okay.

25 Q Okay. And in your statement to Investigator Adams,

Cortney Mackey - Re-Direct by Ms. Mingo

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1 did you state that you went upstairs and locked the door?

2 A Yes.

3 Q And he came upstairs and broke into the room?

4 A Yes, but the -- It really don't matter if the door
5 locked or unlocked, it's still opens.

6 Q What do you mean still opens?

7 A Because the doorknob was so ragally.

8 Q But you tried to lock it. Why did you lock the door?

9 A I don't remember locking the door, but I see in that
10 statement -- I mean it's in there.

11 Q And why do you think you felt the need to do that?

12 A I don't remember locking it though.

13 Q You don't remember locking it?

14 A I remember closing it, but I don't remember locking
15 it, but I see in my statement it says locked, but I don't
16 remember.

17 Q Okay. Do you know why you even went upstairs and
18 closed the door even?

19 A I went upstairs to get away from him.

20 Q And why'd you want to get away from him?

21 A Because he was starting to get on my nerves.

22 Q He was just starting to get on your nerves.

23 A Yes.

24 Ms. Mingo - Okay. Answer anything Mr. Grier
25 has.

Cortney Mackey - Re-Cross by Mr. Grier

75

1 The Court - Mr. Grier, re-cross.

2 Mr. Grier - Yes, Your Honor.

3 Re-Cross Examination

4 by Mr. Grier -

5 Q You gave a statement and nowhere in that statement
6 did you say anything about being afraid of Jabbarie Brown,
7 did you?

8 A I wasn't. I don't how you find it hard to believe,
9 but I wasn't. I was just looking at it like it was just
10 all mouth.

11 Q Well, and you're certainly ---

12 A And I wasn't ---

13 A That's consistent with what you said in your
14 statement. Right? You never said you were afraid of
15 being injured or killed. Correct?

16 A No.

17 Mr. Grier - Thank you. Nothing else, Your
18 Honor.

19 The Court - Thank you. You may step down.

20 Ms. Mingo - State calls Stanley Brown.

21 The Court - Mr. Brown, come forward, please.

22 Stanley Brown, after being first duly sworn,
23 testifies as follows -

24 Direct Examination

25 by Ms. Mingo -

Stanley Brown - Direct by Ms. Mingo

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1 Q State your name for the record, please.

2 A Stanley T. Brown.

3 Q Mr. Brown, what's your relationship with Jabarrie
4 Brown?

5 A I'm his father.

6 Q Back in October of 2007, October 20th, do you
7 remember going out to McIlwain Road to pick Jabarrie up
8 from where he was visiting Cortney Mackey?

9 A Yes.

10 Q And why did you go there?

11 A At the time I was doing something, I was doing some
12 cleaning around my house and if I recall I think Cortney
13 called me and told me to come and pick my son up.

14 Q Okay. And how did Cortney sound when she called you?

15 A Well, she sound -- At the time she didn't sound like
16 she was upset or anything. She just normally talk like --
17 She just said, well, Stanley, could you come down here and
18 pick Jabarrie up.

19 Q Did you immediately go and do that?

20 A Well, I had to put up what I was working with then I
21 went down.

22 Q How long did it take you to get there from the time
23 she called you?

24 A Probably about fifteen minutes.

25 Q Okay, and who did you observe when you arrived?

Stanley Brown - Direct by Ms. Mingo

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1 A Well, when I pulled up in my truck it was some more
2 people outside. I think I toot -- No, when I pulled up I
3 tooted the horn, but when I looked up he was -- my son was
4 standing outside.

5 Q Your son was outside when you pulled up.

6 A Yes.

7 Q What did he look like? What was his demeanor? Do
8 you remember?

9 A Well, when I pulled up he was talking to someone else
10 and he come -- I asked him, I said you ready to go,
11 because I'm doing something at the house, I wanted to get
12 through at that time. I think went back to -- was -- when
13 I was going to the truck, next thing I know something had
14 -- I think that's when the little altercation had
15 happened.

16 Q Okay. Let's go back. You pull up, Jabbarie's
17 outside talking to people. Where's Cortney?

18 A She's in the house.

19 Q She's in the house.

20 A Yes.

21 Q Do you ever enter the house?

22 A Not at that time I didn't, no.

23 Q Okay. Once you initially see Jabbarie and speak with
24 him, what do you do next?

25 A What I do?

Stanley Brown - Direct by Ms. Mingo

78

1 Q Yes.

2 A Well, I told him to come on, I got something to do
3 and ---

4 Q Did he immediately go with you?

5 A Yes, he come around the other side of the truck to
6 get in and when I looked, that's when the little
7 altercation -- I think I remember the door or something
8 happened.

9 Mr. Grier - I'm sorry, Your Honor, I couldn't
10 quite hear that.

11 A That's when the door had ---

12 The Court - Get him closer to the microphone.

13 Q That's when the door had -- I'm sorry? Can you
14 repeat ---

15 A That's when the door had fell.

16 Q When the door -- Did you see the door fall?

17 A No, not at the time, no.

18 Q Okay. How'd you know the door fell?

19 A When I looked -- It was like when I got in my truck
20 and I looked around, I -- That's when I got out, I went to
21 check to see was everything all right, so ---

22 Q When you got out of your truck, did you go into the
23 house at that point?

24 A I went right to the door. I didn't go inside the
25 house.

Stanley Brown - Direct by Ms. Mingo

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1 Q Okay. Did you speak with Cortney?

2 A At that time I think I did.

3 Q Okay, and what -- What did she look like?

4 A Well, due to all respect, she kind of had her night
5 clothes on.

6 Q Did it appear there had been a tussle?

7 A When I went to the door?

8 Q Yes.

9 A No.

10 Q Were they exchanging words? Did you hear anything?

11 A I can't recall at that time, no.

12 Q So when you went to the door, what happened after
13 that? You went to the door, you saw Cortney.

14 A And I seen the door laying down. In fact, I think I
15 was the one kind of moved the door, and I think I later on
16 -- I think the next day or so I told her I'll come back
17 down there and we'll fix the door, because at that time --
18 the next day him and her was back together, I mean talking
19 whatever.

20 Q Once you got back to the truck after you inspected
21 the door and saw that the door had fell down, you went
22 back in your truck at that point?

23 A Like I said, I moved -- kind of moved the door.

24 Q Right.

25 A And -- fact I kind of held it back up ---

Stanley Brown - Direct by Ms. Mingo

80

1 Q Okay.

2 A --- and that's when we went back out, got in my
3 truck, and I think Ms. Mackey she closed the door, she
4 went on ---

5 Q Did you have a discussion with Jabarrie once you got
6 in the truck?

7 A Yes, I did.

8 Q Okay. Did you inquire as to what had happened?

9 A Not -- Well, being a father, I said, well, what's
10 going on, you know. He didn't talk to me that much. You
11 know, sometimes he gets silent on you.

12 Q So you're saying he didn't really say anything?

13 A Not that much to me.

14 Q At any point did you see or discover a weapon?

15 A When I got home.

16 Q What happened when you got home?

17 A When I got home he told me, he said uh, dad I found
18 this and I seen what it was, and I said give it to me.
19 And he gave it to me.

20 Q And what type of weapon was it?

21 A I -- I mean -- I know it was a little small gun. I
22 can't -- I don't know whether it was .22 or a .38.

23 Q So he handed you the gun. What did you do with the
24 gun?

25 A When I got the gun, I said, well, I got to do -- you

Stanley Brown - Direct by Ms. Mingo

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1 know, I -- being a father, I told him I said look, you can
2 get yourself in a whole lot of trouble with guns and by me
3 being his dad, feel little protective, what could happen
4 down the road because ---

5 The Court - Please speak closer to the
6 microphone.

7 A What could happen down the road, just having that
8 father conversation. When he gave it to me, I said well,
9 I'm going to figure out what I'm going to do with it, so
10 that's when I took -- I didn't take it in the house,
11 because in my own house I don't have a gun.

12 Q So you didn't take it in the house.

13 A No, I didn't.

14 Q What did you do with it?

15 A I just hid it in one of my bushes on the front side
16 of my house.

17 Q So you hid it in the bushes.

18 A Yes.

19 Q Did Jabbarrie know you put it there?

20 A No.

21 Q Did law enforcement eventually arrive at your house?

22 A Yes, they did.

23 Q Okay. And where was Jabbarrie when law enforcement
24 arrived?

25 A If I can recall he was in the house.

Stanley Brown - Direct by Ms. Mingo

82

1 Q He was in the house?

2 A Yes.

3 Q Okay. Did they -- Did you meet them outside or did
4 they come into your home?

5 A I was already outside.

6 Q They never went into your house?

7 A In fact, I was under my carport. At the time I think
8 I was washing my car when they pulled up.

9 Q Did Jabbarrie come outside with you when law
10 enforcement was there?

11 A Not at the time he didn't, because I was the only one
12 out there, outside at the time.

13 Q Okay. Did they tell you why they were there?

14 A Well, they told me they wanted to -- asked me was he
15 here. I told them yes, uh ---

16 Q And did you go get him?

17 A I called him.

18 Q What do you mean you called -- You called him on the
19 phone or you went in the ---

20 A No, I was outside. I hollered.

21 Q And did he immediately come out?

22 A Not at the time but he came and when he came --
23 before he got there the officer told me that he wanted to
24 talk with me, so at the time he didn't tell me why he
25 wanted to talk with him.

Stanley Brown - Direct by Ms. Mingo

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1 Q Okay. So you didn't know what they were there?

2 A Not at the time I didn't.

3 Q Okay. When did you discover why they were there?

4 A The next day.

5 Q The next day?

6 A The next day.

7 Q Okay. Let me ask you this. You said you hid the
8 weapon in the woods -- I'm sorry. Tell me again where you
9 hid the weapon. I don't want to change your words.

10 A Well I had some shrubberies in front of my house.
11 They big old shrubberies, so I just stuck it down in the
12 shrubbery.

13 Q Okay. Did you show law enforcement where you had put
14 this weapon on that day when they came to your house?

15 A Yes, I gave it to them.

16 Q Okay. So while they were out there, you gave them
17 the weapon.

18 A Yes.

19 Q Why'd you give them the weapon. You said you didn't
20 know what they were there for until the next day.

21 A Well, what I'm saying, at the time he walked up and
22 he told me he wanted to talk to him, then he telling us
23 about -- brung up about a weapon, and I say, yes, and I
24 walked over there and gets it. I give it to him by being
25 -- because I didn't want no trouble. You know, I could've

Stanley Brown - Cross by Mr. Grier

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1 said no or kept it for myself, but I didn't. I, you know,
2 thought I was doing the right thing by just handing it
3 over, because so much going on with weapons, especially in
4 the neighborhood I was in at the time.

5 Q Okay. So you felt the need to leave it outside?

6 A No, I felt like when the officer asked me about the
7 gun, it was like I told you, I don't have a gun myself, so
8 that's why I was being good samaritan by turning it over.

9 Q Okay. But initially were you just being cautious by
10 putting outside instead of putting it in your house?

11 A Yes, because I was going to figure out -- I probably
12 would've got rid of it, because at the time when he told
13 me that he found the gun. (sic)

14 Ms. Mingo - Answer anything that Mr. Grier has
15 at this time.

16 The Court - Mr. Grier.

17 Mr. Grier - Thank you, Your Honor.

18 Cross Examination

19 by Mr. Grier -

20 Q Mr. Brown, I understand you work a lot. Where do you
21 work at?

22 A At work at McClain Power in York.

23 Q In York?

24 A Yes, sir.

25 Q At McClains Power?

Stanley Brown - Cross by Mr. Grier

85

- 1 A Yes.
- 2 Q What kind of work is that?
- 3 A We make insulations for power line companies.
- 4 Q Okay. Well, how long you been working there?
- 5 A I been with this company now two years, well, going
- 6 on for two and a half years. The previous job I had I got
- 7 laid off, so I got this job.
- 8 Q You were able to find a job even in this economy huh.
- 9 A (No response)
- 10 Q How many children you got, Mr. Brown?
- 11 A I have four, four children. I have one son and three
- 12 daughters.
- 13 Q All right. Jabarrie's your only son.
- 14 A Yes, sir.
- 15 Q Where does he fit in with all those kids? Was he the
- 16 oldest, youngest, in the middle, number two, number three?
- 17 A He's my first one.
- 18 Q Okay. So he's got three younger sisters?
- 19 A Yes, sir.
- 20 Q All right. When you went to pick up Jabarrie that
- 21 day, you -- How long were you at the residence?
- 22 A About ten or fifteen minutes. I'd say about maybe --
- 23 less than fifteen minutes.
- 24 Q All right. You didn't see any fussing going on?
- 25 A Like I said, when I pulled up he was outside.

Mike Adams - Direct by Ms. Mingo

86

1 Mr. Grier - Okay. All right. Okay. That's all
2 I got, all the questions I have.

3 The Court - Any re-direct?

4 Ms. Mingo - No, sir.

5 The Court - Okay. Thank you. You may step
6 down.

7 Ms. Mingo - Your Honor, the State calls
8 Investigator Mike Adams to the stand.

9 The Court - All right. Investigator Adams.

10 Mike Adams, after being first duly sworn,
11 testifies as follows -

12 Direct Examination

13 by Ms. Mingo -

14 Q State your name for the record, please.

15 A It's Mike Adams.

16 Q Investigator Adams, did you investigate a matter that
17 led to the arrest of Jabarrie Brown on October the 21st,
18 2007?

19 A Yes, ma'am.

20 Q Okay. And who was the victim of the domestic
21 violence?

22 A The victim is Cortney Mackey.

23 Q Did you ever meet Ms. Mackey?

24 A Yes, ma'am. I met her the night I took the incident
25 report at the hospital.

Mike Adams - Direct by Ms. Mingo

87

1 Q Okay. That's here in Lancaster, Springs Memorial
2 Hospital?

3 A Yes, ma'am.

4 Q About what time was it?

5 A It was -- She called this in at -- I'm sorry. She
6 called it in at 8:00 o'clock that night. The incident
7 supposedly happened at 5:00 o'clock in the afternoon.

8 Q Okay. Did you have a conversation with her?

9 A Yes, ma'am.

10 Q How did she look to you? What was her demeanor or
11 her general disposition, if you can recall? I know it's
12 been a while.

13 A She was distressed, upset, angry, all three involved.

14 Q And you spoke with her?

15 A Yes, ma'am.

16 Q And did she, in fact, give you a written statement --
17 -

18 A Yes, ma'am.

19 Q --- there at the hospital?

20 A She give me a written statement and a verbal
21 statement after we had a conversation after she completed
22 her written statement.

23 Q Okay. You said she looked upset, stressed, in
24 distress.

25 A Yes, ma'am.

Mike Adams - Direct by Ms. Mingo

88

1 Q Did she state that she was fearful during this
2 altercation?

3 A Yes, ma'am. Several times after she completed the
4 statement she noted that several times during the actual
5 account of what happened.

6 Q After speaking with Ms. Mackey, what did you then do?

7 A We went looking for Mr. -- I mean -- sorry -- Mr.
8 Brown, because the victim was so concerned about him
9 coming for her.

10 Q Okay. Did she tell you where you could probably find
11 him?

12 A Yes, ma'am.

13 Q Okay. And where did she direct you to go?

14 A His parent's house, his father's house.

15 Q Okay. Did you go to that location?

16 A Yes, ma'am.

17 Q And where is that?

18 A The house is going to be on which is near
19 Erwin Elementary School.

20 Q Okay. And did you arrive at that location?

21 A Yes, ma'am.

22 Q Do you know approximately what time? Was it shortly
23 after leaving the hospital?

24 A Um I arrived there at -- looks like 9:40, just before
25 10:00 o'clock, 9:40 at night.

Mike Adams - Direct by Ms. Mingo

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1 Q Okay. And who did you observe when you arrived?

2 A When I arrived the first person I seen was Jabarrie
3 looking out the window of the garage door whenever I
4 pulled up. They have a open carport and I seen a face
5 come to the window looking out to see who it was, and then
6 his father come walking around from the side of the
7 carport at -- just like on the grassy area.

8 Q Okay. Did -- His father was already outside.

9 A Yes, ma'am, he was.

10 Q Okay. And what about Jabarrie? Did he come out when
11 he saw you guys ---

12 A No, ma'am ---

13 Q --- pull up or ---

14 A --- he immediately went back in the -- Well, he never
15 came up. He never opened the door. He just like pulled
16 the curtain back and looked out and you could see his face
17 and then all of a sudden you seen the curtain close and he
18 disappeared.

19 Q Okay. Did you ever speak with his dad?

20 A Yes, ma'am, when we arrived, I explained what was
21 going on to the father and asked could I speak to
22 Jabarrie. He agreed to let us speak and entered the house
23 looking for him, could not find him in the residence. He
24 allowed us to search the residence and we didn't find him
25 and everybody found out he had ran out the back door into

Mike Adams - Direct by Ms. Mingo

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1 the woods, and we asked him to call the cell phone and
2 probably fifteen, twenty minutes after that he talked
3 Jabarrie out of the woods to come back to the residence
4 and that's where I talked to Jabarrie.

5 Q So Mr. -- Mr. Brown, Jabarrie Brown looks out the
6 window, sees you guys approaching, disappears.

7 A Yes, he takes off into the woods.

8 Q Okay. Did you ask Mr. Stanley Brown to call him on
9 his cell phone and get him back up there?

10 A Yes, ma'am, I explained how we were going to have to
11 look for him and bring dogs out and things like that and
12 he agreed to call him on the cell phone. He thought he
13 had his cell phone on him.

14 Q Okay. While you were waiting for Jabarrie to come
15 from out of the woods, did you have a conversation with
16 Mr. Brown?

17 A Yes, ma'am.

18 Q And did you discover from talking with Mr. Brown --
19 Was he a witness to this altercation?

20 A No, ma'am. He said he received a call from the
21 victim to come get Jabarrie because this altercation was
22 coming on -- was going on, said he pulled up, Jabarrie got
23 in his truck. He said when Jabarrie got in the truck, he
24 didn't see anything other than both of them were upset
25 from the altercation supposedly, but when he got in the

Mike Adams - Direct by Ms. Mingó

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1 truck, that's when he felt a gun in Jabarrie's pocket. He
2 asked Jabarrie about at the truck and Jabarrie give him
3 the gun at that time.

4 Q Okay. Did you ask him about the whereabouts of the
5 gun while you were there?

6 A Yes, ma'am, I --- We were really concerned that
7 Jabarrie still had the weapon on him before we started to
8 looking to try to see if we could secure that, and he said
9 he had already taken it off and explained to me that's how
10 he found it and received it from him. He then led me
11 directly to it. He said that he took it off his son
12 because he was concerned about his son having this gun,
13 and he was so concerned that he didn't tell the son where
14 he had hid it. He took me to the front. It's like azalea
15 bushes in the front yard or shrubs and he had buried it
16 underneath a pile of mulch around the azalea bushes.

17 Q Okay. You secured the weapon. Did Jabarrie
18 eventually come back?

19 A Yes, ma'am, he did.

20 Q Okay. And once Jabarrie came back, were you still
21 outside talking with the dad, talking with his father?

22 A Well, he called from in the house and we all come
23 back outside and Jabarrie came outside from out in the
24 woods. We were actually standing outside looking towards
25 the wood lines trying to figure out where he was hiding

Mike Adams - Direct by Ms. Mingo

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1 at, and like I said, about twenty minutes later when the
2 father called him on the cell phone, he come back about
3 ten minutes after his dad called him, and um, we just
4 talked out in the yard from that point.

5 Q Okay. And can you describe to the jury what
6 Jabbarrie's demeanor was, what his emotional state was? I
7 mean was there anything ---

8 A Upset, tired. He'd been running for a little bit, so
9 he was winded, all of the above.

10 Q Okay. And did you have a conversation with Jabbarrie
11 Brown?

12 A Yes, ma'am.

13 Q Okay. Did he give a written statement?

14 A No, ma'am, we took a verbal statement after I
15 mirandized him at the house right in his driveway. His
16 father was right there near us and couple other deputies.

17 Q Okay. And you said mirandized. And what does that
18 mean briefly?

19 A Basically advised him of his rights to have an
20 attorney present while he's being questioned and explained
21 to him he has a right to stop talking at any point and as
22 for the attorney or, you know, it's up to him.

23 Q Okay. And what did you learn from your conversation
24 with Jabbarrie?

25 A He explained to me they had a domestic at the house

Mike Adams - Direct by Ms. Mingo

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1 where him and his girlfriend had had a pushing match.
2 Jabbarrie said he was actually injured. She didn't receive
3 any injuries, but he had a little bit of redness around
4 his nose where he said he got hit one time. He did admit
5 to that part of it. When brought up the part about the
6 gun, he said he never had a gun on him, never touched a
7 gun, never seen a gun. He denied ever pointing a gun at
8 Ms. Mackey at any point. And even when I brought up and
9 said, well, your father handed me this gun and said you
10 had it, he said his dad was lying.

11 Q After speaking with Jabbarrie, what did you then do?
12 Did you immediately place him under arrest?

13 A Yes, ma'am. There was enough physical evidence and
14 distress by the victim and, you know, some minor injuries
15 that we had probable cause to make an arrest.

16 Q Did you ever go back to the incident location?

17 A Yes, ma'am. It took about nine days to actually
18 locate somebody at the incident location so we could at
19 least photograph it to allow people to kind of a layout of
20 the place.

21 Q Okay. I'm going to show you some photos. Do you
22 recognize these photos?

23 Mr. Grier - I'm sorry, Your Honor ---

24 The Court - Is there any objection?

25 Mr. Grier - No, Your Honor.

Mike Adams - Direct by Ms. Mingo

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1 The Court - All right, these will be admitted
2 into evidence as what?

3 Ms. Mingo - State's number 3, Your Honor.

4 The Court - State's number 3 without objection.

5 (Photos marked into evidence as State's Exhibit
6 Number 3.)

7 Q What do these photos depict?

8 A This is the incident location ---

9 Q Okay.

10 A --- at the residence on McIlwain Road.

11 Q And what's in the first picture?

12 A The bathroom.

13 Q Okay. This is where Cortney stated that he pointed
14 the gun at her?

15 A The gun was pointed at her head.

16 Q Okay.

17 A Yes, ma'am.

18 Q And what's in that second photo?

19 A This is actually the glass from the front entry door
20 that he kicked out. It was ---

21 Mr. Grier - Your Honor, -- I need to be able to
22 see.

23 A It was laid up against like a wall in the front room,
24 just needed to be repaired.

25 Q Okay.

Mike Adams - Direct by Ms. Mingo

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1 A This is actually the entry door. It's a store door
2 and that's the glass that goes in it. And this is the
3 basically weathering that holds the door in place, and
4 they had placed that out the back door to be thrown away.

5 Q Okay. Thank you. I'm going to show you what's been
6 marked as State's Exhibit Number 1. Do you recognize
7 this?

8 A Yes, ma'am. That's the gun related to this incident.

9 Q Okay. And where did you retrieve this gun?

10 A Jabbarrie's father give it to me after he dug it up in
11 front of me at the front of their residence in mulch.

12 Q Okay.

13 Ms. Mingo - Your Honor, at this time I move to
14 introduce State's Exhibit Number 1 into evidence.

15 The Court - Any objection?

16 Mr. Grier - No, Your Honor, no objection.

17 The Court - Without objection, State's Exhibit
18 Number 1 is admitted.

19 (Gun marked into evidence as State's Exhibit
20 Number 1.)

21 Ms. Mingo - Beg the Court's indulgence one
22 moment.

23 The Court - Yes, ma'am.

24 Q Other than your conversation with Jabbarrie Brown that
25 night, did you have any further conversation with him?

Mike Adams - Cross by Mr. Grier

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1 A No, ma'am, he declined to actually give us anymore
2 statements or provide a written statement at that time.

3 Ms. Mingo - Okay. Answer anything Mr. Grier may
4 have.

5 The Court - Mr. Grier.

6 Mr. Grier - Thank you, Your Honor.

7 Cross Examination

8 by Mr. Grier -

9 Q Ms. Mackey told you she was mad?

10 A She was upset.

11 Q But she ---

12 A Upset, stressed. She didn't really use the term mad.
13 She said that they had been basically involved in a
14 pushing match, domestic, some blows were passed between
15 both of them. She didn't receive any injuries from them.
16 She said she was angry because of that, said she was
17 scared because of the gun being involved.

18 Q She said she was angry. What's the difference
19 between angry and mad?

20 A She didn't use the term mad.

21 Q Angry?

22 A She was angry.

23 Q Okay. But she didn't have any injuries on her.
24 Right?

25 A Just kind of clothes kind of all over the place but

Mike Adams - Cross by Mr. Grier

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1 nothing I could see.

2 Q Okay. And she gave a written statement?

3 A Yes, sir.

4 Q In that written statement nowhere does she say that
5 she's in fear for her life or bodily injury, does she?

6 A No, sir.

7 Mr. Grier - Thank you.

8 The Court - Any re-direct?

9 Ms. Mingo - No, sir, Your Honor.

10 The Court - Thank you. You may step down.

11 Ms. Mingo - State rest, Your Honor.

12 The Court - All right, thank you. Ladies and
13 gentlemen, we have some things that we need to take up as
14 matters of law. I'm going to dismiss you to the jury room
15 for just a few minutes. Thank you. Please do not discuss
16 anything about the case while you're back there.

17 (Jury exits the courtroom)

18 The Court - All right, Mr. Grier.

19 Mr. Grier - Your Honor, I'd move for a directed
20 verdict. Judge, certainly if the Court grants the motion
21 for a directed verdict on the CDV HAN it would be
22 dispositive of possession of a firearm during the
23 commission of a violent crime, therefore, Your Honor, I
24 don't think the State's met its burden of proof and it's
25 required to present some evidence for it to go to the jury

1 which would show, first -- this section is guilty of a
2 criminal domestic violence of a high and aggravated nature
3 when one of the following occurs, a person commits -- and,
4 of course, the basis for the State's theory of the case is
5 an assault with or without an accompanying battery which
6 would reasonably cause a person to fear imminent serious
7 or bodily injury or death, Your Honor. Most certainly the
8 victim -- alleged victim in the case has testified that
9 she did not fear any bodily injury or death and I think
10 that's dispositive of the issue of whether it would be a
11 CDV of a high and aggravated nature, Your Honor. I'd ask
12 that that charge be dismissed. I understand that that
13 would not necessarily be dispositive of a criminal
14 domestic violence case which I would argue is a lesser
15 included offense and most certainly would be asking that
16 that be included in your instructions if this case does go
17 --- eventually go to the jury. However, I'm asking for a
18 directed verdict. You know, I think under any theory of
19 the case the -- you know, the victim has to experience
20 some fear of serious bodily injury or death. In any
21 event, that's the nature of my directed -- motion for a
22 directed verdict, Your Honor.

23 The Court - All right, thank you. Ms. Mingo?

24 Ms. Mingo - Your Honor, in looking at the
25 statute, I certainly agree when in looking at A-2 under

1 the CDV HAN statute it requires an assault which could
2 reasonable cause a person to fear imminent seriously (sic)
3 bodily injury or death and under A-1 it requires an
4 assault and battery which involves the use of a deadly
5 weapon or results in serious bodily injury to the victim.
6 In this situation, Your Honor, you had the victim testify
7 they got into an altercation that lasted approximately
8 fifteen minutes that was ongoing. It started downstairs
9 in the living room where he pushed her down on the couch,
10 followed her upstairs and he did the same thing. She went
11 to the bathroom and he followed her in there, so I
12 certainly think there was an ongoing type assault and
13 battery situation. At some point while they're in the
14 bathroom he pulls out the weapon and points it at her,
15 which certainly gives us the use of the deadly weapon
16 under A-1. Your Honor, I think the jury can infer what
17 they can just based on the totality of the circumstances
18 and all the testimony. We had Ms. Mackey get up there and
19 testify that they're in a relationship now. They've had
20 a baby since this occurred and she doesn't want anything
21 to happen to him, she's forgave him. But in light of
22 that, I mean I think you certainly have to consider the
23 fact that there was a weapon pointed at her head. She
24 told Investigator Adams on that day that she was afraid.
25 She was afraid enough to go upstairs and lock the bedroom

1 door as she puts in her statement, as well as call her
2 (sic) dad while she's up in that bedroom.

3 The Court - His dad.

4 Ms. Mingo - I'm sorry, call his dad. I'm sorry.
5 So I certainly think there's enough to get past a directed
6 verdict motion.

7 Mr. Grier - Your Honor, just briefly. I would
8 distinguish, you know, the CDV HAN in that there was
9 contact, which I know would technically be a battery. I
10 can't dispute that. The evidence supports there was
11 contact, but the -- the particular incident -- and there
12 were really like I believe two incidents of pushing kind
13 of a mutual combat between the parties, but the incident
14 that -- the only incident that I believe would give rise
15 to -- you know, to the CDV HAN with a weapon being used
16 was the incident where he allegedly pointed the gun. That
17 was an assault, there was no battery alleged ---

18 The Court - But the law doesn't say that it
19 caused her to be in imminent fear. It's a reasonable
20 purpose. Under your line of theory, a rape victim two
21 years later reconcile with the perpetrator and would that
22 mean that a rape didn't occur two years ago? I mean just
23 the fact that they're now together and she doesn't want
24 him convicted doesn't mean that on this date three year --
25 almost two and a half three years ago that a crime didn't

1 take place. I think the jury may reasonable infer that
2 they just don't want to convict him, but that doesn't --
3 your argument does not mean that a crime did not happen.
4 I think they've got enough evidence. Obviously it was
5 enough fear that she had the police called. I don't think
6 anybody would dispute it with me that if somebody points
7 a gun at you a reasonable person would feel that they are
8 in imminent jeopardy, so I am going to respectfully deny
9 your motion for a directed verdict. Anything else before
10 we ---

11 Ms. Mingo - Could we have a few moments just to
12 go over closing ---

13 The Court - Yes, let me -- I'm going to you
14 copies of my charges if y'all want to -- And obviously
15 you're not going to put up any evidence.

16 Mr. Grier - No, sir, I'm not.

17 The Court - All right, we'll go back on the
18 record and why don't we take a few minute break and then
19 when we come back I'm going to go right into letting you
20 do your closing arguments and then I'll charge and then
21 we'll see where we go from there.

22 Mr. Grier - Any particular time, Your Hono? You
23 want to give us a particular time being back here.

24 The Court - It shouldn't take you ten minutes to
25 read that and I did make a few changes from what my law

1 clerk -- He kind of gave the long version as to what are
2 weapons, gasoline, fire bombs. I cut all that out, since
3 it's obviously -- Obviously we're talking about a gun
4 here. Okay?

5 Mr. Grier - Yes, sir.

6 The Court - All right, why don't we come back in
7 ten minutes and we'll ---

8 Ms. Mingo - Ten minutes.

9 The Court - Then I'll let you rest on the record
10 ---

11 Mr. Grier - Yes, sir.

12 The Court - Do you want to go ahead and deem
13 that you've made your motion after that, so we don't have
14 to send the jury back out ---

15 Mr. Grier - Yes. Yes, sir.

16 The Court - --- one more time?

17 Mr. Grier - Right.

18 The Court - I would believe that you would make
19 that motion and we can put it on the record.

20 Mr. Grier - Yes, if you'd just put it on the
21 record, we could ---

22 The Court - All right.

23 (Recess taken)

24 The Court - Have you had an opportunity to
25 review the charges?

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1 Mr. Grier - I have, Your Honor. Your Honor, I
2 would -- I'm under the impression that criminal domestic
3 violence would be a lesser included offense, and I would
4 ask that that be included. As I read the ---

5 The Court - I don't know that solicitor included
6 the offense with the weapon involved. That doesn't -- If
7 there was a question as to whether or not the weapon was
8 involved, that may make it a lesser included offense, but
9 I don't think it is, and it's clearly that the only thing
10 that makes it CDV high and aggravated is the weapon. So
11 I don't think I need to charge CDV ---

12 Mr. Grier - And so there's no evidence that
13 there was not a weapon is ---

14 The Court - Basically that's right. I mean from
15 all the testimony, there's nothing to say there's not --
16 there was no weapon.

17 Mr. Grier - Your Honor, the only thing that I
18 could hang my hat on with regard to that is Mr. -- his dad
19 said that, you know, that he said that he found the weapon
20 and he didn't testify that a weapon was used in that and
21 I realize that ---

22 The Court - Yes, but she testified ---

23 Mr. Grier - Yes, sir.

24 The Court - -- and he wasn't there when it
25 happened, so it wasn't that she thought there was a

1 weapon. It was pretty clear there was a weapon.

2 Mr. Grier - Thank you, Your Honor.

3 The Court - All right, thank you. Anything from
4 the State?

5 Ms. Mingo - Not from the State, Your Honor.

6 The Court - Okay. All right, let's bring them
7 in the ---

8 Mr. Grier - Judge, before we do bring them in,
9 did I need to put something on the record ---

10 The Court - No. Rather than bringing the jury
11 in, you resting on the record and then sending them out
12 again to ---

13 Mr. Grier - Right.

14 The Court - --- to make your motion for directed
15 verdict at the close of all evidence ---

16 Mr. Grier - Right.

17 The Court - --- I would deem -- If you want to
18 go ahead and make it now, I'll deem it -- I just don't
19 want to have to keep shifting the jury around.

20 Mr. Grier - Your Honor, the defense is not going
21 to -- I would go ahead -- The defense is not going to
22 present any evidence. We're going to go ahead and rest.

23 The Court - So after that I can -- you would ---

24 Mr. Grier - Renew my motions.

25 The Court - Renew your motions. Very well.

1 Mr. Grier - Yes, Your Honor. Your Honor, the
2 other thing ---

3 The Court - Denied.

4 Mr. Grier - --- is that having not presented any
5 evidence ---

6 The Court - You get last argument.

7 Mr. Grier - Yes, sir. Thank you.

8 The Court - Yes, sir. All right, thank you.

9 (Jury returns to the courtroom)

10 The Court - All right. Mr. Grier.

11 Mr. Grier - Your Honor, the defense would elect
12 to argue last as I believe I'm entitled to.

13 The Court - Would you like to rest first?

14 Mr. Grier - Oh, Your Honor, I -- the defense
15 would rest.

16 The Court - All right, thank you. Ladies and
17 gentlemen, with the defense resting that is all the
18 evidence that you will hear in this case. At this time
19 the State and the defense will provide you with their
20 closing arguments. I will then charge you on the law of
21 this case. All right. State ready?

22 Ms. Mingo - Yes, sir, the State's ready.

23 The Court - The defense ready?

24 Mr. Grier - Yes, Your Honor.

25 The Court - Ms. Mingo.

1 Ms. Mingo - May it please the Court. In a
2 little while the Judge is going to charge you on the law
3 in this case and tell you what criminal domestic violence
4 of a high and aggravated nature means and what possession
5 of a firearm during the commission of a violent crime
6 means. He's going to give you the elements of those
7 charges, but I'll tell you briefly that a person commits
8 criminal domestic violence of a high and aggravated nature
9 where there's an assault and battery which involves the
10 use of a deadly weapon or an assault which would
11 reasonably cause a person to fear serious bodily injury or
12 death. And let's go back to Ms. Mackey. You heard from
13 Ms. Mackey. She testified and she said that they got into
14 an altercation. He started arguing with her about
15 something that had happened the night before, became
16 irate, pushed her, she pushes him back, she goes upstairs
17 and in her statement says I go upstairs, I lock the door
18 and call his father, because he's getting out of control.
19 Mr. Brown, Jabbarie Brown, eventually comes up the stairs,
20 comes into that bedroom, pushes her again. She walks out
21 of the -- She hits him back. She goes into the bathroom,
22 and at that point he follows her into the bathroom and
23 points a gun at her head. That was -- That's what she
24 told you. She said eventually Mr. Brown went downstairs
25 and she shortly thereafter followed him downstairs as she

1 heard Mr. Brown, Stanley Brown, pulling up in the driveway
2 and he was there when they got downstairs. You heard from
3 Mike Adams from the Lancaster County Sheriff's office.
4 Now, keep in mind Investigator Adams saw Cortney Mackey
5 the day that this happened. It was fresh. It had just
6 happened a couple of hours earlier. Met her at Springs
7 Memorial Hospital. I asked them what did she look like,
8 what was her demeanor, how did she appear to be. He said
9 upset, distressed. He asked her was she fearful. She
10 said yes, she was in fear. Was so fearful she told them
11 this is where he -- this is where you can find him, told
12 her -- told him how to reach Jabbarrie Brown, and he
13 immediately went to that location. You heard from his
14 father, Stanley Brown. When he got there, apparently,
15 Jabbarrie was standing outside, but he did -- he saw the
16 screen door knocked down, apparently some altercation had
17 taken place, took his son, felt a gun in his jean pocket
18 according to Investigator Adams. He met with Investigator
19 Adams at the house, said Jabbarrie gave me the gun, said he
20 had found the gun, told the officer where it was and
21 Investigator Adams secured the weapon. I don't think
22 there's any doubt that a weapon was involved in this
23 crime. The weapon has been entered into evidence and you
24 can view that if you feel that to be necessary, but there
25 was a weapon used. What you have to determine is did the

1 charge of criminal domestic violence high and aggravated
2 nature take place. Would his actions cause a reasonable
3 person to be in fear of their safety or their life. Now,
4 just because you're in this courtroom you don't have to
5 leave your common sense out in the parking lot. You bring
6 your everyday experiences in this courtroom with you. You
7 heard Ms. Mackey testify and she said he pushed me, I went
8 upstairs, I locked the door, I called his dad for help,
9 and I asked her, why did you call his dad to come over
10 there. Well, I didn't want to be there alone with him,
11 his dad needed to come. Goes into a bathroom where he
12 points a gun at her head, and at the end of all that, what
13 does she says (sic), but I -- I wasn't fearful. And you
14 have to determine if you believe that or not. As jurors
15 you determine the credibility of the witnesses. You
16 determine if you believe a little bit of what somebody
17 says, all of what somebody says, you can believe some of
18 it and dismiss parts of it. I submit to you she was not
19 truthful when she told you that she was not in fear. And
20 the Judge is going to go over the law and you ask
21 yourselves would a reasonable person have been in fear
22 with a gun pointed at their heads. She told you that she
23 wasn't, but on the same day you heard Investigator Adams
24 get up and say she told me she was in fear and she
25 appeared to be fearful. What happens when Investigator

1 Adams comes to the house? He sees Jabarrie Brown. What
2 does he do? Looks out the window, immediately flees.
3 Investigator Adams gets Jabarrie's dad to call him, just
4 so he'll come back and he said it took about fifteen to
5 twenty minutes. He had fled in the woods. I submit to
6 you he fled because he knew he had done something wrong
7 and did not want to face law enforcement. Investigator
8 Adams talked to Stanley Brown, no question about the gun,
9 he provided the Investigator with the gun. He secured
10 that. The only question is whether you believe Cortney
11 Mackey today or do you think she was telling the truth
12 back then. What makes the most sense to you. Now, why
13 would she lie about not being in fear? I don't know. But
14 you did hear her say we're back together. This incident
15 was three years ago remember, back in October of 2007.
16 They've had a child since then. They've reconciled. I
17 wasn't fearful. I'm not fearful of him. We communicate
18 every day. Now, irrespective of what's happened since
19 that incident you have to determine that a crime occurred
20 on that particular day. Whether she forgave him and
21 whether they got back together that same night, I submit
22 to you that is not what the issue is. You have to
23 determine whether a crime was committed, did an incident
24 of domestic violence take place in that home. I submit to
25 you it did and that Mr. Brown is guilty. I want to thank

1 you for your time and I'm not going to go over the issues
2 over and over again, but I ask that you pay attention when
3 the Judge reads you the law that a reasonable person had
4 been in fear. She said that she was not today, but again
5 she told the officer that she was. She gave a written
6 statement. Now, let's talk about the written statement.
7 She details exactly what happened and you can have --
8 you'll have a chance to look at her statement. You can
9 view that, take that back in the jury room with you. In
10 her written statement she doesn't write I was in fear.
11 That's not in her statement. Investigator Adams said they
12 continued to talk and she repeatedly stated she was
13 fearful of him and she appeared to be fearful. They had
14 a conversation. She gave oral statements. And just keep
15 that in mind, would she have a reason to lie today, and I
16 submit to you she does. They're back together and maybe
17 doesn't want a conviction. Maybe they're friends. Maybe
18 they're boyfriend and girlfriend. I think she indicated
19 that they were. But I ask you to just use your best
20 judgment, use your common sense. Go back to the night of
21 this incident, October 21st, 2007 and ask yourselves why
22 would she run upstairs in the bedroom and lock the door,
23 why would she ask her dad -- ask his dad, excuse me, to
24 come over and how she must have felt with a gun pointed at
25 her head. And we have statutes in this State and the

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1 domestic violence statute pretty much says you have a
2 right to be secure in your own home, and that's what this
3 case is about, security and she lost that on that day.
4 It's not something you can weigh. Well, it's not a big
5 deal to me now. I don't really care. This is not Cortney
6 Mackey vs. Jabbarrie Brown. This is the State of South
7 Carolina vs. Jabbarrie Brown. He broke our laws. I'm
8 asking that you convict him of both charges, criminal
9 domestic violence in a high and aggravated nature and
10 possession a firearm during the commission of a violent
11 crime. Thank you.

12 The Court - Mr. Grier.

13 Mr. Grier - Thank you. May it please the Court.
14 Ms. Mackey. Ladies and gentlemen of the jury, this is a
15 short trial and we did not wish -- did the best we could
16 to get to the facts of the case and not waste your time
17 and let you hear the evidence and make your determination.
18 Jabbarrie Brown is presumed innocent and the only people in
19 the world that can remove that cloak of innocence from
20 Jabbarrie Brown is this jury right here. I'd submit to you
21 that the State has not met their burden of proof in
22 proving to you that Jabbarrie Brown is guilty of criminal
23 domestic violence of a high and aggravated nature for this
24 reason. The State most certainly has argued that you got
25 to go back and determine whether Ms. Mackey was -- what

1 was she thinking on the night that this happened and what
2 was she thinking today. This is three years ago. These
3 people have forgiven each other. They've had another
4 child, and of course, they're looking at it with a
5 different perspective, but on the night that it happened
6 you heard Officer Adams say she was angry, and of course,
7 when she said -- when she was angry, you don't know what
8 somebody's going to say when they're in a domestic dispute
9 and the law enforcement is involved, you've called the --
10 you've called your paramour's father and he's come and
11 he's taken the -- you know, taken your boyfriend away, but
12 I would submit to you what doesn't jive with any theory
13 that she was in fear that night is, well, first of all,
14 her testimony right here on the stand and secondly she
15 goes back downstairs with him, he's leaving and what does
16 she do, she runs out and gives him the finger, Now, if
17 she is in fear of Jabbarrie Brown, why does she run out and
18 shoot the bird and start the process over. It's a silly,
19 stupid domestic argument between people and I'm not going
20 to sit here and look you in the eye and tell you that
21 Jabbarrie Brown acted sensibly in getting into some kind of
22 fuss with -- you know, with Ms. Mackey on that night. It
23 was silly. It was stupid and on both parts and most
24 certainly what he did was not something that I'm going to
25 try to justify, but the question was, was she placed in

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1 fear of her life or serious bodily injury that night for
2 you the decide and she's told you that she wasn't and I
3 believe that most certainly given the State has the burden
4 of proof, there's the real possibility that, in fact, she
5 was not in fear for her life or serious bodily injury that
6 night. She said she wasn't. Her mannerisms that night
7 and her behavior that night and following him out after
8 this gun-pointing incident that's alleged happened, just
9 are not consistent with somebody that is in fear, but what
10 do we know later when she's talking to Adams? She's mad
11 and she's spouting off and she's probably saying anything
12 and we just don't know. There is the real possibility
13 that he may -- There's the real possibility that he may be
14 innocent any way you look at it. You're going to have to
15 decide whether or not she was truthful that night and
16 whether or not she was truthful on the stand, whether or
17 not she was -- the State has met its burden of proof
18 beyond all reasonable doubt, and again, reasonable doubt
19 is the kind of doubt that would cause a person to -- a
20 jury to hesitate -- to hesitate to act. The Judge is
21 going to instruct you of course -- You know, he's going to
22 give you the law. What Ms. Mingo and I say are simply our
23 versions of the facts and what -- and our interpretation
24 of the facts in such a way that we believe you should view
25 them and the Judge is the one that gives you the law and

1 you're going to have to take these facts and apply the law
2 to them and make a determination. My -- I ask that you
3 use your common sense, look back into this window three
4 years ago, reconstruct whether or not there is the real
5 possibility -- not whether he might be guilty, not whether
6 he's probably guilty, but whether there's the real
7 possibility that he might be innocent. That is really
8 what I'm asking you -- the law is asking you to decide
9 today, and I believe that after you've reviewed the
10 evidence that you'll come back with a verdict of not
11 guilty, because there is the real possibility that
12 Jabbarie Brown is innocent. Thank you.

13 The Court - All right, ladies and gentlemen, all
14 the testimony and the other evidence to be presented to
15 you in this case has now been presented. Now is the time
16 of the trial where I will charge you with the law to be
17 applied in this case. Now, the indictment in this case
18 alleges two offenses against the Defendant, Jabbarie
19 Brown, first, the criminal domestic violence of a high and
20 aggravated nature and possession of a weapon during the
21 commission of or attempt to commit a violent crime. I
22 remind you the fact that the defendant was arrested,
23 charged and indicted in this case is not evidence and
24 cannot be considered by you as evidence of guilt in this
25 case, nor does it create any presumption or inference of

1 guilt. The indictment is simply the formal written
2 instrument which contains the charges made against the
3 defendant. It is the formal document by which this case
4 is brought into this courtroom. Now, ladies and
5 gentlemen, the defendant has pled not guilty to the
6 indictments and that plea puts the burden on the State to
7 prove the defendant guilty. A person charged with
8 committing a criminal offense in South Carolina is never
9 required to prove their innocence. I charge you that this
10 is an important rule of law, that the defendant in a
11 criminal trial no matter how serious the charge is will
12 always be presumed to be innocent of the crime for which
13 the indictment was issued unless guilt has been proven by
14 evidence satisfying you the jury of that guilt beyond a
15 reasonable doubt. This presumption of innocence does not
16 end when you begin your deliberations, but it accompanies
17 the defendant throughout the trial until you reach a
18 verdict based upon the evidence satisfying you of that
19 guilt beyond a reasonable doubt. The presumption of
20 innocence is like a robe of righteousness placed about the
21 shoulders of the defendant which remains there around him
22 until it has been stripped from the defendant by evidence
23 that satisfies you of his guilt beyond a reasonable doubt.
24 The presumption of innocence is not a mere legal theory.
25 It's not just a legal phrase. It is a substantial right

1 to which every defendant is entitled unless you the jury
2 are satisfied from the evidence of the defendant's guilt
3 beyond a reasonable doubt. Now, ladies and gentlemen,
4 during a trial there are two types of evidence which are
5 generally presented. There's direct evidence and
6 circumstantial evidence. Direct evidence is testimony of
7 a person who claims to have actual knowledge of a fact
8 such as an eye-witness. It is evidence which immediately
9 established the main fact to be proved. Circumstantial
10 evidence is proof of a chain of circum -- chain of facts
11 and circumstances indicating the existence of a fact. It
12 is evidence which immediately establishes collateral facts
13 from which the main fact can be inferred. Circumstantial
14 evidence is based upon inference and not on personal
15 knowledge or observation. The law makes absolutely no
16 distinction between the weight or value to be given to
17 either direct or circumstantial evidence, nor is a greater
18 degree of certainty required of circumstantial evidence
19 than of direct evidence. You should weigh all of the
20 evidence in this case and after weighing all the evidence,
21 if you are not convinced of the guilt of the defendant
22 beyond a reasonable doubt, you must find the defendant not
23 guilty. The question always comes up, what is reasonable
24 doubt in the law. A reasonable doubt is the kind of doubt
25 that would cause a reasonable person to hesitate to act.

1 The State has the burden of proving the defendant guilty
2 beyond a reasonable doubt. Some of you may have served as
3 jurors in civil cases where you were told that it is only
4 necessary to prove the fact more likely true than not
5 true, such as by a great weight or the preponderance of
6 the evidence. In criminal cases the State's burden must
7 be more powerful than that. It must be beyond a
8 reasonable doubt. Proof beyond a reasonable doubt is
9 proof that leaves you firmly convinced of the defendant's
10 guilt. There are very few things in this world that we
11 know with absolute certainty and in criminal cases the law
12 does not require proof that overcomes every possible
13 doubt. If based upon your consideration of the evidence
14 you are firmly convinced that the defendant is guilty of
15 the crime charged, you must find the defendant guilty. If
16 on the other hand you think there is a real possibility
17 that the defendant is not guilty, you must give the
18 defendant the benefit of the doubt and find him not
19 guilty. Now, during the trial necessarily you must
20 determine the credibility of the witnesses who have
21 testified in this case. Credibility simply means
22 believability. It becomes your duty as jurors to analyze
23 and to evaluate the evidence and determine which evidence
24 convinces you of its truth. In determining the
25 believability of witnesses who have testified in this

1 case, you may believe one witness over several witnesses
2 or several witnesses over one witness. You may believe a
3 part of the testimony of a witness and reject the
4 remaining part of the testimony of that same witness. You
5 may believe the testimony of a witness in its entirety or
6 reject the testimony of a witness in its entirety. You
7 may consider whether any witness has exhibited to you any
8 interest, bias, prejudice or other motive in this case.
9 You may also consider the appearance and manner of a
10 witness while on the witness stand. Now, ladies and
11 gentlemen, I instruct you and emphasize the fact that the
12 defendant did not testify is not a factor to be considered
13 by you in any way in your deliberation and your
14 consideration on the question of guilt or innocence of the
15 defendant. It must not be considered by you in any manner
16 whatsoever. The defendant has the constitutional right to
17 remain silent and the assertion of this right must not be
18 considered by you in your deliberations. I repeat, under
19 your oath you are to draw no conclusion whatsoever from
20 the fact that the defendant in this case did not testify.
21 The fact that the defendant did not testify should not
22 even be discussed in the jury room. The burden of proof
23 as I have stated to you is on the State. The defendant is
24 not required to prove his innocence. The burden of proof
25 remains on the State to prove guilt beyond a reasonable

1 doubt. Under the laws of this State a defendant may be
2 tried even if the defendant does not attend the trial, but
3 the fact that a defendant is not present may not be
4 considered against the defendant in any manner whatsoever.
5 Ladies and gentlemen, the defendant is charged with
6 criminal domestic violence of a high and aggravated
7 nature. The State must prove beyond a reasonable doubt
8 that the defendant caused physical harm or injury to a
9 member of the defendant's own household or that the
10 defendant offered or attempted to cause physical harm or
11 injury to a member of the defendant's own household with
12 the apparent present ability to cause harm or injury under
13 circumstances reasonably creating fear of imminent danger.
14 A household member is a spouse, a former spouse, a person
15 with whom the defendant has a child in common or a person
16 of the opposite sex with whom the defendant is living or
17 has lived with in the past. Under Section 16-25-65, a
18 person who violates Section 16-25-20(A) is guilty of the
19 offense of criminal domestic violence of a high and
20 aggravated nature when one of the following occurs: the
21 person commits (1) an assault and battery which involves
22 the use of a deadly weapon or results in serious bodily
23 injury to the victim, or (2) an assault with or without an
24 accompanying battery which would reasonable cause a person
25 to fear imminent serious bodily injury or death. The

1 following examples of instruments which may be deadly
2 weapons, a pistol, a shotgun, a rifle, a dirk, a dagger or
3 a knife. A gun may be a deadly weapon even if it is not
4 operating. The defendant is also charged with possession
5 of a weapon during the commission of or attempt to commit
6 a violent crime. The State must prove beyond a reasonable
7 doubt that the defendant was in possession of a firearm or
8 visibly displayed what appeared to be a firearm during the
9 commission of a violent crime. A firearm means any
10 machine gun, gun, automatic rifle, revolver or any weapon
11 which is designated to or may be readily converted to
12 expel a projectile. In order to find the defendant guilty
13 of possession of a weapon during the commission of a
14 violent crime, you must first find the defendant guilty of
15 either committing a violent crime or attempting to commit
16 a violent crime. Criminal domestic violence of a high and
17 aggravated nature is a violent crime. Now, ladies and
18 gentlemen I remind you that during this trial you and I
19 have had certain duties to perform. As the Trial Judge it
20 is my responsibility to preside over the trial of this
21 case and I also have the duty to rule on the admissibility
22 of evidence offered during this trial. You are to
23 consider only the competent evidence before you. If there
24 was any testimony ordered stricken from the record in this
25 case, you must disregard that testimony. You are to

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1 consider only the testimony which has been presented from
2 the witness stand and any exhibits which have been made a
3 part of this record or any stipulations of counsel. I
4 have the additional duty to charge you the law applicable
5 to this case. As the presiding Judge I am the sole Judge
6 of the law of this case and it is your duty as jurors to
7 accept and apply the law as I now state it to you. If you
8 already have any idea as to what the law is or what the
9 law ought to be and it does not agree with what I tell
10 you, you must abandon that idea, because you are sworn to
11 accept the law and apply the law as I stated it to you.
12 In every case tried before a jury, the jury becomes the
13 sole and exclusive Judge of the facts of the case. Trial
14 Judge cannot intimate, state, comment or make any
15 statement to a trial jury about the facts of a case.
16 Since you are the jury, you are the sole Judge of the
17 facts in this case. You are not to infer from what I have
18 said during the process of this trial in ruling upon
19 admissibility of evidence or otherwise or anything that I
20 say now during the course of these instructions that I
21 have any opinion about the facts of the case. The law
22 does not allow me to have an opinion about the facts of
23 the case. This is a matter solely for you the jury to
24 determine. As jurors it is your duty to determine the
25 effect, value, weight and truth of the evidence presented.

1 Ladies and gentlemen, there are two possible verdicts
2 which you may find in this case on each of the charges.
3 On the charge of criminal domestic violence of a high and
4 aggravated nature, the verdicts are possibly not guilty
5 and guilty. On the charge of possession of a weapon
6 during the commission or attempt to commit a violent
7 crime, the verdicts are not guilty or guilty. Ladies and
8 gentlemen, there is no significance whatsoever in the
9 order in which I state these possible verdicts. It is
10 simply that one must be stated first. Now, ladies and
11 gentlemen, your verdict must be a unanimous one. All
12 twelve of you must agree on the verdict. Your decision
13 must not be based on sympathy, passion, prejudice, emotion
14 or any other consideration not in evidence in this case.
15 Mr. Foreman, when the jury agrees on the verdict, you will
16 write down the verdict on this verdict form that I'm going
17 to give to you and you will sign your name as foreman,
18 then knock on the jury room door and inform the bailiff
19 that you have reached a verdict. At that time you will
20 then be received back into the courtroom for publication
21 of your verdict. I now ask that you return to the jury
22 room, but do not begin your deliberations until you are
23 told to do so by the clerk or the bailiff. There are some
24 matters that must be discussed with the attorneys before
25 you begin your deliberations. Thank you. We need to

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1 separate the alternate from the other twelve so if you can
2 put him in another room for right now. Thank you.

3 (Jury exits the courtroom)

4 The Court - You can go with him. If you could
5 just set him off in a separate room. I hate to cut him
6 loose and then have something happen and not have the --
7 That's happened before. All right, any objections from
8 the State to the closing charge?

9 Ms. Mingo - No, sir.

10 The Court - Any objections from the ---

11 Mr. Grier - No, Your Honor. Just pondering what
12 is in evidence and what's not in evidence.

13 The Court - And did y'all want to take a look at
14 the verdict form?

15 Ms. Mingo - Yes, sir.

16 The Court - I'm not going to send the
17 indictments back there. It always confuses them. They
18 start thinking it's evidence even though I told them it's
19 not.

20 Mr. Grier - Thank you.

21 The Court - You need to have the gun made safe.
22 Have we done that?

23 Ms. Mingo - Not --- The bullets are in the bag
24 with the gun.

25 Court Reporter - Your Honor, are we on the

1 record or off the record?

2 The Court - Off the record.

3 (Discussion is held between counsel and the
4 Court Reporter regarding Exhibits which was not reported.)

5 The Court - All right, and give them the verdict
6 form and tell them they may begin their deliberations.
7 Court's in recess until the call of the case. All right.
8 Time is 3:27.

9 (Jury deliberates at 3:27 p.m.)

10 (Court in recess awaiting verdict)

11 (Note received from the jury at 3:38 p.m.)

12 The Court - All right, this will be Court's
13 Exhibit Number 1. The question is, would like to view the
14 written statement. My reply to that is the written
15 statement was not admitted into evidence. And I guess
16 should not be considered. Well ---

17 Ms. Mingo - I asked her about it, talked about
18 it, but ---

19 The Court - Only things that come into evidence
20 are to be considered and it was not admitted into
21 evidence. I'm just going to leave it that it wasn't
22 admitted into evidence.

23 Mr. Grier - Yes, sir.

24 The Court - You can mark that?

25 (Discussion is held between the Court and the

1 Court Reporter which was not reported.)

2 (Whereupon, note was sent back to the jury)

3 The Court - All right, Court's in recess.

4 (Court in recess awaiting verdict)

5 The Court - All right, you may bring the
6 alternate juror in here as well. Please be seated. Thank
7 you. All right, let's bring the jury in. Oh, let's get
8 the alternate in. I'm just bringing you in here in case
9 you want to see it. You're free from your duties.

10 (Jury returns with verdict at 3:47 p.m.)

11 The Court - Mr. Foreman, I understand the jury
12 has reached a unanimous verdict.

13 Mr. Foreman - Yes, sir, we have.

14 The Court - Okay.

15 (Verdict is handed up to the Court)

16 The Court - Thank you. All right, please
17 publish the verdict.

18 Deputy Clerk - In the Court of General Sessions,
19 State of South Carolina vs. Jabbarie Brown, Indictment
20 Number 2007-GS-29-1338 and 1339, as to the charge of
21 criminal domestic violence of a high and aggravated
22 nature, we the jury unanimously find the defendant guilty.
23 As to the charge of possession of a weapon during the
24 commission of or attempt to commit a violent crime, we the
25 jury unanimously find the defendant guilty.

1 Ladies and gentlemen of the jury, if this is
2 your verdict so say you all by the raising of your right
3 hand.

4 (Jurors affirm)

5 Deputy Clerk - Let the record reflect all jurors
6 raised their right hand.

7 The Court - Does the State request polling of
8 the jury?

9 Ms. Mingo - No, sir.

10 The Court - Does the defense request polling?

11 Mr. Grier - Defense does, Your Honor.

12 The Court - All right, thank you.

13 Deputy Clerk - Mr. Foreperson, Timothy Staton,
14 was this your verdict?

15 Mr. Staton - Yes, ma'am.

16 Deputy Clerk - Is it still your verdict?

17 Mr. Staton - Yes, ma'am.

18 Deputy Clerk - Preston Starkey, was this your
19 verdict?

20 Mr. Starkey - Yes, ma'am.

21 Deputy Clerk - Is it still your verdict?

22 Mr. Starkey - Yes, ma'am.

23 Deputy Clerk - Linda Watson, was this your
24 verdict?

25 Ms. Watson - Yes.

1 Deputy Clerk - Is it still your verdict?
2 Ms. Watson - Yes.
3 Deputy Clerk - Tommy Robinson, was this your
4 verdict?
5 Mr. Robinson - Yes, ma'am.
6 Deputy Clerk - Is it still your verdict?
7 Mr. Robinson - Yes, ma'am.
8 Deputy Clerk - Lucinda Broughton, was this your
9 verdict?
10 Ms. Broughton - Yes, ma'am.
11 Deputy Clerk - Is it still your verdict?
12 Ms. Broughton - Yes, ma'am.
13 Deputy Clerk - Vonda Tidwell, was this was your
14 verdict?
15 Ms. Tidwell - Yes, ma'am.
16 Deputy Clerk - Is it still your verdict?
17 Ms. Tidwell - Yes, ma'am.
18 Deputy Clerk - Derek Smith, was this your
19 verdict?
20 Mr. Smith - Yes, ma'am.
21 Deputy Clerk - Is it still your verdict?
22 Mr. Smith - Yes, ma'am.
23 Deputy Clerk - Rhonda Caskey, was this your
24 verdict?
25 Ms. Caskey - Yes.

1 Deputy Clerk - Is it still your verdict?

2 Ms. Caskey - Yes, ma'am.

3 Deputy Clerk - Tonda Giles, is this your
4 verdict?

5 Ms. Giles - Yes.

6 Deputy Clerk - Is it still your verdict?

7 Ms. Giles - Yes.

8 Deputy Clerk - Maxine Stradford, was this your
9 verdict?

10 Ms. Stradford - Yes.

11 Deputy Clerk - Is it still your verdict?

12 Ms. Stradford - Yes, ma'am.

13 Deputy Clerk - Howard Griffin, was this your
14 verdict?

15 Mr. Griffin - Yes, ma'am.

16 Deputy Clerk - Is it still your verdict?

17 Mr. Griffin - Yes, ma'am.

18 The Court - All right, thank you. The verdict
19 stands. All right, ladies and gentlemen, let me take this
20 opportunity to thank you for your service today. It is
21 never an easy thing to sit in judgment of others, but
22 you've taken that task on and you've done it in a way that
23 you've upheld your oath and I want to thank you for that.
24 Now you have been told that you can't discuss this case
25 with anybody. I told you that all along. That

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1 restriction is now lifted. You may discuss it with anyone
2 you choose to for as long as you want to. If somebody
3 persist in wanting to talk to you about it, you can say I
4 don't want to talk about it anymore and if they persist,
5 if you'll just let one of the bailiffs know, they will in
6 turn talk to me and I'll make sure that that's not a
7 problem anymore. Now, ladies and gentlemen, again, this
8 now satisfies your -- It satisfies yours as well since you
9 were the alternate throughout the trial. You do not have
10 to serve -- You cannot serve on a jury in Lancaster County
11 or this State for the next year and if you would like to
12 be exempt from jury duty you may do so for the next three
13 years, so again I want to thank you. It wasn't a long
14 case, but that doesn't take away the importance of the
15 case, and again I want to thank you. You've upheld your
16 oath as I knew you would. I'd like to shake all your
17 hands as you leave here this afternoon. Now you will need
18 to call back tomorrow after 12:00 as to whether or not
19 you're going to be needed again, but y'all are now
20 dismissed.

21 (Whereupon, the Judge thanks jurors for their
22 service as they exit the courtroom which is not reported.)

23 The Court - Any motions?

24 Mr. Grier - Your Honor, I think I need to make
25 my obligatory post trial motions, Your Honor. I would

1 just renew all my prior motions for a directed verdict and
2 move that you set aside the verdict in your status as the
3 thirteenth juror. I think there's sufficient evidence for
4 the Court to do that and ask that you set it aside.

5 The Court - All right, thank you. Ms. Mingo?

6 Ms. Mingo - Your Honor, the jury's spoken. I
7 believe there was enough evidence to support both charges
8 in this case. I'm going to ask that you not set aside the
9 verdict.

10 The Court - All right, thank you. I think the -
11 - In light of the fact that we had a piece of evidence
12 that didn't actually go in, the jury still found -- and I
13 think they believed her testimony and certainly they
14 contemplated everything, they deliberated and I'm going to
15 uphold the verdict, so I'm going to deny your motion.

16 Mr. Grier - And I would just make a motion for
17 a new trial as a part of that too for the same grounds.

18 The Court - Yes, sir, respectfully denied.

19 Mr. Grier - Thank you, Your Honor.

20 The Court - All right. Thank you. I will
21 sentence and we'll seal it. All right, Court's adjourned
22 til 10:00 tomorrow morning.

23 Clerk - Yes, sir.

24 Ms. Mingo - Thank you, Your Honor.

25 The Court - Thank you.

1 Mr. Grier - Judge, do we argue as part of the
2 sentencing or do you ---

3 The Court - Yes, if you'd like to do that at
4 this point in time argue on sentencing and then I'll
5 sentenced and seal it. All right, State?

6 Ms. Mingo - Your Honor, I'll give you Mr.
7 Brown's prior history. It appears to be mostly
8 Magistrate's Court stuff. November -- November of 2001 he
9 had a possession of beer or wine by a minor, August of
10 2003 public disorderly conduct, October, 2003, possession
11 of a beer by a person under 21, April of 2007, criminal
12 domestic violence first offense. It appears from the
13 State of Virginia he has a possession of a Schedule I or
14 II controlled substance and that was from July of 2001.
15 That's the defendant's record. Your Honor, these are the
16 sentence sheets.

17 (Document handed up to the Court)

18 The Court - Would State like to make an argument
19 concerning sentencing?

20 Ms. Mingo - Your Honor, I'm going to ask you for
21 a substantial sentence in this case. The victim testified
22 and I understand what her position is. I think it was a
23 very serious case with serious allegations involving a
24 victim having a gun pointed at her head, but more
25 disturbingly in the presence of a young child, and I think

1 the situation could've been a lot worse than it actually
2 was. I'm going to ask you for a substantial sentence in
3 this case.

4 The Court - All right, thank you.

5 Mr. Grier - Your Honor, obviously the elephant
6 in the room is the possession of a firearm during the
7 commission of a violent crime, because that's going to
8 require that Mr. Brown receive a five year sentence. He
9 doesn't have a huge substantial record. Certainly these
10 Magistrate's Court cases are of concern because they're
11 not lawful either, but ---

12 The Court - What is the range on the CDV high
13 and aggravated?

14 Mr. Grier - Your Honor, it's zero to ---

15 Ms. Mingo - One to ten.

16 The Court - One to ten.

17 Mr. Grier - Yes, one to ten, excuse me. Yes,
18 one to ten on that. So Judge and certainly the statute
19 addresses the fact that the possession of a firearm during
20 the commission of a violent crime can be run consecutively
21 with the underlying violent charge and you heard -- you
22 learned a good bit about this -- about the private lives
23 of the victim in the case and about Mr. Brown and they
24 have two children together, that their intention is, you
25 know, is to resume their relationship. We don't know how

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1 that's going to happen but -- And I think that all
2 indications are that he's got a solid father and it's a
3 solid family, so, you know, and the support to perhaps be
4 able to turn around whatever bad behavior he engaged in at
5 this time. Judge, I'm simply asking you to take all
6 factors into consideration, that I think that had the
7 victim had remained, she would be asking you to do the
8 very least that you could for his kids and for their
9 relationship, so I'm asking you to simply run whatever
10 concurrent and not to exceed, you know, the mandatory five
11 that you have to give them on the possession of firearm.

12 The Court - All right, thank you very much.

13 Mr. Grier - Thank you, Judge.

14 The Court - All right, Court's adjourned until
15 10:00 o'clock tomorrow morning.

16 Ms. Mingo - Thank you.

17 (Court's Exhibit Number 2 marked)

18 (End of transcript)

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Certificate

I, Shirley G. Broom, the undersigned Court Reporter, hereby certify that the foregoing 134 pages constitute a true record of proceedings taken in the case of State of South Carolina vs. Jabbarie Brown, as taken by me at the time and place stated.

I do further certify that the persons were present as stated, that I am not of Counsel for, related to, or in the employee of any of the parties to this action and that I have no interest whatsoever in the outcome of this case.

This the 12th day of July, 2012.


Shirley G. Broom
Circuit Court Reporter
Sixteenth Judicial Circuit

VOIR DIRE

Case No: 07-65-29-1338, 1339Judge: Jeffrey YoungPl./State: StateState/Plaint. Atty: Cartisha MingoDoug BarfieldDefendant: Jabarric BrownDefense Atty: Mark GrierCourt Reporter: Shirley G. Broom

Juror No.	Name	Sex	Race	Strikes			
				Court	Plaintiff	Defense	Accept
129	Preston Starkey	M	W		✓	✓	✓
2	Tina Aeschbacher	~~F~~	W		✓	X	
144	Linda Watson	F	W		✓	✓	✓
117	Tommy Robinson	M	W		✓	✓	✓
68	Danay Killough	M	W		✓	X	
17	Lucinda Broughton	F	W		✓	✓	✓
137	Vonda Tidwell	F	B		✓	✓	✓
55	Pamela Hassett	F	W		✓	X	
124	Deek Smith	M	W		✓	✓	✓
22	Rhonda Cuskey	F	W		✓	✓	✓
59	Tammy Hinson	F	W		X		
48	Tonda Giles	F	W		✓	✓	✓
130	Timothy Staton	M	W		✓	✓	✓
100	Christine Arganek	F	W		✓	X	
62	Glenn Huffer	M	W		✓	✓	✓
7	Scott Beckham	M	W		X		
134	Maxine Stralford	F	B		✓	✓	✓
51	Howard Griffin	M	W		✓	✓	✓
122	Matthew Sistare	M	W		✓	✓	✓

For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for court, "P" for Plaintiff or "D" for Defense.

1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF LANCASTER
4 2007-GS-29-1338, 1339
5

6 State of South Carolina

7 vs.

8 Jabbarie Brown
9
10

11 Lancaster, South Carolina

12 December 12, 2011

13 Before the Honorable J. Ernest Kinard, Jr.
14

15 APPEARANCES

16 For the State: Curtisha Mingo

17 For the Defendant: Mark Grier
18

19 Reported by: Michael C. Watkins

20 Official Court Reporter
21
22
23
24
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1	Unsealing the sentence:	3
2	Motion Hearing:	3
3	Certificate:	6
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1 MS. MINGO: Your Honor, standing before you is Jabbarri
2 Brown along with his attorney, Mark Grier. Your Honor, on
3 April 1st of 2010 Mr. Brown was charged with -- tried on the
4 charges of criminal domestic violence of a high and
5 aggravated nature and possession of a weapon during the
6 commission of a violent crime, he was convicted of both
7 charges in his absence, Your Honor, that's what brings us
8 here today. It looks like on November 25th of this year,
9 just a couple of weeks ago, Mr. Brown was arrested on a CDV
10 2nd charge involving the same victim and he has been held in
11 the Lancaster County Detention Center ever since. I would
12 be happy to give the Court a brief summary of the facts of
13 the trial case if you desire.

14 THE COURT: Well, you need to wait until I open it.
15 And Mr. Brown, are you doing all right?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Now, Mr. Brown, you were tried --

18 THE DEFENDANT: Yes, sir.

19 THE COURT: The solicitor said you were convicted, she
20 doesn't know that, she was just guessing. And I did one of
21 these in Charleston a couple of years ago and told the guy
22 it was two counts of trafficking 2nd and above, I told him
23 it could be 30 years consecutive and they found him not
24 guilty, he broke out laughing hysterical, he thought he was
25 going away for 30 years. So let's see what the jury -- if.

1 you were tried by a jury --

2 MS. MINGO: He was.

3 THE COURT: Well, if he was tried by a jury they did
4 not return a verdict, they didn't sign it. You can look at
5 it, it's sealed. The Judge did a couple of things -- he
6 should have sent it back because it's not signed by the
7 solicitor. But he ordered him to pay \$500 on both of them
8 to the public defender fund, well, you know, that's just a
9 crazy sentence. I would just say this sentence is totally
10 void, plus he sentenced him to five years, then he struck --
11 underlined under the Youthful Offender Act and he sentenced
12 him under the department of corrections so he checked that.
13 He had just hit the bench, he didn't know exactly what he
14 was doing, I'm not saying anything.

15 MS. MINGO: Okay. He's got another charge we can deal
16 with that he is locked up --

17 MR. GRIER: So Judge, you're dismissing --

18 THE COURT: It shouldn't have been submitted to the
19 jury. One the solicitor didn't sign it, two there's no
20 verdict form saying they found him guilty, and three the
21 sentence doesn't make any sense. You can't charge him \$500
22 twice first, and second you can't charge him \$500 if you
23 don't put him on probation and then you can't sentence him
24 to the department of corrections and underline to the
25 Youthful Offender.

1 MR. GRIER: Judge, in light of that I would move that
2 the case be dismissed and --

3 THE COURT: Well, we're going to deal with it. We're
4 not going to dismiss anything until we deal with the other
5 one.

6 MS. MINGO: Thank you, Your Honor.

7 (END OF THE HEARING.)

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1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of record of the proceedings
5 had and evidence introduced in the trial of the captioned
6 case, relative to appeal, in the Court of General Sessions
7 for Lancaster County, South Carolina, on the 12th day of
8 December, 2011.

9 I do further certify that I am neither of kin, counsel,
10 nor interest to any party hereto.

11

12

February 3, 2013

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Michael C. Watkins
Court Reporter.

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1 State of South Carolina
2 Court of General Sessions
3 County of Lancaster
4 2007-GS-29-01338, 01339
5

6 State of South Carolina

7 VS.

8 Jabarrie Brown
9

10 Lancaster, South Carolina

11 March 16, 2012

12 The Honorable Brooks P. Goldsmith
13

14 APPEARANCES

15 For the State: Curtisha Mingo

16 For the Defendant: Mark Grier

17 REPORTED BY: Michael C. Watkins

18 Official Court Reporter
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1	Guilty Plea:	3
2	Sentencing:	12
3	Certificate:	13
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1 MS. MINGO: Your Honor, this is Jabarrie Brown.
2 Mr. Brown was tried in his absence back in April of 2010 on
3 the charges of criminal domestic violence of a high and
4 aggravated nature and possession of a firearm during the
5 commission of a violent crime, he was convicted on both
6 charges. He was picked up in November of 2011, Your Honor,
7 the following Monday we came before Judge Kinard for formal
8 sentencing, Judge Kinard -- I don't know if the Court has
9 had an opportunity to look over the transcript.

10 THE COURT: I do have a transcript, about three or four
11 pages?

12 MS. MINGO: Yes, sir. Judge Kinard commented on the
13 indictment not being signed, he didn't like the sentence but
14 the main issue was at that time we did not have the verdict
15 form to produce to the judge. We have that now, Your Honor,
16 we're ready to go forward with sentencing.

17 THE COURT: Mr. Grier, are you ready?

18 MR. GRIER: Well, Judge, I would like to make some
19 motions, or if at the appropriate time would be after
20 sentencing.

21 THE COURT: I think now would be the time.

22 MR. GRIER: Judge, I don't know if you have unsealed --

23 THE COURT: I did.

24 MR. GRIER: Well, I'm uncertain as to whether based on
25 what I read in the transcript -- I understood it to mean

1 that the verdict form was not sealed. I think that in judge
2 Kinard's conversation apparently the -- he alludes to the
3 verdict being sealed and them not even knowing if they were
4 guilty or not guilty, those are some of the comments he
5 makes in the transcript. His understanding was when it's a
6 sealed verdict there seems to be some confusion certainly
7 about whether there was a -- Judge Kinard is talking about a
8 sealed verdict or, you know, sealed sentence or both or
9 whatever. Because certainly from his comments about what
10 happened to him I believe in Charleston he indicates that
11 the verdict wasn't even -- wasn't even read until it was
12 opened subsequent to the arrest of the defendant. Not
13 withstanding that, Judge, what is undisputed is that an
14 unsigned indictment was -- the indictment was never signed
15 and it was never presented to the grand jury in the proper
16 format and the judge was submitted an unsigned indictment to
17 the jury. Of course, I didn't see that it was unsigned as
18 well. Under the Gentry line of cases -- and I understand,
19 Gentry kind of cleaned some of that up saying that the
20 purpose of the indictment was simply to give you notice of
21 what the charges are, but I don't think there's a case on
22 point that really tells us if an indictment even exists
23 until it is signed by the prosecutor. I don't know,
24 certainly it could have been cured prior to it going to a
25 jury and I don't submit it wasn't, I would just argue, in

1 fact, no indictment ever existed because there was no signed
2 indictment presented and the jury never had a signed
3 indictment. And so I am asking for a -- I'm moving for a
4 dismissal or a new trial, whichever would be appropriate
5 under the circumstances if the Court agrees. Most
6 certainly, Judge, if you I believe that I've got a
7 legitimate issue there that I would ask that you consider
8 the law on -- I don't know that we have anything on point on
9 that, but the real practical aspect of what is going to
10 happen is that Mr. Brown is going to have an appeal and he's
11 going to have a bona fide legitimate PCR issue I do believe,
12 and so we're going to be revisiting this again and it may
13 take a couple of years, but as a matter of judicial
14 efficiency I believe it would be appropriate for the Court
15 to simply grant a new trial in this case. I represented him
16 at trial, I represented him at the trial.

17 THE COURT: So this is a motion for a new trial, the
18 grounds is that the indictment was not signed by the
19 solicitor?

20 MR. GRIER: No indictment existed because it was
21 unsigned and -- but at all points during judicial
22 proceedings there was no indictment.

23 THE COURT: But you do acknowledge I guess, do you not,
24 that the grand jury issued an indictment?

25 MR. GRIER: Yes, sir.

1 THE COURT: Solicitor, what is your position?

2 MS. MINGO: Your Honor, I believe that the lack of a
3 signature certainly does not void the indictment, definitely
4 not the conviction. The grand jury did true bill the
5 indictment, I think any concerns regarding the indictment or
6 any defects that Mr. Grier -- any defects concerning the
7 indictment should have been made prior to the jury being
8 sworn, I believe the case law is clear on that. If he had I
9 simply would have made a motion to amend the indictment with
10 a signature. I don't think it is that huge of an issue and
11 I believe the conviction stands.

12 THE COURT: I agree with your position on that issue as
13 you stated and deny the motion.

14 MR. GRIER: Okay. Judge, I have got another motion.

15 THE COURT: Okay.

16 MR. GRIER: Judge, certainly Mr. Brown was not present
17 at trial and I will tell you Mr. Brown, we -- I'm sure
18 you're going to ask me about how that happened, but most
19 certainly he says I didn't communicate with him and he was
20 unaware that this trial was taking place and he would have
21 been here had he had the opportunity to be here. I would
22 just move for a new trial on the basis that my client was
23 denied his due process rights and not being able to be
24 present, be heard and not participating in the proceedings.

25 THE COURT: All right. Well, of course I don't have

1 the transcript from the trial, I don't know what was
2 presented to the judge then.

3 MR. GRIER: Well, I did move for a continuance prior to
4 that trial and that was not granted.

5 THE COURT: All right. I deny your motion then on that
6 ground.

7 MR. GRIER: Judge, I had -- that's all of the motions
8 that I would have, I don't know if Mr. Brown would want to
9 be heard on that. I guess you've already ruled and I don't
10 know if you would like to hear from him on the grounds of
11 that motion.

12 THE COURT: Well, let me ask you this: Have you,
13 Mr. Grier, had an opportunity to look at the contents of the
14 file -- the sealed record?

15 MR. GRIER: No, in fact, I haven't. I do desire the
16 opportunity.

17 (Break in proceedings.)

18 MR. GRIER: Judge, I've had a chance to review that.
19 Judge, I will allude to what Judge Kinard stated or made a
20 finding, he says that the sentence doesn't make any sense.
21 You can't charge him -- sentence him to the department of
22 corrections and underline youthful offender. I just submit
23 to you and argue that the judge that reviewed this last time
24 said it was an illegal sentence and ask you to --

25 THE COURT: I disagree with his interpretation. I'm

1 looking at the sentence sheet and what he determines to be
2 the underlining of youthful offender sentence I find to be a
3 line drawn through the section below it, and you can see
4 that he does the same thing, when there are other blanks in
5 the sentence sheet he just draws a line through a blank to
6 make sure, I assume, that everybody knows he didn't intend
7 to go on in there, that's the way I read the sentence sheet.
8 I read the sentence sheet as the sentence was five years on
9 each and it was concurrent. But is that what we should do
10 in this case? I don't know. Solicitor?

11 MS. MINGO: Well, Your Honor, I believe the possession
12 of a firearm during the commission of a violent crime is a
13 straight five years, I believe I'm correct on that.

14 THE COURT: All right. Mr. Grier?

15 MR. GRIER: Judge, you're not bound by -- I said you're
16 not bound by -- I don't think you're bound by a previous
17 sentence by another judge. And --

18 THE COURT: That wasn't what the solicitor was saying,
19 she was saying that the conviction of possession of a
20 firearm in the commission of a violent crime mandates five
21 years.

22 MR. GRIER: Well, unfortunately I can't argue with
23 that, that is the law and there's no -- it's a minimum five
24 year sentence and there's no ambiguity about that.

25 THE COURT: Is there anything else that you wish to do

1 or want to do, Mr. Grier, concerning sentencing?

2 MR. GRIER: Judge, I would just ask that -- I would ask
3 that -- and quite frankly, I would ask that you suspend it
4 and/or some portion of it and split it. There's no
5 indication that he used the gun, or the evidence presented
6 at trial was that he presented it but he did not use it and
7 that he has ever used a gun to inflict harm on any one.

8 THE COURT: Doesn't the statute say I can't suspend it?

9 MR. GRIER: I think you're the judge, I would ask you
10 to do what --

11 THE COURT: What I want to do.

12 MR. GRIER: Yes, sir.

13 THE COURT: I think the legislature passed a law that
14 says I can't do it.

15 MR. GRIER: But if you think it's unconstitutional you
16 can make some new law here.

17 THE COURT: Anything else concerning sentencing?

18 MR. GRIER: No. I don't know if his family would like
19 to be heard, they've been here all morning, Judge, and I
20 don't know if anybody would like to speak. His dad was here
21 for the trial, he's here today and I -- Judge, would you
22 hear from them? I don't think it's probably going to make a
23 difference in the outcome here, but --

24 THE COURT: Certainly.

25 THE WITNESS: My name is Deacon Stanley Brown, my wife

1 is here with me today and his sister and his aunt. I would
2 like to speak on behalf of my son. You know, a lot of
3 things be written on a piece of paper but I raised him and I
4 really know what type of person he is. Right now he have
5 two little boys, one is six and one is three, he will be
6 four next month, I'll just say he's an outstanding father.
7 Most of the time when you seen him you seen him with those
8 two little boys, anybody that knew him knew what type person
9 he was. He got a good heart, and he loves his little boys.
10 And me and his mother, we've been behind him. We know what
11 type of person he is, and, Your Honor, if there is any
12 leniency towards him -- I don't want to see him spend a
13 whole lot of time away from his two little boys because they
14 constantly ask me and his mother when my daddy is coming
15 home. During the time he be incarcerated I take time out on
16 Sundays to bring him out there just to see his little boys.
17 You know, I know everybody make mistakes in life and nobody
18 is perfect, in certain situations everybody deserves another
19 chance, and right now I see that his boys need him and his
20 family support him and if there is any leniency today, Your
21 Honor, I ask you. Thank you.

22 THE COURT: Thank you, sir.

23 MR. GRIER: Judge, we close that the victim in this
24 case says that Jabarrie was a good father, the problems were
25 between them. He was a devoted father and she had a lot of

1 respect for him during the trial and had a lot of respect
2 for him as a father.

3 THE COURT: Solicitor, what about the victim?

4 MS. MINGO: Your Honor, I did speak with her yesterday,
5 I think she indicated she would be here but apparently could
6 not make it. But, of course, she -- I guess I will leave it
7 there, Your Honor. I've spoken with her several times when
8 we were before Judge Kinard and she inquired what could we
9 do the lessen the sentence, she's not out for blood. I
10 don't think that's the issue today, he has been convicted,
11 this is where we are now.

12 THE COURT: I can't see that we have any choice in the
13 matter, I don't see that I have any leeway.

14 MR. GRIER: Unless you interpret the victim's -- she
15 doesn't want this. I haven't been able to persuade the
16 solicitor that the victim's in these cases ought to be
17 listened to as much as they are when they are jumping up and
18 down to send them jail a long time, she's doing her job and
19 I do not mean that in any way -- just like folks question me
20 about my job and how we do it. But most certainly that has
21 been part of what we have been trying to do here today and
22 we have not accomplished it.

23 THE COURT: Mr. Brown, anything you want to say?

24 THE DEFENDANT: No, sir.

25 THE COURT: Mr. Brown, the Court is not going to

1 change, then, the sentence on either case. I guess just for
2 the record the sentences were five years each, they were
3 concurrent, credit for any time served. Good luck to you.

4 (End of proceedings.)

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1 I, the undersigned, Michael C. Watkins, Official
2 Court Reporter for the Sixth Judicial Circuit of the State
3 of South Carolina, do hereby certify that the foregoing is
4 a true, accurate and complete transcript of record of the
5 proceedings had and evidence introduced in the trial of
6 the captioned case, relative to appeal, in the Court of
7 General Sessions for Lancaster County, South Carolina, on
8 the 16th day of March, 2012.

9 I do further certify that I am neither of kin,
10 counsel, nor interest to any party hereto.

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June 29, 2012.

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Michael C. Watkins
Court Reporter

WITNESSES

Mike Adams- LCSO # 07-26518

S. Adams

ARREST WARRANT NUMBER/DOA

K-123143 (DOA-10/21/07)

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

MAR 25 2010

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

DOCKET NO. 2010-GS-29-1338

The State of South Carolina
County of Lancaster

COURT OF GENERAL SESSIONS

APRIL TERM 2010

THE STATE

vs.

Jabarrie Brown

Indictment for

Criminal Domestic Violence of a
High and Aggravated Nature.

SC Code: § 16-25-0065

CDR Code: 2988

Class: Felony D

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on , the Grand Jurors of Lancaster County present upon their oath:

CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE

That Jabbarie Brown did in Lancaster County on or about 10/20/07, cause physical harm or injury or offer or attempt to cause physical harm or injury with apparent present ability under circumstances reasonably creating fear of imminent peril to Courtney Mackey, the defendant's own household member, and during the commission of the offense the defendant did commit an assault and battery against the victim which involved the use of a deadly weapon or which resulted in serious bodily injury to the victim or the defendant did commit an assault against the victim, with or without an accompanying battery, which would reasonably cause a person to fear imminent serious bodily injury or death in violation of Section 16-25-65 of the Code of Laws of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Douglas A. Barfield, Jr., SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Lancaster
STATE

VS.

Jabbarie BrownAKA: _____
Race: B Sex: M Age: 26
DOB: _____ SS#: 3
Address: _____
City, State, Zip: _____
DL# _____ SID# _____*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: ADYHANIn violation of 16-25-65 of the S.C. Code of Laws, bearing CDR Code # 2988
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

22
Solicitor74946
SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department
of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling ☐

*Fines:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§47.12 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$
§14-1-213 (Drug Court Surcharge)	\$100	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§90.7(SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$ <u>13390</u>

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: _____

☒ Appointed PD or appointed other counsel,
§47.12 requires \$500 be paid to Clerk
during probation.Clerk of Court/Deputy Clerk _____
Court Reporter: _____

Presiding Judge _____

Judge Code: 2156Sentence Date March 31, 2012

SCCA/217 (11/2009)

and His Attorney.

Sentence entered March 16, 2012 and published to Defendant
BY Debra (139)

WITNESSES

Mike Adams-LCSO #07-26518

[Signature]

ARREST WARRANT NUMBER/DOA

K-123144 (DOA-10/21/07)

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date:

MAR 25 2010

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

2007
DOCKET NO. 2010-GS-29-1339

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

APRIL TERM 2010

THE STATE

vs.

Jabarrie Brown

Indictment for

Possession or Display of Firearm or
Knife During Commission of a Violent
Crime

SC Code: § 16-23-490

CDR Code: 0549

Class: Felony, F

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on _____, the Grand Jurors of Lancaster County present upon their oath:

**POSSESSION OR DISPLAY OF FIREARM OR KNIFE DURING COMMISSION OF A
VIOLENT CRIME**

That Jabbarie Brown did in Lancaster County on or about 10/20/07, possess or visibly display a firearm or knife, to wit: a firearm during his/her commission of a violent crime, to wit: criminal domestic violence of a high and aggravated nature, in violation of §16-23-490, *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.

Douglas A. Barfield, Jr., SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lancaster
STATE

INDICTMENT/CASE# 2007 -GS- 29 -1339

VS.
Jabarric Brown
AKA:
Race: B Sex: M Age: 26
DOB: 2 SS#: 3
Address:
City, State, Zip:
DL# SID#

AW#: K-123144
Date of Offense: 10/21/07
S.C. Code §: 16-23-490
CDR Code #: 0549

SENTENCE SHEET

☐ CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Possession of a firearm during the commission of a violent crime
In Violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0549
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
(CSC w/minor 1st or Lawd Act)
The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant (Waives Presentment to Grand Jury: (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 74946
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment
of \$; plus costs and assessments as applicable; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department
of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:
☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms: Obtain GED ☐
☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp.

Recipient: May serve W/E beginning
Substance Abuse Counseling ☐

*Fines:

\$14-1-206 (Assessments 107.5%)		\$
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
\$47.12 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$
\$14-1-213 (Drug Court Surcharge)	\$100	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
\$90.7(SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$ 733.90

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ Beginning
\$ Paid to Public Defender Fund
Other:

☒ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/Deputy Clerk [Signature]
Court Reporter: [Signature]

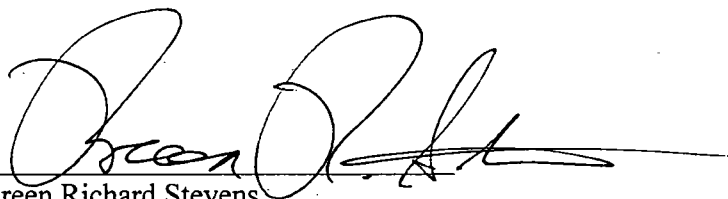
Presiding Judge [Signature]
Judge Code: 2156
Sentence Date: March 31, 2010

SCCA/217 (11/2009) Sentence opened March 16, 2012. And Published To Defendant
And His Attorney [Signature]

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

April 8, 2013

A handwritten signature in black ink, appearing to read "Breen Richard Stevens", written over a horizontal line.

Breen Richard Stevens
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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JABARRIE BROWN,

APPELLANT

APPELLATE CASE NO. 2012-210387

BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court committed reversible error by refusing to charge the jury on criminal domestic violence as a lesser included offense of criminal domestic violence of a high and aggravated nature.

STATEMENT OF THE CASE

On March 25, 2010, the Lancaster County Grand Jury indicted Appellant Jabarrie Brown on counts of criminal domestic violence of a high and aggravated nature and possession or display of a firearm or knife during commission of a violent crime. R. 155—R. 156; R. 158—R. 159. On March 31, 2010 the case proceeded to a trial in Appellant's absence before The Honorable Jeffrey Young and a jury. Mark Grier represented Appellant and Curtisha Mingo represented the State. R. 1. On April 1, 2010, the jury found Appellant guilty as charged, and the court entered a sealed sentence. R. 125, lines 19-25; R. 130, lines 20-22.

On December 12, 2011, Appellant appeared at a hearing before The Honorable J. Ernest Kinard, Jr. Mark Grier and Curtisha Mingo again represented the parties. The court further delayed sentencing.¹ R. 136-140. On March 16, 2012, Appellant appeared before The Honorable Brooks P. Goldsmith. Mark Grier and Curtisha Mingo continued to represent the parties. R. 142. The court sentenced Appellant to concurrent five-year terms of incarceration for the CDVHAN and possession charges.² R. 153, lines 1-3; R. 157; R. 160.

¹ The court concluded that the sealed sentence was invalid on its face and adjourned until a proper sentence could be determined.

² The court concluded that the original sentence was valid, interpreting it to impose the concurrent five-year terms of incarceration.

ARGUMENT

THE TRIAL COURT REVERSIBLY ERRED BY FAILING TO CHARGE CRIMINAL DOMESTIC VIOLENCE AS A LESSER-INCLUDED OFFENSE OF CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE BECAUSE MACKEY TESTIFIED APPELLANT DID NOT TOUCH HER AFTER HE PULLED OUT THE HANDGUN AND BECAUSE SHE KNEW HER BOYFRIEND WOULD NOT HARM HER.

FACTS

Cortney Mackey has known Appellant since 2003. On the afternoon of October 20, 2007, Appellant returned to Mackey's apartment after buying lunch for her and their young son. The two were dating and raising the child together. R. 53, line 20—R. 55, line 14. Appellant and Mackey were spending time together every day, either at his residence or hers. R. 67, line 19-24. Appellant and Mackey began to argue about not Mackey not coming to see him the night before. R. 54, line 11—R. 55, line 14. Appellant pushed Mackey on the couch, and she pushed him back before going upstairs to her bedroom. She called Appellant's father to come get him "because he was just starting to get on my nerves." R. 56, lines 1-18; R. 58, lines 14-23; R. 74, lines 19-23.

Appellant followed Mackey to the bedroom where they continued arguing, and Appellant pushed Mackey on the bed. She got up and punched Appellant in the head and went into her bathroom. R. 56, line 25—R. 57, line 13. Appellant followed her to the bathroom, pulled a small handgun from his pocket, and pointed it at her. R. 57, line 16—R. 58, line 4. Appellant's dad arrived soon thereafter, and Appellant voluntarily got in the car and went home. R. 61, lines 13-16.

Mackey admitted that as he left, she was still angry and stuck her middle finger up at him. She was not worried about provoking him. R. 70, lines 4-21. Later that night, Mackey, still upset, went to a hospital, where she called the police. She gave a written

statement about the argument. R. 86, lines 23—R. 87, line 22. Police then went to Appellant's home and arrested him. R. 88, lines 10-16; R. 93, lines 11-15. Nevertheless, Mackey and Appellant spoke the next day. Ap. 64, lines 16-20. They continued their relationship and are together today with a second child. R. 53, lines 20-24; R. 65, line 3—R. 66, line 7.

At trial, Mackey testified that she never took Appellant's actions with the gun seriously:

It was like up near my head area but it wasn't touching, and he was just like I'll kill you B [sic], but I was like you ain't going to do nothing, you ain't going to do nothing, and I wasn't even worried about it, ... So then he put the gun away and we just walked downstairs, but I had called his daddy to come get him.

R. 58, lines 7-13. Mackey later reiterated that when Appellant pointed the gun, she "was like, you ain't going to do s-h-i-t, and he put the gun back in his pocket and [they] went downstairs." R. 59, lines 10-14. She further testified that she "wasn't scared period. I didn't even call [the police]. . . . I didn't even write in my statement that I was scared." Mackey knew Appellant was "all mouth." R. 63, lines 18-25; R. 75, lines 5-16. Appellant's father also testified that "she didn't sound like she was upset or anything" when she called. R. 76, lines 14-16.

At the close of evidence Appellant requested a jury charge on criminal domestic violence ("CDV") as a lesser-included offense of criminal domestic violence of a high and aggravated nature ("CDVHAN"), which the court denied. The court concluded that the evidence indisputably established that a gun was involved, and therefore if the offense occurred, it was necessarily of a high and aggravated nature under the statute. R. 103, lines 1-16.

DISCUSSION

The trial court reversibly erred by failing to charge CDV because Mackay testified Appellant did not touch her after he pulled out the gun and because she knew her boyfriend would not harm her. The law to be charged is determined from the evidence presented at trial. *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). “[T]he task of the trial court in deciding whether to charge [a lesser-included offense], and of this court reviewing that decision on appeal, is to examine the record to determine if there is evidence upon which the jury could find the defendant was guilty of the lesser offense, but not guilty of the greater offense.” *State v. Golston*, 399 S.C. 393, 398, 732 S.E.2d 175, 178 (2012). In determining whether the evidence supports a lesser-included charge, a court must view the facts in the light most favorable to the defendant. *See, e.g., State v. Coleman*, 342 S.C. 172, 179-80, 536 S.E.2d 387, 391 (Ct. R. 2000) (citing *State v. Byrd*, 323 S.C. 319, 474 S.E.2d 430 (1996)). The trial court commits reversible error by failing to give a requested charge on an issue raised by the evidence. *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993).

South Carolina Code section 16-25-20(A) defines the offense of criminal domestic violence (“CDV”) as (1) causing to a person’s household member physical injury or (2) offering or attempting to cause such injury with the present ability under circumstances reasonably creating fear of imminent peril. Section 16-20-65(A) defines the offense of CDVHAN as committing CDV “when . . . [t]he person commits” either of the following:

- (1) an assault and battery which involves the use of a deadly weapon or results in serious bodily injury to the victim; or

(2) an assault, with or without an accompanying battery, which would reasonably cause a person to fear imminent serious bodily injury or death.

Thus, Appellant was entitled to a CDV charge if the evidence viewed in the light most favorable to him could support a finding that he committed neither (1) nor (2) above.

A. The evidence supported the finding that Appellant did not commit a battery using a deadly weapon because Mackey testified he did not touch her after he pulled out the handgun.

The evidence supported the finding that Appellant did not commit a battery using a deadly weapon because Mackey testified he did not touch her after he pulled out the handgun. As an initial matter, construing subsections (1) and (2) harmoniously means that subsection (1) requires the defendant to make contact with the household member during the assault and battery. The cardinal rule of statutory construction is to give effect to the intent of the Legislature. *S.C. Coastal Conservation League v. S.C. Dep't of Health and Envtl. Control*, 390 S.C. 418, 425, 702 S.E.2d 246, 250 (2010); *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing *Charleston County Sch. District v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993)). Legislative intent is first and foremost determined by the language of the statute. *State v. Pittman*, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) (citing *Whitner v. State*, 328 S.C. 1, 6, 492 S.E.2d 777, 779 (1997)). “[A] statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect.” *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). “When interpreting a statute, courts must presume the legislature did not intend to do a futile act.” *State v. Sweat*, 386 S.C. 339, 377, 688 S.E.2d 569, 651 (2010). Thus, a “statute should be so construed that no word, clause, sentence, provision or part shall

be rendered surplusage, or superfluous.” *Id.* at 351, 688 S.E.2d at 575 (quoting *In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995)). See also *Davenport v. City of Rock Hill*, 315 S.C. 114, 117, 432 S.E.2d 451, 453 (1993) (“It is never to be supposed that a single word was inserted in the law of this state without the intention of thereby conveying some meaning.”). “[A] penal statute is construed strictly against the State and in favor of the defendant.” *State v. Cutler*, 274 S.C. 376, 378, 264 S.E.2d 420, 420-21 (1980).

The South Carolina Code does not define assault and battery under 16-20-65(A). The offense has its origin in common law. *State v. Hill*, 254 S.C. 321, 329, 175 S.E.2d 227, 231 (1970). At common law, an assault was “an unlawful attempt or offer to commit a violent injury upon the person of another, coupled with a present ability to complete the attempt or offer by a battery. . . . [a]nd differ[ed] from assault and battery in that there [was] no touching of the victim” *In the Interest of Doe*, 318 S.C. 527, 533, 458 S.E.2d 556, 560 (Ct. R. 1995) (citations omitted). Courts harbor a strong presumption that the Legislature does not intend to modify the common law. *Wimberly v. Barr*, 359 S.C. 414, 422, 597 S.E.2d 853, 857 (Ct. R. 2004).

Nevertheless, the legislature may be regarded as modifying the common law when its language is clear and unambiguous. *Nuckolls v. Great Atlantic & Pacific Tea Co.*, 192 S.C. 156, 5 S.E.2d 862 (1939). Thus, in the recent past, the legislature has explicitly defined assault and battery by statute. See, e.g., *State v. Fennell*, 340 S.C. 266, 274, 531 S.E.2d 512, 516 (2000) (assaying offenses of simple assault and battery as defined by statute, assault and battery of a high and aggravated nature under common law, and assault and battery intent to kill as defined by statute). Under the current

statutory system, a person can be guilty of assault and battery in the second and third degrees even though the victim is neither injured nor physically contacted. S.C. Code § 16-3-600(E)(1).

For the present purposes, physical contact is implicitly required under subsection (1) because subsection 16-20-65(A)(2) specifies an offender must commit an “an assault, with or without an accompanying battery” To interpret otherwise would mean that the phrase “with our without accompanying battery” would be superfluous. Further, this interpretation comports with the principle that the legislature does not intend to modify the common law without expressly indicating it has done so.

At trial, the parties presented evidence supporting the finding Appellant did not commit a battery using the handgun as required under subsection 16-20-65(A)(1). CDV and assault and battery are offenses against the person. *See* S.C. Code Ann. Title 16, Ch. 3 (titled “Offenses against the Person” and including assault and battery offenses and offense of spousal sexual battery); *State v. Prince*, 335 S.C. 466, 475, 517 S.E.2d 229, 234 (Ct. R. 1999) (discussing “fear inducing” offenses of stalking, assault and battery, criminal sexual conduct, and CDV). With offenses against the person, the corpus delicti is consummated as soon as the victim suffers the harm that is sought to be avoided. *See, e.g., State v. Jones*, 344 S.C. 48, 54-55, 543 S.E.2d 541, 543-44 (2001) (holding defendant who simultaneously robbed three victims at gunpoint committed “a separate offense as to each person who was threatened with bodily harm by a deadly weapon” and could be charged with three separate counts). For the common law offense of assault and battery, the harm sought to be avoided is harmful or offensive contact and fear from the reasonable apprehension thereof. *See, e.g., State v. Davis*, 19 S.C.L. (1 Hill) 46 (Ct. R. L.

& Eq. 1833) (defining assault as “any attempt to do violence to the person of another, in a rude, angry, or resentful manner . . . and raising a stick or fist, within striking distance, pointing a gun within the distance it will carry . . . are the instances, usually put by way of illustration”); *Smith v. Smith*, 194 S.C. 247, 9 S.E.2d 584 (1940) (“[A] battery is the unlawful touching or striking of another . . . sometimes defined as any injury done . . . in a rude, insolent, or revengeful way . . .” (citations omitted)).

In this case, Mackey testified that Appellant did not touch her with the handgun or with anything else after he pulled the gun out. Instead, she specifically testified that he never touched her with the gun. In this situation, the only alleged harm sought to be avoided was fear from the reasonable apprehension that Appellant would use the gun to harm Mackey. Physical injury or offensive contact from his actual contacting her with the gun is simply not an issue in this case. While testimony showed Appellant did push Mackey downstairs and in her bedroom prior to pulling out the gun, any assault and battery he committed thereby was predicated on a harm independent of the handgun and was consummated before Appellant pulled out the gun. Thus, the evidence could not have supported a finding that Appellant committed a battery involving a deadly weapon as required under subsection 16-3-65(A)(1).

B. Evidence that Appellant and Mackey were dating and raising a child together and Mackey’s testimony that she never feared Appellant hurting her with the gun supported a finding that Appellant did not reasonably cause Mackey to fear being shot or injured with the gun.

Evidence that Appellant and Mackey were dating and raising a child together and Mackey’s testimony that she never feared Appellant hurting her with the gun supported a finding that Appellant did not reasonably cause Mackey to fear being shot or injured with

the gun. Whether Appellant's use of the handgun would reasonably cause a person to fear imminent serious bodily injury or death is an objective determination based on the totality of the circumstances. *Cf. State v. Navy*, 386 S.C. 294, 301, 688 S.E.2d 838, 841 (2010) ("Whether a suspect is in custody [for purposes of Miranda warnings] is determined by an examination of the totality of the circumstances It is an objective determination, that is, would a reasonable person have believed he was in custody.").

Based on the totality of the circumstances presented by the evidence, a jury could have found Appellant would not have reasonably caused a person in Mackey's position to fear being injured by the gun. Mackey and Appellant had known each other for around four years. Mackey was his girlfriend, whom he saw every day, and the mother of Appellant's young son, whom the two were actively raising together. The two had a not uncommon argument over the mundane topic of not seeing each other the night before. Both exhibited a predilection for expressing anger through coarse language and mild physical aggression, but no evidence existed in the record that Appellant had a violent reputation or previously engaged in violent behavior towards Mackey or anyone else. Neither did the evidence show Mackey suffered any physical injury.

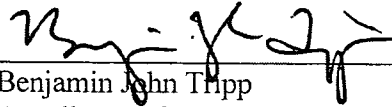
Mackey did not call the police at the time of the argument, nor did she exhibit any other indubitable sign that she feared for her safety at all. She testified she merely left Appellant downstairs and called his dad to come get him because he was getting "on her nerves." At the end of the fight, Appellant voluntarily got in his father's car and went home. Mackey testified she was fearless in insulting him as he left by sticking her middle finger up at him. She did call the police well after the argument, but admitted that when she did so, she was still angry at Appellant.

Finally, the only circumstances to be gleaned regarding the use of the handgun itself were that it was small and Appellant was already carrying it on his person. He did not actively retrieve it from elsewhere, and no evidence was presented that it was even loaded. The dispute between longtime boyfriend and girlfriend reasonably appeared to be fueled by raw emotions from uncool heads, but fear from being shot or beaten with a handgun was not necessarily one of those. Mackey's own testimony only supported this theory of the case. She stated she "wasn't scared period" and was entirely unimpressed with Appellant's show of force—so much so that she egged him on, saying, "You ain't going to do nothing." Based on the evidence and circumstances presented, the jury was entitled to determine that a reasonable person in Mackey's position would not have reasonably feared Appellant's use of the gun to cause injury.

CONCLUSION

For the foregoing reasons, the evidence could support findings that Appellant neither committed an assault and battery with a deadly weapon nor reasonably caused Mackey to fear imminent serious bodily injury or death. Accordingly, Appellant respectfully requests reversal of his convictions for CDVHAN and possession of a deadly weapon during the commission of a violent crime and remand for a new trial.

Respectfully submitted,


Benjamin John Tipp
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of June, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lancaster County
William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

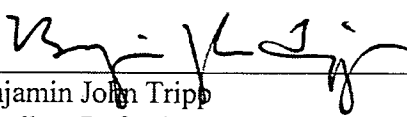
V.

JABARRIE BROWN,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Brief of Appellant 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 2nd day of June, 2014.



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of June, 2014.

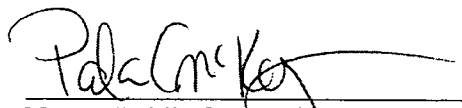
 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

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STATEMENT OF ISSUE ON APPEAL

The trial court did not err in declining to charge criminal domestic violence as a lesser included offense of criminal domestic violence of a high and aggravated nature where the evidence is uncontroverted that Appellant pointed a gun at his girlfriend's head and announced he would kill her.

STATEMENT OF THE CASE

Appellant Brown was indicted by the Lancaster County Grand Jury for criminal domestic violence of a high and aggravated nature and possession or display of a firearm or knife during the commission of a violent crime. He was tried by jury for these charges on March 31, 2010, and found guilty as charged on both counts at the conclusion of the trial on April 1, 2010. The jury took twenty minutes to deliberate. R. pp. 124-125. Brown did not attend his own trial, so the sentence was sealed. Ultimately, Brown was sentenced to concurrent terms of five years imprisonment for each charge.

STATEMENT OF FACTS

Appellant Brown pointed a pistol at his girlfriend and said "I'll kill you B." R. p. 58. His girlfriend (Victim) lived at her aunt's house with her child. Brown is the father. Brown took Victim and their child to McDonalds for something to eat. An argument started there over the fact that Victim did not come over to Brown's house the night before. The argument continued at the aunt's house, with Brown pushing Victim and Victim falling on the couch. She stood back up and pushed Brown. She then went upstairs with her child to her bedroom and closed the door. Brown followed behind and pushed her on the bed. She then punched him in the head and walked into the bathroom. Brown took a gun out of his pocket. R. pp. 52-57. It was a little grey gun. R. p. 58.

Victim testified as follows:

And then he like pointed it at me. It was like up near my head area but it wasn't touching, and he was just like I'll kill you B, but I was like you ain't going to do nothing, you ain't going to do nothing, and I wasn't even worried about it, ... So then he put the gun away and we just walked downstairs, but I had called his daddy to come get him.

R. p. 58, lines 7-13.

Brown walked outside towards his father and Victim, still angry, stuck up her middle finger at Brown. This prompted Brown to kick in the storm door. The storm door fell off its hinges and fell into the house. Victim testified that the father, Stanley Brown (Stanley), never came in the house. R. pp. 59-60; p. 62; p. 70.

Victim testified that when she called Stanley, she told him, "Stanley, this is [Victim], you need to come get [Brown], because he's starting to get angry is what I told him." R. p.

63, lines 6-8. Victim denied she was scared. R. p. 63.

In contrast, Investigator Mike Adams testified that he went to the hospital and took an incident report from Victim.¹ She appeared to be distressed and upset. She said she was fearful. R. pp. 87-88. Investigator Adams testified: "We went looking for [Brown] because the victim was so concerned about him coming for her." R. p. 88, lines 6-9.

Victim testified that her and Brown were back together soon afterwards. Victim testified that "[w]e communicated daily. I would say – I don't see him that much, but we communicate daily." R. p. 65, lines 10-11. They are still in a relationship. R. p. 66, lines 4-7. She testified that she works all the time, except when she is attending school (USC – Lancaster). Brown spends time with the kids, but Victim's aunt keeps them most of the time. R. p. 66.² Despite the fact that he pointed a gun at her head while her son was in the house, she still thought he was a good father who would do nothing to endanger the kids. R. p. 67, lines 6-8. She has forgiven Brown for pointing a gun at her head. R. p. 70.

Stanley verified that he received a call from Victim to pick up Brown. He reached the residence and honked the horn. He looked up to see Brown standing by the front door. As for the door, it was laying down in the doorway. On cross-examination, he contradicted himself and said that Brown was already standing outside when he arrived. Stanley offered to fix the door that his son knocked off its hinges. R. pp. 76-79; p. 85. No evidence in the record indicates Brown offered to fix the door he broke in his violent rampage.

¹ A pre-trial hearing was held, during which Victim testified that the door fell on the child. This probably explains the hospital visit, although the jury never heard this testimony. R. pp. 34-35. Victim testified that she never called law enforcement. R. p. 65.

² So the aunt is raising the children with Victim. Brown is mistaken when he claims that Victim and Brown are raising children together.

When they got home Brown told Stanley he found this gun and Stanley took the gun from him. Stanley lectured his son about the dangers of having a gun. Stanley hid the gun in the shrubs. But Stanley did the right thing and showed law enforcement where this gun was located when they arrived. Stanley described his actions as being "a good Samaritan." R. pp. 80-83.

Investigator Adams testified that he went to Brown's house later that evening. Investigator Adams saw Brown looking out the garage window. Stanley was outside when they arrived and they spoke with him. Stanley went inside the house to find Brown, but Brown fled into the woods. Stanley had to talk his son into coming out of the woods. Stanley showed law enforcement where the gun was buried, under a pile of mulch by the azaleas. R. pp. 88-91. When Brown spoke with law enforcement, he claimed he did not have a gun. R. p. 93.

ARGUMENT

The trial court did not err in declining to charge criminal domestic violence as a lesser included offense of criminal domestic violence of a high and aggravated nature where the evidence is uncontroverted that Appellant pointed a gun at his girlfriend's head and announced he would kill her.

Brown complains the trial court erred in denying his request to charge criminal domestic violence (CDV) as a lesser included offense of criminal domestic violence of a high and aggravated nature (CDVHAN). However, no evidence supports the lesser included offense. Brown pointed a gun at Victim's head and threatened to kill her. This conduct cannot be anything but CDVHAN.

A lesser included offense should be charged only where evidence warrants the instruction. State v. Coleman, 342 S.C. 172, 536 S.E.2d 387 (Ct. App. 2000). "It is not error to refuse to charge the lesser included offense unless there is evidence tending to show the defendant was guilty *only* of the lesser offense." Id. at 175, 536 S.E.2d at 389 (emphasis in the original). "The mere contention that the jury might accept the State's evidence in part and reject it in part is insufficient to satisfy the requirement that some evidence tends to show the defendant was guilty of only the lesser offense." State v. Franks, 376 S.C. 621, 624, 658 S.E.2d 104, 106 (Ct. App. 2008) (citations and internal quotation marks omitted).

Brown's argument is that because Victim testified she was not in fear of imminent serious bodily injury or death, a jury issue was created as to whether the CDV was of a high and aggravated nature. However, the CDVHAN statute defines an objective test, not a subjective one.

Criminal domestic violence is prohibited by S.C. Code §16-25-20(A) (Supp. 2007),³ which makes it unlawful to “(1) cause physical harm or injury to a person’s own household member; or (2) offer or attempt to cause physical harm or injury to a person’s own household member with apparent present ability under circumstances reasonably creating fear of imminent peril.”

Criminal domestic violence of a high and aggravated nature occurs when the aggressor commits: “(1) an assault and battery which involves the use of a deadly weapon or results in serious bodily injury to the victim; or (2) an assault, with or without an accompanying battery, which **would reasonably cause a person to fear imminent serious bodily injury or death.**” S.C. Code §16-25-60(A) (Supp. 2007) (emphasis added). An assault is “an unlawful attempt or offer to commit a violent injury upon another person, coupled with the present ability to complete the attempt or offer by a battery.” State v. Sutton, 340 S.C. 393, 397, 532 S.E.2d 283, 285 (2000). Note that paragraph (1) of §16-25-60 refers to injury inflicted on “the victim,” while paragraph (2), implicated in this case, refers to an assault causing “a person” to be put in fear of serious bodily injury or death.

Use of “a person” instead of a “victim” indicates an objective test that is not dependent on a victim’s subjective state of mind. See Seckinger v. The Vessel, Excalibur, 326 S.C. 382, 483 S.E.2d 775 (Ct. App. 1997) (statutory language should be given its plain and ordinary meaning unless something else in the statute requires an alternative meaning). The statute requires the “victim” be injured for paragraph (1) to apply, but does not require the State to prove the victim was in fear for paragraph (2) to become effective. See Home

³ The aggravated assault occurred on October 20, 2007. R. p. 159.

Building & Loan Ass'n v. City of Spartanburg, 185 S.C. 313, 194 S.E. 139, 142 (1937) (finding no requirement to publish proposed penalty ordinance where first part of the applicable statute permitted council to impose tax by ordinance after ten day publication period, and a later portion of the statute granted power to impose penalty without referencing a publication period); see generally Taylor v. Michigan Public Utilities Commission, 186 N.W. 485, 487 (Mich. 1922) ("The law designates the actors and when a law designates the actors none others can come upon the stage.").

In the instant case, the only evidence is that Brown pointed the gun at Victim and said "I'll kill you B." R. p. 58. This action undoubtedly would reasonably cause a person to fear imminent serious injury or death. "An assault with a pistol is one of an aggravated nature." State v. Wharton, 263 S.C. 437, 211 S.E.2d 237 (1975) *overruled on other grounds by State v. Evans*, 307 S.C. 477, 415 S.E.2d 816 (1992). Victim's testimony that she was not in fear, if believed, is not reasonable; her foolish subjective belief is irrelevant.

In State v. Golston, 399 S.C. 393, 732 S.E.2d 175 (Ct. App. 2013), this Court noted:

In most prosecutions for CDVHAN, there will be evidence the defendant committed acts which constitute only CDV in addition to acts which constitute CDVHAN. In this case, for example, Golston's statement to the victim "you ain't going nowhere" and his admitted "slap[ping] her face" could be found by a jury to amount only to CDV and not CDVHAN. However, the mere existence of evidence that Golston committed these acts in addition to other acts which could constitute CDVHAN, such as beating the victim with his fists so severely that her own son could not recognize her and she could not open one of her eyes for ten days, does not warrant a jury charge on simple CDV. Rather, to warrant a jury charge on the lesser offense, the evidence viewed as a whole must be such that the jury could conclude the defendant is guilty of the lesser offense *instead of* the indicted offense.

Id. at 397-98, 732 S.E.2d at 178 (citation omitted, emphasis in the original).

In the present case, the evidence indicates that Brown pointed a gun at Victim's head and threatened to kill her. Fortunately, this is not a homicide case. However, the compulsion to point a pistol at a person's head should be dealt with firmly, and the acceptance of such extreme conduct as a mere simple assault would signal casual tolerance for the violent use of guns that our society must deplore. Whether or not Victim was in actual fear for her life is immaterial. Accordingly, no evidence supports that Brown was guilty of only the lesser rather than the greater offense, and the trial court did not err in declining to charge criminal domestic violence to the jury. The conviction and sentence should be affirmed.

CONCLUSION

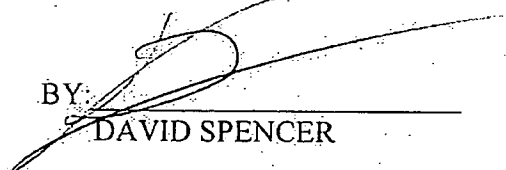
For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

August 28, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Lancaster County

Honorable William Jeffrey Young, Circuit Court Judge

THE STATE,

Respondent,

vs.

JABARRIE BROWN,

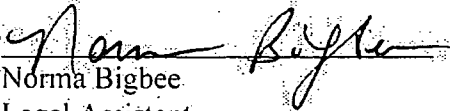
Appellant.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Benjamin J. Tripp, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, PO Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

This 28th day of August, 2014.


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