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SC Court of Appeals

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY

Thomas L. Hughston, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHARLES MOODY BRANDENBURG,

APPELLANT

APPELLATE CASE NO. 2013-002655

RECORD ON APPEAL

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

Attorneys for Respondent

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF ABBEVILLE	)	
STATE OF SOUTH CAROLINA,	)	
	)	
v.	)	Case No. 13-GS-01-00418
	)	
CHARLES M. BRANDENBURG, JR.	)	
	)	
Defendant.	)	

TRANSCRIPT OF JURY TRIAL

The within jury trial in the above-captioned matter was held on December 4-5, 2013, before The Honorable Thomas L. Hughston, Jr. in Court of General Sessions, Abbeville County Courthouse, 102 Courthouse Square, Abbeville, South Carolina; attended by counsel as follows:

APPEARANCES:

Elizabeth Phillips White, Assistant Solicitor
Yates Brown, Assistant Solicitor
8th Judicial Circuit
....Appearing for State of South Carolina

Patricia Bolen, Esq.
Jana Nelson, Esq.
8th Circuit Public Defenders Office
....Appearing for the Defendant

Transcribed for Vivian Clark, Court Reporter

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
P O Box 901
Johns Island, South Carolina 29457
dgarrison@sccourts.org

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(None Entered)

INDEX OF COURT'S EXHIBITS

(None Entered)

THE COURT: Could the jury please give me your attention? First of all, let me introduce myself, my name is Tommy Hughston. I work as a Circuit Judge for the State of South Carolina and I have been assigned by the Chief Justice of the Supreme Court of South Carolina to preside over this week's term of General Sessions, or what we normally think of as criminal court here in Abbeville County.

We have been involved since Monday with the disposition of cases in which the State claims that someone has violated one of the laws of this state and we have asked you to come in today anticipating that we will need you to conduct a jury trial.

I believe the Clerk has already called the roll of the jury so we know who'all we have here.

At this point, I need to ask you some additional questions to make sure that you are qualified to serve on the jury. I am going to ask you a series of about ten or twelve questions, to you as a group. If your answer is yes to any of the questions,

please stand where you are seated so that I can see that you are answering yes. I may need to follow up with some additional questions to you.

So, as I said, I am going to ask a series about ten or twelve questions to you as a group if your answer is yes to any of the questions, please stand.

Does any member of the jury, anyone here to serve on the jury who is not a citizen of the United States of America? If so, please stand. Anyone not a citizen of the United States of America, if so, please stand. (No response). No one's standing.

Anyone here to serve on the jury who is not now a resident of Abbeville County? You may have lived in Abbeville in the past but you have since moved elsewhere but you still got a notice to come and you came today in response to that notice. Anyone not now a resident of Abbeville County? If so, please stand.

Yes sir, tell me your name and number, if you would please, sir.

JUROR NUMBER 144: My number is 144. Robert C. Watt and my address is [redacted]

[redacted] Building.

THE COURT: You live in Anderson County, then?

JUROR 144: Yes, sir.

THE COURT: All right, then we will excuse you. Thank you very much for coming. You are free to go. I don't know how we got you on the list, either through your voter registration or through the highway department driver's license but you might need to let one or both of those know that you live in Anderson County, not in Abbeville County.

JUROR 144: Thank you, sir.

(JUROR NUMBER 144 IS EXCUSED)

THE COURT: Thank you very much. Anyone else with a positive response to that question? If so, please stand. (No response). No one else standing.

Anyone present for jury duty who has less than a sixth grade education or its equivalent? If so, please stand. Anyone with less than a sixth grade education or its equivalent? If so, please stand. (No Response). No one's standing. Anyone here to serve on the jury who is unable to read, write, speak or understand

the English language? If so, please stand. (No response). No one's standing.

Is anyone here who is a county officer, a law enforcement officer of any type, or who is employed within the walls of any courthouse? If so, please stand. (No response). No one's standing.

Anyone here to serve on the jury who has been convicted, or pled guilty in a state or federal court to a crime punishable by imprisonment for more than one year and whose civil rights have not been restored by pardon or amnesty? If so, please stand and come down front and I will discuss that with you.

You all (speaking to counsel) just stay seated, just stay seated. I'll tell you what you need to know if you need to know anything. Yes, sir. Give me your name and number, please sir.

JUROR 104: Randy Monroe

THE COURT: Well, what do you think you want to tell me?

(SIDEBAR)

(SIDEBAR CONCLUDED)

THE COURT: Okay, all right, tell me your

name again.

JUROR 104: Randy Monroe.

THE COURT: Randy Monroe.

THE CLERK: Juror 104.

THE COURT: Juror Number 104, Randy Monroe will be excused. Thank you very much for coming. You are free to go.

(JUROR NUMBER 104 EXCUSED)

BAILIFF: Juror Number 44.

THE COURT: Come on up.

SIDEBAR:

THE COURT: Yes sir, what do you want to tell me?

JUROR NUMBER 44: I had a failure to stop.

THE COURT: Okay. That, that, that failure to stop would do it then. What did you want to tell me about what the judge told you, what?

JUROR 44: That he said he could sentence me up to two years.

THE COURT: Yeah, that's right. That's right. That would, that would do it and, Okay. This is 44?

JUROR 44: Yes, sir.

THE COURT: Juror Number 44 is excused. Thank you for coming, you are free to go.

(JUROR NUMBER 44 EXCUSED)

BAILIFF: Juror 142, Your Honor.

SIDEBAR:

THE COURT: All right, what did you want to tell me?

JUROR NUMBER 142: (Inaudible)

(SIDEBAR CONCLUDED)

THE COURT: Okay. And your number was what?

JUROR NUMBER 142: One forty-two (142).

THE COURT: Juror Number 142 is excused. Thank you very much for coming, you are free to go.

Anyone else with a positive response to that question? If so, please stand. (No response). No one else standing.

Does anyone have any type of medical problems such as a problem with your heart or a back problem or something of that sort that you think would interfere with your ability to serve on the jury this week? Anyone with any type of medical problem that you think would interfere with your ability to serve on the jury this week?

(No Response). If so, please stand and come down front and I'll discuss that with you. Yes sir?

JUROR NUMBER 50: Good morning.

THE COURT: Tell me your number, please, sir.

JUROR NUMBER 50: Fifty (50).

THE COURT: Fifty. All right, what do you want to tell me?

(SIDEBAR)

THE COURT: Uh, Okay. Well I'm going to ask you to stay with us. If you think it presents a problem during the course of the trial and you are actually selected on the jury, you let me know something that, you know, that you need a break or you need to get up and move around or whatever, and we'll try to accommodate you. Okay?

JUROR NUMBER 50: That works.

THE COURT: Stay with us.

JUROR 50: All right.

BAILIFF: Number 88, Your Honor.

THE COURT: Yes, ma'am. What would you like to tell me?

JUROR NUMBER 88: I am sick and I have

trouble sitting for a long periods of time.

THE COURT: How about an hour, an hour and fifteen minutes?

JUROR NUMBER 88: Yeah, I can handle that.

THE COURT: Okay, but you said you were sick, what do you mean by that?

JUROR NUMBER 88: I have sinusitis and an ear infection.

THE COURT: Are you on medication?

JUROR NUMBER 88: No.

THE COURT: You need to go to a doctor?

JUROR NUMBER 88: Uh, yeah.

THE COURT: All right, all right, I'm going to transfer her then. We are going to transfer you to another term of court after the first of the year.

Just give her notice of whatever.

Okay. We are going to ask you to come back when you are feeling better, okay?

JUROR NUMBER 88: All right. Thank you,

THE COURT: That's number 88, was it?

CLERK: Yes, sir.

THE COURT: Juror Number 88 is excused from this term. Be transferred.

(JUROR NUMBER 88 TRANSFERRED)

BAILIFF: Juror Number 128.

THE COURT: Come on up.

SIDEBAR:

THE COURT: Yes, ma'am, what would you like to tell me?

JUROR NUMBER 128: (Inaudible)

COURT REPORTER: Judge, I can't hear her.

THE COURT: That's okay. This doesn't need to be on the record. I'll let you know if we run into something we need to have on the record.

COURT REPORTER: Thank you.

THE COURT: But you said -- what are you taking for that?

JUROR 128: I got medicine in the car

THE COURT: But you think that you would be bothered by serving on the jury?

JUROR 128: I think it would.

THE COURT: You think that you would be bothered by serving on the jury, that it would upset you?

JUROR 128: Yes.

(SIDEBAR CONCLUDED)

THE COURT: Okay, I am going to excuse

her. All right, so what number?

CLERK: 128

THE COURT: 128's excused. Thank you for coming, you are free to go.

(JUROR NUMBER 128 EXCUSED)

CLERK: Twelve.

THE COURT: Yes, sir, what would you like, what do you want to tell me?

(SIDEBAR WITH JUROR NUMBER 12)

THE COURT: We'll excuse you then. Thank you very much for coming, you are free to go.

(JUROR NUMBER 12 EXCUSED)

THE COURT: All right, I usually ask this at the first but I forgot it, I'm going to go back and ask it now.

Anyone here to serve on the jury, any one here that's been summoned in this year as a potential juror, who is under the age of eighteen or over the age of sixty-five?

If so, please stand. Anyone under eighteen or over sixty-five, if so, please stand. (No response). No one's standing.

Anyone here to serve on the jury who is a full time teacher or a full time student in a school? If so, please stand. Full-time

teacher, full-time student, if so, please stand. No one's standing.

Anyone here who has a child under the age of seven for whom you have the duty of custody and care and you have not been able to make arrangements for someone to care for your child.

And also I include in that any elderly parent or someone that you have the duty and custody and care or anyone with any type of problem in regard to caring or a child or person, an elderly person, if so, please stand. No one is standing.

All right in addition to those reasons that I've gone over, for which I can excuse you from serving on the jury, there may be some particular compelling personal situation, such as a problem with your job, family obligation, or something of that sort that makes it particularly inconvenient for you to serve on the jury this week.

I cannot excuse you for such a reason but I can consider transferring you to a later term of court when you might be able to make better arrangements, be able to serve for a week on the jury.

This is a relatively short week, keep that

in mind, Wednesday through Friday. So, keep that in mind as you decide whether you might want to be transferred to a full term from Monday through Friday or not. But if you would like to discuss that with me, go on down front and I'll discuss it with you.

BAILIFF: Juror Number 134.

SIDEBAR:

THE COURT: All right, come on up.

JUROR NUMBER 134: Your Honor, I'm a college basketball referee and I'm a high school basketball referee. I get my schedule like in six to eight months ---

THE COURT: How about that? Guess what, I used to be an official too.

JUROR NUMBER 134: Yes, sir. I get my schedule like six to eight months in advance.

THE COURT: When you've got a game.

JUROR NUMBER 134: I've got a game. I had a game last night. I got a game today. I've got a game tomorrow.

THE COURT: What time today?

JUROR NUMBER 134: I've got to be in North Carolina around, like 3:00.

THE COURT: Today?

JUROR NUMBER 134: Yes, sir.

THE COURT: Okay, we will transfer him then. Okay. You will be transferred. She'll send you another notice. Good luck.

CLERK: It's Scott Sutherl?

JUROR NUMBER 134: Yes.

(JUROR NUMBER 134 TRANSFERRED)

THE COURT: Anyone else that would like to be considered for a possible transfer? (No response), -- no one else is standing.

All right, let me tell you how we normally operate. We normally start work about 9:30 in the morning and we work, we take a break, about a ten or a fifteen-minute break sometime during the morning and we work until about 1:00. And then we take a lunch break from 1:00 to 2:00 and we come back at 2:00 and we work until about 5:00 in the afternoon.

So those are our normal hours of operation, normal hours of being here conducting the trial of cases. So those are the times that you should plan on being with us, as you are looking forward during the week, if you are actually selected to be on a trial jury.

The clerk's going to go ahead now and get

everything in order as far as getting all your names into the computer. Now we do everything by computer, so that we can select a jury. I am going to give you a break.

Actually, we have a couple of matters that we need to deal with, I think, before we can actually select a jury. Let me see the lawyers up here over to this side, if you would, they are going to be involved in the trial of the case.

(OFF RECORD SIDEBAR)

THE COURT: All right, before we actually get started with the trial of the case that we have, that we anticipate being called for trial this morning, I have to go over some matters, deal with some pretrial issues with the attorneys and there is no need in keeping you here. Actually, I cannot allow you to be in here while we are dealing with those pretrial matters.

So I am going to give you a break and ask that you return, be back here in the area outside the courtroom doors there by 12:00. It's about, well almost a quarter until 11:00 now. I think I should be able to do the things that I need to do with the lawyers in about an hour and fifteen minutes. So I am going to ask you to

leave the courtroom. Be back outside these doors at 12:00 and we'll ask you come back in as soon as we can after that.

So, if you would, go out ---, before you go I need to see three, I need to see three of you down here:

Number 24, Jonathan Brown

Number 32, David Cann, I believe it is.

Number 81, Jeffery Johnson

If those three would come down front here. I want to ask about something, if you would. Please all three come down front. Everybody else is free to go.

(JURY PANEL ON RECESS)

THE COURT: Just wait, just wait right there. You two wait right there, one at a time. SIDEBAR:

THE COURT: Tell me your name?

JUROR NUMBER 32: David Cann.

THE COURT: Mr. Cann, all right. I got a juror, a copy of a, what's said to be your record and it shows on there that you were convicted of an assault on a police officer in 1993. Do you remember that?

JUROR NUMBER 32: Yes, sir.

THE COURT: Okay. That would, then that does carry a possible penalty, you didn't serve a year, but it carries a possible penalty of more than one year so that would disqualify you. So I am going to excuse you.

(SIDEBAR CONCLUDED)

THE COURT: Juror Number 32 is excused.

(JUROR NUMBER 32 EXCUSED)

THE COURT: Who's next? All right, Jonathan Brown?

SIDEBAR:

THE COURT: Okay. They gave me a copy of what shows, what's supposed to be a record that shows that in 1991 you broke into a motor vehicle. Do you remember that?

JUROR NUMBER 24: Yes, sir.

THE COURT: Is that right?

JUROR NUMBER 24: Yes, sir.

THE COURT: Okay, that does carry up to five years so, you might not have served anything and all but it does carry five years with that which will disqualify you now, Okay?

JUROR NUMBER 24: Yes, sir.

THE COURT: Thanks for coming. You are free to go.

(SIDEBAR CONCLUDED)

THE COURT: Number 24 is excused.

(JUROR NUMBER 24 EXCUSED)

THE COURT: Come on up, Mr. Johnson.

JUROR NUMBER 81: Yes, sir.

SIDEBAR:

THE COURT: Okay. I have been given a copy of what's supposed to be your record and all and it shows that in 1993, yeah, that's it, you know, you were convicted of possession of stolen property and all, is that right?

JUROR NUMBER 81: That was expunged.

THE COURT: Okay. Well, I don't know, when you say expunged ---

JUROR NUMBER 81: Expunged, pardoned, cleared off my record.

THE COURT: Think you were given a pardon?

JUROR NUMBER 81: I was given an expungement. Isn't that what it is called?

THE COURT: That's okay. That doesn't necessarily disqualify you and everything. That doesn't disqualify you, and everything, you know.

One of you (solicitors) come up here

just a second. You know we say the language of it we've been using is you know, civil rights have not been restored by pardon or amnesty but how expungement fits into that now. If a record has been expunged, I know it does, I mean ---

SOLICITOR: Well, if it is has been expunged, it shouldn't be showing on the ---

THE COURT: He says, that what he says, he says his record has been expunged on this.

Mr. Johnson, did you say your record has been expunged on this, tell me about what you mean by that?

JUROR NUMBER 81: I had to write letters to an attorney and to the Governor of the State after not being in any trouble and met the conditions ---

THE COURT: Okay, I think it qualifies, I think you are qualified -- so I am going to ask you to stay with us. You come back at 12:00, Okay?

JUROR NUMBER 81: All right, sir.

SOLICITOR: I'm sorry, which number

was that?

THE COURT: Juror Number 81. Possession of stolen goods or something like that. Juror Number 81, possession of stolen property.

(SIDEBAR CONCLUDED)

(DEFENDANT PRESENT)

THE COURT: All right, I will be right back. I am going to bring those Motions out. I'll be right back. Keep your seat.

(JUDGE EXITS/RETURNS TO COURTROOM)

THE COURT: All right, so I have been informed that the case you want to call, that the State wants to call for trial, is the case of State v Charles Brandenburg.

And I have been given two Motions, one a Motion for Severance and a Motion to Quash. Which one to deal with first? I guess, I think it would be the Motion to quash.

MS. BOLEN: I think so, Your Honor.

THE COURT: All right. So I have read what you have said in your written Motion, be glad to hear from you as to anything else you want to say.

MS. BOLEN: I don't have a lot more in

terms of oral argument on this one other than that the Indictment doesn't give any specificity about what ---

THE COURT: Where is, I don't have the Indictment. Let me have the Indictment. Let me have a moment to read it. (Upon review), okay. What do you have to say in response to this motion?

MS. WHITE: Your Honor, first of all looking at South Carolina Code Section 17-19-20 which states ---

THE COURT: 17-19-20. I don't have that.

MS. WHITE: --- that every Indictment shall be deemed and judged sufficient -- and I am paraphrasing -- if it charges the crime substantially in the language of the common law or of the statute prohibiting the crime charged.

Turning to the specific statute ---

THE COURT: Wait a minute, let me look at that, then you can go on. Section what?

MS. WHITE: 17-19-20

THE COURT: 17-19-20. (Upon review), okay.

MS. WHITE: And, Your Honor, I have the most recent version of the stalking statute, 16-

37-, ---

THE COURT: You want to pass it up?

MS. WHITE: I can, (tendering). And, Your Honor, the indictment tracks the language of the statute.

The statute defines stalking as a pattern of words, conduct that are intended to cause and does cause a person to fear death or bodily injury, CSC, kidnaping of the person or a member of his family. It goes on and defines pattern.

Also, Your Honor, *State v. Gonzales*, which is a 2004 Court of Appeals case, 600 SE 123 ---

THE COURT: Okay, let me see if there is any difference in the language from what I'm looking at.

MS. WHITE: Yes, sir.

THE COURT: All right. Thank you. Your position is that a pattern is -- and all you've got to do in the indictment for it to be a sufficient indictment is to track the words of the statute?

MS. WHITE: Your Honor, I think I said -- the position of South Carolina law, *State v. Gentry*, the indictment is a notice document which puts one on notice of the crime that he has

alleged to have committed.

THE COURT: You have to have the facts you base ---

MS. WHITE: Well, Your Honor, I don't know if an indictment is required to enumerate all the facts. It puts this defendant on notice. It tracks the language of the *State v. Gonzales* wherein the statute creates and defines intent is ordinarily sufficient.

Your Honor, this Motion has become ---

THE COURT: And this is for such a broad parameter of time also.

MS. WHIET: Well, stalking, Your Honor, is a pattern.

THE COURT: It is all the way from February to ---

MS. WHITE: Stalking being a pattern, there has to be a pattern.

THE COURT: I understand that, I understand that, and all, but it just seems like you ought to be, you ought to be able to tell somebody what words, what actions, what it is you think constitutes these different conclusions that you've reached, that you reach.

MS. WHITE: Your Honor, I would consider this analogous to a burglary indictment where the State alleges that they committed a crime therein but were not required to state what crime the defendant went in to commit.

THE COURT: Well, that's ---

MS. WHITE: I don't think the State's required to allege every fact that proves its case. He is on notice that between, that on this time period his conduct towards this specific victim and her family constituted stalking.

Now, if we said the he stalked a person, I could see where that wouldn't be sufficient notice of what he is being called to answer.

But he is being called to answer his conduct against this specific victim and her family between those specific dates, between September the 18th and February 28th.

Now, I think the statute requires the broad timeframe to encompass all of the conduct, the pattern, where it is two or more actions. This was multiple actions on multiple days spanning those four months.

THE COURT: All right, anything else you

want to say in response to that?

MS. BOLEN: Thank you, Your Honor, it is a six-month timeframe that's alleged and this, part of this Motion ties in with some discovery issues that there are in the case. Where this indictment was obtained, I believe, on Monday of this week and that the timeframe is one that has been very recently expanded.

As Your Honor says, there is nothing in the indictment about what he is alleged to have done by words or conduct. There is a number of ways that the stalking statute alleges someone can stalk someone else and the indictment does not put us on notice for which of those they're seeking to prove.

Additionally, the indictment does not say anything about her family, it specifically says Angela Brandenburg.

MS. WHITE: It says her family at the bottom, Your Honor. Your Honor, I think procedurally, a little bit of procedural background, would probably be helpful.

The State alleges this conduct began around September, 2012. It continued through December the 19th, which is when he was arrested for

stalking by Abbeville County. He was released on bond about a week later and the conduct continued after that for another approximately two months. At that point, Abbeville City got a warrant, they saw the stalking warrant, got a harassment warrant.

When we got the case, they came in as two separate warrants and in the interest of judicial economy it didn't make sense to chop it up. It was the same victim, the same defendant and relatively the same timeframe so we combined all the information and got the indictment for stalking.

THE COURT: Well, I understand that but the basic, you know, the thing ---

MS. WHITE: And, Your Honor, the ---

THE COURT: --- what bothers me about this is, is that just does track the statute. Maybe that is the state of the law and all, that all you got to do is allege what the statute says and that's a good indictment. Then that's the law and that's what we follow and everything, and all.

I would, you know, I think it ought to go beyond that in that it should contain facts other

than just, you know, what the statute says but apparently the case law is that's all it has to say.

MS. WHITE: And Your Honor, I did also want to address that the ---

THE COURT: Have you got a copy of the case that you said says that?

MS. WHITE: I don't have -- my internet connection is not working, Your Honor. I can print out a copy of it. I don't have it directly with me.

MS. BOLEN: Your Honor, I've got it pulled up on my computer if you want me to bring it up.

THE COURT: Well, I'll come down there. All right, anyone else want to say anything?

MS. WHITE: Your Honor, I did want to say she brought up the discovery, the, both warrants in the case allege these dates. The County warrant begins on September 18th and the City warrant is through, I think, February the 26th. So these dates are included when discovery was provided originally.

MS. BOLEN: Yes, I take a little exception to that. The warrant does state in this case, but especially the second warrant says just

Abbeville.

It does not give any indication -- until yesterday I had no indication that there was any alleged conduct between December 19th and February 26th. And that is going to be part of my discovery motion and I guess that also ties into the severance motion, but prior to yesterday there was one allegation with a two and a half month time period with nothing and then one single date allegation.

MS. WHITE: Your Honor, the incident reports that she was provided did state that the victim had not reported a lot of incidents.

When I met with the victim and talked with her yesterday, I got the entire timeline where incidents were not reported to law enforcement. I provided that to Ms. Bolen as soon as I had it.

I don't think that they are, all of the information that's in the care, custody and control of the State was provided to Ms. Bolen in a timely fashion. I don't believe there is any duty on my part to tell her---

THE COURT: Well, I don't know about discovery, I am not really going to deal with

that right now. I am dealing with the Motion to quash.

MS. WHITE: Yes, sir.

THE COURT: As far as your Motion to quash is concerned, and all, I deny your Motion to quash.

MS. BOLEN: Yes, sir.

THE COURT: Apparently the law is that to track the language of the statute is enough but there is -- and I find that there is sufficient notice to the defendant as to what he is being charged with in this indictment.

MS. BOLEN: Yes, sir.

THE COURT: All right. Now, then does that, you also had given me this Motion to sever, or whatever and all, but apparently all we are dealing with is this one indictment now.

MS. BOLEN: Well, yes sir, and that kind of was the basis of my Motion to sever. My client was arrested on -- well, the warrant was signed on December 13, 2012.

This warrant was signed by the Abbeville -- I'm sorry. The warrant from the Abbeville County Sheriff's Office is a warrant for stalking. The dates on that warrant are

from September 18, 2012 to November 13, 2012.

THE COURT: I know but -- I mean, we're not dealing with that anymore. All we are dealing with is this indictment.

MS. BOLEN: Right, but my severance motion goes to that one indictment -- yes sir -- in that he was charged ---

THE COURT: We're not dealing with the harassment charge.

MS. BOLEN: Correct, but the stalking charge ends on November 13th of 2012.

THE COURT: The indictment, the warrant did, but now we've got an indictment that goes from September 1 until February 28th.

MS. BOLEN: Yes, sir, and our Motion is that he was charged with two separate incidences and that is improper for the State to re-indict him on one indictment that encompasses both incidences.

THE COURT: Why?

MS. BOLEN: Why?

THE COURT: (Affirmative nod).

MS. BOLEN; Because -- well, first of all, it is unfairly prejudices my client. I provided the case law in the brief but our State

Appellate Court has said that trying two cases that are maybe factually similar but are unrelated, I believe it is the *Cate* case that says that.

THE COURT: But we aren't trying but one case now.

MS. BOLEN: Right, but they're combining two separate warrants, basically to make their case stronger. Up until -- Ms. White did tell me last week she was intending to seek this indictment, but the indictment was not returned until Monday. That -- it does extend the time frame quite a bit, Your Honor, in that, prior to yesterday -- and I'm not faulting Ms. White, I know she did tell me as soon as she knew.

But prior to yesterday I was prepared to defend this case in one way and now I am provided a tremendous of information that completed undoes how I was prepared to defend this case.

Prior to yesterday, there was no allegation of any conduct between the 13th of December and February 26th. And the warrant that was obtained by the City on February 26th specifically says on September 26th to February 26th. There is no mention of anything before that.

It is true that in one of the incident reports that goes to the Sheriff's Office indictment the report notes that the alleged victim tells them that there were other unreported incidences; but that is nowhere in the second warrant. So, we were prepared to defend a stalking based on conduct that happened September, October, November. And then Harassment for conduct that happened on one day in February.

THE COURT: Well, are you moving then for a continuance because you haven't had adequate time to prepare for this trial?

MS. BOLEN: No sir, we are not asking for a continuance.

THE COURT: Why not?

MS. BOLEN: We are asking for ---

THE COURT: It seems that what you'd be doing.

MS. BOLEN: Well, we are asking for ---

THE COURT: I have already ruled that this indictment is good and they can, you know, they can proceed on this indictment.

MS. BOLEN: Okay.

THE COURT: So why shouldn't we go to trial

on it then?

MS. BOLEN: I am not saying we shouldn't go to trial on it, I am just saying that we should -- that the charges should be severed as the original warrant. That he was ---

THE COURT: I deny that.

MS. BOLEN: Okay. Your Honor, next we have a discovery motion. We're asking for suppression of evidence that was given to us yesterday.

If I can just pull up exactly what I found out yesterday. Just to give you a little bit of background, Your Honor. Ms. White and I first talked about this case, according to my records, we first talked about it, on February 8th of 2013, which would be on the first charge. We had a docket appearance on that date, for the initial appearance. My notes say that Ms. White was asking for further documentation.

So, it's as long as ten months ago we were asking for further documentation of these other acts alleged.

Last week, ---

THE COURT: Well, what is it that you say that you were entitled to earlier than that you

didn't get.

What does the Rules say about what you are entitled to, first of all, -- I didn't bring a copy of the Rules out here, but what is it that you are entitled to that you don't think that you got?

MS. BOLEN: There are a number of apparent text messages and admissions by my client that I have not been provided with until yesterday and I still don't have the actual substance of them. I was just told that they exist.

THE COURT: So, you looking up the rule?

MS. BOLEN: Yes, sir.

THE COURT: Hold on just let's look at the rule. You got it?

MS. BOLEN: Yes, sir.

THE COURT: Okay. Let me come down there and look at it. The first one deals with statements of the defendant.

MS. BOLEN: Yes, sir.

THE COURT: Okay. So you say that you requested those and what?

MS. BOLEN: And yesterday I was told that there were text messages, a letter which apparently they are not going to try to

introduce, and phone calls and an admission of some type made by my client that they are going to introduce.

THE COURT: Do you have any response to that?

MS. WHITE: Your Honor, first of all regarding statements of the defendant, I found out about statements that the defendant made not to law enforcement, not to investigators, not to anyone in my office but to the victim. I found out about those yesterday, in trial prep. I told Ms. Bolen as soon as I knew about them. They are not in the care, custody or control of the State, never have been.

There are text messages that are on the victim's telephone. I told Ms. Bolen that she could look at them this morning, take pictures, do whatever she wanted to do regarding that. Going to, again, documents or intangible objects, again not in the care, custody or control of the State, it became known yesterday

---

THE COURT: Hold on just a minute, let's back up. Let's back up. So are there any

written or recorded statements made by the defendant which you intend to introduce as evidence?

MS. WHITE: No, sir, I am not intending to ---

THE COURT: Okay.

MS. WHITE: I intending to introduce oral statements by the victim to the victim, just through her testimony, and also paraphrased text messages that were sent her during the time frame. Not actually introduce pictures or the substance of the text message.

THE COURT: Oral testimony from the prosecuting witness as to what he said to her.

MS. WHITE: Yes, sir. Which I think falls under an admission.

THE COURT: Well, I mean, you said you didn't know about these statements until yesterday?

MS. WHITE: Yes, sir.

THE COURT: All right.

MS. WHITE: Yes, sir. But going to the actual requirements of Rule 5, if the victim is not a State actor, she is not being represented by the State, she is merely a witness in the

case. Ms. Bolen could actually have spoken with her. Ms. Bolen was perfectly free to call her, to call any of the State's witnesses.

THE COURT: Well, I understand that.

MS. WHITE: And I ---

THE COURT: Wait just a minute.

MS. WHITE: In fact, Ms. Bolen did speak with her.

THE COURT: All right, anything either of one of you has to say about oral statements?

MS. BOLEN: Yes, sir. I do believe that they need to be turned over. I understand that there are statements that the victim had. But Rule 5 states that -- our Rule 5 applies to the Solicitor says that anything that is "known to the prosecution or by exercising due diligence may become known. "

The State's case largely rests on the testimony of this woman and I think we should have known about these messages before yesterday.

I am aware of no legal authority by either our Supreme Court or the United States Supreme Court that requires the defense to preemptively find out what evidence the State is intending to introduce against the defendant at trial.

It is true that I spoke with Ms. Brandenburg but I don't think I am under any duty to ask her for more evidence against my client, Your Honor.

MS. WHITE: Your Honor, I think there is a duty on the part of the defense attorney to investigate. I also think that I have am under no duty to basically disclose the entire contents of my trial prep with the victim, which I did yesterday. I went above and beyond my duty, I believe, and disclosed every single thing that the victim told me yesterday.

MS. BOLEN: Well, I ---

MS. WHITE: That we intend to introduce at trial today. I think I went above and beyond the requirements of Rule 5.

Regardless of what they ask for in their Motion, "anything known to the prosecution", I don't have to turn over anything known to the prosecution. I have to turn over what is required by Rule 5 and *Brady*.

And I did turn it over as soon as I knew.

MS. BOLEN: Your Honor, I am not contesting that at all. She actually turned it over when -- she called me at 3:00 in the

afternoon yesterday, and turned it over as soon as she knew.

Our Rule 5 request was specifically for oral statements made by prosecution witnesses within the possession, custody or control of the prosecution.

And not only were these text messages ---

THE COURT: Well, Rule 5 really covers what he said and all. So, anyway, based on the record that has been made so far, before me, I do not find any violation of Rule 5 that would require me to suppress oral statements that he made that are going to be testified to by one of the witnesses for the State.

MS. BOLEN: Your Honor, also yesterday -- well, last week Ms. White had told me that there may, the victim had based, I was given five incident reports for the two warrants, one went with the February warrant, one went with, the other four went with the December warrant.

Last week Ms. White told me that there might be some other incidences and she gave me sort of general parameters of them. One of them involved something that allegedly happened in Greenwood County, one involved something that

allegedly happened in Berkeley County. Yesterday -- again, she turned it over as soon as she knew, but yesterday she gave me a much more definite time frame with many more details about all of these incidences that prior to yesterday we didn't know anything about.

And we are asking for those to be suppressed on the basis that to introduce them at this late time violates our client's rights to a fair trial, the right to defend himself, and his due process rights.

THE COURT: I don't understand what you are talking about.

MS. BOLEN: Well, we were, we've been, basically until yesterday we were on notice of five difference incidences that were outlined by the incident reports that I had received from the State. Yesterday, I was informed that there are now probably an additional nine incidences that they are seeking to introduce evidence of; which I had no knowledge of prior to yesterday.

MS. WHITE: And Your Honor, the reason there were -- she actually did know about one of them.

THE COURT: Wait, wait, wait, back up.

So what does that violate? I mean, what is it that you say that they have done that is contrary to the rule or law or whatever?

MS. BOLEN: Well, I think that it violates his rights to a fair trial, Your Honor. It's essentially that he is put on notice for one thing and then told the day before, 'well, we are actually going to try him on this other stuff.'

I think it violates his right to a fair trial. I think it violates his due process rights.

And we would just ask that we go forward on the incident reports that were provided and not on the other information that was given yesterday.

THE COURT: Well, I appreciate the position but I deny your Motion.

MS. BOLEN: Thank you, Your Honor. I think I have one last -- just want to make sure I hit everything, Your Honor.

Ms. White, I think Wednesday of last week, dropped off at my office a Family Court Order from Berkeley County which, among other things, contains a mutual Restraining Order. I think I referenced this Order in my motion for severance.

Since he is going to trial on a stalking charge, not the harassment charge, the restraining Order is not the element of stalking. It actually ---

THE COURT: Are you going to try and introduce that?

MS. WHITE: I do intend ---

THE COURT: Why?

MS. WHITE: --- to introduce it, Your Honor. I think it goes to that he was on notice that she did not want this contact to continue and it continued after this Order was issued.

THE COURT: Well then, is it an element of the offense of stalking?

MS. WHITE: I think it is intended to cause or could cause a reasonable person, the fact that even after a judge has told him, 'stay away from her and you are not to go around your children', that even after a judge has told him that ---

THE COURT: Well, ---

MS. WHITE: --- but he is still doing that. I think is very much an element of stalking.

It goes to the fear that she had; the fear that, you know, he would take the kids; it goes to his intent to ---

THE COURT: Well, I don't know about that, I am going to have to think about that a little bit. It seems to me that it would not be, you know admissible to prove stalking if stalking as defined under the statute.

MS. WHITE: Also Your Honor, I think ---

THE COURT: And any possible relevance would be out. This is a pretrial statement and everything. If you want to try and introduce it, you can let me know in advance that that's what you want to do and we'll take it up nonjury. I will rule at that time. But my pretrial, you know, feeling is that I don't think that's relevant and any possible relevance is outweighed by potential for unfair prejudice.

MS. WHITE: Your Honor, I think that it also goes -- I think it also goes as unfairly prejudicial to the State to not to introduce it because this conduct has gone on for months and that she has taken no steps to end it. I think the jury could think well she wasn't that scared after all.

THE COURT: No, no. Well, I've given you my first impression. As I said, if you want to try and introduce that in the trial of this case

for stalking, then you let me know in advance and we will hear you fully and let you offer your testimony and everything nonjury and I'll rule at that time.

MS. WHITE: Thank you, Your Honor.

MS. BOLEN: Your Honor, if I could have just a brief break I need to---

THE COURT: All right. Let me mention something up here, you all, the lawyers come up here. I may have a surprise for all of you.

I'm pretty sure that there used to be part of our law, statute, whatever and everything but the defense is entitled to three days notice in regard to an indictment. This Indictment is December 2. You know, I don't know that that's three days notice. I mean, if he didn't have notice of this Indictment until December 2, you are entitled to, look at the statute and see what the statute says. I don't know if you want to raise that or not. I am just telling you that I think that is what the law, or what the law used to be.

MS. WHITE: I think if the indictment is standing that ---

THE COURT: Well, look it up on your

computer, look at the statute and see what you are entitled to as far as notice.

I mean, I don't whether you all want to insist on that or not. But I mean, I think that is what the statute say, or at least it used to.

MS. WHITE: Your Honor, the statute section I see, 17-19-80 does say that persons indicted for capital offenses get at least three days.

THE COURT: Well, is that it? I couldn't remember.

MS. WHITE: It may just be capital offenses.

THE COURT: 17-19-30?

MS. WHITE: Eighty (80)

THE COURT: I couldn't remember. It may just be limited to that.

MS. WHITE: It appears to be limited to capital but I might be mistaken.

THE COURT: Okay. It looks like that's it.

MS. WHITE: Yes, sir.

THE COURT: I was, tried to expand it.

THE COURT: Are the researching that, or what are they doing back there?

MS. BOLEN: I am not sure, Your Honor.

I had one more thing I wanted to put on the record before we had the jury back.

THE COURT: All right. So anything else?

MS. WHITE: Your Honor, returning to the previous motion on behalf of the defense.

THE COURT: Which previous motion?

MS. WHITE: The Motion on restraining Order. I would like for Your Honor to read the restraining Order. There are incidents that occur after this that I think are extremely relevant.

THE COURT: Well, as I said, you can present all that during the trial if you want to try and do that.

I mean things that happen may, you know, if it is a factual matter, it's a factual matter but the fact that there was a restraining Order is what I don't think you are going to be able to, you should be allowed to prove.

MS. WHITE: Your Honor, I'm not certain -- I think that directly goes to, to his intent to continue harassing her. It goes to his state of mind. It goes to the fear that she has because I have to prove that these calls were reasonable for a person would be in fear of death, bodily

injury, etcetera, etcetera. The fact that even though a judge has told him, "you can't do this, and it is punishable by up to a year if you violate my Order", and he's still doing this, but goes to her fear. And that's an element of the offense.

THE COURT: You have one view and I have another. All right.

MS. BOLEN: Your Honor, in response to that, he is not ---

THE COURT: I'm not ruling, I've told you what my feeling is about it. Let's move on.

MS.BOLEN: Okay. I was just to be overly ---

THE COURT: Don't say anything more about that now. Move on to whatever else, anything else?

MS. BOLEN: Your Honor, I understand you denied my discovery Motion, I just wanted to make sure for the record that the record has that I was making that under both Rule 5 and *Brady*. And finally, Your Honor, --

THE COURT: *Brady* to do with exculpatory stuff.

MS. BOLEN: Right, and there is one piece

of exculpatory evidence that I was given yesterday. Again as Ms. White, only found out about yesterday, but apparently at some point in November the alleged victim went to the Sheriff's Office to complain about this alleged conduct and the Sheriff's Office told her there was nothing they could do about it; which I think goes to show they didn't think there was any crime. That was over a year ago. They don't know who said that to her and if I had found out earlier I could have gone over there and seen if anyone remembered. At this point, we're past a year.

THE COURT: All of which maybe brings me back to what I was thinking about that I want to make sure that I'm hearing you on. You're not moving for a continuance on this case.

MS. BOLEN: No, sir. We have actually put in a speedy trial motion, client has been incarcerated. All I am asking is ---

THE COURT: All right

MS. BOLEN: --- for the exculpatory information is that I be able to question her about that. That she went to the Sheriff's Office and that they told her ---

THE COURT: You ask what questions you want

to ask and if there is not an objection, there is no problem.

MS. BOLEN: Okay. Your Honor, I believe that's all we have, outside of the issue(s) we will take up if it comes up.

THE COURT: All right.

MS. BOLEN: I would make a Motion that the witnesses be sequestered, Your Honor.

THE COURT: Any objection to that?

MS. WHITE: Your Honor, just for purposes of the Victims Bill of Rights, Ms. Brandenburg can stay?

THE COURT: Sure, she can stay in, she can stay.

MS. WHITE: And other than that, nothing.

THE COURT: She can stay. All right. Anything else?

MS. BOLEN: Nothing.

THE COURT: All right. Well, we will have the jury back in here at twelve. You all remember now the way I struck a jury in a criminal case is very similar to the way we do in a civil.

You are going to have a list, it's five strikes for each side in a case like this, okay.

So that's twelve plus ten is twenty two plus four more for a possible alternate and all so that will be twenty-six people. You will have one through twenty-six. You'll have the list, both sides will have the list. I start at the top and ask you will the State accept or excuse juror number one, we go by the number next to the left hand side number. If you accept, I ask you if you accept. Of course, if they excuse we'll go to number two and so forth down the line until we've got our twelve jurors and one alternate. You understand that?

MS. WHITE: Yes, sir.

THE COURT: Okay.

MS BOLEN: One more question, Your Honor. Since there is not a ruling yet on the restraining Order can we ask that the State refrain from mentioning that.

THE COURT: They shouldn't mention that, no, they shouldn't mention that in opening statements. No.

MS. BOLEN: Thank you, Your Honor.

MS WHITE: And Your Honor, I would like to mention, I am not going to mention the restraining Order but Ms. Brandenburg did have sole

custody of the children. I would like to mention that in opening.

MS. BOLEN: I don't ---

THE COURT: I don't know that has anything to do with the case but, you know, the charges but anyway. You know, basically the opening statement really should be what the claim is, that you claim that he stalked her and, you know, what the elements of the offense are. Now we have gotten beyond that to a certain extent.

But, you know, basically is let the testimony come from the witnesses, both sides, let the testimony come from the witnesses.

So you have an objection during the course of her argument or her opening statement to the jury, you raise your objection and I'll rule.

But stay away from anything that is going to be controversial is what I'm telling both sides.

MS. BOLEN: Well, that the custody is not something that happens until that very same restraining Order.

THE COURT: I don't see where that has anything to do with it.

MS. WHITE: That is part of the exact same Order.

THE COURT: Well, I don't think that has anything to do with stalking. Let that be a guide. I am going to keep your book up here unless you want it back.

MS. WHITE: I might want it for opening, Your Honor.

THE COURT: Well, has anyone got a copy of the book? They don't have a copy up here (on the bench).

MS. WHITE: I think we can get somebody to bring another copy.

THE COURT: If you have a copy machine, that's ---

CLERK: Yes, sir.

THE COURT: Make me copies of this, because it's not in the book over there. So 16-3-1700. Guess that's the only one that we need to start with anyway. Thank you.

(BRIEF RECESS)

(MARKED STATE'S EXHIBIT 1 - ID ONLY TEMPORARY RESTRAINING ORDER)

(DEFENDANT PRESENT)

THE COURT: Go ahead and bring all the jury in. I thought they were already letting them in. Go ahead and bring the jury in.

MS. WHITE: Your Honor, may we approach?

SIDEBAR:

THE COURT: Sure.

MS. WHITE: I have a question about time. Are you wanting to pick and go straight into opening and testimony?

THE COURT: Well, it depends on how long it takes us to pick the jury. You know, we got a little bit of time and we will do it -- or, do you have a preference?

MS WHITE: I would think to do opening after lunch.

THE COURT: All right, we'll try to do that, we'll try to do that.

(SIDEBAR CONCLUDED)

THE COURT: All right, members of the jury, please give me your attention. We are about to pick a jury for trial of the case of State of South Carolina against Charles Moody Brandenburg.

Mr. Brandenburg, if you would stand please and turn that way so that way so the jury can see you.

DEFENDANT: (Complies)

THE COURT: Thank you, you can be seated.

Mr. Brandenburg has been charged by the State with violating a provision of the law found in Section 16-3-1730 -- that's just the number that is assigned to this particular provision of the law -- or 16-3-1700 is where it is actually defined and all. I will read that to you later on but it is commonly called stalking.

That is what the State claims that Mr. Brandenburg violated the particular provision of the law commonly referred to stalking, and I will define that in its entirety later during the trial, during the period of time from September 1, 2012 through February 28, 2013. And this involved Angela Brandenburg.

Mrs. Brandenburg, if you would please stand and all wherever she is seated over here.

MS. BRANDENBURG: (Complies).

THE COURT: Angela Brandenburg. All right you can be seated.

So those are the people directly involved in the charges that are made against Mr. Brandenburg.

To this charge of stalking, he has said, 'I am not guilty. And that is why we are going to have the trial for a jury to determine whether

the State can prove him guilty of this crime beyond a reasonable doubt. That's why we are going to have this trial for a jury to determine whether the State can, though the evidence presented here in Court prove him guilty of this charge beyond a reasonable doubt.

Now, I would ask the lawyers who are going to be trying the case to stand and introduce themselves to the jury also. We'll start with the Solicitor.

MS. WHITE: Thank you. Ladies and gentlemen, I am Elizabeth White. I am an assistant solicitor here in Abbeville County. Trying the case with me today is Assistant Solicitor Yates Brown and this is Angela Priest from the Abbeville Police Department.

THE COURT: All right, and if you would, go ahead and call out the names of potential witnesses that you might call on behalf of the State.

MS. WHITE: Potential witnesses are:

Angela Brandenburg

Robert Faggart

Cynthia Kennedy with the Abbeville Police Department

Joe Berryfield with the Abbeville Police Department

Donna Brown with the Long Primary

Dr. Carl Costner with Long Cane Primary

Jeffrey Abercrombie with the Abbeville Sheriff's Office

Angela Priest with the Abbeville Police Department, and

Georgia Shobe

THE COURT: All right. Members of the jury panel I want to know if you are related by marriage or blood or marriage to any of those people or do you know any of those people whose names were just called out to you in any way, shape, form, or fashion.

Anyone on the jury panel related by blood or marriage or do you know in any way any of those people whose names were just called out to you, the lawyers that were introduced down here, the police representative, all the people that were just introduced to you. Names called out to you, if you know them in any way, related to them in any way, please stand.

We will start with the gentleman there, the first one. Tell me your name and number.

JUROR NUMBER 133: Brandon Sutherland, Juror 133.

THE COURT: What's your response?

JUROR NUMBER 133: Me and Angela are first cousins.

THE COURT: All right, thank you very much. We will excuse him in this case.

(JUROR NUMBER 133 EXCUSED)

THE COURT: Thank you. Yes, sir, your name and number?

JUROR NUMBER 109: William Patterson, 109. I used to work for Robert Faggart and I know Angela and I'm a Scout Master for their son, Forrest Faggart.

THE COURT: All right, thank you very much for that information.

The gentleman that stood and said that y'all were cousins, if you would, go ahead and move over to the other side of the courtroom, we'll just separate you out at this point. All right, thank you very much.

All right, now we switch over to this side and I'll ask the lawyers to introduce yourselves to the jury and call out the names of witnesses you that you might call for the defense.

MS. BOLEN: Thank you, Your Honor. I'm Patricia Bolen. I am an attorney here in Abbeville. Trying the case with me is Jana Nelson, also an attorney here. Together we represent Mr. Brandenburg.

Any potential witnesses the court would call are Vince Wilkie or Brian Davis.

THE COURT: All right, and the same question as far as of the attorneys and of course, the defendant, Mr. Brandenburg and those potential witnesses. Anyone on the jury panel related by blood or marriage or do you know in any way any of these people? If so, please stand.

Anyone on the panel related by blood or marriage or do you know in any way these people that we just introduced to you and whose names were just called out to you?

We'll start with the gentleman that's closest to the aisle. Tell me your name and number please, sir.

JUROR NUMBER 15: Michael Botts, Juror Number 15. Courtney Caldwell is my second cousin.

THE COURT: All right, thank you very much for that information. Yes, sir, your name and number.

JUROR NUMBER 109: William Patterson, 109. I know Courtney, grew up with her, went to school with her brother.

THE COURT: All right. Thank you very much for that information. Yes ma'am, tell me your name and number.

JUROR NUMBER 16: Belinda Bowie, I'm Juror Number 16. Vince Wilkie, I known since he was little boy and also Courtney Caldwell.

THE COURT: All right. Thank you very much for that information.

Anyone else with a positive response to that question, if so, please stand. (No response). No one else standing.

Does any member of the jury panel have any knowledge or information or think you know anything at all about any fact or circumstance that may be involved in the trial of this case?

Anyone know anything, may think you know anything at all about any fact or circumstance that may be involved in the trial of this case in which Mr. Brandenburg, as I said, is charged with stalking Angela Brandenburg between September 1, 2012 and February 28, 2013.

Anyone have any knowledge of anything at all

to do with this case, if so, please stand. No one's standing.

Is any member of the jury panel aware of any bias or prejudice, either in favor of or against the State of Mr. Brandenburg? (No response). Charles M. Brandenburg, Jr. or the State? (No response).

You all ready? All right both sides ready?

MS. WHITE: Yes, sir, Your Honor.

THE COURT: All right, ready?

MS. BOLEN: Yes, Your Honor.

THE COURT: All right, members of the jury panel as I said, we have this list of names and the computer has given us to use to pick a jury for the trial of this case. And we go by the numbers in the order in which the computer put them out, put the names out. So we are going to refer to numbers, not names, and the numbers of course in no way correspond to your juror number; so don't think that they are talking about you if you hear your juror number called out because that's not the number we're dealing with. So will the State accept or excuse juror number one.

MS. WHITE: Please excuse juror number one.

THE COURT: All right. Will the State

accept or excuse juror numbered two?

MS. WHITE: State accepts juror number two.

THE COURT: Defendant?

MS. BOLEN: Your Honor, Defendant accepts juror number two.

THE COURT: Number three?

MS. WHITE: State accepts juror number three. .

MS. BOLEN: Defense accepts juror three, Your Honor.

THE COURT: Number four?

MS. WHITE: State accepts juror number four.

MS. BOLEN: Defense accepts juror number four.

THE COURT: Number five?

MS. WHITE: State accepts juror number five.

MS. BOLEN: Defense accepts juror five.

THE COURT: Number six.

MS. WHITE: State excuses juror six.

THE COURT: Number seven?

MS. WHITE: State accepts juror seven.

MS. BOLEN: Defense accepts juror seven.

THE COURT: Number eight?

MS. WHITE: State accepts juror eight.

MS. BOLEN: Defense accepts juror eight.

THE COURT: Number nine?

MS. WHITE: State accepts juror nine.

MS. BOLEN: Defense excuses juror nine.

THE COURT: Number ten?

MS. WHITE: State accepts juror ten.

MS. BOLEN: Defense accepts juror ten.

THE COURT: Number eleven?

MS. WHITE: State accepts juror eleven.

MS. BOLEN: Defense accepts juror eleven.

THE COURT: Twelve?

MS. WHITE: State accepts juror twelve.

MS. BOLEN: Defense accepts juror twelve.

THE COURT: Thirteen?

MS. WHITE: State accepts juror thirteen.

MS. BOLEN: Defense accepts juror thirteen.

THE COURT: Fourteen?

MS. WHITE: State accepts juror fourteen.

MS. BOLEN: Defense accepts juror fourteen.

THE COURT: Fifteen?

MS. WHITE: State asks juror fifteen be excused.

THE COURT: Sixteen?

MS. WHITE: State accepts juror sixteen.

MS. BOLEN: Defense asks that juror sixteen be excused.

THE COURT: Seventeen?

MS. WHITE: The State accepts juror seventeen.

MS. BOLEN: Defense accepts juror seventeen.

THE COURT: All right. I believe that's our twelve jurors, everybody agree on that? I think that's twelve.

MS. WHITE: Yes, Your Honor.

MS. BOLEN: Yes, Your Honor.

THE COURT: All right. Now we've got an alternate. One excuse per the State and two for the defendant to pick an alternate. Will the State accept or excuse juror eighteen as the alternate?

MS. WHITE: The State accepts juror eighteen.

THE COURT: Defendant?

MS. BOLEN: Defense accepts juror eighteen.

THE COURT: All right. Any exceptions to the jurors as presently constituted by the State? Any exceptions?

MS. WHITE: None from the State, Your Honor.

THE COURT: Defendant?

MS. BOLEN: None from the defense, Your Honor.

THE COURT: All right. You want to call the names or you want me to call them?

THE CLERK: I will call them.

THE COURT: All right, the Clerk will call the names of those who have been picked as the jury in this case.

If she calls your name, come forward and over here, and have a seat in these chairs, that is the jury box over there and bring any personal belongings that you may have with you.

Call the names.

THE CLERK: Yes, sir:

Trevor Price

Rebecca McCaslan

David Ellis

Tennison Dawson

Tracy Duncan

Johnny Martin

Ethan Powell

Ida Hudson

Russell Ackerson

Kayla Kwist

Harry Ramey

Joseph C. Powell

As alternate:

Gloria Marshall.

THE COURT: Over here, Ms. Marshall. You're the alternate, we got you a special seat over here for the alternate juror.

All right and the first thing we ask the jury to do if you would follow the bailiff out, take them and show them the jury room. I will be back with you in just a few minutes. If you would, follow the bailiff out, he will show you to your jury room. I'll be back with you in just a few minutes.

Take those note pads with you and put your name on the front of them, because you are going to keep that throughout the trial. Put your name on the front page there so you can easily identify it as yours.

(JURY OUT)

THE COURT: All right, assuming this case takes the rest of the day and probably a little bit into tomorrow, at least to try, and

all, what do you want me to tell the rest of the jury?

MS. WHITE: They are excused, Your Honor.

THE COURT: Members of the jury panel that are still sitting in the audience, I have just been informed by the Solicitor that this is the only case that they intend to call for trial this week, for a jury trial this week.

We've got some other things that we will be dealing with where we don't need a jury, but this the only case that we needed a jury for this week. So you are through, your service on the jury panel is complete.

I want to thank you very much, want to at least thank you for coming in, you didn't have any choice but nevertheless, thanks for coming in. The Clerk will be mailing a paycheck to you for coming in today. If you don't get that by sometime next week, get in touch with Ms. MacMahan, the Clerk of Court so she can follow up and get it to you. Thank you very much, you are free to go. You can stay if you want to, but you are free to go.

(JURY PANEL EXCUSED)

THE COURT: Now you all want to wait until after lunch to do your opening statements?

(PANEL RELEASED AT 12:32 P.M.)

MS. WHITE: Yes, sir.

THE COURT: All right, Okay. Well, let me, wait just a second. Yes, that will be fine, bring the jury back in.

(JURY IN AT 12:33 P.M.)

THE COURT: Just come in and have a seat wherever it is comfortable to you, wherever you want to sit right now. All right, we have the jury back with us and the defendant is present along with everybody's attorney, all the attorneys are present.

All right. Well, first thing I am going to do is give you a break and all. I still have a few little preliminary matters that I have to deal with the lawyers about and before we can get started with the actual trial of this case and all and I'll get any further involved in the trial of this case so I am going to let you go to lunch a little bit early today. There is no sense in keeping you back there in that jury room while I am dealing with them about some other matters. So, I am going to let you go in just

a minute and tell you to back in the jury room, back there, not in the Courtroom, not outside.

When you get back, don't hang around outside. Other people may be coming and going, the lawyers, witnesses, whatever and so it's best when you get back to the area of the courthouse after your lunch break, to come straight in, go straight to the jury room. That way you avoid any contact with any of the people that may be involved in the trial of the case. Okay?

So do that, keep that in mind throughout the trial if we go into tomorrow which I imagine we probably will, keep that in mind.

Another thing, you cannot discuss the case even amongst yourselves during the trial of the case. The only time you are to discuss it is when the twelve of you are together at the conclusion of the case when you have heard everything, you have heard my instructions, you have heard all the testimony. You have heard the lawyers argue and everything. That is when you'll discuss it, that's when you'll talk about it, back there in the jury room, the twelve of you.

So during the trial, don't talk about the

case, you can talk about anything else, the weather, whether you pull for Clemson or Carolina, whatever you want to during the trial, but don't talk about the case. Keep that in mind throughout.

The only time you are to discuss it is when the twelve of you are in the jury room, at the end of the case when you are considering your verdict.

So with that, I will let you go. Be back in the jury room at 2:00, we'll get started just as soon as we can after that. Leave your note pads there in your chair, we'll take them up and give them back to you, we'll have them in the jury room when you come back. Just leave them in the chair there, we'll take them up, give them back to you later. Have a nice lunch.

(JURY OUT AT 12:35 PM)

THE COURT: All right, anything else before we break then? You all probably had, you wanted to have Mr. Brandenburg to shave, is there any problem? I don't know whether y'all take him somewhere or whatever. If they've got the razor and shaving cream or whatever. Any problem with letting him shave?

SECURITY OFFICER: No, Your Honor.

THE COURT: Okay, all right.

MS. BOLEN: Thank you.

THE COURT: Anything else? (No response). All right, be back a little before 2:00 then.

(LUNCH RECESS)

(DEFENDANT PRESENT)

THE COURT: Please be seated. Come on out. All right bring the jury out.

(JURY IN @ 2:00 P.M.)

THE COURT: Let see, if you would leave that first seat, move over there, and let's see, I am looking for Juror Tracy Duncan, Juror Number 45, where is Tracy Duncan?

JUROR NUMBER 45: (Raises hand).

THE COURT: Tracy Duncan. Okay, come on around to the front here, if you would. I am going to ask you to sit in that seat right there. Ms. Duncan, I am appointing you as foreperson of the jury. If you would occupy that seat at all times during the trial.

The alternate juror, that's the seat, Ms. Marshall, that's the seat that we reserve for you.

The rest of you are free to sit anywhere you

like in the jury box at such times as you come and go from the courtroom but if you would, let the foreperson sit there and the alternate juror sit there. All right.

Oh, I forgot about that the Clerk's not here yet, do you have a copy of the oath? I sent her on an errand and I didn't realize she wasn't back.

All right, if you would please, stand and raise your hand, all of you please. Do you solemnly swear that you will well and truly try the issue before this Court in this case, this is the case of The State of South Carolina against Charles Moody Brandenburg, and a true deliverance make and a true verdict render according to the evidence and the law presented, so help you God?

If you accept this oath, please indicating by saying "I will". Thank you all the jurors are in accord then. You may be seated. Thank you.

As I told you earlier, each one of you has a note pad and a pen. I do allow jurors to take notes during the course of a trial. Some people don't think that is a very good idea. Some people think that it may distract you from what is actually being said and done during the

presentation of the testimony and the evidence.

(CLERK ENTERS COURTROOM)

THE COURT: Come on in. I took care of the oath for you. Good. She was out doing something and I took care of part of her job.

I do allow jurors, as I said, to take notes during the course of a trial. Those notes are to be used only as memory aides. Notes are not entitled to any greater weight than the recollection or the impression of each juror as to what the testimony or evidence actually was.

Those are your notes and your notes only. No one will be looking at them, checking to see what you wrote or didn't write or anything of that sort. At the conclusion of the trial, I'd ask you to tear out any notes you may have made, take them with you, tear them up, whatever you want to do. As I said, those are your notes and your notes only and notes are not entitled to any greater weight than the recollection or the impression of each juror as to what the testimony or evidence actually was.

Ms. Duncan, as I have said, I have appointed you as Forelady, Foreperson of the jury. In addition to sitting in that seat, it

will be your job at the conclusion of the case to preside over the jury deliberations when you are considering your verdict. Your vote counts no more than anybody else's vote in deciding this case, it is just your job to get the discussion going, keep it on track, and to report to us when you have reached a verdict.

Also, if there is any need for you as a jury to communicate with me about any matter during the course of the trial, you would be the jury spokesperson here in Court for that purpose.

As I told you earlier, this is a case in which the State of South Carolina, charges/claims that Mr. Charles Moody Brandenburg, that I introduced to you earlier, violated one of the laws of this State that is commonly referred to as stalking. And we will hear more about exactly what that term means before you retire to consider your verdict. I will define it for you and tell you more about what is exactly meant when we use the work "stalking" in terms of a criminal statute.

But to that charge, Mr. Brandenburg has said, "I'm not guilty" and that places the burden of proving him guilty on the State.

A person who is charged is never required to prove himself or herself innocent. The burden of proof is always on the State to convince you by the evidence presented here in Court that he is guilty beyond a reasonable doubt.

Really that is the question that you'll answer at the conclusion of this case, has the State met the burden of proof of proving him guilty of this charge beyond a reasonable doubt?

You are the sole judges of the facts of the case. I haven't anything to do with the facts. During the course of the trial, my job is to make sure that the parties follow the rules.

We have certain Rules of Evidence and Rules of Procedure that they are supposed to follow in presenting the facts to you. My job during the trial is to make sure that they follow those rules. Perhaps during the trial, one or more of the attorneys will get up and say something like, "Your Honor, I object", or "we need to discuss a point of law or point of procedure" or something like that with you and all. When the lawyers do that, they are talking to me, they are not talking to you. They are calling a possible violation of one of those rules of evidence or

rules of procedure to my attention. Don't you concern yourselves with those objections or how I may rule on those objections, whether I overrule it, sustain it, whatever because it is has absolutely nothing to do with your job in this case; which is to be the finders or the judges of the facts of the case.

Probably, if one of those occasions arise, I'd ask you to leave the courtroom, go to the jury room, let me discuss the rule, let me discuss the application, let me make a decision, bring you back in and go on with the trial of the case. I'm not trying to hide anything from you by doing that. it is just that we have found over the years that that's the best way for me and the lawyers to be able to discuss the Rules, discuss how they should be applied in a particular case, make a decision and go on with the trial.

So, how are we going to go about learning about this case? First of all, each attorney, an attorney for each side will have an opportunity to make and opening statement to you. These are not arguments, the arguments will come at the conclusion of the case. But I do allow each side to introduce themselves a little further,

tell you a little bit about, more about what the charge is, what the State claims in this case, and whatever the Defense wants to say in response to those charges in this case.

After those opening statements, then we have witnesses. People will come up here and sit in this chair and tell you what they know about this case, about the charges that are being made against Mr. Brandenburg in this case. After all the testimony and all the evidence has been presented, then we will have summations and arguments from the attorneys and then after that, I will discuss with you more fully what your duties and responsibilities are as a jury in this case and the law that applies in this case and then you go to the jury room and the twelve of you would deliberate and you'll answer that question, has the State met the burden of proof in regard to this charge made against Mr. Brandenburg in this case.

Keep in mind what your job is going to be at the conclusion of the case.

Ms. White, would you like to make an opening statement?

MS. WHITE: I would, Your Honor. Ms.

Bolen has a ---

MS BOLEN: If we can approach for just a sidebar or something.

(BENCH CONFERENCE)

THE COURT: Members of the jury panel, I need you to go to the jury room for a moment. I've got to discuss something with the lawyers. Go to the jury room, please. One of those occasions.

(JURY EXITS)

THE COURT: All right, we have the jury out. All right, Ms. Bolen what would you like to say?

MS. BOLEN: Thank you, Your Honor. I wanted to bring this to the Court's attention. During our lunch break, I was waiting in line for the Women's restroom downstairs, there was someone in it. As I was waiting, Ms. Davenport from the Solicitor's Office was, as well as, I believe, Ms. Shope and Mr. Keith were walking down the hall.

THE COURT: Who is Ms. Davenport?

MS. BOLEN: She is right here, she works with the Solicitor's Office. The woman who left the bathroom, I don't have a great memory for

faces, but at the time I did recognize her as a juror, but she and Ms. Davenport both said something about "oh, it's you" or something indicating they knew each other and I believe they made some kind of physical contact and I think they talked a little bit. I went into the restroom. I heard the woman, I heard Ms. Davenport ask 'what are you here for' and she said for jury duty.

It turns out she is on the jury and I just wanted that on the record and have both of them asked, I guess, what they talked about, what their relationship is. That's contact within the Solicitor's office and a juror.

MS. WHITE: Your Honor, I haven't had a chance to talk to Ms. Davenport about it. I know that she ---

THE COURT: Come on around, Ms. Davenport and let's hear what you have to say. Just come on up here. Up here. Raise your right hand. Do you swear or affirm the testimony you are about to give to be the truth?

MS. DAVENPORT: Yes, sir.

THE COURT: Have a seat. And your job with the Solicitor's office is what?

MS. DAVENPORT: Court administrator.

THE COURT: Court administrator. Okay. All right. Tell us what happened downstairs with the ---

MS. DAVENPORT: I was walking in from lunch and I saw this girl, she saw me. I've known her -- come to find out it is the little girl that went to nursery school with my daughter, who is now twenty-five years old. And we just, she recognized me as Monica's mom and, I mean, it was just ---

THE COURT: Okay. Do you know who it is?

MS. DAVENPORT: Her names is Kayla used to be, uh, -- (pause).

THE COURT: Kwist it must be.

MS. DAVENPORT: She would have been born in '88 or '89.

THE COURT: All right, any questions you want to ask her?

MS. BOLEN: What was the gist of the conversation between the two of you?

MS. DAVENPORT: I asked her why she was here, because the last time I had seen one of Monica's friends they were in trouble. But I just, we just hadn't seen each other, and it was

'how are you doing and everything.' I mean, it was ---

MS. BOLEN: Was there anything said about her being on the jury.

MS. DAVENPORT: She said that she was here for jury duty but I didn't know, honestly, that a jury had been chosen, I thought she was one of everybody. I thought she was leaving. But I never would have -- I mean, she doesn't know where I work, she doesn't know that unless something was said when I wasn't in here.

I mean, I did not know. I'm sorry. I just hadn't seen her as this little girl since high school.

THE COURT: Did you say anything about this case at all?

MS. DAVENPORT: No. Heavens no.

THE COURT: Okay. All right. Any other, anything else?

MS. BOLEN: I don't believe so, Your Honor.

THE COURT: Anything you want to ask?

MS. WHITE: Did she even know that you worked in the Solicitor's Office?

MS. DAVENPORT: No, she didn't know where I worked.

MS. WHITE: Have you recently had any involvement in this ---

MS. DAVENPORT: No, this is the first time I have been in here since you guys started on this.

THE COURT: Okay.

MS. DAVENPORT: I'm sorry.

THE COURT: That's all right.

MS. DAVENPORT: I promise I didn't know what was going on.

THE COURT: Anything else anybody wants to say?

MS. BOLEN: No sir.

THE COURT: Thank you very much, you can return to your room. "Banished from the courtroom."

Remind me, Ms. Nelson and Ms. Bolen, I've got that report from SCDC about that young man that you all represent that I sent down for evaluation and everything and I can give you all a copy of it afterward today.

MS. BOLEN: You got the report back?

THE COURT: I got a report today, yeah.

MS. BOLEN: Okay. Thank you, Your Honor.

THE COURT: Actually we could forward it to

you on your e-mail if you want me to. Actually she can. Whenever. Tell her your e-mail address.

MS. BOLEN: I'll write it down and bring it up.

THE COURT: Okay. All right. Bring the jury back in.

(JURY BACK AT 2:16 P.M.)

THE COURT: All right, we have the jury back with us and everybody's present along with their attorneys. All right, we'll go ahead now with opening statement, Ms. White.

MS. WHITE: May it please the Court? I want to introduce myself to you all, I am Elizabeth White and I work for the Solicitor's office. I have been a prosecutor over here in Abbeville for going on, over eight years.

And I was thinking about what I was going to tell you all about this case today. This case more than a lot of other ones that I have worked on, it's a puzzle. And you are going to get a piece at a time.

If you think about when you put a puzzle together, you know you start at the corners and work your way down and across and it's not going

to make any sense, you can't tell what the pictures is until you start filling in everything. And once you see the big picture, what is going to see is that Mr. Brandenburg over here is guilty of stalking his estranged wife. They're separated and she is seeking a divorce.

Now, stalking is defined by, it's a statute in South Carolina. What it is, it's a pattern of words or conduct that causes somebody to fear death, bodily injury, kidnapping, which is a big one in this case, for themselves or a family member.

The kidnapping is the big one in this case, it is of Mrs. Brandenburg's two children.

And "pattern" just means two or more incidents.

"Family" means exactly what you think it means. And without getting to much into what happened, because you all are going to hear everything in just a few minutes from the witness stand that from about February -- excuse me. That from September 18, 2012 through February 26, 2013, the defendant, Mr. Brandenburg, was everywhere she turned around. He was calling, it was texting, it was following her from work, it

was showing up at the kid's school, it was showing up at her parent's house, showing up at her house, every time she turned around, there he was. After being told, "I don't want you around". And that is what is in this case. Now, what this case is not about is custody.

Mrs. Brandenburg made every effort to be reasonable about these children, about him seeing these children. So that is what this case is not about. This case is about a man who wanted things his way, to be in control over his wife and his kids and was more concerned over what he perceived his rights to be than respecting her right to be left alone.

Now, we have to prove this case beyond a reasonable doubt. That's a burden that we welcome. The Judge has already told you all about it once, you will hear it again throughout the trial. And what is means, it doesn't mean all doubt, because I couldn't convince twelve of you all beyond all doubt that we all get pizza for dinner. There is no way humanly possible to do that.

What it means is, that when go back into the jury room, you are firmly convinced that he did

what he's accused of doing. That when you go back there, and you say, 'did Charles Brandenburg stalk Angela Brandenburg and make her fear bodily injury, or kidnapping or death' that your answer is "yes." And when you have heard all the evidence, you have heard all the testimony, I think that you will come back with that verdict, that he is guilty of stalking. Thank you.

THE COURT: All right, Ms. Bolen.

MS. BOLEN: Thank you, Your Honor, may it please the Court. Ladies and gentlemen this case is not a puzzle at all. I agree with the Solicitor that there is a big picture. I disagree about what that big picture is.

The big picture that this case is about a woman who wants her own way. She wants to call all the shots, she wants to be in control of everything. She wants everything her way. Charles and Angela were married -- in fact, they still are. She chose to marry him. She chose to have kids with him.

And then when she decided it was over, that was it. It was over. She didn't want to have contact with him. She wanted him out of their

lives entirely. And when things didn't go her way, that is why we are here today.

Once you hear the evidence of what he is accused of doing, you'll agree he is not guilty of stalking her. He is not guilty of doing anything illegal to her. And when you hear all the evidence, match it up with the statute, then you will agree he that he is not guilty. Thank you.

THE COURT: Thank you, call your first witness.

MS WHITE: State calls Angela Brandenburg.

(WITNESS TAKES THE STAND)

ANGELA BRANDENBURG, having been duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR WHITE:

Q. Will you please tell us your name?

A. Angela Brandenburg.

Q. Okay. And where do you live, Mrs. Brandenburg?

A. In Abbeville.

Q. How long have you lived in Abbeville?

A. Since last year. I came up here June 28,

2012.

Q. Are you familiar with the defendant, Charles Brandenburg?

A. Yes, I am.

Q. And who is he to you?

A. My estranged husband.

Q. Okay. Is he present in the courtroom today?

A. Yes, ma'am.

Q. Can you point him out for us?

A. Right over there.

MS. WHITE: Your Honor, let the record reflect that she pointed out the defendant.

DIRECT EXAMINATION CONTINUED

BY MS. WHITE:

Q. Now you said, he's your estranged, when did you all get married?

A. August the 25th, 2005.

Q. And do you have any children together?

A. We have two children. A boy and a girl.

Q. When were they born?

A. Tripp was born 2006; Bailey, 2007.

Q. Now, you said you'd left June 28th, 2012. In the months prior to that, can you describe Mr. Brandenburg's behavior?

MS. BOLEN: Objection, relevance.

THE COURT: Would you like to be heard, Solicitor?

MS. WHITE: Yes, sir, I would.

THE COURT: Members of the jury panel, need you to go to the jury room then.

(JURY OUT AT 2:24 P.M.)

THE COURT: All right, let me say, -- well, I believe you testified you separated June 28, 2012. If she testified to that, I missed it but we'll assume that is when you did separate. Is that correct?

MS. BRANDENBURG: Yes, sir,

THE COURT: Okay. All right. And your question was, as I understood it, 'would you tell us about his conduct prior to your separation.'

MS. WHITE: Yes, sir.

MS. BOLEN: And, Your Honor, I'm objecting on relevancy.

THE COURT: Well, why is that relevant?

MS. WHITE: Your Honor, and I can proffer the testimony if necessary.

THE COURT: All right, go ahead.

MS. WHITE: All right, we will start with -- how would say in the months prior to your separation, how would you describe Mr. Branden-

burg's behavior?

MS. BRANDENBURG: His behavior was very erratic. He would have violent outbursts. He would pack up the kids multiple times saying that he was moving somewhere, that we were all going somewhere. I had not had a job since the middle of April, I believe, because of his behaviors -- he would call or he would show up at ten or eleven o' clock at night saying he was taking the kids somewhere.

MS. WHITE: So would he pack up the children and come to find you wherever you were?

MS. BRANDENBURG: Yes, he would, call and say that he had the kids packed up and they were leaving and I needed to be there in thirty minutes.

MS. WHITE: All right. Did he ever say anything that caused you to fear for the children's safety?

MS. BRANDENBURG: He -- a couple of time he said that he was willing to sacrifice the kids if need be.

MS. WHITE: Your Honor, I think it's relevant. It goes to the fear of bodily injury to himself or a family member. It goes to

kidnaping. It explains why she -- and this case isn't going to make sense to the jury why she didn't want the defendant to be alone with the children, that she was perfectly happy with supervised visitation but did not want him to be alone with them, absent the background of his behavior.

MS. BOLEN: Your Honor, first of all, this had to do with what happened in Berkeley County. It doesn't have anything to do with the charge of stalking in Abbeville County.

Ms. White said in her opening statement that this is not about custody. There shouldn't be any talk about supervised visitation.

Additionally I'm objecting on a Rule 5 basis with my pretrial Motion, that this is information, particularly the last statement about him saying something about sacrificing the kids. This is an addition which I was not provided with.

MS. WHITE: Which was provided to her yesterday.

MS. BOLEN: Yesterday. But I don't see that it is relevant. I don't think it is probative, I see it as overly prejudicial and we

ask for it to be excluded as -- something that happened in June of 2012 in Berkeley County, I don't see how that ties into a stalking charge in Abbeville County between September, 2012 and February, 2013.

MS WHITE: Your Honor, it's the reason she left. And it is the reason he followed her.

MS. BOLEN: It's 404(b), as well, Your Honor.

THE COURT: Well, ---

MS. WHITE: It's *res gesti*. It also goes to goes to *Lyle*: common scheme or plans, absence of mistake, ---

MS. BOLEN: But it's not his ---

THE COURT: Well, I sustain the objection. I think, it is not relevant to the charges in the Indictment for September 1, '12 to February 28, '13 and any possible relevance is outweighed by the potential for unfair prejudice, in my opinion, bringing in things that are outside the timeframe of the indictment.

MS. WHITE: Your Honor, I think the threat that he made toward the children safety goes directly to the fear that he could kidnap ---

THE COURT: Well, I appreciate it. I

understand what you said but I sustain the objection to that testimony.

MS. BOLEN: Thank you, Your Honor.

THE COURT: Bring the jury back in.

(JURY IN AT 2:37 P.M.)

THE COURT: All right. We have the jury back with us. You may continue to examine the witness.

DIRECT EXAMINATION CONTINUED

BY MS. WHITE:

Q. All right, when did you say you separated again?

A. I left Charleston, September the 13th, June the 28th. Excuse me

THE COURT: I couldn't hear you. You left when?

MS. BRANDENBURG: June 28th.

THE COURT: Okay.

MS. BRANDENBURG: Sorry, I ---

THE COURT: Okay. That's all right.

DIRECT EXAMINATION CONTINUED

BY MS. WHITE:

Q. And did Mr. Brandenburg know you were leaving?

A. As in?

Q. Had you talked about separating?

A. No, we did not.

Q. Where did you go when you separated?
A. I came to parents' home, here in Abbeville.
Q. And, I'm sorry, I may have already asked you, where were you living with him, where was your marital home?
A. We were in Berkeley County.
Q. Okay. So you came back here to Abbeville?
A. Yes, ma'am.
Q. Where do your parents live in Abbeville?
A. They live out on [redacted]
Q. Did you have any conversations with Mr. Brandenburg about him seeing the children?
A. From?
Q. From June 28th through the rest of the summer?
A. During July he did. He would call every now and again. After a couple of weeks, I did take his phone calls. But at no time did he really mention wanting to see the kids.

He would ask to speak to them. I would ask them if they wanted to speak him and if they did, I let them speak to him. If they didn't, I, you know, wouldn't. I left it up to them.

And then the first part of September he started talking about wanting to come see them. I suggested to him that we meet in Columbia at his mother's

house. That I would bring the kids to Columbia and let him see them then.

Q. Sorry, you said September was the first time he started talking about wanting to see them?

A. Uh-huh.

Q. When was the first time you saw Mr. Brandenburg after you left in June?

A. He came to Abbeville on September the 18th.

Q. Okay. And what happened on September the 18th?

A. He showed up at my parent's house about 8:30 that evening.

MS BOLEN: And Your Honor, I just renew my pretrial Rule 5 Motion on this testimony .

THE COURT: All right. I overrule your objection, I will allow them to continue. Go ahead.

DIRECT EXAMINATION CONTINUED

BY MS. WHITE:

Q. And where is your parent's house?

A. It's on [redacted]

Q. And is that in Abbeville County?

A. Yes, ma'am.

Q. Okay. So he showed up on September the 18th, what happened when he showed up then?

A. When he showed up, my father went out and met him and told him he wasn't welcomed there and that he needed to leave.

Q. Did he leave?

A. Yes.

Q. All right. When was the next time you saw him?

A. The next morning, when I was taking the children to school. He was at the school.

Q. And where do the kids go to the school?

A. Long Cane Primary.

MS. BOLEN: Just renewing my Rule 5, Your Honor.

THE COURT: Go ahead.

DIRECT EXAMINATION CONTINUED

BY MS. WHITE:

Q. When were they enrolled in Long Cane?

A. I enrolled them in August, when I knew I was moving up here.

Q. That is August of 2012?

A. Yes, 2012.

Q. Okay. And so you saw him at the Long Cane school on September the 19TH?

A. Yes.

Q. Did you have a conversation with -- where

was he at the school?

A. In front of the school, there is about eight parking spots. He was parked there. I pulled into another one of the parking spots. He got out of his car and intercepted us walking toward the school and spoke with the children. Then when I took them on in and then he spoke with me some more.

Q. Did you set up any additional times to meet when you talked on the 19th?

A. No. We had discussed prior to that, that, that Saturday we were going to meet in Columbia so I explained to him, you know, that this wasn't what we had planned, what I thought we'd agreed on. He decided that was better for him to be there and so I agreed that after I picked up the kids at school that afternoon, I would let him see them for a little bit then.

Q. So he had met, he met you as you were taking the children into school, right?

A. Yes, ma'am.

Q. Okay. When was the next contact you had with Mr. Brandenburg?

A. He saw the kids after school that afternoon and then tried to get us, talk us into going to

the motel with him to spend the night. I'm like, 'No, it's not safe to take the children out of the house to a hotel', that he needed to go back to Charleston. You know, we had agreed to meet Saturday, I will still bring them then. 'I will still come on, you know, on Saturday.'

I did receive a text on the 20th that had ---

MS. BOLEN: Your Honor -- Your Honor, I renew my Rule 5 objection.

THE COURT: Hold on just a minute. Members of the jury panel I need you to go the jury room, please.

(JURY OUT AT 2:56 P.M.)

THE COURT: All right. We have the jury out now. All right, Ms. Bolen, I want to be clear about what it is that you're objecting to.

MS.BOLEN: Your Honor, I just want to make sure that my pre-trial objection based on Rule 5 is ---

HE COURT: Tell me exactly what you are talking about under Rule 5 that you didn't get that you think that you should be objecting to now.

MS. BOLEN: Well, with this testimony, this is ---

THE COURT: If you mean, you mean that you in some way, the things that he told her or said to her, during the course of that, you think that was something that had to be revealed to you under Rule 5?

MS. BOLEN: Yes, sir.

THE COURT: All right. I overrule that objection. And that objection continues throughout of that kind of testimony.

MS. BOLEN: Yes, sir.

THE COURT: Okay.

MS. BOLEN: Since the jury is out, I'd like to know what you know what she is reading from as she testifies. I have seen her looking at a sheet of paper. And I don't know what that ---

MS. BRANDENBURG: I have the ---

THE COURT: Okay. Let me, I mean, you are certainly welcomed to cross-examine her about that and you have, and you can look at all that before you cross examine her if you want to under the Rules.

MS. BOLEN: Yes, sir.

THE COURT: Okay. All right. So as far as I'm concerned your objection is, is that you were not provided with the oral testimony, that

is what she's now testifying that he said to her during the course of their entire dealings with this matter, you think you should have been given that under Rule 5.

MS. BOLEN: Right.

THE COURT: I appreciate the position but I overrule that objection. And your objection will run throughout as far as any of that kind of testimony is concerned.

MS. BOLEN: Thank you, Your Honor. It was also an objection to some of the previous incidences not disclosed. I understand your ruling and I not object. I just wanted to make sure that it was preserved.

THE COURT: All right. I am not sure I understand that, you know. I am not sure I understand what your objection is there.

MS. BOLEN: Well, in that I was provided with five incident reports, the first of which is dated in November, November 27th and all this testimony is before that. And these were incidences that I found out about, some of them last week and some of them yesterday.

THE COURT: And what is it in Rule 5 that says you are entitled to any of that?

MS. BOLEN: I believe it's the State's, oral statements of the State's witnesses.

THE COURT: Okay. That's oral statements.

MS. BOLEN: Uh-huh.

THE COURT: But the incident reports that you are talking about, what is it under Rule 5 that says you are entitled to that?

MS. BOLEN: I don't think there is anything particular that requires the -- I mean I have the incident reports.

THE COURT: Okay. Bring the jury back in.

(JURY BACK AT 3:12 P.M.)

THE COURT: You all are getting some early afternoon exercise, work off your lunch. All right you may continue to examine the witness.

MS. WHITE: Thank you, Your Honor.

DIRECT EXAMINATION CONTINUED

BY MS. WHITE:

Q. Mrs. Brandenburg, we were talking about September the 19th, that at -- and I apologize, but I want to ask you about that again. I think some of it got a little bit lost. Was that September 19, 2012?

A. Yes, Ma'am.

Q. Okay. And where was this happening?

A. Okay. September the 19th was the day he had been at the school. He went to see the children into the school and then I told him he just needed to go back to Charleston. And, if he wanted to see the kids he could see them on Saturday in Columbia as we had discussed several days prior to him coming.

And, then it was on September the 20th that I had gotten a text that said "GW".

Q. Okay, now going back to the 19th, he had said something about a motel, I think you testified?

A. Yes, he had asked that me and the children follow him, accompany him to a motel to spend the night. And I told him that I wasn't comfortable in taking the children out of my family's home to a motel, that it wasn't safe, that, you know, that he just needed to go back and he could see them on Saturday as we had planned.

Q. Okay. And then you said on September 20th you got a text message?

A. I got a text message that said something about "GW". And I texted him back "what do you mean?" He sent me another text that said something like, "I'm going to follow those pretty blue eyes." I wasn't sure what he meant.

Then on the 21st, I got another text that had a room number, or what I assumed was a room number. It was 206, and then he called me later and told me that he was in Greenwood and wanted to meet me and wanted to see the kids. And I said "'I'm going -- you know, 'I have already told them that we are going to the zoo, we're going to Columbia.'

Q. And this was the day that you had planned to meet him in Columbia?

A. Yes, ma'am.

Q. That he was up here in Greenwood?

A. Yes, he ---

Q. In Abbeville?

A. Yes, he'd come to Greenwood.

Q. What was the next time you had contact with him?

A. The next time was October the 5th. I was at work and had gotten a text, and a call from him and it had another room number on it. And when I left work on the morning of the 6th, I work overnight, and when I left that Saturday morning, there was a note on my truck and he was in the parking lot.

Q. And where do you work?

A. At Self Regional Hospital.

Q. What do you do there?

A. I am a nurse.

MS. BOLEN: Your Honor, I have an objection, this is outside the venue and the scope of the Indictment.

THE COURT: I'm sorry. This was Saturday, you said a note or something?

MS. WHITE: This was on October 5th.

THE COURT: And what was your objection?

MS. BRANDENBURG: October the fifth and into the sixth.

THE COURT: Okay. And what is your objection?

MS. BOLEN: My objection is apparently she works in Greenwood and the indictment states Abbeville County.

THE COURT: I appreciate that. I overrule your objection, I will allow it. Go ahead.

DIRECT EXAMINATION CONTINUED

BY MS. WHITE:

Q. All right. So you said there was a note on your truck on the 5th?

A. Yes, Ma'am.

Q. Okay. And what did that note say?

A. It was basically asking me to come to a hotel that he was in and had the room number on it.

Q. And what was the next time you saw him or heard from him after that?

A. He had texted me later that night that said something about me working all night and then he had called about five o' clock that morning and was like "would you like to go get breakfast? Can we talk?" I think that phone call was about 5:00 in the morning and when I left work probably around 7:00, give or take fifteen minutes, he was out in the parking lot.

THE COURT: Where is it that you work, did you say?

MS. BRANDENBURG: Self Regional Hospital, ER.

THE COURT: Okay. I just didn't understand you.

DIRECT EXAMINATION CONTINUED

BY MS. WHITE:

Q. What do you do in the ER?

A. I am a nurse.

Q. So he is in the parking lot on the morning of the October 6th?

A. Yes.

Q. And what happened then?

A. He starts talking to me, basically, not wanting a divorce. He said, 'I'm coming to pick the kids up today.' I'm like, I told him he wasn't, that plans had already been made, that he wasn't going to be allowed to show up decide that he was seeing the kids. If he wanted to, you know, discuss with me times and set up something, but given the fact that I work nights, I couldn't readily be available on the day time and he kept demanding to see the kids.

He and was not listening to anything I said, so I was like 'Okay, I'm going home. If you want to see the kids, you know, plan on letting me know beforehand.' Then I left to go to my parent's house with him behind me, following me.

Q. And how long did you talk to him that morning?

A. Probably about thirty minutes.

Q. So as you left to go to your parent's house and he followed you, what happened from there?

A. He arrived a couple of minutes after I did and my father went outside and told him he needed to leave and he said no, that he was here to see

the kids and he wasn't leaving.

My mother called, I think my mother called 911, and the Sheriff's Department came out to the house.

Q. And at this point, was your parent's house in Abbeville?

A. Yes, ma'am, in Abbeville.

Q. So the Sheriff's Department comes out and what happens?

A. They came out and he suggested to him that if he wanted -- that, you know, technically since he had a vested interest at the house, that they couldn't make him leave or that is wasn't trespassing but that if he wanted to see the kids that maybe he should talk to me and come up with a plan to see them. That the best thing to do would be for him to go ahead and leave at this time and after about an hour of talking back and forth he left.

Q. And after that, what's the next time that you saw him?

A. The morning, Sunday morning of the 18th. I was down-staffed from work at 5 AM and leaving the hospital I noticed a car following me. And it followed me to Abbeville and I made several

turns, I did not go to my house because I suspected that it might be him. But, I never stopped. Then, I finally lost the vehicle, went to my house, and then kind of kept an eye out and never saw the car come back around.

Q. Okay. Going back, the 18th of what month?

A. Of November.

Q. Of November or October?

A. November.

Q. And, you said, going to your house, were you still living with your parents at the time?

A. No. I'm sorry, I had moved out of my parent's house the first part of November and had gotten a house for me and the children.

Q. Okay. Where is that place at?

A. It's on Burns Avenue.

Q. Okay, is that here in Abbeville County?

A. Yes, ma'am, it's in Abbeville as well.

Q. And you said that the car was behind you and following you. Did you ever find out who was driving that car?

A. He admitted to me later that it had been him following me because he felt that he had a right to know where me and the children were living.

Q. And when you said "he", you are talking about Mr. Brandenburg?

A. Yes.

Q. What's the next time that you saw him?

A. The next time was on November the 26th. I had gotten a message from his mother that said.

Q. Don't tell them what his Mom said.

A. Okay. That he was on his way. I went and picked up the kids from school. I got a message from him that said something, 'I can't believe you got the kids out of school early, what are you doing?' It was a real angry message.

And I basically had gone and gotten the kids and taken them to one of my relative's house. And then later that night, when I was going to work -- (cough) -- excuse me.

Then later that night when I was going to work he was at the corner of I think it is West Alexander going into the backside of Self Hospital. He was sitting on the corner waiting for me to go into work.

Q. What time of day would you say that was?

A. That was probably about 6:30.

Q. Okay. So was the Highway Department

closed at that time?

A. It was closed. Yes.

Q. Was there any other in the car in that parking lot?

A. No other cars, and he was actually outside of his car leaning up against his car.

Q. And, that was November the 26th? Did anything happen on November 27th?

A. On November the 27th, I got a call from one of the school officials telling me that he was at the school. And I just said, "Okay" because, I had kept the children out of school that day because I was, you know, with him being as mad as he was, and him being around, I wasn't sure what he was doing.

And, I just said okay and hung up the phone and then me and the children went to another relative's house that he did not know the address of.

And then later that morning, as I was riding by the school, I saw his car parked up at the Shell station, which is just above the school.

Q. Did you see him, or just his car?

A. I saw somebody in the car that I believed

to him.

Q. Where was it sitting at the Shell station?

A. At the corner, the Shell is -- kind of hugs the corner of, I think it is Graystone.

Q. Was it facing the highway?

A. It was facing the highway. It was facing Highway 72.

Q. Did you make any reports to law enforcement during this time frame other than when they came to your parent's house?

A. That morning I went to the Sheriff's Department and asked if I could make some type of report since it seemed like he was always there and they told me that they could not; that was a Family Court issue that they could not get into the middle of spousal disputes. I explained to them that we had a Court date for December the 3rd in Family Court but was there not anything that could be done in between the two times and the victim's advocate in the Sheriff's Department was like 'no we can't really do anything'.

Q. Okay. Now, going back to, did Mr. Brandenburg ever file anything in Family Court?

A. Not that I am aware of.

Q. So you were never served with any papers?

A. I was never served with any papers. I had actually -- when he refused to listen to me in September regarding that, I had gone ahead and contacted a lawyer and started the process which is why we had that December the 3rd date because he didn't, on the 6th when he showed up demanding to see the kids and I said, you know, "it's not convenient"; "well, then, I want to see them next week". I had actually rearranged my schedule somewhat the following week in anticipation of him being there Saturday or contacting me and he never contacted me to follow through with that visitation.

And so from that point on, I was, you know, I felt like I needed to do something to protect the children.

Q. Now, when was the next time, skipping ahead until December, when was the next time that you saw him?

A. I saw him in Berkeley County on December 3rd at our Family Court hearing. That was the next time that I saw him.

Q. Okay, and after that?

A. After that, he, on the 12th, I took the kids to school and then went to Greenwood to do

Christmas shopping. I had left WalMart and was coming across to Kohl's and he was there in that parking lot and pulled me over. And was basically talking and, you know, trying to see if we could work things out and I'm like "no, everything has been said and done".

Q. When he said, trying to work things out, what did he say that afternoon, regarding the marriage or regarding the kids?

A. The marriage.

Q. And this was in the Kohl's parking lot in Greenwood?

A. Yes.

Q. Did you see him again on December 12th?

A. I did. I saw him that afternoon, I went to pick up the kids, and that afternoon he was across the street from the school, yelling and screaming towards us.

Q. What was he doing?

A. I don't know if he was trying to get the children's attention, trying to -- but he was, I had gone, at that time you could park on the side and go under awning and pick up the children. I had gone ahead and done that because I didn't want him to get there first and get the children

or be stuck in the -- I don't know if anyone has picked up their kids, but it's a long line and you are stuck there for several minutes and I was, I didn't want him to get to the kids before I did basically because I wasn't sure if he was going to get, take them, or do anything.

And so I went, and as I am walking across the street, he starts yelling their names. And I am just trying to get them in the car and go ahead. As I am leaving that is when the police department had come. I pulled over and I told them, you know, that is my estranged husband.

I think he is trying to get the children's attention because he wants to see them. I had already agreed to meet him after school. My thought was that I could pick them up and then let him know 'we will be at this spot.' Then I told the police then, I said that 'if he wants to meet me at McDonald's, I will take the children to McDonald's and let him see them.' And then he met me at McDonald's a short while later.

Q. Was there any law enforcement present at the time?

A. Uh, yes, there happened to be a police

officer just below in the Bi Lo parking lot and ironically enough, one of the, an off duty Sheriff's Department person was inside McDonald's as well. It was coincidence.

Q. Okay. That was on December the 12th. Did anything happen the day after that?

A. The day after that, I took the children to school and ended up coming in and waiting a few minutes to make sure that he didn't come behind me and try to go back to the school. Dr. Costner was a little upset from the incidence of the day before so I told him ---

Q. I'm sorry, who is Dr. Costner?

A. Dr. Costner is the principal of Long Cane Primary.

Q. Okay.

A. And he was aware of the situation and I had tried to keep him informed of all that was going on and my concerns. And, he had basically asked me to stay to make sure that he didn't come back to the school behind me that morning. And then about thirty minutes, about 8:30 school starts at 8:00, by 8:30 since he had not come back, I left and no sooner had I left the school parking lot than I pass him on (Highway) 72. He

flags me down, and tries to talk to me again.

Q. And did you talk to him?

A. I talked to him for about thirty minutes but he, you know, -- 'basically like you need to leave us alone, you need to focus on what you need to do and the things you are doing and, you know, we could go from there once you focus on what is going on.' Knew we were still waiting on the results of the Court but that hadn't been said then and then finally I'm like you know, 'there is no use in talking to you, I'm, you know, going home' and I left.

Q. Did you make any additional reports to law enforcement?

A. I did not.

THE COURT: What date did you say the Family Court hearing was?

MS. BRANDENBURG: It was on December the 3rd.

THE COURT: The third, Okay. I just didn't get that date. Okay.

MS. BRANDENBURG: Actually I take that back, I did because that was the afternoon that I went out to the Sheriff's Department and was like this is, you know, ridiculous. Every time I turn around he's there and at that time they were

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like, 'well given the fact that had shown up at your parent's house, he was at the school on the 27th', and then this incidence where he was across the street from the school, they are like, you know, this is a pattern of him.

MS. BOLEN: Your Honor, I am objecting as to hearsay and as to legal conclusions.

THE COURT: Just tell us what happened next.

MS. BRANDENBURG: I went out to the Sheriff's Department and explained to them what all was going on and said, 'I am tired of looking over my shoulder and seeing him everywhere I turn around, is there not anything that can be done?' That's when they felt that they had enough to issue a warrant.

DIRECT EXAMINATION CONTINUED

BY MR. WHITE:

Q. And so a warrant was issued?

A. A warrant was issued on that day.

Q. Do you know that he was arrested on that warrant?

A. He was arrested on that warrant on the 19th.

Q. Okay. And did anything else happen on the 19th?

A. On the 19th, he knocked on my door.

Q. And, I'm sorry, are we in December; correct?

A. We are in December, yes. On the 13th after he pulled me over in the parking lot, that was a Thursday morning, I left, he's like 'I want to see the kids after school.' And I was like, 'I don't know, I'm going home now.'

And then he ended up leaving for Charleston that afternoon. On Friday he sent me a text that said "Congratulations".

MS. BOLEN: And, Your Honor, I have a matter of law at this point.

THE COURT: Members of the jury panel, I need you to go to the jury room, please.

(JURY OUT A 2:56 P.M.)

THE COURT: All right. We've got the jury out, what would you like to say.

MS. BOLEN: Thank you, Your Honor. I believe that this is going to be in territory where she is going to start testifying about this Restraining Order, in that we've heard.

THE COURT: I don't know. What do you want to ask her?

MS. WHITE: Your Honor, I was going to, Ms.

Bolen back to your question wasn't meant to solicit any testimony about the restraining Order but she is correct, I was about to start getting in to the restraining Order.

THE COURT: Well, what was the question that you asked?

MS. WHITE: The question that I asked I think was when was the next time she had contact after, what happened, did anything else happen on December 19th?

THE COURT: What was the answer, what's your answer to that? You said something, what I remember you saying was something about you got a text saying "congratulations". And then that was when the objection came, I think, and all. Okay. Continue from there.

MS. WHITE: You want me, Your Honor, to proffer the testimony?

THE COURT: Well, whatever.

MS. WHITE: Okay. You said you went to Family Court hearing on December the 3rd?

MS. BRANDENBURG: Yes, Ma'am.

MS. WHITE: When did you find out the results of that hearing?

MS. BRANDENBURG: On December the 14th, I

got a text from him that said "Congratulations." I called my lawyer's office and the court order from, the results from the 3rd were released.

MS. WHITE: Okay. And what were those results from the 3rd?

MS. BRANDENBURG: The results of that was I had sole custody of the children. He could not have visitation until he had a mental evaluation and there was a mutual no harm/ harassment -- basically we weren't supposed to contact each other. Any communication had to go through our lawyers.

MS. WHITE: Okay. And I am going to hand you what has been marked for identification as State's Exhibit 1. Do you recognize that document?

MS. BRANDENBURG: Yes, Ma'am.

MS. WHITE: And what is that?

MS. BRANDENBURG: This is the temporary order that we received from Berkeley County.

MS. WHITE: Okay. Is that stamped by the Berkeley County Clerk of Court?

MS. BRANDENBURG: It is.

MS. WHITE: And is it signed by a judge?

MS. BRANDENBURG: It is.

MS. WHITE: Okay. And that Order basically memorializes what Judge Creech ordered?

MS. BRANDENBURG: Yes.

MS. WHITE: In regards to the restraining Order?

MS. BRANDENBURG: Uh-huh.

MS. WHITE: When was that Order clocked in, when was the time stamp on it?

MS. BRANDENBURG: This was clocked in on January the 9th.

MS. WHITE: Okay. Your Honor, if you would care to review this?

THE COURT: I mean are you offering that into evidence?

MS. WHITE: I am offering that.

THE COURT: All right, let me look at it. Let me look at it.

MS. WHITE: Judge, I had a couple of additional questions with respect to relevancy.

THE COURT: All right, go ahead and ask them.

MS. WHITE: Okay. After this, you found out about the Order on December 14th, did he come to your house any more?

MS. BRANDENBURG: Yes, he was at my house

on December the 19th.

MS. WHITE: Okay.

THE COURT: Well, that's before. This is dated December the 28th, I believe.

MS. WHITE: That is correct, Your Honor. And it was clocked on January the 9th, signed by the Judge on January the 9th.

THE COURT: Okay, but anyway, but, so, wait, wait, wait, I am trying to get this, get this timeline here. You said on December the 14th, you got this "congratulations" text and then you, what did you call your lawyer?

MS. BRANDENBURG: Yes, sir, on -- since he was *pro se* in Family Court, all transcripts from the Clerk of Court go to him via e-mail and then to my lawyer and on December the 14th -- incidence it is only my lawyer, she is the one who basically filed everything for the Berkeley County Family Court. On December the 14th, the Clerk sent out the Orders for that the typed up to my lawyer so it had everything that was on, that the Judge requested to be put into that order.

THE COURT: All right. I'll, Okay. So, really actually on December the 14th, there was an

e-mail from the Judge to your lawyer saying "prepare a proposed Order along these lines."

MS. BRANDENBURG: Exactly.

THE COURT: Okay.

MS. BRANDENBURG: And Mr. Brandenburg received one as well.

THE COURT: So there really wasn't an Order until December the 28th. But anyway ---

MS. WHITE: And then did you have any contact with him after December 28th?

MS. BRANDENBURG: After December?

MS. WHITE: After the Order went into effect when the Judge signed in on December 28th, or ---

MS. BRANDENBURG: Wait, December the 14th is when we ---

MS. WHITE: When you found out about it.

MS. BRANDENBURG: --- we found out about it.

MS. WHITE: Did you have contact with him in February, I guess is what I am asking now?

MS. BRANDENBURG: Yes.

THE COURT: Well, I mean I guess you can ask her about anything, after the 14th up to the 28th. I mean as far as any contact is concerned,

I don't know whether there was or not.

MS. WHITE: Well, he came to the house.

MS. BRANDENBURG: Well, on December the 19th, he knocked on the door and I told him he needed to leave, that we -- that he wasn't supposed to be there and that we were not supposed to have contact. I told him I was calling the police and he ended up leaving. The kids were having their Christmas parties that day so I put them in the car to take them to school and as I was leaving Burns, turning onto 72, onto Burns Avenue.

And the police had been called, I went and took the children to school and my understanding is that he was detained shortly thereafter.

MS. WHITE: And the next time you saw him was when?

MS. BRANDENBURG: The next time I saw him was on February the 8th. He was on the, he was actually at the school when I took the kids to school.

I dropped them off at school, came back to the house, and then later in the afternoon, at lunch time, he was sitting on the Square, where I saw him several other times.

MS. WHITE: Did he contact you after the 8th?

MS. BRANDENBURG: He called me on the 24th saying that he was going to be in Abbeville to meet with the lawyer and would I talk to him at some point in time. I didn't call him back, I didn't contact him. And then I saw him again on the 26th when he rode by the house several times and at one point put toys in my back yard.

THE COURT: Are you talking about February the 26th?

MS. BRANDENBURG: I am.

THE COURT: Oh, Okay.

MS. WHITE: And did he attempt to speak to the children on the 26th?

MS. BRANDENBURG: Yes, on one of his ride-bys, my son was coming back from a friend's house and he tried to make contact with our son.

THE COURT: I mean, did you see that?

MS. BRANDENBURG: I did. I was in my back yard because as soon as I saw his car and I knew my child was outside, I went out into the backyard and called him and as he was coming across. Chad was trying to call Tripp as he was coming in the yard.

MS. WHITE: And that's when the second warrant was issued, was after the 26th?

MS. BRANDENBURG: Well, that day since there had been other incidences where I hadn't filed and I felt that I should have filed, I called the Police Department and asked them to come by and do an incident. The officer came by, wrote out an incident and the next morning he came by and said the he had taken it before the Judge and that there had been an Harassment since, in his mind, he had not followed though, you know, he was not leaving me alone basically.

MS. WHITE: And how many times did he ride by your house on the 26th?

THE COURT: Well, I, let's deal with that and everything. I am still of the opinion that any proof of a harassment warrant is not relevant insofar as this case is concerned and all. Now you can have her testify about what happened as far as him being there, doing things and so forth, what contacts and all that sort of stuff but leave out anything about another warrant being sworn out charging harassment.

MS. WHITE: Okay.

THE COURT: You understand that?

MS. WHITE: I do.

THE COURT: Okay. All right. Now let's talk about here, Okay. I think I've got enough as far as you wanting to offer this Order in evidence now and, all right, will be glad to hear from you as far as statement of position.

MS.BOLEN: Thank you, Your Honor, may it please the Court. Our position is that it is simply not relevant to the stalking charge. It is not an element of stalking.

It -- he is not charged with violation of an Order of Protection, or a violation of a Restraining Order. It would be relevant on one of those charges. He is not charged with that.

He is also not charged as far as I know, with any sort of contempt action in Family Court. I think the remedy is if someone believes he violated Family Court Orders to seek a remedy in Family Court and have him held in contempt. That is not what we are here for today. I think it's not relevant, it's not an element, it may be an element of other crimes that he is not charged with.

Additionally, Your Honor, I think it is overly prejudicial and I also think that it is

intruding on the providence of the jury because you have this Order, which is findings made by another fact finder. When those listed as, we don't know what that evidence is. And it would be intruding on the providence of the jury as the fact finders in this case. It would be far too easy for them say, "oh, well some Family Court judge heard this and issued this, this all must be true." That's impeding their job and their duty.

My main objection is it's simply not relevant and it doesn't go to any of the elements charged.

However, if Your Honor were to let it in, we would ask for either a stipulation or a redaction that it went into effect when it was clocked and -- even the Rules of Civil Procedure Rule, 58, the Order is effective when clocked. We also ask that everything other than a Mutual Restraining Order be redacted in that is totally prejudicial and contains hearsay statements as well as findings of fact made by some other tribunal that would considering it.

But we argue that it is not relevant and should be kept out entirely.

THE COURT: What you want to say?

MS. WHITE: Your Honor, it goes directly to the intent. It goes to -- that Order represents ironclad notice and is the mutual restraining Order. So, she couldn't contact him either.

I know in her opening that Ms. Bolen stated that this is a woman who wanted it all her own way. After this Order was issued, she couldn't respond to his phone calls. She couldn't respond to his text messages. But setting that aside, it goes to his intent, this is ironclad notice setting aside what the father will testify to as to saying, "don't come around here". Setting aside her not wanting contact with him, this is ironclad notice from a Judge saying "you are not to have contact, this is unwanted contact. If you contacting her, this is harassment."

THE COURT: Well, it doesn't say it is harassment.

MS. WHITE: It does not say that, Your Honor but it does say that neither party is to contact the other in any way. It also goes to the pattern, it is an element of stalking, we have to show a continuity of purpose that he

intends to keep talking her or contacting her, visiting her, despite having been told not to. This goes to that continuity of purpose because it shown it doesn't matter who tells him not to contact her, he is still going to do it.

With regards to the visitation portion of the Order, again, this shows someone who is now at this point in January has no legal right to come around whatsoever. Has no visitation with the children, has no -- is supposed to have no contact with Ms. Brandenburg and is still coming around. So even the excuse if 'I just want to see my children' is no longer valid at this point.

THE COURT: Anything else you want to say?

MS. WHITE: And Your Honor, ---

THE COURT: Well, I was turning to her.

MS. BOLEN: Your Honor, I think in terms of the continuity I don't think there is going to be evidence saying you know, there is evidence of the incidences that happen after the Order. I think quite frankly, it's going to confuse the jury because they are going to think, "well, he violated the Order." That is not anything they are being told about in the law. And I simply

think it is not relevant. It's not relevant.

THE COURT: I appreciate the position but I overrule your objection. I am going to allow it into evidence.

MS. BOLEN: Your Honor, are we going to be able to redact, or have the stipulation ---

THE COURT: What do you want to redact?

MS. BOLEN: I would like to have the stipulation that is a mutual restraining Order that may protect January 9th, 2013. I would like to redact everything about, I would like for, I would like for it to come in in its entirety. If the Court is inclined to redact it, I ---

THE COURT: I don't see any reason to redact anything basically.

MS. BOLEN: And for the record I would like to say that we'd like to redact it especially the part about him needing a psychiatric evaluation as being overly prejudicial, that being covered with anything.

THE COURT: All right, I appreciate your that, I overrule that objection. I am going to allow it in. So, but you've got to offer it and do it in front of the jury again. Bring the jury back in.

(JURY IN AT 3:45 P.M.)

THE COURT: All right, you may continue to examine the witness.

MS. WHITE: Thank you, Your Honor.

DIRECT EXAMINATION CONTINUED

BY MS. WHITE:

Q. Ms. Brandenburg, I think the last question I asked you, you were saying that you received a text message on December the 14th?

A. Yes, Ma'am.

Q. And what was that?

A. It was a text from him that said "congratulations" and I assumed that it must have been from the Court date that we had had on the 3rd; so I called my lawyer and that was when the results of the December 3rd trial date had come back that said ---

Q. And what were the results?

A. The results were I had sole custody.

THE COURT: Well, actually, let me say, actually what you found out from your lawyer was that the Judge had sent her a letter saying 'prepare a proposed Order along these lines.' Isn't that correct?

MS. BRANDENBURG: Yes, sir. That is

correct.

THE COURT: Okay. So there wasn't any Order until much later, the Order was actually signed on December the 28th.

Q. And the next contact you had?

A. There was a knock on the door and it was him.

Q. Okay. And this is at your house?

A. At my house, yes.

Q. And that's here in Abbeville County?

A. Here, yes.

Q. What happened when he was at the front?

A. I went to the door. I had the storm door locked. I opened the door and I told him he0 needed to leave, that he shouldn't be there, that he had see the results of that and that he needed to go. I told him I was going to call the police and I shut the door. I think he lingered for about ten or fifteen seconds. I called my mother and told her he was there.

He ended up leaving and as he left, I took the kids to the car because I was going to take them to school. They were having their Christmas parties that day and they were excited to go to school. As I was leaving, he was coming into

Burns Avenue on (Highway) 72 as I was going onto 72.

And during the time between me taking them to school, I had asked my mother to call the police and while I was at the school, and while I was at the school it was my understanding that he had been arrested.

Q. Okay. I am going to hand you what has been marked as State's Exhibit 1.

MS. WHITE: May I approach the witness, Your Honor?

THE COURT: Yes.

DIRECT EXAMINATION CONTINUED

BY MS. WHITE:

Q. Do you recognize that document?

A. I do.

Q. Okay. What is that?

A. It's the temporary Order from the Family Court in Berkeley.

Q. Okay. Is that, has that been signed by the Clerk of Court or stamped?

A. Yes. It's got a Clerk of Court stamp.

Q. Okay. And was it signed by a Judge?

A. It was.

Q. Okay.

MS. WHITE: Your Honor, State offers Exhibit 1.

THE COURT: All right, and over your objection I am going to allow it into evidence.

MS. BOLEN: Yes, sir.

(SO ENTERED AS STATE'S EXHIBIT 1)

DIRECT EXAMINATION CONTINUED

BY MS. WHITE:

Q. All right. And if I could get you, and this is the, is this the results your of temporary Hearing?

A. Yes it is.

Q. Okay. If you could just read bullet point number one, for me?

A. (Reading): *"Plaintiff shall have sole custody of the parties minor children.*

Q. And bullet point number two?

A. (Reading): *"Defendant shall have no visitation with the parties minor children until he undergoes a mental health evaluation by a licensed psychiatrist as required below recommending under what conditions visitation may be safely exercised.*

Q. Okay. And going to number seven, and you can just read seven and a, b, and c are the

relevant portions.

A. (Reading): *"The parties are mutually restrained from the following: Harming, harassing, threatening, following, or interfering with the other in any manner what so ever. Entering or attempting to enter the other's place of residence, employment, or education, communicating or attempting to communicate with the other except through counsel of record."*

Q. And so this was signed on December the 28th and clocked on January 9th?

A. Yes.

Q. Did you have any contact with Mr. Brandenburg after January 9th, and now we are in 2013, correct?

A. Yes we are in 2013. I did receive a letter sometime around ---

MS. BOLEN: Your Honor, I've got an objection. We can maybe handle it at a side bar?

(SIDEBAR)

DIRECT EXAMINATION CONTINUED

BY MS. WHITE:

Q. And skipping past, did you have any contact with him in February?

A. On the 8th, I noticed he was -- on the way to take the children to school, he was outside at the Abbeville Motel which is right below the school. And then later that day, he was on the Square for much of the afternoon. I saw him a couple of times as I was riding through the Square.

Q. And let me stop you there. Did he ever move to Abbeville County?

A. Not to my knowledge. No.

Q. He was still living in Berkeley County this entire time?

A. Yes.

Q. Does he have family in Abbeville besides you and the children?

A. No.

Q. Does he work in Abbeville County?

A. No.

Q. Does he have any reason to be here other than you and ---

MS. BOLEN: Your Honor, I object.

THE COURT: I sustain the objection to that question.

DIRECT EXAMINATION CONTINUED

BY MS. WHITE:

Q. All right, did you have any contact with him after February the 8th?

A. Yes, I got a call from him on February the 24th.

Q. And what did he say then?

A. He said he was going to be in Abbeville in a couple of days, that he had a meeting with the lawyer and that he wanted to see me.

Q. Did you see him on the 24th.

A. I did not. I didn't call him back.

Q. And did you see him after that?

A. On the 26th, right before I was going to pick the children up from school, he rode by my house. And then I picked the children up from school and happened to look out the window and noticed he was coming by again. It took him awhile to go turn the corner where we live. Then I walked out into the back yard and noticed that a bag of toys had been placed in the back yard and my son. Our son was outside playing, I called him to come in and about the time he was driving back by a third time. He attempted to get Tripp's attention but Tripp came on in, into the backyard and went in the house.

Q. Did you call law enforcement about that?

A. After I got both of the kids in the house, I called law enforcement to come by and make an incident report because I wanted to make sure that everything was documented, and he had scared me in that he had actually put something over the fence.

Q. What was, were you scared while this was going on?

A. I was.

Q. And what were you scared of?

A. I wasn't sure what he was going to do. I was scared that he might take the children. I wasn't sure if he was going to have an angry outburst and you know, harm me or be mad because of us leaving. I still wondered if he was going to take try to take the kids because he had threatened that. You know, he, in the past, had said he was going them to take them away. So I was just worried that he would take the kids and leave.

MS. BOLEN: Your Honor, I have an objection to that.

THE COURT: Well, I appreciate the position I overrule your objection. I'll allow it. Go ahead.

MS. WHITE: Please answer any questions Ms. Bolen has.

(CROSS EXAMINATION)

BY MS. BOLEN:

Q. Mrs. Brandenburg, I've got some questions for you about what you testified about, okay? You moved here in June of last year, right?

A. Yes.

Q. Okay. You lived with your parents first?

A. Yes.

Q. Okay. You were living at your parent's house September 18th?

A. Yes, I was.

Q. And you said he, Charles showed up there, right?

A. Yes.

Q. And when you told him to leave, he left, right?

A. Yes.

Q. Okay. He didn't make any threats to you, correct?

A. No.

Q. He didn't make any threats to the children, correct?

A. No.

Q. Okay. He didn't have any weapons with him, right?
A. Not that I am aware of.
Q. And you basically just didn't want him there, correct?
A. I didn't, you're right, I didn't want him there.
Q. You didn't want him there, you told him to leave and he left, right?
A. Yes.
Q. And you didn't call the police, correct?
A. No.
Q. Okay. Then you said, September 19th, your kids were at Long Cane Elementary, right?
A. Correct.
Q. And he was parked out beside the school?
A. Yes.
Q. And you spoke with him after dropping your kids off, right?
A. I did.
Q. You saw him in the parking lot, and spoke with him.
A. Yes.
Q. And at that point, you agreed to let him see the children, right?

A. After school, yes.

Q. Okay. And you told him to go back to Charleston, right?

A. Later that evening, yes, I was like you need to go back to school, sorry, to Charleston.

Q. And at some point, then in September, September 19th, that he asked you to follow him to a motel so he could visit with the children?

A. Yes.

Q. And so he asked you to do that, right? That was a question he asked you?

A. Yes. He said 'why don't you and the kids come and spend the night with me at the hotel.'

Q. He didn't order you to, correct?

A. No.

Q. He didn't make any kind of threat about 'if you don't, this will happen'; right?

A. No.

Q. He just asked you to and you didn't do it, right?

A. Right.

Q. And nothing happened when you didn't follow him, right?

A. No.

Q. He didn't , he didn't get mad, he didn't

call you he didn't do anything to you, right?

A. No.

Q. Okay. Move on to the October 5th. You said he left a note on your car or your truck?

A. Yes.

Q. And the note again asked you to meet him at a hotel?

A. Yes.

Q. He didn't demand that you did, right?

A. No.

Q. Didn't threaten any kind of harm to you or your children, if you didn't, correct?

A. No.

Q. Just asked "would you meet me at a hotel."

A. Yes.

Q. And you did not meet him at the hotel, correct?

A. I was working.

Q. Okay. And you didn't keep that note, right?

A. No.

Q. Okay. And nothing happened when you didn't meet him, right? He didn't come to your work?

A. He came to my work the follow morning.

Q. Outside though, right?
A. Yes.
Q. He did not come into the hospital?
A. Not that I am aware of.
Q. He did not call you or make any sort of threats over the phone, correct?
A. He called me at about 5:00 that morning and then texted me after midnight but ---
Q. Just telling you a motel room he was in, right?
A. Yes.
Q. He made no threat then?
A. No, not over the phone.
Q. And didn't mention anything about the kids, right?
A. Uh-huh.
Q. Okay. Say yes or no, please.
A. To which one?
Q. The last one.
A. What was your last question?
Q. He didn't say anything about the kids, correct?
A. No.
Q. Okay. And I believe you said, one of the texts was "would you go to breakfast and talk",

correct?

A. Yes.

Q. SO he asked you in a very polite way would you like to meet me for a meal and talk?

A. Yes.

Q. There was no threat in that, right?

A. No.

Q. That did not cause you to be scared that he was going to do something to you, correct?

A. Correct.

Q. Okay. And I think you said that he was in the parking lot or near the parking lot of Self one morning?

A. He was in the parking lot.

Q. And you stopped to talk to him, right?

A. Yes.

Q. Okay. You voluntarily stopped to talk with him?

A. Or he was in between my path to my car.

Q. Okay. And he told you he didn't want a divorce, right?

A. Correct.

Q. And at that point he asked again, asked you if he could see the kids sometime, right?

A. Well, he demanded to see the kids that day.

Q. And you told him no, right?
A. Correct. Because we had not made a plan for it, I was working that night and that Saturday night as well.
Q. Okay.
A. So, I honestly had no time to even try to do it, even if I was going to let him.
Q. And this would be the morning of October 6th, right?
A. Correct.
Q. Okay. So when you found the note on your car, you didn't call the police, right?
A. No.
Q. And when you talked to him in the parking lot on October sixth, you did not call the police, correct?
A. Actually I did, because that was when he followed me to my parent's house He was threatening in the parking lot and as I left, he left pretty much in pursuit of me, following me to my parent's house.
Q. You didn't call the police yourself, one of your parents did?
A. Yes. My parents did, excuse me.
Q. But you didn't call them on your cell,

correct.

A. No, I did not because I was more concerned about getting to my parent's house before he did.

Q. Okay. And so you go to arrive at your parent's house, right?

A. Yes.

Q. Were the kids there?

A. Yes.

Q. Okay, so that is the time you said that the Sheriff's Office came out and said he was not trespassing, right?

A. Right. That due to the fact that there was no Family Court Order, that it was not considered trespassing since we had equal rights to the kids.

Q. And I believe they told you he had equal rights; right? I don't know if those were the words used.

A. That's the words I use, that is not what they said. That's my words, I think the officer that came out likened it to if your car is in s someone else's property, you can come pick up your car. He put it more in that context.

Q. Okay. And these were his kids, right?

A. Right.

Q. His kids?
A. Yes.
Q. But I think you said on direct that the Sheriff told you that he had a vested interest in his children, right?
A. Yes.
Q. And his kids were there, right?
A. Yes.
Q. And you did not let him see them?
A. No.
Q. Even though a Sheriff's Deputy was there.
A. No.
Q. Okay. And then you said that October in King Fish you think you saw him on the road but you're not sure it was him?
A. I was ninety percent sure that it was him.
Q. And did he try to cut you off, in any way?
A. What do you mean, in the road?
Q. I'm sorry, yes.
A. No.
Q. Did he try to run you off the road?
A. No.
Q. Okay. He didn't come to your house, right?
A. I made circles around Abbeville until I felt confident I had lost him.

Q. Okay. And you didn't call the police, right.

A. No, I did not.

Q. Around early November is when you moved out of your parent's house, right?

A. Correct.

Q. Okay. I think at one point during the testimony on direct, you were talking about, you know, him asking to see the kids, he was always asking, correct, he'd say "can I see the kids, I want to see the kids".

A. It wasn't always asking, there's a few texts where he demanded to see the kids.

Q. Okay. Well, I think you have showed me text messages that you have. Let's just go through those:
September 18th, he asked you what school the kids went to, right?

A. Yes.

Q. September 18th, he also texted you "please meet, I am not here to argue", correct?

A. Yes. But he said he wasn't here to argue because I had told him that we had already made plans to meet that weekend and he was determined he was going to meet us that day.

Q. Okay. But he said "please meet", right?
A. Yes.
Q. Okay. September 21, he sent you a text about asking to see the kids, correct?
A. Yes.
Q. September 22nd, he said " I want to talk to the kids tomorrow, please let me see the kids." Correct?
A. Yes.
Q. September 23rd, his text to you was "any chance I can speak to them." Correct?
A. Yes.
Q. September 28th, he sent you a text "be safe..." -- correct?
A. Yes.
Q. October 5th, "Can you call me?" Correct?
A. Yes.
Q. October 6th, "I want to pick up the kids next weekend. Thank you." Right? That is what he texted?
A. Yes, and I actually made arrangements and rearranged my work schedule so that he could see them that weekend and I didn't get another message or call from him stating that he was planning to come to Abbeville or wanting to try

and meet anywhere.

Q. Okay. October 7th, he texted you "you want me out of your life, you are free to leave. I'll take all the blame." Correct?

A. Yes.

Q. October 11th, "You said you would let me speak to the kids yesterday."

You said, "You said you were interviewing for a job in Charleston."

He said, "Missed it."

Correct?

A. Yes.

Q. October 16th, he sent one: "I love you, and called to speak with the kids." Correct?

A. Yes.

Q. October 16th, he also requested or asked you for some pictures of the kids. Correct?

A. Correct, of which I, -- did you want me to follow up on that one?

MS. WHITE: Objection Your Honor.

THE COURT: Ask another question.

CROSS EXAMINATION CONTINUED

BY MS. BOLEN:

Q. So all those text messages are him asking to see the children, correct?

A. Or speak to them, yes.
Q. Speaking to them. And he is also asking in a way that gives you some notice that 'I would like to speak with them tomorrow.' Correct?
A. It's not always -- yes, but it was not always tomorrow.
Q. Okay.
A. With that much advance notice when he asked to speak to them, I offer the children the -- several of those times he did speak with them. And several times I asked the children if they wanted to speak to him or not and used that as a gauge. If they said they said they didn't really want to speak to him, I didn't call and put them on phone.
And when he asked for pictures of the kids, I didn't send him pictures, because he had started a Facebook account with no privacy settings.
Q. Okay.
A. And I thought that was endangering them to have their birthdates and pictures on Facebook with no privacy.
Q. And at one point in your direct testimony, you said something about that he asked to see the kids and you said "it wasn't convenient at the

time." Is that right?

A. More -- well, I don't know if "convenient" is the right word because considering I was working third shift and had to work that Friday night and that Saturday night.

Q. Okay. So you told him it wasn't convenient at that point for him to see the kids, right. That is what you testified to.

A. Yes.

Q. Okay. So it is up to you determine when it is convenient for him to see his kids. I mean, at that point ---

A. No, not necessarily. It wasn't convenient for me to let him see them the weekend following the 6th, but I rearranged my work schedule so that he could, and he didn't bother trying to call back or plan anything then. So with advance notice, I tried to work around.

Q. Okay. And then you said and testified that on November 26th, he texted you that he couldn't believe you got the kids out of school early, correct?

A. Correct.

Q. So that's him showing concern that the kids were not in school, right?

A. I think it was more in the context that he was angry that they weren't there when he came.

Q. Okay. And then I guess you said that, at one point I think you said around November 25th, or 26th, he was sitting in a Public Works parking lot? Is that a Highway Department parking lot?

A. Yes. On November 2nd, -- and, since I've pulled it out, this is just a time line of where I have written down the dates that he was around to that I make sure not to give you an incorrect date.

Q. And when did you write that down?

A. I pulled it together the other day.

Q. So just within the last week or so?

A. Yes.

Q. Okay.

A. Back to the question about being outside the Highway Department, that was on the night, of the night of the 26th.

Q. November twenty sixth?

A. November 26th.

Q. Okay. And the Highway Department is a public place; correct?

A. It is.

Q. Okay. He didn't follow you or anything,

right?

A. I wasn't in my vehicle. He didn't realize that I was coming in to work. I had borrowed my uncle's vehicle that night because, from my understanding, he was coming into town angry and I really didn't want to have to encounter him, so I used one of my relative's vehicles.

Q. But you were, how far away from him were you? You were in the street, right? You were driving?

A. I was driving, he was outside of his vehicle.

Q. Okay. And you didn't see him the rest of that day, right?

A. I don't think that he came by the hospital. I told every, I told security at the hospital as well as all my co-workers that if anyone came asking for me that I was not there.

Q. Okay. And you didn't call the police, right?

A. No, I didn't.

Q. Okay. And then on November 27th, that's the day that you kept the kids out of school or took the kids out early, right?

A. I kept them out of school that day.

Q. And the only contact he made was saying, "I can't believe you took them out of school early?" Right?

A. That was the previous day. He'd made that comment, he called me multiple times that day and I ignored him.

Q. Okay. And he didn't make any threats to you, right?

A. His tone was very angry and harsh.

Q. He did not threaten any bodily harm?

A. No. Not in specific words.

Q. Okay. And on the 27th, this is when you went to the Sheriff's Office and believe they told you, didn't make a report, it was a Family issue and they couldn't get involved, correct?

A. Yes.

Q. Okay. December 12th, as you say you were in Greenwood, I think you were at Kohl's?

A. Yes.

Q. All right. And you say, now you were in your car, right?

A. Right.

Q. You are out in the parking lot?

A. Yes.

Q. Okay. And he was also in the parking lot?

A. Yes.
Q. So you are in your car driving, correct?
A. Correct.
Q. And you say he, quote, "pulled you over"; correct?
A. Yes.
Q. You could have kept driving, right?
A. I could have but I also knew that nothing had been done as far as Family Court. I also had a fear that he was going to go to the school and attempt to get the children out of school, so if I was talking to him and placating him, then I wouldn't have to -- I knew my kids were safe if I was placating him.
Q. And the kids were not with you, right?
A. They were in school.
Q. Okay. And he had not, you never testified that he said anything about going to get the kids when you saw him in the Kohl's parking lot, right?
A. No.
Q. That is not part of your testimony?
A. He did not say that.
Q. He did not say that?
A. No.

Q. And in fact, when he, you voluntarily went to talk to him, he just said he wanted to work it out, right?

A. Yes.

Q. Okay. And in the afternoon of the 12th, that's when you say that you saw him at the school, and you thought, you weren't sure if he was maybe trying to get the kids attention?

A. That what I assumed he was trying to do.

Q. Okay. So that was your assumption that he was trying to get the kids attention, right?

A. Yes.

Q. Okay. And you told the police basically, 'tell him I'll meet him at McDonald's with the kids.' Right?

A. Yes.

Q. So you felt fine going to McDonald's to meet with him, right?

A. I felt like it would be a public place and that nothing would happen there.

Q. Okay. And you said that there happened to be an Abbeville Police Department car in the Bi-Lo, but they weren't there for you, right?

A. I don't know if they were there for me or not. One of the officers before I left, told me

just to call 911 if I needed anything, I wouldn't have to worry about that they would know it was me. I wouldn't have to worry about giving them any other information. I assumed that that car had been there because of the incident in the school.

Q. Okay. And you said that a Sheriff's Deputy was by coincidence at McDonald's. He was eating lunch there?

A. I think, yes, with his family.

Q. And that's helpful but you didn't call the police about talking in the Kohl's parking lot, right?

A. I did not.

Q. And you actually didn't call the police on the afternoon of December 12th, right?

A. Another parent, from my understanding -- no, I did not call.

Q. At McDonald's you did not call the police at all, correct?

A. No.

Q. Okay, let's move on to December 13th. You said that you were basically driving home by the school, right?

A. Yes.

Q. You were in your cars Highway 72?
A. Yes.
Q. Okay, so you are in your cars driving, right?
A. Yes.
Q. And you said you drove by and passed together, right.
A. Yes.
Q. And again, you didn't have to stop. Right?
A. Correct. But I didn't have of type of Order from The Family Court, he had just as much right to go in the school as I did.
Q. Okay.
A. So I stopped basically to placate him and make sure he didn't stay angry and go to the school and get the kids.
Q. Okay. And you voluntarily stopped and talked with him, right?
A. Yes.
Q. And you talked to him for thirty minutes?
A. Approximately.
Q. Okay. And December 13th, that is when you said you went to the Sheriff's Office, right?
A. Yes.

Q. And you told them -- or at least your testimony on direct was you told them, "I'm tired of looking over my shoulder", right?

A. Yes.

Q. Okay.

A. And seeing him every time I turn around.

Q. So you are tired of seeing him, basically?

A. Yes.

Q. Okay. Going back to the 13th, you actually were the one to suggest the meeting at McDonald's, right?

A. Yes. But just as a public place to get him away from the school.

Q. Okay. And he didn't make any threats to you there, right?

A. No.

Q. And no threats to the kids, right?

A. No threats to the kids but he tried to, 'let's go to the toy store', or 'I have a toy for you', 'don't you want to come ride in Dad's car?'

Q. So a father wanted to give his children some toys, is that your testimony?

A. That he was offering them toys.

Q. Okay. And on the 13th when he flagged you

down, he didn't make any threats to you then, right?

A. No.

Q. And no threats to the kids, right?

A. He didn't mention the kids when he flagged me down.

Q. Okay. December 19th, you said he knocked on your door in the morning, right?

A. Yes.

Q. And he asked to see the kids, correct?

A. Yes.

Q. Okay. And he did not come in the house at all, correct?

A. I had the storm door locked, he tried to, he attempted to grab the handle but since it was locked, he could not come in.

Q. Okay. And you told him to leave, right?

A. Yes.

Q. And he left, correct?

A. Only after he saw the phone to my ear and I threatened to call the police.

Q. Okay. So you went back to call the police, correct?

A. Yes.

Q. And he left?

A. Yes.

Q. And I think you said in your direct, that you actually didn't call the police. You called your mother and asked her to, right?

A. Yes.

Q. Let's talk about February 18th (sic). This is when you said that you were driving, I guess you were driving, I guess you were going to and from work, or to and from the school?

A. February 8th, I was driving to and from the school and then the other errands around town.

Q. Okay. And you drove by the Abbeville Hotel?

A. Yes.

Q. And that happens to be a hotel on 72?

A. Yes.

Q. I have that right?

A. Yes.

Q. Okay. And you noticed that he was there?

A. Yes.

Q. Okay. Just there, did you see his car?

A. Yes. He was sitting, standing right, sitting near his car, leaning up against his car.

Q. Okay. And the Abbeville Square is a public place, correct?

A. It is.
Q. Okay. And then you said you saw him later that day on Abbeville Square right?
A. Yes.
Q. Okay. And you actually said you drove through the Square several times and saw him several times, right?
A. Yes.
Q. Okay, so he was sitting on the Square which is a public place, right?
A. Yes.
Q. And you rode through, how many times? You said 'several'. How many do you think?
A. I think I rode through twice.
Q. Okay. And you just noticed him sitting there?
A. Yes. And the first time I rode by, he got up and got into his car. I don't know if he followed me or not but I know as soon as he saw me, he got up and went to his car.
Q. And then the second time, he was sitting on the Square, right?
A. Yes.
Q. Okay. Now on the 24th, you said you talked to him and he wanted to see the kids?

A. On February 24th?
Q. Yes.
A. I did not talk to him. He called my phone and said that he was going to be in Abbeville and would I meet him.
Q. Okay. So again, he asked you to meet him, correct?
A. Correct, but at this time he wasn't even supposed to be attempting to contact me because this was after the Family Court Order had gone into effect.
Q. But there again, he didn't make any threats in this message, right?
A. No.
Q. He didn't make any threats to you or to the kids, correct?
A. No.
Q. He didn't say anything about taking the kids, correct?
A. No.
Q. Okay. And February 26th, you state he drove by the house, your house?
A. Yes.
Q. And you live on a public road, right?
A. Yes.

Q. Okay. And that you say you noticed that some toys were in the back yard?
A. Yes.
Q. Okay. And just toys, right?
A. Yes.
Q. Okay. Now through all of this, you have not given any testimony that he made any threats of bodily harm, against you or your kids. Right?
A. Right.
Q. No threats that he would take your kids, right?
A. No.
Q. No. So he has never threatened to take your children, correct, during the timeframe?
A. During the timeframe that you are talking about, no.
Q. Okay.
A. Now, his mannerisms were very threatening and his tone and timber of his voice was very threatening and intimidating.
Q. And we're, the time span we talking about is September, early September, 2012 to late February of 2013, right? Which is September, October, November, December, January, a six-month period, right?

A. Yes.
Q. And during that time, he never once came and tried to take the children from you, correct?
A. He came. I don't know I don't know if, I mean, yes.
Q. Okay. So he never tried to take your kids and never tried to hurt you, right?
A. No.
Q. During that time frame?
A. Well, on the 26th when he came by the house, he was calling Tripp's attention as Tripp was coming into the house, coming towards the house. I don't know what his intent was at that point.
Q. Okay. You don't know what his intent was? Okay. But he never, and you during all of this, you never changed your phone number, right?
A. No, I did not.
Q. You didn't change your address?
A. I moved from Charleston up here. And then I attempted to not publicize, I am using a post office box. And I attempted not to publicize my new address.
Q. Okay. You didn't move your kids to a different school, right?
A. No. There are only so many schools in

Abbeville County.

Q. You didn't ask to be in Witness Protection, right?

A. No.

Q. Okay.

MS. BOLEN: I believe that is all I have.

THE COURT: Anything on redirect?

MS. WHITE: Very briefly, Your Honor. May we break, I think we have an issue.

THE COURT: I don't think a sidebar is very good. If you've got something you want to say.

MS. WHITE: Your Honor, I believe that Ms. Bolen opened the door.

THE COURT: Members of the jury panel needs to go to the jury room for a moment, please.

(JURY OUT AT 3:45 P.M.)

THE COURT: All right, what is it you want to ask?

MS. WHITE: Your Honor, previously ruled that the testimony regarding the threat made about the kids, that he would sacrifice the kids if he had to, was not admissible; also the behavior prior the Ms. Brandenburg leaving. Ms. Bolen repeatedly used the words, 'never made threats, he never frightened you, never

threatened to take the kids, never threatened to harm to the kids.'

I think at this point, she has opened the door to that threat, to that reason that Ms. Brandenburg was so scared that he would get his hands on the kids alone and unsupervised.

And I think she has opened the door to that, Your Honor, and I would ask that I be allowed to go into that testimony now.

MS. BOLEN: Your Honor, I clarified that that was during the timeframe in the Indictment. It was during the time frame that we are talking about. Because that is what he is on trial for.

MS. WHITE: Depending -- Your Honor, Ms. Bolen's words are not testimony so her question, what she clarified, it doesn't matter, this jury has heard that he has never made threats, and this simply not true.

THE COURT: Well, I appreciate the position and it is a close question and all but I am going to maintain the ruling that I made earlier and all. I don't think it is relevant.

MS. WHITE: Thank you, Your Honor.

THE COURT: All right, I appreciate the

position but I will sustain the objection still. Anything else on redirect?

MS. WHITE: I do have additional questions.

THE COURT: Bring the jury back in.

(JURY IN AT 3:47 P.M.)

THE COURT: All right, anything on re-direct?

MS. WHITE: Very briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. WHITE:

Q. Ms. Bolen asked a lot of questions about did he ever make any overt threat, how would you describe Mr. Brandenburg's demeanor the times that you talked to him?

A. During the timeframe we are talking about?

Q. Yes.

A. Very threatening.

Q. When you say threatening, how would you ---

A. He would get angry and would, you know, "why can't you see it my way? Why, you know, you are not giving me a chance," anything I said he kind of talked over or it was as though, I didn't say it. It was, you know, this is the way, everything was his way. And he kind of shut down if I wasn't giving him the responses and all

the conversations just seemed to be circular, because he wasn't hearing the answers that he wanted to hear.

Q. And did his actions and demeanor frighten you during this timeframe?

A. It made me -- yes, made me very nervous and concerned.

THE COURT: What were you concerned about?

MS. BRANDENBURG: I was concerned that he was going to come to wherever the children were and try and get the children, or that he was going to basically, have some form of outburst. And all the times that he pulled me over, I never allowed him into my vehicle, I never got out of my vehicle. A couple of the times, I never even turned the car off, so yeah, I voluntarily spoke to him but it is not like I, you know, I think there was only one time, where on the 18th, where I had actually gotten into a vehicle with him, but all the other times, he was on outside my vehicle.

REDIRECT EXAMINATION CONTINUED

BY MS. WHITE:

Q. Now, during some of this timeframe, were you, you were still letting him try to see the

kids, correct?

A. Up until probably mid-October I was trying to work with him. Once I realized that it was going to be his way or no way, then I started the process of going through Family Court since everything I had been told was that was the only outlet and avenue I had. Then, I quit trying to work with him.

MS. WHITE: No further questions, Your Honor.

THE COURT: All right. Thank you very much, you can return to your place in the courtroom.

(WITNESS STEPS DOWN)

THE COURT: We are going to take a short break and let you go to the jury room for about a five- to ten-minute break, move around a little bit and everything so we will take short break. We will get you some water. I will put the bailiff in charge of that, he is going to get you some water.

(JURY OUT AT 4:00 P.M.)

(BRIEF RECESS)

(DEFENDNAT PRESENT)

THE COURT: Okay, let's see if they

have had enough water.

(JURY BACK AT 4:08 P.M.)

THE COURT: All right, we have the all the jury back with us and the parties are present along with their attorneys. All right, call your next witness.

MS. WHITE: State calls Charles Costner.

(WITNESS TAKES THE STAND)

CHARLES ALEXANDER COSTNER, having been duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MS. WHITE:

Q. Okay. And how are you employed?

A. I am an employee of the Abbeville County School District, I am the principal at Long Cane Primary.

Q. Okay. And are Tripp and Bailey Brandenburg students at Long Cane Primary?

A. Yes, they are.

Q. Okay. And who is their mother?

A. Their mother is Mrs. Brandenburg.

Q. Have you ever had the occasion to meet the defendant, Charles Brandenburg?

A. Yes, I have on two separate occasions.

Q. Okay, taking you back to the first, November the 26th, of 2012, was that one of the dates that you met Mr. Brandenburg?

A. That was the first time that I had ever met him.

Q. Okay. And could you tell the jury a little bit about what happened on that day?

A. Yes, ma'am. Mr. Brandenburg arrived at Long Cane Primary, it was at the end of the day and he had requested the opportunity to come and see his children. I informed Mr. Brandenburg that I didn't know him nor did we have any documentation that he was the father. He said that he just wanted to spend some time with his kids. He mentioned giving them some gifts and I asked him if he could fill out an emergency card and I would be glad to look into it to see if he was really the guardian as he said he was. And -- but before I could prove he was the legal guardian we were not going to allow him to see the children.

Q. Okay. And what is an emergency card?

A. Oh, I'm sorry. An emergency card basically is an information sheet we require all parents to fill it out at the beginning of the

school year. We use that to determine who can see a child, who can pick up the child, and who we can contact in case the child gets sick or hurt in school.

Q. Okay. Now on November 26th, when he showed up, was that, was school still in session when he came.

A. Yes. It was approximately around 2:00 so it was getting close to dismissal when he arrived.

Q. Did he, on that date, did he say anything about taking the children?

A. No. Not, not that I can recall. I mean, on that day he just, he described the situation, there was something going on between the marital status. I wasn't aware. And he described that situation and then he said the he just wanted to see his children.

Q. Did you ever see Mr. Brandenburg again?

A. He arrived the following day.

Q. Okay. About what time did he arrive that day?

A. That, I believe it was earlier in the day, it was while school was in session. He was demanding to see his children; that was the

second time I had seen him.

Q. Okay. Did you notice a difference in his appearance from day one to day two?

A. Yes, Ma'am. He really had, when he arrived it concerned one of my employees working in the front office. The clothing didn't look the same as the day before. He was very red and color flushed. Even that, there was an aroma of alcohol. I don't know if had been drinking but there was some aroma of alcohol.

Q. Was he dishevèled at all?

A. He looked unkempt. It's kind of, you know, the clothing, there was a stain on the pants he was wearing. He just really looked like he had had a, I don't know how to say it, a rough -- looked roughed from the night or whatever, or whatever from the night when he arrived at the school.

Q. And you said he showed up demanding to see the children.

A. Yes, Ma'am. He had, when he had arrived, he was very upset and agitated. He wanted to see his children. He said he was their father. He said there were no other Brandenburgs around. You know, tried to talk him into calming down to

let him know I understood that if he was the father, that he did have those legal rights. That we didn't have the proof, we didn't have enough time to find out that information. He became more agitated, so we escorted him to my office where we could talk and try to make that determination. He still was very vocal that he wanted to take his children. He wanted to take the children, I believe, back to Charleston. That it became a point of such concern that we felt it was necessary that law enforcement be contacted. Because we did not know it was going to go. We didn't know what was going to happen and my concern was keeping him in my office away from the students, away from the staff until we could get someone to come in and kind of help me resolve the situation and get it taken care of.

Q. And you say you did call law enforcement on that day?

A. Yes, Ma'am. Actually three officers did arrive.

Q. Okay. And what happened after they got there?

A. He was still pretty agitated, he was using very inappropriate terms.

Q. And forgive me, but what kind of inappropriate terms?

A. All right. He was cursing, demanding that he had a right to see his children. He was demanding that, you know, he didn't care. He just, he wanted to take his kids with him and it was his right. We had no right to keep the kids from him and he continued to be combative with law enforcement.

When law enforcement arrived and started asking questions, I stepped back. We remained in my office. But still we couldn't resolve that he wanted to see his children, we weren't going to allow him to see the children, because we didn't have proof. The end result was that law enforcement did have to escort him off campus and inform him that, you know, he needed to take care of business and not on school grounds.

Q. Were the kids actually in school on that day?

A. No, the children were not in school that day.

Q. Was there another time that he showed up at the school?

A. There was one incident that wasn't on

school grounds, it was across the street. It was in reading, it was brought to my attention, it was during dismissal and the way that our school is set up, when we dismiss school, cars come around and park and wait by the side of the school, we load children in and parents were calling the school parents, my understanding, one parent had contacted law enforcement.

MS. BOLEN: I have an objection. That is hearsay.

THE COURT: Just tell what you saw or heard yourself. Not what somebody maybe have reported to you. Did you see or anything, you said there was another, time, do you know a date or what?

MR. COSTNER: On the December date, yes sir.

THE COURT: December, sometime in December.

MR. COSTNER: December the 12th.

THE COURT: Twelfth. Okay. Just tell her what you saw or heard.

WITNESS: I saw Mr. Brandenburg across the highway pacing back and forth and across the highway. There is just a guard rail, there is no sidewalk, normally we never see pedestrians over there. He was observed walking back and forth

and law enforcement was contacted.

Q. How would you describe his demeanor on that day from what you observed?

A. From my observation, he was pacing and it didn't look like he had, person didn't have a place to go, he wasn't going to one place, he was going back and forth. Heightened awareness, it really concerned me as the building of the principal to make sure the children were safe and not exposed to -- to a hostile environment. We thought it best that we contact law enforcement.

Q. Do you know the end result of that?

A. I do not.

Q. Is it common to have children in your school who are the subject of custody disputes?

A. We do have parents who are going through, been through divorces or separation, yes, we do have those. This is the first situation where we have had law enforcement that has had to be contacted for such a situation.

Q. Have you ever had a parent show up demanding to remove their child from school?

MS. BOLEN: I have an objection as to relevance?

WITNESS: No.

THE COURT: Well, ask another question.

MS. WHITE: Please answer any questions Ms. Bolen has for you.

MS. BOLEN: Thank you, Your Honor.

CROSS EXAMINATION

BY MS. BOLEN:

Q. Dr. Costner, I have just got a couple of questions for you. You said on the 26th, November the 26th that he talked to you about, you said he requested an opportunity to see his kids, right?

A. Yes, Ma'am.

Q. And then he told you he just wanted spend time with them and give them some gifts, right?

A. Yes, Ma'am. From my recollection, yes.

Q. And he didn't say anything taking the kids, right?

A. Not on that day, no.

Q. Okay. He just wanted to see them and when you explained, he left, right?

A. Yes, he filled out the paperwork and left.

Q. Okay. Then on the 27th, I think you testified you didn't know what was going to happen, right?

A. No. Ma'am. I did not know what was

going to happen, that is correct.

Q. And you said you called law enforcement, but there was an officer already at the school, right?

A. No, ma'am.

Q. There was not an officer there?

A. No, we do not have an officer at our school.

Q. And again, he was saying he wanted to see the kids and he had the right to see his kids, right?

A. He did say that, yes, Ma'am.

Q. Okay. And then on the 12th, how far away were you, so if I can just kind of get a visual, where were you on school ground when you saw him?

A. During dismissal time, I was probably standing near the flag pole and I would say he was across the highway.

So I would say the officer in the back (of courtroom) would be close, he might be a little further back.

Q. Okay. And he was on, but he was not on school grounds at that point, right?

A. No, it was not school grounds.

Q. And so basically you saw this father,

standing across the street from the school.

A. I saw, I did not know, I saw this gentleman across the street -- so, yes, ma'am, we had him removed by law enforcement.

MS. BOLEN: I don't have anything else, thank you.

THE COURT: Thank you very much, anything else?

MS. WHITE: Just one, Your Honor.

REDIRECT EXAMINATION

BY MS. WHITE:

Q. Have you ever seen another parent pacing back and forth, in that area?

A. No, Ma'am.

MS. BOLEN: Objection as to relevance.

THE COURT: Well I'm going to allow it. All right, thank you very much. You can return to your place of you want to excuse him?

MS. WHITE: Yes, sir.

(WITNESS STEPS DOWN)

THE COURT: Thanks for coming, you are free to go. Call your next witness.

MS. WHITE: State calls Robert Faggert.

THE COURT: Robert Packer, is it, or Packard or something?

MS. WHITE: Faggart, Your Honor.

THE COURT: Like the automobile?

MS. WHITE: F A G G A R T.

THE COURT: Oh, okay, I misunderstood you.

(WITNESS TAKES THE STAND)

ROBERT FAGGERT, being duly sworn to tell the truth, the whole truth, and nothing but the truth, testified on his oath as follows.

DIRECT EXAMINATION

BY SOLICITOR WHITE:

Q. And if you could tell us your name for the record?

A. Robert Faggart.

Q. Okay. Are you related to Angela Brandenburg?

A. She is my daughter.

Q. Okay. And where do you live?

A. [redacted], Abbeville.

Q. Okay. So here in Abbeville. Turning to the case we are here for today. Have you ever had a conversation with the defendant, Mr. Brandenburg about staying away from your property?

A. I have.

Q. Do you know when that was?

A. I've got it down right here, I documented each time. September the 18th he came out to house and parked fairly closed to the road and walked on in. I live kind of out in the country with a long driveway. And he walked up and I met him on the front porch and when I confronted him I told him "you're not welcome on my property" ; that he needed to leave, and he didn't. Or if he came back I was going to call the Sheriff and trespass notice or something. We talked a few minutes, and then he left.

Q. How would you characterize his demeanor on that day?

A. He was stubborn, a little determined but wasn't, other than that, a problem. Argumentative.

Q. Did he show up on your property again?

A. Yes. On October 6th, he followed Angie home. Angie was working seven to seven. About 7:30 that morning Angie came in and he came in and he came in behind her. And I walked out and met him at his car and told him, my daughter had told my wife to call the Sheriff. I told him to leave, that he was given notice that he was not welcome on my property and that for him

to leave, I would call the Sheriff. He said, "well, good we will wait on him". So Sheriff came in and I told the Sheriff what transpired the time before and when that happened, he went and talked to Chad and a few minutes, I didn't hear the conversation and then he talked to my daughter.

THE COURT: Who is Chad?

MR. FAGGART: Charles Brandenburg.

DIRECT EXAMINATION CONTINUED

BY MS. WHITE:

Q. I'm sorry, he goes by Chad?

A. Yes. That's what Charles Brandenburg, okay. And he talked to Charles, then he talked to my daughter and then a little while later, he left.

I asked the Sheriff's Department then, I said "can I get a trespassing warrant against him"?

He said as long as those, some property or something in here that he, we couldn't get a trespassing order against him because he had left and think everything will be all right.

November 6th, he came back to town Angela and the children had left my home, had moved out and was living in a home of their own. When he pulled up in the yard, I met him and told him under no circumstances, there was nothing there that belonged

to him and if he didn't leave, that I would call the Sheriff and post trespassing notices against him. He left then.

Q. Okay. Did he say anything on that day, before he left?

A. Something to the effect of, "I want to see my wife and children" was basically you know, that is what he wanted to do.

Q. Did you tell them where they were?

A. I did not.

Q. Okay. Did he ask?

A. I don't even think he asked.

MS. WHITE: Please answer any questions that Ms. Bolen has for you.

CROSS EXAMINATION

BY MS. BOLEN:

Q. Mr. Faggart. Just a couple of questions. On the 18th, when he came over, you told him to leave and he left, right?

A. That was the first visit?

Q. Yes, sir.

A. He did after a while after we jawed back and forth some, yes.

Q. And during that time period of September 18th until November twenty sixth Angie and their children

were living with you, right?
A. That is correct.
Q. Okay. And those are his kids, right?
A. That is correct.
Q. Okay. And on October 6th, the Sheriff told you that you couldn't get a trespass ---
A. No, that was on the -- it wasn't on the sixth, it was on the October, the second time when he came by when I called the Sheriff.
Q. Okay. So the second time in October
A. Okay.
Q. The second time in October you did call the Sheriff, right?
A. I did. The Sheriff came out and visited with him and my daughter and then talked to me after it was all over.
Q. And he told you, you couldn't get a trespass order against him, right?
A. That is correct, at that time.
Q. Because Angie and the kids were visiting you, right?
A. That is correct.
Q. Okay. And then in November when, and then there is no trespass order in place, right?
A. That is correct.

Q. In November? Okay. He came over in, at this point she had left, right?
A. That is correct.
Q. And he just asked to see his wife and kids, right?
A. That is correct.
Q. Okay. And you told him to leave and he left, right?
A. Pretty much.
Q. Nothing further. Thank you.

THE COURT: Thank you very much. You want to excuse him? We appreciate you coming you are free to go.

(WITNESS STEPS DOWN)

THE COURT: Do you have another witness?

MS. WHITE: State calls Angie Priest.

THE COURT: Who?

MS. WHITE: Angie Priest.

(WITNESS TAKES THE STAND)

ANGIE PRIEST, having been sworn to tell the truth, the whole truth and nothing but the truth, testified on her oath as follows:

DIRECT EXAMINATION

BY MS WHITE:

Q. Tell us your name for the record.

A. Sergeant Angela Priest.

THE COURT: How do you spell your last name?

WITNESS: P R I E S T

THE COURT: All right.

DIRECT EXAMINATION CONTINUED

BY MS. WHITE:

Q. Who do you work for, Sergeant Priest.

A. I work with the Abbeville Police Department.

Q. And how long have you been at the police department?

A. A little over twenty years.

Q. What are your duties at the police department?

A. I'm a patrol officer, I'm a routine officer for Abbeville, supervisor on each shift, and we write traffic tickets, make arrests for the State of South Carolina and the city of Abbeville.

Q. Okay. And was your shift working the evening of December 19th 2012?

A. Yes.

Q. Did you an occasion to respond to a case involving Mr. Brandenburg?

A. Yes, I did.

Q. Can you tell us how that call came in?
A. We were notified that Mr. Brandenburg was in the area, had come to his estranged wife's residence and she resides I believe, at [redacted] within the city limits of Abbeville. We were notified that he was en route to that residence, then had left the residence and was somewhere in the vicinity.
We were also aware that Abbeville County Sheriff's Department had warrants on Mr. Brandenburg so we were actively trying to apprehend Mr. Brandenburg. We responded to that area to try to see if we could locate him.
Q. Okay. Were you able to locate him?
A. We did locate Mr. Brandenburg in his vehicle. He was parked, he was sitting inside his vehicle parked on Dundess Road which is within view of Burns Avenue, where his estranged wife lives.
Q. From where his vehicle was sitting on Dundess Road would he have been able to see Mrs. Brandenburg's comings and goings?
A. Yes, Ma'am. It was to the rear of the residence, of her residence.
Q. Okay. And were you involved in actually

detaining Mr. Brandenburg?

A. Yes, Ma'am. We verified with Abbeville County Sheriff's Department that they had active warrants.

MS. BOLEN: Your Honor, I have an objection to this.

THE COURT: Members of the jury panel need to go to the jury room please.

(JURY OUT AT 4:28 P.M.)

THE COURT: All right.

MS. BOLEN: Your Honor, this jury has already heard testimony.

THE COURT: Well, I don't, what -- already heard what?

MS. BOLEN: That he was arrested on the 19th December.

THE COURT: I didn't write that down if they did.

MS. BOLEN: Your Honor, I think it is totally prejudicial, you had already ---

THE COURT: I mean, I just wrote down "December 19th at my house". I didn't write down anything about any arrest or anything on that occasion.

MS. BOLEN: I think she said that it was her

understanding that he was detained that day.

THE COURT: Well, I don't know about that. But, I mean, what were the warrants for?

MS. BOLEN: It was the County stalking warrant.

THE COURT: What?

MS. BOLEN: It was the County's stalking warrant.

MS. WHITE: And, Your Honor, I'm not even, that was the last question I was going to ask of any of that incident.

And, Your Honor, this is confirming Ms. Brandenburg's testimony that he was arrested that date.

THE COURT: Well, if she did, I didn't write it down. Oh, I do see that. I do see that in my notes also. I do see where she testified that he was arrested on December the 19th and all but -- but anyway, all right. Is there anything else you want to say?

MS. BOLEN: I was going to get into testimony about since she wasn't the one to secure the warrant any testimony about them, how they got the warrant, ---

THE COURT: Anyway, I appreciate that. I

am going to allow the testimony. Bring the jury back in.

MS. BOLEN: Well, Your Honor, I guess I would like to eliminate the instruction ---

THE COURT: We will deal with that later on, you think about you want me to say. But I don't -- I mean, that's -- we'll talk about that later on.

(JURY BACK AT 4:33 P.M.)

THE COURT: All right. You may continue to examine the witness.

DIRECT EXAMINATION RESUMED

BY MS. WHITE:

Q. Did Mr. Brandenburg make any, did he make any statements to you about being at his estranged wife's house?

A. He did. He admitted to coming to her residence that morning to try and see his kids. He did mention that, yes.

Q. Now, during the time frame from roughly September 18th 2012 to February 26th 2013, are you aware of how many reports that were made to law enforcement regarding this case?

A. Approximately about four reports that I am aware of were made in reference to Mr. Brandenburg.

Q. Did your shift in particular, you in particular, take any additional steps knowing that this situation was on going?

A. Yes, ma'am. My entire shift did extra patrols around Ms. Brandenburg's residence, extra patrol at the school, in the mornings, in the evenings when the kids were dismissed we did extra patrols to make sure everything was safe.

Q. Sergeant Priest, are you aware of any sort of witness protection program that the City of Abbeville offers victims?

A. No, ma'am. My understanding that's a federal program. And we are city/state level, we don't have anything like that, that I am aware of.

Q. The City of Abbeville, would they have the resources to relocate a victim?

A. No they -- no, ma'am. I'm sorry for that.

MS. WHITE: Please answer any questions Ms. Bolen has.

CROSS EXAMINATION

BY MS. BOLEN:

Q. I just a handful of questions for you.

A. When you saw Mr. Brandenburg on December 19th, he was on, is it Dungess Road?

A. Dungess Road, yes.
Q. So he was not on Burns Road, right?
A. No, ma'am.
Q. Okay. And those are road public roads, right?
A. He was actually pulled to the side of Dungess Road. It was -- he was pulled into a yard, yes, actually.
Q. So you said that there was, you knew the Sheriff's office had outstanding warrants. It was just one warrant, right?
A. I'm thinking that it was one warrant. I'm not sure, we just knew there was at least one warrant.
Q. And it was for this charge, right?
A. For this charge?
Q. Uh-huh.
A. I don't understand.
Q. He didn't have any other warrants out there for anything else, other than what he is on trial for, right?
A. Abbeville County. I just wasn't thinking active warrants.
Q. Okay. And he told you that he was just trying to see his kids, right?
A. He did say -- he admitted at that time that he been to the residence that morning and he was trying

to see his kids and he also stated that he was trying to make an effort to move to the area.

Q. And you said that that as an additional step you had extra patrols, run right at the school let-out time?

A. Yes, ma'am.

Q. And no further incident reports resulted in any extra patrols, correct?

A. There was an additional incident report taken after this report but I had not entered any more reports for my incident report.

Q. But based on your patrol, you didn't have any incidences that, based on simply your patrol, right?

A. No.

Q. That is all I have, thank you.

THE COURT: Thank you very much you can return to your place or whatever.

MS. WHITE: You Honor, I have one more.

THE COURT: Oh, you do.

REDIRECT EXAMINATION

BY MS. WHITE:

Q. Would you see Mr. Brandenburg around town on when you were on patrol?

A. Yes, ma'am.

Q. How often would you say you saw him?

A. I probably would say at least three to four times, just in town.

Q. And to your knowledge, does he live here?

A. No, ma'am.

Q. Thank you, no further questions. And this was three to four times in the whole six-month period we've talking about.

A. It was three to four, I would say after the incidents had started to be documented, yes.

THE COURT: All right. Thank you very much. You can return to your place or be excused. Do you excuse her?

MS. WHITE: Yes, sir.

(WITNESS STEPS DOWN)

THE COURT: Thank you for coming, you are free to go. Call your next witness.

MS. WHITE: Could I have just a moment, Your Honor?

THE COURT: Yes.

MS. WHITE: Your Honor, the State rests.

THE COURT: All right. Ready to go forward?

MS. BOLEN: Yes, Your Honor, the defense has a matter of law.

THE COURT: Members of the jury panel,

need you to go to the jury room for a few minutes please. All right, Ms. Bolen?

(JURY OUT AT 4:36 P.M.)

MS. BOLEN: Thank you, Your Honor. Defense just was moving for -- based on our previous objections -- for a directed verdict on liability on the basis of there has not been any evidence presented that actually meets the elements of the stalking statute.

The stalking statute, Your Honor, requires that pattern of words or conduct that serve no legitimate purpose is intended to cause, and does actually cause, fear of death of a person, or member of the family, assault upon the person, or a member of the family, bodily injury to the person or a member of the family, criminal sexual conduct on the person or a member of the family. In that, for example, a member of the family or damage the property of the person or a member of his family.

Through the testimony that has been given, those have not been met. There has certainly been no testimony about any fear of death, assault, bodily injury, criminal sexual conduct, when I ask the victim if he had ever made any,

during this time period, made any threats to take the children, her answer was "no".

So I don't know how there is a reasonable fear that he would kidnap the children, just when there has been no testimony about any, anything about damage to property. And in addition, Your Honor, the testimony that has been given is largely in his trying to see his kids, which we believe is a legitimate purpose.

Up until January 9th, he had the right to see his kids. And that is a legitimate purpose to be able to go see his children.

There has been no testimony about, of any threats of any of these things. And we believe the statute, the elements of the statute simply are not met by the State's evidence.

THE COURT: What do you want to say in response to that?

MS. WHITE: Your Honor, I think viewing the evidence in the light most favorable to the State, there is certainly evidence there that the jury can conclude that he is guilty of stalking. And we have definitely shown the pattern of conduct, pattern of contact.

Mrs. Brandenburg testified that she was in

fear that he would harm her and that he would have some sort of angry outburst, that he would take the children, she did testify to that. That he scared her, we've shown, and as far as the serves no legitimate purpose, Mrs. Brandenburg testified that there were other ways that she was attempting to let him see the children, through his mother.

Then the principal, Your Honor, also testified that his conduct went far beyond what he has ever seen from a parent before. He has never seen a parent stalking up and down the highway. He has never had to call law enforcement to have someone removed.

And, Your Honor, looking at the statute, it is not, is kidnapping a member of the family or the victim herself is clearly the testimony showed that over and over again she was concerned about protecting her children, keeping her children away from him so that he could not take them and I think testimony was allowed over objection, that he had made a threat to take them

THE COURT: All right, well I think it is a close question, actually, but I am going to deny your Motion for Directed Verdict. All right,

are you ready to call your first witness?

MS. BOLEN: Thank you, Your Honor. If I can have a moment, Your Honor. Your Honor, we are not intending to call any witnesses.

THE COURT: You are not going to call any witnesses?

MS. BOLEN: We renew all of our previous Motions and Objections.

THE COURT: All right. So, well, of course, you get to, you rest in front of the jury and everything and so we will recess for the evening and come back tomorrow morning with summations and arguments.

MS. BOLEN: Yes, sir.

THE COURT: All right, bring the jury in.

(JURY IN AT 4:41P.M.)

THE COURT: All right, we have the jury back with us. All right, that finishes all the testimony from the State, correct?

MS. WHITE: Yes, sir, Your Honor.

THE COURT: All right, Ms. Bolen would you like to call any witnesses on behalf of your client?

MS. BOLEN: Your Honor, the defense rests.

THE COURT: All right. That finishes all the testimony then that you will have in this case.

We will have summations and arguments from the attorneys and looking at the time, it is almost five o'clock now and so I think it would be best for us to recess for this evening. And come back tomorrow morning and hear the summations and arguments from the lawyers and my instructions to you on the law and then you will deliberate and you will give us your decision.

So again, I will remind you not to discuss the case with family, friends, or anyone else. They are not the twelve people, you are. If they want to know what you are doing, you tell them that you are involved in the trial of a case, you are actually on the jury. The trial is going on. The trial is not over yet and that you cannot discuss the case with them. You cannot talk to them about it in any way, shape, form, or fashion. Blame it on me. Tell them that I told you that you cannot discuss it with them at this point. You can tell them all about it once it is over, but until it is over it would be a violation of the oath that you took at the

start of this case to discuss it with anyone. So, keep that in mind.

Be back here tomorrow morning at 9:30, we will get started just as soon as we can after that. Leave your note pads in your chair there, the bailiff will take them up, we will lock them up over the evening, give them back to you tomorrow morning. So have a nice evening, be back tomorrow morning at 9:30.

(JURY OUT AT 4:43 PM)

THE COURT: All right, the jury is out and gone and the door is closed and everything. Is there any request to charge or anything that you specifically think I should charge other than the Statute?

MS. WHITE: Your Honor, the State is also asking for the lesser included of first degree harassment; which is also ---

THE COURT: Well, let me look, you gave me a copy, I don't have the modern up-to-date version, you've got it.

MS. WHITE: I think it should be in your copy, Your Honor.

THE COURT: No, I, actually the copy, your assistant made such a bad copy, it's not.

MS. WHITE: I'm sorry, I will hand up the book.

THE COURT: We'll have to go, we're going to make a better copy over the evening.

MS. WHITE: 1700(a).

THE COURT: Let me look at this. So what are you talking about, you want me to charge harassment in the second degree because at the time of the harassment and the injunction/ restraining Order was in effect prohibiting the harassment?

MS. WHITE: No sir, Your Honor. I was asking for a lesser-included charge of first degree harassment.

THE COURT: First degree harassment? Let me see what that says then. What do you all want to say in regard to that?

MS. BOLEN: Your Honor, we are objecting to harassment as lesser included. This is a situation where the State actually has one warrant for stalking and had a warrant for harassment. They specifically chose to do this new indictment to encompass both.

This case is over a year old. They re-indicted it specifically this past week. They

made the choice when they did that. They chose stalking. I think they need to go with that choice. If they wanted to try him on harassment they could have tried him on the original warrant for harassment.

THE COURT: Anything you want to say in response to that?

MS. WHITE: Your Honor, I think the duty of South Carolina law is that when the State has elements of an offense -- such as murder down to an attempted murder, you get to -- you go for the highest charge and if there is an element missing, then you go down to the next lesser included.

In this case, if the jury failed to find that she feared death or kidnapping but it did cause mental distress, then harassment in the-first degree is pertinent. It is a lesser included and I don't think the law requires that I choose between lesser includeds.

I think that it is a given, it is actually charged if the testimony in front of the jury could be used to support that charge and I think in this case, it would.

THE COURT: My inclination is no in

regard to that. I am going to think about it over the evening and look at this and study about it a little bit. Study about it some and all, but my inclination is no in regard to that where you've got these two separate offenses that are defined by statute and you've only indicted him for one, and all, I don't think that is a lesser included offense to where you can go to an offense that is entirely separately defined.

I don't think it is a separate, I don't think it is a lesser included offense. You may, you may have produced evidence that would have supported, you know, this charge but I don't think that you can just put that in through this indictment. I could be wrong but I'm not an expert in regard to it.

This is new territory for all of us, I think and all. At least it is for me, anyway. It might not be for you all but it is for me.

MS. WHITE: I can do some research on it ---

THE COURT: All right. You can, I'll be glad, like I say, my inclination is to not allow it, to not charge it and everything, but I'm not going to make a final ruling now, and

all. I'll study it and think about it over the evening recess and I want a better copy of these three pages here and all, that I can take with me.

SOLICITOR: Judge that comes out of the same funds as that witness protection ---

THE COURT: What?

SOLICITOR: I think copies come out of the same funds as that witness protection fund.

THE COURT: Okay. All right, but any way. Come take this and make me good copies. Somebody. I want this page, this page and this page.

(COURT IN RECESS @ 4:52 P.M.)

(TRANSCRIPT CONTINUED NEXT PAGE)

DECEMBER 5, 2013 9:30 A.M.

(DEFENDANT PRESENT)

THE COURT: All right. We have the attorneys present, the defendant and the prosecuting, main prosecuting witness.

So in addition to whatever discussions we had yesterday on the record as far as the posture of this case at this point in time, we've also had extensive in chambers discussions and -- of course, those are not on the record. But I ant to I want to give anybody a full and fair opportunity, both sides, a full and fair opportunity to discuss the posture of the case and what you want me to do and what you don't want me to do as far as charging the jury is concerned.

And my intention at this point is to charge the jury as follows:

You know, I am going to submit the, and I have already shown you the form of verdict that I am going to submit to them and I am going give them. I'm going to tell them that they can consider whether under the evidence and under the law -- that first of all what they should

consider, whether or not the State had proven, of course, beyond a reasonable that he's guilty of stalking.

That is defined by the statute and I am going to give, I am going to give the cause of the, definition of stalking and the way it is defined in the statute and elements and all that sort of stuff. I have a hard time, you know, remembering it and understanding it and everything. And I would feel the jury would have an even harder job and all, so with you all's permission, I am going to give them a copy of the statute as far as stalking is defined.

And, of course, that, tell them that should consider whether or not the State has met its burden of proof in regard to proving stalking or not. If not, they find him "not guilty".

And then if they, of course, consider whether the State's met its burden of proof and if they have, find him "guilty" of stalking. If the find him guilty of stalking, that's the end of it. They don't have to go any further, that's the end of it.

If they find him "not guilty" insofar as stalking is concerned, then they should consider,

moving to consider whether or not the State has proven him guilty of harassment in the first degree. I am going to charge that as a lesser included offense under this statutory scheme as enacted by the legislature. So they would move and consider whether or not the State has proven him guilty beyond a reasonable doubt of harassment in the first degree.

They can find him guilty or not guilty of that. Of course, if they find him guilty of that and all, they don't go any further.

If they find him not guilty of that, then they move and consider whether the State has proven him guilty of harassment in the second degree. Again, they'd have to find him guilty or not guilty on that lesser-included offense.

So that is what I intend to do as far as the charges, the crimes that I am going to submit to the jury for them to consider.

Anything else that anybody wants to say about it? We will start with the State.

MS. WHITE: Your Honor, I just wanted to briefly summarize what we'd said in Chambers. Obviously, the State ---

THE COURT: Well, you just say whatever

you want to say. Now is your chance.

MS. WHITE: That it is part of the statutory schemes these are all delineated in 63-1700. Also, Your Honor, the test for whether it is lesser included, being whether the elements and the same, minus one, also whether we would be able to come back later if jeopardy attached on stalking and re-indict for harassment. The State's position that we would not have been able to do that because it is a lesser included offense. I just want it on the record, the different things that were discussed in Chambers.

THE COURT: All right. But anyway, I ruled in your favor so you don't really have to say anything, but anyway, that's all right.

All right, can't resist. I understand that.

Anyway, what you all (indicating defense) want to say over here, you all don't agree with any of that. You may put your objections on the record.

MS. BOLEN: Thank you, Your Honor. Yeah, we are objecting to the harassment being charged as lesser-included. Just renewing my first case from yesterday was that the State had an harassment warrant and had a stalking warrant and

chose, actually had stalking indictment and chose specifically to re-indict on stalking only. Though they could have indicted on harassment and chose not to so, we are asking that only the stalking charge -- sadly we don't believe it is a lesser-included under *State v Gosnell*, that contains, there's many things that doesn't meet the test for lesser-included at this point.

State agrees succinctly and that cite is at 341-SC-26-27. It's a 2000 case and the test for whether something is a lesser-included is whether the greater offense contains all the elements of the lesser. There is an element in the lesser that is not greater, then it is not lesser included.

And our position is that the wording of the harassment statute contains elements that are not in the stalking statute. Specifically there's language about the "reasonable intrusion" in the body of a person in the harassment Statute that is not in the stalking statute.

There is also language requirements that that element that harassment would cause the person to suffer an emotional distress. There's no mention in the stalking of mental and

emotional distress and that's certainly not something that came up in evidence or that we were proffered on being given the warrant.

The rest of the case, although we are not conceding that they are including in stalking, they are delineated in a way that they give rise from the wording of the stalking statute. Stalking requires fear of several very serious crimes. In that of Assault, Bodily Injury, Criminal Sexual Conduct, Kidnapping, Damage to Property, whereas the examples for Harassment are things like, calling, surveillance, and may include property damage. And so in regards to just, that because of the, the elements and grounds that for intrusion, as well as the suffering of emotional and mental distress, there is not in the stalking statute, so that it is not a lesser included.

THE COURT: You sound like you are singing my song. What was my song earlier as far as all that's concerned and everything but, you know, considering everything, I think this is the best way to handle it, and all.

So, I appreciate your position but I am going to submit it the way I said I am going to

submit it to the jury, and all. So, your, I appreciate very much your position in regard to this matter but I think this is the best way considering everything to deal with this statutory scheme.

MS. BOLEN: Thank you, Your Honor.

THE COURT: All right. Anything else before we bring the jury out?

MS. WHITE: Your Honor, we discussed this in chambers, I just want to be sure that Your Honor was planning to charge the kidnapping statue.

THE COURT: I was hoping you weren't going to bring that up. You know, I'll be glad to hear from both sides in regard to what I should or say, what I should do as far as that's concerned.

MS. WHITE: Your Honor, we're asking that you charge that statute, to define it. Some of the other things here are very easy to understand, such as there is no real question about what is meant by assault, bodily injury, criminal sexual conduct. The kidnapping, as we discussed in Chambers, people may have a sort of everyday, common sense understanding of what that

might be and that is very different from the statute actually says.

But, I think, instead of to substitute what they may think, or what they may have seen on TV or what their friends may have told them, that there is a way of telling them what kidnapping is and that our State laws say that a parent cannot kidnap their minor child.

MS. WHITE: Your Honor, and this action just occurred to me in looking at the stalking statute. There are a number of other legal concepts. If we are defining kidnaping, then we should define assault, should we define ---

THE COURT: Well, you may be right. And if you want me to do all that to further confuse the jury.

MS. WHITE: And that is my point, Your Honor. That by defining, by breaking it out and defining all these different legal terms we are taking the chance on confusing them.

THE COURT: Well, no, well this is good to iron it out now. Kidnaping a member of one's family and only -- that would be the child, that's the only thing that would be possible under the evidence in my opinion.

MS. WHITE: Your Honor, I would ask for the entire stalking statute because she did testify that she was scared, that she was scared of his angry outbursts, she didn't know ---

THE COURT: Well, I said I am going to, I guess I'll leave in and say "kidnapping of the person" and that would be her, you know. And if you, you know, if they should find, you know, kidnapping of her. But as far as the children are concerned I think that the statute that defines kidnaping rules that out.

So I am going to tell them that stalking cannot be, they cannot base a conviction on stalking on any supposed plan or fear of kidnaping of the child, because under the law he couldn't kidnap the child.

MS. WHITE: And Your Honor, again, just for the record, I understand your ruling but putting this on the record, it is the State's position there is a statute, and I don't have the number, that deals with parent-child relationships, that no parent shall take a child from a custodial parent. There is also, Your Honor, there was this, Mrs. Brandenburg at the time was this occurred did have sole custody of

the children with no visitation and I think that that does change the terms of the kidnaping statute. I am just putting that on the record.

THE COURT: All right. Well, I appreciate the position, you know, but I am going to do what I just said I was going to do as far as that's concerned.

You know, and I might say all this kind of thing is in one respect, makes this job interesting and challenging and makes me want to continue it for whatever reasons in some ways and all. There is always something new coming up and something new you have to think about and deal with. And it certainly has been the case in this case and I think it is for you all and for me both but we do the best jobs that we can in dealing with what we've got to deal with. So that's the way I am going to do it.

I understand your position and I appreciate both sides, you can't both be right. So I am doing the best I can do. Bring the jury in.

(JURY IN AT 10:42 A.M.)

THE COURT: All right we have the jury back with us and the parties are present along with their attorneys and all.

Again, I appreciate your being here earlier and on time and I appreciate your patience while we kept you back there in the jury room while the lawyers and I were working on this case to get it to you in a posture that is appropriate under the law.

This has been a relatively simple case in terms of the length of time involved as far as how long this trial has been going on. What has kept the lawyers and me involved to a great extent yesterday and today is discussion and decisions in regard to the law that is applicable in a case like this.

Mr. Brandenburg, as I told you earlier, is charged with having violated a particular provision of the Code of Laws of this state, can be found in Section 16-3-1730, that is just a number in one of those books that is over there in that cabinet there, that is assigned to this particular provision of law commonly called stalking. And I have copies of that particular provision because it's defined in a very technical way in the Code of Laws. And so I am going to give you an actual copy of the definition with the lawyers' permission. I am

going to give you an actual copy of that particular provision of law which contains all the elements that the State must prove beyond a reasonable doubt in order to be entitled to a verdict of "Guilty" in regard to that charge of Stalking.

If the State fails to prove any of the elements of this particular crime with which he is charged, beyond a reasonable doubt then, of course, you must find him "Not Guilty".

Now in addition to that, you've got two other definitions and two other charges that you may consider. Stalking is the most serious. That's the most serious offense that will be submitted to you for your consideration. We have a, as part of the law of this state, the law is that when you charge someone with a crime like this, it also includes what we refer to as lesser included crimes. And under the statutory scheme that was adopted by the legislature in regard to Stalking, there are two lesser-included crimes which you may consider. If you find that the State has not proven him guilty beyond a reasonable doubt of Stalking, then you may consider whether the State has proven him guilty

beyond a reasonable doubt of what is called Harassment in the First Degree. You hadn't heard anything about that before. But I am telling you about that now, and all. And there is a definition, actually it comes first in this paper that I am going to give you in just a few minutes of Harassment in the First Degree.

So if you find him not guilty of Stalking, you move on to consideration of whether the State has proved him guilty beyond a reasonable doubt of Harassment in the First Degree. And you'll see that definition here in what I am going to give you in just a few minutes.

If you find him not guilty, -- of course if you find him guilty of Harassment in the First Degree, that's the end of it. You don't have to go any further and all. But if you find him not guilty, then you move to the last one, the last lesser-included offense that he could be considered, for you to consider, would be Harassment in the Second Degree. And again, you'll find that definition in what I am going to give you in just a few minutes.

So, three charges really that you can consider in this case:

First, stalking. If you find him guilty of that, that's the end of it.

If you find him not guilty, you go to the next one, Harassment in the First Degree. If you find him guilty of that, that's the end of it.

If you find him not guilty you go to the last one, which is Harassment in the Second Degree. And again, you have the same two choices in regard to that, of not guilty or guilty.

So, all three of those are going to be submitted to you for your consideration. And I wanted to go ahead and mention all that to you at this point before you hear from the attorneys because they, I'm sure they are going to talk about those things in their discussions and in their arguments to you.

But I am going to go ahead and ask the bailiff, if you would, to come up and get this, one of you, come up and get this and give these out to the jury and all. And I am going to let you take a few minutes to read over those before you hear from the lawyers and all. And you will see what you, what we're going be dealing with. I don't expect you to memorize it right now, I

just want you to familiarize yourself with it so that you'll see what we are talking there and as I said, the lawyers may refer to, I'm sure they will refer to some of those terms and other things during the course of their discussions with the case to you.

So I am giving those out to you now and ask you to take a few minutes to look over it, read it, (bailiff distributing copies). When you finish having that opportunity -- don't rush, take your time, don't try to memorize it, though. You are going to have that with you in the jury room when you consider your verdict. But I just want you to see what you are going to be dealing with and I think you will have a better appreciation of why I am doing that at this point, to help you in your future deliberations.

BAILIFF: Your Honor, I am one short.

THE COURT: One short. I will give you mine. And we will get another one. Or I may take it back from you. I may have an extra copy here. I do, I've got it. Go ahead and look at it now.

(JURORS REVIEWING)

THE COURT: Okay. Thank you. We will

proceed now then with summations and arguments from the attorneys. These will be true arguments in which they try to persuade you as to what version or view you should take in the facts of this case and how those facts may fit in with the law.

The way we go about hearing from the attorneys is first of all, Ms. White, the Solicitor who has been prosecuting this case will argue to you about the law involved in this case and then we will switch and the attorney for the defendant, Ms. Bolen, will argue fully to you on the law and on the facts and then we do allow the Solicitor to make the last argument to you in which she will discuss the facts and how those facts may fit into the law.

All right so some difference in the process now as far as, ---

MS. WHITE: Your Honor.

THE COURT: Oh, y'all get the last one, because you. Okay. I'm sorry, this is a little different and all. The law does, you're right, you're right, you're right the State has to open fully on the facts and the law and then you all get to close after that fully on the facts and

the law. I apologize. This is a little different procedure as far as this case is concerned and all. And this is a procedure that we follow in a case like this. So the State will open fully. The defense will close fully. So that's the way we go about hearing from the attorneys and ask you give your attention now to the, to them as the summarize and argue to you. Go right ahead.

MS WHITE: Thank you, Your Honor, may it please the Court. I told you all yesterday that this case was going to be like a puzzle. And if you think about a puzzle, each individual piece doesn't make any sense or each individual piece doesn't look like the big picture. It's only when you start adding it all up, when you look at everything, that you realize what the picture is about. And in this case, like I told you yesterday, what that picture is about is stalking.

Now, I don't want to labor the point, I don't want to speak too long but I did want to go back through what Mrs. Brandenburg said yesterday about what happened and when it happened, because I think it's important that day after day, after day, after day, she was in contact that she

didn't want. She was being followed, she was getting calls, she was being intercepted going to the school, she was being intercepted in the parking lot, day after day, after day.

So, we are going to start June 28th 2012. That is when she leaves. And you will remember her testimony through the first couple of months there's no attempt by Mr. Brandenburg to see her or the children in any way. He calls her, sometimes asks to speak to the kids, sometimes he doesn't. Sometimes they talk to him, sometimes they don't. But he is calling her.

And then this goes on for all through July, all through August, into September. And she said that she stopped answering his calls. She started ignoring them, round about getting into September. And I think that that's probably the point that it occurred to him that she is serious.

Well, September 18th, he shows up out of the blue at her parent's house and her father says "leave, don't come back, you are not welcome here." And then he did, he left. And that's at the point that she realizes she needs to go on and go to Family Court, get a plan in place, and

start moving on with her life. That he just shows up out of the blue.

Well, the next day she said he "intercepted us" as we were going into the school. She was taking the children to school. And she had said he could see the kids that afternoon and they were going to try to work out some sort of visitation schedule. She wanted, his mother lives in Columbia, he lives right outside of Charleston, she lives in Abbeville, Columbia is a reasonable place to meet. It is the reasonable thing to do. And to have his mother act as a go between, all perfectly reasonable suggestions. They were going to meet up the next weekend. She was going to do that.

Well the next weekend, she starts getting text messages from him and he said something like, "I'm going to follow those pretty blue eyes". That strikes me as a little different. It struck me a little different. Then he texted her that he is in Greenwood. Well she thought they were going to meet up in Columbia. She was in Columbia. She had already told the kids "we are going to Columbia, we are going to have a good time, we are going to go to the zoo".

She's in Columbia and he is texting her from a hotel room in Greenwood that he wants her to come to. He's trying to get her alone. Through all this, he's trying to get her to go with him places where they can be.

So then, on October the 5th, there is a note on her truck in the parking lot that he wants to move, by her himself. And she doesn't follow him or respond and so he ends up calling her. He calls her and he texts her, "are you going to work all night?"

And then, he is not getting his way so he begins to become unreasonable. He's waiting by her car the next morning when she gets off work. And who knows how long he was waiting there? I mean, she said he was texting her and calling her at midnight. She works all night, seven to seven. So how long was he sitting in that parking lot just waiting on her to get off work? So he is sitting in the parking lot and this is when he is angry. She says he was demanding, that the argument got started with "why can't we work this out? I want -- you know I don't want a divorce." This is the start of the argument, she talked to him for thirty minutes. And he is angry that he

didn't get his way. She didn't go back to his hotel room.

And finally she gets in her car and she is coming home to Abbeville. He follows her, follows her to Abbeville and comes to her parent's house and her Dad again says, "I told you, you are not welcome here".

And this is enough that her Dad calls law enforcement. And law enforcement comes out, the Sheriff's Office. And they told him, "You know, this isn't the way to handle this. You need to come up with a plan. You need to come up with a plan and have a reasonable way of dealing with these issues, that this isn't the way to handle this."

So, on November the 18th, and at that point, Mrs. Brandenburg files in Family Court. Now Mr. Brandenburg never filed the first paper in Family Court. He never tried to go about legal, legally obtaining any sort of right from this organization. Never filed the first paper, this is how you follow Mrs. Brandenburg around and be angry and demanding and scared the living daylights out of her. Never decided to go to file. But she files in Family Court, she knows

what she is supposed to do.

Well, on November the 18th, he follows her home from the hospital and she didn't know it was him at first. And again, she was being reasonable, she still hadn't called law enforcement to report that he has been harassing her. She still hadn't called them. The only phone call has been to get him off their property. And she doesn't call them that day either. She's not a hundred percent certain it is him, she is, you know, her nerves are up a little bit. She needs to make sure.

Well, he admitted to her a few weeks later. "I have a right to know where my wife and kids are." He might have the right to know where his kids are but he doesn't have a right to know where she is. He was trying to find her. Goes to her parent's house again and been told twice, now, "don't come here." He was there again.

On November 26th, this is the first time he goes to the school and remember what Dr. Costner said. The first time, he showed up he was calm, dressed nicely, you know, "I want to see the kids, I got some gifts for them". The kids weren't there. This was during the day she had

already gotten them out of school but the kids weren't there and Dr. Costner said, you know, "I need to make sure I know who you are anyway". He goes out with the contact information that is, he's calm.

Well, when he leaves, and finds out the kids aren't there he gives her an angry message, "why aren't the kids at school today?" Well, do you think that, this is a man who is trying to pull them out of class to see them and give them presents so I don't think he is concerned about instruction time. I think he is angry because he wasn't able to get them.

So anyway, he sends her this angry message and that's the night that he's parked in the Highway Department parking lot on West Alexander up in Greenwood. At 6:30 at night, the Highway Department is closed, he has no reason in the world to be there, just sitting, watching to see when she comes by. She said she had gotten a different car. He didn't know what car she was in so he didn't see her car there. And that is another point, kind of digressing, if this is a man who just wants to see his kids, why he is watching her, at the Highway Department on West

Alexander in Greenwood while she is going to and from work? She is not taking her kids to and from work. Why is he so concerned about where she is at 6:30 at night?

So he sits at the Highway Department, we have no idea how long he sits there but we know he shows up at the school the next morning. And he shows up there earlier and, remember what Dr. Costner says, he is angry, he is red, he is demanding, he is unkempt, his clothes are stained. He's furious. He smells like alcohol, he is saying he is going to take his children to Charleston. Dr. Costner takes him in his office and what did he say? That he was concerned about the safety of the staff and kids. He didn't know what he was going to do. He was inappropriate, he said. And then I asked him, and he kind of hedged on saying exactly what was said and that he was using inappropriate language.

So, he is at the school ranting and raving and that's when law enforcement was called to the school for the second, the first time, excuse me. It takes three officers to escort him out.

That day she saw his car at the Shell station. His car was facing an alleyway. Again,

just sitting there. That's the first time she goes to the Sheriff's Office and wanted something done, to get him to stop following her. And the victim advocate told her there wasn't anything that they could do about this.

Now, remember at this point we're still fairly early. There's not, there's some stuff that has happened, not the entire sequence of events just yet. The victim's advocate tells her you've got this hearing date in December in Family Court. Mrs. Brandenburg said that she felt like the reason she went was she felt like she needed to protect herself and the kids. That is why she went.

Well, December 3rd's the hearing.

December the 12th, is the day that she is Christmas shopping and she's in the Kohl's parking lot and he flags her down and again. "Why can't we get back together? Why can't we work this out?"

He goes to the school on that day, and this is the really hurting day, this is the day that he just pacing back and forth across from the school. There is not a sidewalk there, there is nothing. There is a guard rail and woods across

from Long Cane Elementary. He is pacing back and forth, yelling and screaming at her, her and the kids. And Dr. Costner said like a man had no regret. So law enforcement is called again.

And to try to defuse the situation, she agreed to meet him at McDonald's.

She is trying to be reasonable. She is. She's tried to meet him in Columbia, she had rearranged her schedule in early October, for him to come up and see the kids. He never showed.

She's tried to be reasonable with boundaries to protect herself and to protect her children.

And Dr. Costner said, getting back to December 12th, he's never had a parent act like this. I mean how many kids go to Long Cane school? How many kids have gone through there? How many kids at Long Cane have parents who are getting a divorce? How many parents have had to be escorted out by law enforcement? How many parents have shown up at that guard rail, pacing back and forth acting crazy? None.

And on the 13th, again he flagged her down leaving the school; which he shouldn't have done because he knew that they were under the agreement.

On the 14th, was when she found out about the judge's directions from Family Court and he issued a mutual restraining order, he tells her attorney to prepare the Order. The Order hasn't gone into effect yet, it doesn't go into effect until January 9th and it clocked. But he knows at this point, on December 14th, he knows what the judge's Order is.

On December 19th, after he knows the judge is saying, "she's got sole custody, you don't have visitation, and stay away from each other." Plain and simple, in black and white, you all will have it back there. He knows that's what the judge is going to say in his Order. He goes to her house and remember what she said, "He tried to grab the handle" of the storm door, which was locked. And she is calling the police. He thinks she is on the phone with the police, she was actually on the phone with her Mom and then Ms. Bolen asked her about that, her kids had their parties at school that day, they didn't want miss them. If she had called law enforcement at that point, to have to deal with the police it would have taken who knows how long. They didn't want to miss their parties.

So she does get law enforcement out there. She gets them out there, her Mom calls. And Angie Priest said they found him parked on Dundess facing where he can see her coming and going.

Now, he knows that she is taking the kids to school. He knows the hours of school. While he is sitting there watching her comings and goings, at this point, not going to see his kids there during that day. And that's when he was taken into custody on the stalking.

Now, after that the Restraining Order actually goes into effect. All the conditions of that Order are in effect. And he still, he is in Abbeville. Why is he in Abbeville? He had no reason to be here, no reason whatsoever. He doesn't live here, he doesn't work here, he doesn't family he has here, he is under a Court Order not to see them. Why is he in Abbeville? What is he doing here?

And at this point, I think it's fair to say, you know, law enforcement is doing something at this point. They are concerned, they have already sought their warrant, they've gotten a warrant and you heard Angie Priest say, "We were running

patrols. We were running extra patrols by her house, and by the school". So law enforcement's working at this point.

February 14th, he sends her a text.

February 24th, "Can I talk to you? Can I see the kids?" 'No. You can't. There is a Restraining Order in place. The judge has said, "no, you cannot". He's still trying to contact her. And that in and of itself, is not evidence of stalking but what that is evidence of is that this man does not care who says "no". He doesn't care that she said "no", he doesn't care that her father said "no", he doesn't care if law enforcement said "no", he doesn't care that a judge has said "no". He is going to do what he wants to do.

February the 26th, he comes to her house, rides by three times looking to catch somebody outside. Now he sees Tripp, their son, outside. Tries to lure them to the car with toys. If he had toys to drop off to the kids, he could have given them to his parents. He could have given them to her parents. He could have left it in the yard when nobody was around. He drives by three times and waits until he sees someone, "come

here, come here." What was he going to do with them when he got them over there? This is a man who proven that he can be completely irrational. What was he going to do?

Now, Angie Brandenburg testified that she was scared. She didn't know what he was going to do. She was scared of his outbursts, she was scared that he would hurt her, she was scared that he would take the children, hurt the children, she was scared.

And ladies and gentlemen, what you are going to have to consider is whether a reasonable person would be scared under these circumstances. And I think that they would.

And Ms. Bolen made a big point of, he didn't make any overt threats. He never said "I'm going to hurt you." He got loud, he got angry, he was certainly scaring then at the school. He was certainly scaring her.

And you don't have to have threatening by words. If I park in front of your house on day one, at seven o'clock at night, just sitting there watching, maybe it's not scary. Day two, maybe it's not scary. Day three, you start to get a little bit worried. Day four, day five, day

six, at this point you are ready to call the police and say, "What is this girl doing in front of my house? She is going to hurt somebody. This isn't normal and I have never said a word."

You can threaten somebody without saying a word, just by being there. By being there every time she turns around. By being places he had no business being. And those are all public places. I'm in a public place when I'm parked in front of your house.

The law doesn't require that you be on private property for stalking. That's why it's a pattern. His conduct, if we add it all together, when you look at the big picture, this is something that would cause somebody to be scared.

Now, what was Mrs. Brandenburg supposed to do? She got her kids, she got of the house on June 28th. She got out, she found herself a job, she got herself a house, she started legal proceedings in Family Court. She was trying to be reasonable. She was trying to let him see the children. She just didn't want him around her. And she wanted somebody watching.

Now, she knows this man better than anybody. She lived with him for seven years. Her father,

first time he shows up, "you're not welcome here". He knows this man. This is his son-in-law. She was taking the steps she thought she had to take to protect herself and her children.

And she's not calling the police every time it happened. Because, again, she is not trying to be unreasonable. She is not trying to be that person.

Ms. Bolen said in opening this is about a vengeful woman, controlling woman, who had to have her way. You all saw her on the stand. Does she look vengeful and controlling? She looks tired. She looks tired and she looks like she is just sick of dealing with this. And her voice quivered. You all get to judge the demeanor of the witnesses. That's one of the things you get to look at. And that woman, her voice quivers when she started talking about how scared she is.

Now, stalking is -- you've got the law in front of you, and I have never seen a judge do that before but I think that was a great idea. Because it is important to here that we get the definitions right and you know exactly what it says.

Stalking is a pattern of behavior, and it's two or more incidents, that show a continuity of purpose; which means that he is intending on to do this. And it serves no legitimate purpose. This doesn't serve a legitimate purpose. What is he doing? If he wants to see his children, go to Family Court or go with Mom, where she is taking the kids. Meet her at the zoo, which is what their plan was. If you want to see the kids, there are ways to do it. This doesn't serve any purpose, this is scaring her. And it causes them to fear death, assault, bodily injury, criminal sexual conduct.

Well, she didn't know what he was going to do. And, again, a man who wants his children that badly, that's what they are saying. And that's what he kept saying. What would he have done to her if he had found them alone? To take them?

I told you all in opening that -- I talked about kidnapping. That is one of the things that I had either forgotten or I never knew, that you can't actually kidnap your own child. But she could be scared that he was going to take them and he was going to hurt her to get them. Or that

he would take her to get them as well. She could be scared of that. She can be scared that she'd never see them again. And she can be scared that he is going to hurt her or somebody else to do that. Ladies and gentlemen, I think she was. I think she was terrified.

I think, you can look at her today and see, she is tired, she is tired of being scared.

The defense -- again, I talked about, you don't have to threaten someone. It's the conduct, it's being there.

If y'all do not find that he stalked her, if y'all think that he is not guilty of that, then you consider Harassment in the First Degree and again, y'all have got that definition. It is a pattern of intentionable, intentional, substantial and unreasonable intrusion into her private life that causes her to suffer emotional distress. Goodness gracious. It's there. He is everywhere she turns around. She is scared. She is worried. That meets the elements.

And then you'd go to Harassment Second Degree after that.

This is the last time I get to talk to you all. Ms. Bolen will get to talk to you all after

I do. And she is a good lawyer. I mean, Ms. Bolen and I have been friends for a long time and we have sat at the same table. We have sat across from one another like we are today. She is a great lawyer and she is going to say some stuff that I am sure I'll wish I could get up and respond to. But at the end of the day, it's -- think about this, every time that he was told "no", when he tried to get the children, he got completely irrational.

Showing up at the school, demanding to take them out of school, drunk, he wants to take them drunk to Charleston? They could get hurt right there. There is your injury to a family member.

Everybody's concerned. Dr. Costner was concerned. Law enforcement was concerned. Angela Brandenburg was terrified.

I think when you all look at everything, when you take, when you look at the big picture and put all the pieces in place, you all can see that between September the 18th and February 26th, excuse me 28th, this man stalked his wife and terrified her during that time period. Thank you.

THE COURT: All right, Ms. Bolen.

MS. BOLEN: Thank you, Your Honor. It's going to take me a minute to get all my informational sheets together here.

I told you yesterday that the big picture here is that Angela Brandenburg wanted things her way. And I think after hearing the testimony it is clear that the big picture is, she wanted him out of her life and out of her business. That's what she wanted, she wanted just no contact with him, no contact with him, no contact.

And remember they're married, right now, today. They are actually still married. Okay? This is a married couple.

She just decided "I'm done with this", I'm not going to let him see the kids. That's really the big picture.

I've written out, the statute for stalking because I thought it was really important that you all know what it is. Like Ms. White, I'm actually pleased the judge gave you a copy of all the law.

But what he has been charged is Stalking. Okay? And I know that there is some common, everyday thoughts of what stalking might be and we use it as a very common expression. You know,

there is a lot of talk about someone Facebook stalking or Twitter stalking.

But stalking, under the law is a very serious offense. You can see from how it is written in your statute that it is very serious. It requires a lot. Okay? Requires a pattern of words or conduct that serves no legitimate purpose. All right. Underline that.

Is intended to cause or does cause the targeted person fear and then there are these things:

Death

Assault

Bodily injury

Criminal sexual conduct, which is the statutory term for rape.

Kidnaping.

We're going to come back to that. But I just wanted to make sure at the outset that we know what we are talking about here, what Stalking really is under the law and not what certain comments or thoughts it might be.

Let's talk about this six-month period that he is indicted for stalking her and what actually happened over the six months. Okay?

The indictment is September 1st through February 26th that is right at six months.

During that six-month time period, how many times did Angela Brandenburg call the police? Once, one time, on the 26th of February.

She asked her mother to call another time and her Dad to call another time. How many times did she do it in reference to stalking? Once.

How many times did she go to the police? She said she went to the Sheriff's Office twice. First time, and I think this was in mid to late November, she goes to the Sheriff's Office and they tell her this is a family issue. There is nothing they can do, he has a right to see his kids, he has custody just as much as she does. And they tell her they can't do anything. Now that is important.

And the second time, I want you to pay attention to what she tells them. The first time what they tell her is important. The second time is what she tells them is important. She testifies about this on direct and she testified about it again on cross. She tells them that, quote, "I was tired of looking over my shoulder and seeing him." Tired of looking over and

seeing him. She didn't say "I was tired of living in fear. I was tired of thinking he might take my kids. I was tired of thinking he might do something to me." No, it was "I was tired of seeing him. I didn't want to see him around. Tired of seeing him."

I asked her about that on cross and she still kept to, "I was tired of seeing him." Nothing about fear for herself or her kids. All she is tired of is his existence, him being around.

So what was the actual contact, between September 1st and February 26th? In the beginning it was texts and phone calls. And I went, I went through a lot of these with her yesterday when she was testifying and I am not going to go through all of them again but there were a good number of them.

She agreed that what she said in these text messages were things like:

'Please meet me.

I'm not here to argue, please let me see the kids.

I'd like to see kids next weekend.

Is there any chance I could speak to them?

Please don't fight two weekends a month."

He is saying:

'He is with you always.

I want to pick up the kids next weekend.

Thank you."

That's the sort of thing he's texting her. All this is very polite, all of it is requests, there's no demands. It's:

Please let me to my children.

I would like to see the children.

Please let me talk to them.

That's what he is texting her over these few months when she is saying he is demanding. None of that is demanding, none of it.

She also testified that at one point he told her, "I want to see the kids and give them some presents." So, a father wanted to give his children some presents. Is that against the law? Should that make someone scared?

He's the father, why can't he give his kids some presents? I think we can all understand why a father would want to do this. Okay. So that's all the contact in September/October.

So September 18th, he goes to her parents' house. He is not on trespass notice there. And

when they ask him to leave, he leaves. End of story.

Both she and her Dad said he was there to ask to try and see the kids. They told him to leave and he left. No threats were made. There was nothing about any sort of angry demeanor. No sort of outbursts, no violence, nothing. Just "I'm here to see the kids." *'You need to leave'*, he left. That's it.

September 19th, they spoke together in the parking lot. She walked the kids in, she walked out, and she stopped to talk to him. She talked to him when he wanted to talk to her. And, remember, she said he asked her -- again, that would word, "asked" is important. He asked her, 'Will you meet me at the hotel so I can see the kids?'

"Will you meet me", not "you are going to meet me or I am going to do 'this', or you better meet me or this is going to happen."

No. Will you meet me?

She says no, and that's it. There is no repercussions. Nothing else happens. He doesn't threaten her, he doesn't do anything. He asked the question and she said 'no.'

Again, the purpose of his question was to see his kids.

Move on to early October. This is when she is at her job at Self and he leaves a note on her car. She doesn't have the note but she says she remembered it said something about meeting me at the hotel. Again, a request, not a demand, "Would you please meet me at the hotel?" There's no threats, she doesn't meet him. And again, nothing else happens. He doesn't go after her or doesn't try to do anything, he just says "will you meet me at a hotel so we can talk?" She doesn't respond. That's not a threat.

That shouldn't cause anyone to be scared. Remember they are still married. It's not unreasonable, it's not unreasonable for him to want to talk to his wife.

And then the next morning, she said she got a text from him that said "would you like to meet for breakfast and talk, would you like to meet for breakfast and talk?" How much more non-threatening can language get, 'would you like to meet for breakfast?' There is just nothing in there that would reasonably cause fear of him. Again, she doesn't do it. She doesn't meet him.

Later that day, he goes to the house to try and see the kids. And again, the testimony from her and her Dad was he was there to see his kids. These are his children. He will has rights today. He had rights back then. These are his children. He went there to try and see the kids again, and again her father told him to leave. At this point, they call the police, the dad called the police or it might have been the mother, one of the parents called the police. The Sheriff arrives and, remember what they tell the parents. "We are not going to get him in any trouble for this, he has a right to be here. He has a vested interest in what's in the house because his children are here." That's what the law told them. He has a vested interest, he has a right to be here.

Remember at one point in her testimony she said that she tried to be reasonable with him in terms of visitation. She, you know, said that, before she filed she was trying to be reasonable.

Let me ask you this, on that day in early October, she's at her parent's house. Her parents -- both of them are at her parent's house. Charles is at her parent's house, at

least one Sheriff's deputy is at her parent's house and their children, his children are at her parent's house. So there are five, four or at least four adults to supervise and watch him with the children. Does she let him see the kids that day? No. How reasonable was that? How reasonable is it to say, 'well even the parents are here and there is a Sheriff's deputy here and I am here, and I'm not going to let you see them?'

November 18th, she said she thinks someone is following her, but she doesn't know if was him.

Then we jump to the 26th, so there is a good month to month and a half without, okay, absolutely nothing. Okay?

Early on November 26th, what happens on the 26th? He texted her "Why did you let the kids leave school early, why did you let the kids leave school early?" That's it. No threat. She said the tone was angry. I'm not sure how you get an angry tone from a text message, but I think any of us with kids might be angry about them not being in school.

Later on the 26th, he goes to the school and tells Dr. Costner he wants to see his kids.

There is no incident, there is no problem. He doesn't act out in any way. Starts to full out some paperwork.

The next morning he comes back and asks to see his kids again. And remember, these are his kids. He has rights to them. He has a right to see his children. And Dr. Costner said though he, you know, was disheveled and he started getting a little angry, there was no testimony that he was drunk. There was none. Dr. Costner said, "I couldn't tell if he had been drinking or not."

Then you could understand why he might be a little angry. He's been trying to see his kids and just not able to.

All right. December 12th, this is the time that he is at the Kohl's parking lot and she drives by him and stops her car to talk with him. She stops her car. She is in her car. She could have just kept driving. There is no reason to stop if she didn't want to talk to him. She stopped her car and talked to him. She even testified at one point that she got in his car.

Then she says that she sees him at the school later in the day and that she thinks he is

trying to get the kids attention. And again, these are his children. He has as much right to them as she does. And she says that she offered to meet him at McDonald's with them. So again, how scared is she?

How scared is she if she stops her car and talks to him when she has no reason to and could have just kept going. How scared is she if she says, "let's go and have a meal together". Just doesn't make any sense.

And again, it's not unreasonable, not unreasonable for him to want to see his own children.

December 13th. Again, he's driving down the road, she is driving down the road. She stops her car and talks to him on the side of the road for thirty minutes. He apparently displays some kind of emotion but, again, she is in her car, folks, she could just start driving. She stopped to talk to him. That's something she did voluntarily.

So, December 13th, this is when she went to the Sheriff's Office and tells them, she's tired of seeing him, she's tired of looking over her shoulder and seeing him. Again, no mention of

being tired, being scared of him, tired of living in fear, tired of thinking the kids are going to be taken, nothing, just "I'm tired of seeing him."

So let's count out between September 1st and December 13th, how many times has she actually seen him:

There's the one time she maybe thinks she sees him but she is not sure.

There are two times at her parent's house.

She sees him at the school and stops to talk to him.

She stopped to talk to him at the Kohl's parking lot.

Saw his car up the road and stops to talk to him.

So that is six, maybe seven times; four of which she voluntarily agrees to be stopping where he was.

That's over a three month period.

December 19th, this is when she hears a knock, she opens the door and she said he is there to see the kids. She asks him to leave and he leaves. There is no threat. There is no angry

outburst. We don't hear about him acting out. It is just, knock on the door

'I want to see my kids.

No, you can't, you better leave.'

Yes, she sounded a little bit frustrated but there is nothing wrong in that. He could be anywhere in Abbeville that any of us can be. Or anywhere in the State that any of us can be.

And then we get to the restraining Order. A Judge said and Ms. White said, that Restraining Order doesn't go into effect until January 9th, January 9th, 2013. Okay.

It is a mutual Restraining Order, neither of them can talk to the other. And it doesn't say no visitation with the kids, doesn't say no contact.

So after that, what happens after January 9th? What does she say happened after January 9th?

She testifies that in February 8th, she is driving on 72 and sees him at the Abbeville Hotel. As I said, he have every right to be anywhere anyone else does. There is the nothing wrong with him being at the Abbeville Hotel. And she said says later that day, she sees him on the

Square as she drives by several times he keeps sitting there. He has the right to be on the Square. There's nothing wrong with that. He's not doing anything to her. She's the one that keeps driving by there, apparently.

February 24th. She says he leaves her a voicemail asking to see the kids. One voice mail, that's all.

February 26th, is when she says he drives by the house and she finds toys in the backyard. That as she was coming out, she thinks that she saw him attempting to get their son's attention. He didn't try to lure the son away. There is no testimony about anything about him trying to lure this little boy away. The testimony was he drove by the house, left toys in the yard and as they came out they thought they saw him try to get Tripp's attention. That's it, that's it.

So the picture is, what is the big picture? The big picture is he wants to see his kids and she won't let him.

There is no testimony about physical harm, to her, to the kids. There is no threat of physical harm. There is no threat to take the kids. Never once did we hear any testimony about

"I'm going to take the kids away from you." She didn't testify to anything like that.

And, more importantly, there is no attempt by him to take the kids.

She is not scared of him. She testified she didn't change her number, she didn't change her address, she didn't move the kids to a different school.

I told you in opening that this is a woman who wants everything her way. When she decided it was over, it was over. And I think, from her testimony, that's true. She wanted him out of her life and out of the lives of their children. Remember, this is a married couple and he's got a right to those kids.

And in terms of him being a threat, we didn't hear anything about any angry outbursts. Dr. Costner said he got a little heated. She didn't anything about him getting angry. Getting angry is not a crime. If it was, I think probably all of us would have criminal records. I think at times all of us get angry.

But we didn't have any testimony from her about that. But she may say "oh, she was scared, he might get angry, but is that a reasonable

fear? Does that really cause reasonable fear, no actual outbursts of anger?

Over the six months, did you hear anything about him trying to take his kids? He goes to the school twice, one of those is the third time where he was across from the school property. But there is no testimony that he was there in an attempt to take the children.

All he wants to is see his children.

When the police were conducting their extra patrols, the patrol they did for that time period, the time period which I think she said could have been as broad as the six months, she said there were no further incidents; no further incidents, nothing else came out of that.

Sergeant Priest said the while they were doing their patrol, they saw him, saw him maybe three or four times. Again, he is allowed to be in Abbeville. Anyone is allowed to be in Abbeville.

That brings me to the next think I want to talk about. There is a good bit of testimony about him being in Abbeville. Mrs. Brandenburg as well as Sergeant Priest testifies about that. Folks, it is just not a crime, is it just not a

crime to be in this town, not a crime to be in any town in South Carolina, or any town in this country, as a matter of fact. He is allowed to be here, anyone can move here, anyone can live here, anyone can visit here at any time. So him being her, it's not a crime and it's not evidence of anything.

Let's talk a little bit about the restraining Order -- and this is something the judge is going to tell you, he is going to mention it to you, that violating a restraining Order is not evidence of stalking. It is not evidence of harassment. Okay?

You can see that from the statutes in front of you -- they don't mention a Restraining Order in any way. There is nothing in the Stalking and Harassment statutes that say anything about a restraining Order. So whether you think he violated it or not, it is irrelevant to what he is here for today. Okay?

And really if you look at when the Order went into effect, on January 9th, clearly it's -- the one voice mail, one voice mail and then him riding by the house is not Stalking, again, not making, not making any contact with her. But we

are not here to determine if he violated the Restraining Order, that is a separate remedy, you will have that back there with you, the actual Order. You'll see on the bottom that if someone's alleged to have violated the Restraining Order, that is a separate remedy, that would be in a separated Court. So we are not here to decide if he violated the Restraining Order. Okay? It is not an element of any or the crimes that are before you today.

What this all boils down to is that this is a dad who is trying to see his kids. And what is wrong, what is wrong with a Dad trying to see his kids? I'd say nothing. It is not unreasonable for a father to want to see his children. And that's what it's all about, he hasn't lost custody. He wants to see his kids. Every witness that that State put up, every witness said he wanted to see his kids.

Mrs. Brandenburg testified to that.

Dr. Costner said yes, he was there to see his kids.

Sergeant Priest testified to that.

Her father testified to that.

I know we didn't -- we didn't end up putting

up any witnesses. Everything Charles had to say came in with all the text messages and voice mails that came in. You know everything he had to say. Okay. But every single witness said all he wanted was to see his children.

Until January 9th, he had just as much custody as she did. After January 9th, he never tried again. And it is easy to understand why he got frustrated at the school when Dr. Costner was talking about that. He was a father that was being kept away from his kids. Mrs. Brandenburg testified that she was worried about him having an outburst but again, we didn't hear any testimony about any actual outburst that he had around her, ever. And again, I think it is easy to understand why he might get angry when he is trying over and over to be a good father, to see his kids, to give them presents, to be involved in their life and he is not able to see them, even when there is a Sheriff's deputy there to supervise, he is not able to see them.

Listen to the statute -- and I've got a copy of it here. What he has been charged with is stalking. Stalking is this pattern of behavior that causes someone to reasonable fear

and that would cause a reasonable person.

What that means is if you think her fear was unreasonable, if you think no one would really, you know, because we all interpret things differently. If you don't think it is reasonable for her to fear any of these things, then you can substitute that judgment to those of any reasonable person.

So causing a fear of death, there no testimony about that. Just actually you must cross that out.

Assault. Again, there is no testimony about that. I asked if her, 'no, he never did that.'

Bodily injury. Again, no testimony about that either.

Criminal Sexual Conduct. Again, this is a fancy legal term for rape, absolutely no testimony about that.

Now, kidnapping. First of all, the evidence just doesn't support it. There is no one to say he ever tried to get his kids, or more importantly, that the South Carolina statute and the judge will tell you this, but I will go over it as well, does not allow for a parent to kidnap their child. It is just not possible. A parent

cannot kidnap their own child, that's just a part of our law.

I've got the law written right here and you can see it. There was no evidence of that.

Assault. There was no testimony about that.

I asked her if he ever assaulted her and she said no, that he did not.

Bodily injury. Again, no testimony about that.

Criminal Sexual Conduct. Again, this is a fancy legal term for rape, and there was absolutely no testimony about that.

Now, kidnapping. First of all, the evidence just doesn't support it. There is no one to say he ever tried to get his kids, or more importantly, that the South Carolina statute and the judge will tell you this, but I will go over it as well, does not allow for a parent to kidnap their child. It is just not possible. A parent cannot kidnap their own child. It is part of our State Law. I've got the law written right here so you can see it. And again, this is the kidnapping statute and it contains some very legalistic terms that you don't really ever use in real life, but what it says is that whoever

shall seize, control, inveigle, I don't know if anyone really knows what that means, decoy, kidnap, abduct, carry away any other person, whatsoever, without authority of law except when a minor is seized or taken by his parent. So there is this big exception in the law, and what that means is, custody or no custody, he could not kidnap his own child. He cannot do it under the law. You absolutely can't do it. Okay? He just can't do it.

And then damage to property. Again, there has been no testimony about that, damage to property or any threat to damage to property. So that's out.

So he is just not guilty of Stalking. Clear and very simple, the elements are not there.

Now, I know that as of this morning, you are now considering harassment, whether you think he is guilty of harassment. I am going to go over that a little bit. I don't have it written on the board but we've all got it in front of us.

Harassment in the First Degree, that's the first section that you have. It is a pattern of intentional, substantial and unreasonable intrusion. Substantial and unreasonable. By my

account, he saw her maybe eight times, nine times over a six-month period. Sound right?

Unreasonable? This is, every single time he tried to contact her to just see the kids, is that unreasonable for a father, the husband?

None of his, none of his actions amounted to anything substantial or unreasonable. Going on with the statute, it says no legitimate purpose and again we are back to the kids. He had a legitimate in contacting her. His legitimate purpose was to see his own children. That was his reason for contacting her.

And then there has to be something to cause the person to suffer emotional or mental distress. We didn't hear any testimony about that. She didn't say this, you know, 'it completely stressed me out, I had to go see a psychiatrist.'

You didn't hear a psychiatrist say she suffered from post traumatic stress syndrome. There is nothing about her suffering any emotional or mental distress.

So now, and you look down and Harassment in the Second Degree, very similar language, substantial, unreasonable intrusion, no

legitimate purpose, something that would cause someone to suffer emotional and mental distress.

I submit to you that the evidence as presented doesn't come close to the these actions. It just doesn't.

We've got a concerned father, a concerned husband trying to see his kids, all the evidence was he wanted to see his children.

She met with him voluntarily with him. At time when she saw him, she would stop and talk to him. Now she is trying to say that was scary?

It just doesn't meet the statute. It is not substantial intrusion and it certainly is not unreasonable intrusion. It is very reasonable that he would want to see his kids. A legitimate purpose is he wants to see his kids. And she didn't say anything about suffering any emotional distress from it.

I know this is a lot of information to go over. And I know you all have been very patient sitting while we deal with issues of law. I know you all are really tired and real annoyed about my having to jump up so many times. That is just part of my job in defending my client. I ask you not to hold that against my client. I am just

trying to do my job.

I know you have heard a lot, you have heard a lot form witnesses, you have heard a lot from attorneys. This is an important case. You've heard a lot and I am asking you to look at the law and look at the statutes in front of you. Look at the evidence that was presented and see if they match up. He is just not guilty of a crime. They've got to show more than contact. They've got to show more that just Mrs. Brandenburg didn't want any contact. That is just not enough under the statute.

What does the statute say? The statute says stalking is unwanted contact, that harassment is unwanted contact? That's not what it says. It requires more than that, it really does. And it requires that he has no purpose behind this, and he does have a purpose. Every single thing was about him seeing his children.

So I am asking you to consider the evidence, consider the statutes and find that they just don't match. He is not guilty of any crime and I ask that you return a verdict of Not Guilty. Thank you.

THE COURT: All right. I would ask to get

this aid. All right and before we go any further, I think, looking at the time, that I'll have to have -- I'll have my part that I have to go over with you now and then we have the lunch break coming at some point. I think the best thing to do is for the County to treat you to lunch today, and all. And I've asked the Clerk about that and she says that the easiest way to do that is to order pizza to be brought in and I wanted to ask you about that to see if -- I see some frowns and I see some smiles on the juror's face. We can have a couple of different kinds of pizza brought in so that -- is there anybody on the jury who cannot eat pizza? If so, raise your hand. (No response). Okay. So we've got unanimous vote that you can eat pizza and all.

And so Emily, you want to, and anybody discuss that, I guess you know, you got a meat pizza of some sort and you got a pizza without meat with just cheese of some sort and it's from Pizza Hut, is that where it's coming from? Where is it coming from? Across the street somewhere wherever that is. Anyway, and all, and all, so you want to order and I am looking to see some indication, want to order a cheese pizza and

a meat pizza? I think two or three, we got thirteen people. I guess you better order three all together -- are you all listening to me? I guess you better order three at least. All right so the Clerk's going to take care of that now.

I want to go ahead and say to you that when we get it here, if you've already started your deliberations, before we get the pizza here, and all, we will bring it in to you and I always tell the juries to stop when you get the food in the jury room and eat your lunch, don't try to deliberate while you are eating lunch. Stop. Eat your lunch. Then start your deliberations back and all. So don't try to deliberate and talk about the case while you are enjoying that good pizza. Eat it, think about that, then go back to thinking about the case.

And if you need us to get the trash out, after you've eaten, we will be glad to come in there and get that from you and everything.

All right. So I want to thank both of the attorneys for their summations and arguments to the jury and for the way they have handled this case throughout the trial.

As I said, you now know that it is a little

bit more about what is involved in this than perhaps you may have thought it was before we got to this point in the trial. But there are certain things that do apply that I want to mention to you and go over with you at this point in the trial. You must accept the law as I explain it to be the correct law. This means you should not be concerned with what you may think the law should be but only with what the law is.

As I told you earlier, the State has made certain charges against Mr. Charles Moody Brandenburg, Junior, and to all these charges Mr. Brandenburg has said, "I'm not guilty".

And that places the burden of proving him guilty on the State. A person who is charged is never required to prove himself or herself innocent. The burden of proof is always on the State to convince you by the evidence presented here from this witness stand that he is guilty of a charge that the State has made against him beyond a reasonable doubt.

If the State doesn't do that, then he is entitled to a verdict of "Not Guilty".

So as I've said, the burden of proof is on the State to convince you by the evidence that he

is guilty of a crime with which he has been charged, beyond a reasonable doubt.

What do we mean by those words? What does it mean when we say that the State must prove someone guilty beyond a reasonable doubt? It is not an imaginary or fanciful doubt or a weak doubt. The term "reasonable doubt" may be best understood by giving it it's plain and ordinary meaning. A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. If, after considering all the evidence, you hesitate to convict the defendant on that evidence then he is entitled to a verdict of "Not Guilty".

Reasonable doubt may arise from evidence which is in the case, or from the absence or lack of evidence in the case.

You alone must decide whether reasonable doubt exists as to the guilt of Mr. Brandenburg in regard to these charges that are being submitted to you. You are the judges of the credibility or the believability of the witnesses who have testified. You have to decide who and what to believe. How much weight to give to the various witnesses testimony that you have heard

presented to you in this case.

As I told you, you are the judges of the facts of this case, I don't have anything to do with the facts. Your job is to judge the credibility, the believability, the weight of the testimony and the evidence that has been presented to you in this case in deciding this case. That's your job.

If I've said or done anything during the course of the trial that you have interpreted in any way as an opinion that I might have about the facts, or how this case should be decided, or whatever, please disregard it. For I have intended to be fair and impartial to both sides in this case.

In deciding the facts, it is necessary, as I said, for you to evaluate the witnesses. In doing that, I would suggest you go about that in much the same way you decide issues in your everyday life. You and I have to decide every day whether to believe what someone tells us. It is so much a part of everyday life that we often times don't think about any mental process that we may go through in deciding whether to believe someone. But you do it every day, whether it is

on your job, on the street, at home, wherever. When someone comes up to you and makes a factual statement to you, when someone says something like "such and such just happened, or such and such is about to happen, or you should do this because, or you should do that because". When a person makes that kind of statement to you, you have to decide, 'do I believe what that person tells me, how much trust, how much faith do I put in what that person tells me".

As I said, I would suggest you go about deciding who and what to believe in regard to the testimony and the evidence in this case, in much the same way you decide that issue in your everyday life.

But some of the things that you may want to consider, and this is by no means, an exhaustive list, but some of the things are such things as are:

The demeanor or manner of the witness who testified.

Whether the witness had reason to be biased or prejudiced.

Whether the witness' testimony was contradicted on the one hand or supported and

corroborated on the other hand.

You certainly do not determine truth or credibility or believability, merely by counting the number of witnesses who may have testified concerning some particular point or fact that may be involved in the trial of this case.

Throughout this entire process, you have but one goal really, and that is to seek the truth regardless of its source.

Now, consistent with the fact and the law, the burden of proof is always on the State to convince you by the evidence as I've repeatedly said, beyond a reasonable doubt that he's guilty of a charge. If they do not, then, as I've said, you must return a verdict of Not Guilty.

The fact that the defendant did not testify and did not offer any evidence for you to consider in this case, in no way can be considered as a fact against him. Under the Constitution and laws, that cannot be held against him in any way. The fact that he did not testify, the fact that he did not explain anything as far as anything is concerned, or offer any testimony is not something that can be held against him. He's guaranteed that under the

Constitution of the United States and under the Constitution of the State of South Carolina.

And as you can see, that is perfectly consistent with what I told you earlier, the burden of proof is always on the State. He doesn't have to prove anything. The burden of proof remains with the State at all times, until you the jury have in the privacy of the jury room, reached a conclusion that the State has proven him guilty beyond a reasonable doubt.

So there is no burden on him. The fact that he did not testify can in no way enter into your deliberations. You cannot even consider that and if anyone speaks up and says something like, 'well he didn't say anything, he didn't deny it', he is denied it by the fact that he has said 'I am not guilty of this.' And that is all that, under the law, he has to do in placing the burden of proof on the State.

Now we get to that part of the trial where we are going to discuss the particular charges that I have given to you and I'm going to read them so that -- you've got them there in front of you and, so, I am going to go over these with you. There may be some particular, at some point

that I want to comment about something as I go through this. I know there is a couple of little things that I am going to add to or, as far as I go, as I go through this with you.

But we will start with the most serious charge although that is not the way they are listed on here, so you go to the bottom of that first page, at Paragraph C there where it says "Stalking". And this is what it says and I would invite you to read along with you, with me, (reading):

"*Stalking means a pattern of words, whether verbal, written, or electronic, or a pattern of conduct that serves no legitimate purpose and is intended to cause and does cause a targeted person...*" -- in this case, they are talking about Mrs. Brandenburg, she is the person that they are talking about there when they use the word "targeted person", they are talking about her in terms of this statute. (Continues reading): "*...does cause a targeted person and would cause a reasonable person...*", -- so it is not only that she individually feared in regard to these things that we are going to mention here after that, but it has to be a reasonable fear.

What would a reasonable person do and interpret and think and conclude in regard to any of the things that you have heard about in so far as any of the actions or words of Mr. Brandenburg is concerned? It's not just what she as a person herself -- you know, maybe she's hyper sensitive. I'm not saying she is, I am just trying to give you an illustration of what I am talking about. You know, maybe she flies off the handle or is very emotional over and beyond what you normally would think of. That's not the standard as far, it's not just her individually, that says fear, "I feared it, I was afraid" of these things, it's whether a reasonable person in such circumstances would have been in a position to fear any one or more of these things:

Death, of her or a member of her family.

Assault upon her or a member of her family.

Bodily injury to her or a member of her family.

Criminal Sexual Conduct of her or a member of her family.

Kidnaping of her or a member of her

family.

And in connection with that, there has already been some discussion about this and I'm, this is where I am going to tell you some more in so far as the law is concerned and it has already been mentioned of by both of the lawyers. But, to summarize it, let me read you the law in regard to how the legislature has defined kidnaping. It's a rather convoluted way to define kidnapping but this is what the law says, this is what we have to apply, (reading): *"Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct, or carry away any other person by any means whatsoever, without authority of law."*

So Mrs. Brandenburg could possibly fit into the category of a person who could be kidnaped by Mr. Brandenburg.

But the next section, the next part of the law says he cannot be guilty of kidnapping his own child. That's what the law is. *Except when a minor is seized or taken by his parent.* So that means under the law if the fear was that he was going to kidnap his children, if that's what the reasonable fear was, that doesn't count

under the law in regard to stalking. Because the law is, until it is changed, a parent cannot be guilty of kidnapping his own child.

If she had a reasonable fear that she was going to be kidnapped under all the facts and circumstances, that still could be considered in deciding whether or not the State has proven this element of this offense in so far as she is concerned. But in connection with the child, or children of theirs, under the law as it presently stands, he cannot be guilty of kidnaping of his children. That's what it says in this statute that defines Stalking, one of his or both of his children.

And then the next element there is the possibility of damage to the property of hers or a member of her family.

And it goes on to define pattern. There you see that a "pattern" means two or more acts occurring over a period of time, however short, evidencing a continuity or purpose.

Then "family" means a spouse, child, parent, sibling, or person who regularly resides in the same household as she does.

And then it has the definition of

"electronic contact". In this case that's talking about text messages and that sort of thing, and, voice mail messages, those kinds of things which you are familiar with.

Then the last part says it does not apply to words of conduct protected by the Constitution of this State or the United States.

So, as I said, that is the first thing that you would consider in these, in regard to the charges that the State makes against him. And again, you are going to have this form of verdict and that's the way I've done it, I've written the name of the case here at the top and verdict and then the word "Stalking" and then the two possible verdicts in regard to that:

"*We, the jury, by unanimous vote find him Not Guilty of Stalking*" -- and all, and there is a place for the foreperson to sign.

Or, "*We, the jury, find him Guilty of Stalking*", and then there is a place for the foreperson to sign.

As I said, earlier, if you find him guilty of Stalking, that is the end of it, you don't have to go on and consider these harassment charges that the State also has made against him

or lesser-includeds under the law of this State in regard to this particular situation.

So if you find him "Guilty", then that's the end of it.

But if find that he is not guilty of stalking, if you should find the State has not met its burden of proof, then you consider the charge of Harassment in the First Degree.

And so you go back here and we will look at what Harassment in the First Degree is and that's at the top of that first page. Harassment in the First Degree means, (reading) "*A pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person…*" -- that's Ms. Brandenburg -- "*…that serves no legitimate purpose and causes the person, and would cause a reasonable person…*", -- again, it's not just her individually, what she perceived and thought and concluded insofar as this is a concern, but it is what a reasonable person would consider and conclude in this position. "*… in her position to suffer mental or emotional distress.*"

Harassment in the First Degree may include, but it is not limited to, following the targeted

person, her, following Mrs. Brandenburg, as she moved from location to location, visual or physical contact that is initiated, maintained, or reputed after her person has been provided oral or written notice that the contact is unwanted or after the victim has filed an incident report with a law enforcement agency. Surveillance of or the maintenance of a presence near the targeted persons, residence, place of work, school, or another place regularly occupied or visited by her, Mrs. Brandenburg.

I don't think there has been any mention of any vandalism of property in this case so that would not be something that this, that would be involved. All right.

So then you, if you have gotten down to considering Harassment in the First Degree, again there are two possible verdicts in regard to that. *"We, the jury, by unanimous vote find him Not Guilty."* If that be your vote, then that would be the end of it. You would not have to go to or consider the nest lesser-included offense.

Or, *"We, the jury, by unanimous consent find the defendant guilty."*

But if you find him not guilty of

Harassment in the First Degree, then you consider the last charge of Harassment in the Second Degree.

And you find that definition there in about the middle, or below the middle of that first page there. Harassment in the Second Degree means *"a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person…"* -- again, Mrs. Brandenburg *"…that serves no legitimate purpose and causes the person and would cause a reasonable person…"* -- again, the reasonable person standard, in her position *"…to suffer mental or emotional distress."*

(Reading): *Harassment in the Second Degree may include but is not limited to verbal, written, or electronic contact that is initiated, maintained, or repeated.*

So, those are the charges that you may consider and the definitions of those and how you should apply the facts as you find them to be and apply those to that law and reach your verdict in regard to these charges.

Oh, one other thing I wanted to mention to you. There is in evidence a Court Order and

it does contain what has been referred to a Mutual Restraining Order and this, of course, took effect under the law on January 9th, 2013. So, after that, both parties, Mr. Brandenburg and Mrs. Brandenburg were, under this Order, (reading): *The parties are mutually restrained from the following: harming, harassing, threatening, following, or interfering with the other in any manner whatsoever; entering or attempting to enter the other's place of residence, employment, or education; communicating or attempting to communicate with the other except through counsel of record; selling, encumbering, hiding, wasting, destroying, or dispose of any assets."* That's certainly not involved in this case. Or, "*Incurring any debt, that is not involved in this case. Violating any restrictions on any attached exhibit or visitation schedule which is indicated as applicable to him or her.*"

And in connection with that as far as visitation is concerned, this Order, if you read it you will see that he does not have any visitation rights under the terms of this Order until certain conditions have been met as far as

that's concerned.

So, but I want to tell you that, the fact that he may have violated this Order, and I am not telling you that he did, but the fact that he may have violated this Order in regard to what it says that he is not supposed to do, is not in and of itself proof of any fact that the State has to prove in regard to being able to convict him on one of these charges that you have heard about that the State makes against him. A violation of this Order is a separate thing.

But it is something that you may want to consider in deciding how it affected Mrs. Brandenburg. That is why I let it in for you to know about that in deciding how it may have affected her in terms of the various things that the State must prove in regard to proving him guilty of one of the charges that are made against him.

A violation of this Order is something that can be taken up in the Court where this was issued, the Family Court. That is a different Court from this Court. This is the Circuit Court. The Family Court judge that issued this Order may take up any possible violation and any

punishment for a violation of that Restraining Order in his Court. So I am telling you that, if you, that you shouldn't, that you cannot say he violated this Order, therefore he is automatically guilty of one of these crimes. That's not true. That's not the law.

You can consider it in relation to whatever impact it may have had on Mrs. Brandenburg as far as proving the elements of the crimes that he is charged with, but the fact that he may have violated this Order in any way is not in and of itself the proof of anything insofar as the crimes with which he has been charged are concerned.

Now you were selected in this case, you sat through the process and you saw that you were selected in this case by both sides. Both sides had an equal opportunity to decide who would sit as the jurors in this case. And they concluded that you would be fair and impartial jurors. You were sworn to try this case and determine this case based on the facts of the case as presented to you from the witness stand and my instructions to you on the Law. When you have complied with your oath to do so, no one will have a right to

criticize your verdict regardless of what that verdict may be.

You have no friends to reward or enemies to punish. Your job is to do what you said you would do, decide this case based on your full and fair evaluation of all the testimony and all the evidence that has been presented and my instructions to you on the Law. And as I said, when you do that, no one will have a right to criticize you verdict regardless of what that verdict may be.

Your verdict must be unanimous, all twelve of you must agree on what the verdict is before you can come back into the Courtroom and tell us that you have reached a verdict in regard to these charges that are being submitted to you in this case. We don't have any majority verdicts in South Carolina, all twelve of you must agree.

Madam Forelady, you will have with you in the jury room this verdict form that I have been looking at and holding up and showing to you. I would ask that you use that, sign your name below the appropriate forms there as I have explained it to you and give it back to us, so

that we will know what your verdict is in regard to this case.

I am going to send the indictment that has the stalking charge that has all the elements there in it but that is the paper that goes to the jury in every case and normally we would write, we would ask you to write the verdict on the back here but I am not going to ask you to do that, I ask you to use this verdict form to let us know what your verdict is in regard to these charges that are being submitted to you.

Now, I am going to ask you to go to the jury room. Don't start your deliberations yet. As you can tell I have been looking at some notes during the time I have been discussing this case with you. I want to review my notes to make sure I have told you everything I need to tell you. If I have, I will send the verdict forms to the, a verdict form to you in the jury room along with the physical evidence, you do have, I think there is only one, that copy of the Court Order that I mentioned. You will have that with you and you'll know at that time you can begin you deliberations.

If I have overlooked something, will

I bring you back out to tell you what I have overlooked. So, if you would, follow the bailiff into the jury room, please.

(JURY OUT)

THE COURT: All right, any exception to the charge from the State?

MS. WHITE: No, sir, Your Honor.

THE COURT: From the defendant?

MS. BOLEN: No, sir, Your Honor.

THE COURT: Other than what you have already stated as far as the case is concerned. Let's make it like that. Okay. Nothing new from you? All right.

(COUNSEL APPROVAL OF EXHIBITS)

(JURY IN DELIBERATION @ 12:23 P.M.)

(NOTIFIED OF VERDICT)

(DEFENDANT PRESENT)

THE COURT: Bring the jury in. All right we have the jury -- well, no, here comes the last one. All right, we have the jury with us and the parties are present along with their attorneys.

All right, let me remind you before we do anything, remind you of one thing that I told you. I told you that if you found him guilty that -- oh, I'm sorry. I see what you did.

Okay, I see how you did it. Let me -- I was misreading what you had done. You have done it exactly right. Okay.

The jury has returned a verdict in regard to Stalking and all of Not Guilty, which has been signed by the foreman of the jury.

The jury has returned a verdict of Guilty of Harassment in the First Degree, signed by the foreperson of the jury and then they concluded -- they didn't go to the next one as I told them, properly so. So I appreciate that.

I didn't quite see it that way when I first looked at.

So, as I said, they found Mr. Brandenburg not guilty of the staling but Guilty of Harassment in the First Degree.

Anything prior to discharging the jury?

MS. WHITE: No, sir.

THE COURT: Nothing from the State. Anything from the Defendant?

MS. BOLEN: Nothing from the defense, Your Honor.

THE COURT: Thank you very much, that finishes you up in regard to this case.

I want to thank you for your service.

I'm never really all that interested in what a jury's verdict is, I am interested in the way that you go about arriving at your verdict. By hat, I mean that to my observation you paid attention during the testimony while the people were testifying and telling you what they knew about this case. You paid attention while the attorneys were summarizing and arguing to you and you paid attention while I was discussing the case with you. To my observation, you did all three of those things, so thank you very much for you service in regard to this case. If you have not already done so, I'd ask you to tear out any notes you may have made, take them with you or whatever.

Leave your notepads and pens in the jury room so we can collect them and use them on another trial.

I will be sentencing Mr. Brandenburg in just a few minutes on this conviction, so if you want to stay with us to see the conclusion as far as the things are concerned, you are certainly welcome to do so.

There again, if you hadn't done so, go ahead and tear out any notes you may have made, get

your personal belongings, you are free to go. But if you want to stay, you are certainly welcomed to do so.

And where is the Indictment? Where is the Indictment?

FOREPERSON: It was all there.

THE COURT: No, the Indictment is not here. I don't think, oh, wait a minute, here's this, here it is. Here it is. All right, and before you go, this is what I am going to do. I am going to ask you -- well I am going to ask you to, I am going to write it on the back of the Indictment. What I am doing is, I am writing on the back of the Indictment the verdict of "Guilty" of Harassment in the First Degree. And I am going to ask the Forelady to sign it.

(JURY EXCUSED)

THE COURT: All right, so Mr. Brandenburg, come on up, please. And I'll need a sentencing sheet from the Solicitor.

MS. WHITE: (Tenders).

THE COURT: All right, and so now Mr. Brandenburg has been convicted of Harassment, First Degree and the punishment for that is up to three years in the penitentiary. Solicitor,

anything you want to say as far as this case is concerned?

MS. WHITE: Yes, sir, Your Honor. I wanted to share his prior history with the Court. He has from:

1989, an open container

1990, driving under suspension

1991, driving under suspension and possession of burglary tools.

1991, he received a YOA.

1991, a credit card fraud that looks like it was concurrent, violates his terms of probation.

1991, also a breaking into a motor vehicle and grand larceny.

1993, Simple Possession of Marijuana and Possession of Drug Paraphernalia and he received a fine.

1996, Public Disorderly Conduct. He received a fine of twenty days.

1998, Fraudulent Check. He received thirty days or pay restitution.

2001, Violation of the Order of Protection, or Protective Order, for which he received $1000 fine or thirty days.

2001, Possession of Marijuana.

That is the extent of his criminal history.

THE COURT: Is Mrs. Brandenburg still here?

MS. WHITE: Yes, sir.

THE COURT: Is there anything else you want to say, be glad to hear from you. You don't have to but be I'll be glad to hear from you, anything else you want say.

MRS. BRANDENBURG: No, sir.

THE COURT: All right. I do want to say of course of course to you, that you do, or certainly have the right to pursue any matter in the Family Court, I don't know how that stands as far as what the situation is in regard to the divorce or anything like that is concerned. But as far as any action on his part that you feel violated that Order, you know, you can go back to the Family Court and pursue that through the proper channels with the Family Court, and all, as far as that's concerned.

So, you know, it is entirely up to you. I know you would have to have a lawyer, you would have to spend some more money on a lawyer and so forth and everything but just want to make sure

you understand that you do have ---

MRS. BRANDENBURG: I still have a lawyer, we are still are working through Family Court as well, Your Honor.

THE COURT: Okay. All right. Well, I just want to make sure, that you understood that is an entirely separate matter and you can pursue whatever you want to as far as that's concerned.

MS. WHITE: Your Honor, I did just want to share one further thing. I think the Court heard a little bit about this during some of the pretrial motions.

THE COURT: Pretrial, yes.

MS. WHITE: That Mr. Brandenburg, that there was a mental decline prior to their separation. He was evidencing some belief that he was a Deity, threatened to sacrifice the children and so the State is asking for mental evaluation and criminal health counseling.

THE COURT: And that was, of course, included in that Family Court Order. All right. All right, anything else?

MS. WHITE: No, Your Honor. Thank you.

THE COURT: I mean that was, I was aware of that and that was included in that Family Court Order.

MS. WHITE: Yes, sir.

THE COURT: All right, now we switch to the other side, Ms. Bolen or Ms. Nelson either one or both?

MS. BOLEN: Thank you, Your Honor. May it please the Court. I think most of what I was going to say, you already are aware of through our pretrial motions and discussions. This is a situation where a marriage broke up and his motivations really were to just try and have a relationship with the kids. I would just like Your Honor to take into consideration that he has got about eight months of credit.

THE COURT: Yeah, I -- when was he arrested? Do you know?

MS. BOLEN: This charge in April.

THE COURT: Okay. Do you know the exact date? Look and see if you can figure out both of you, whenever it was. Because I would like to go ahead and write that on the sentence sheet too. Because he is entitled to credit for any preconviction jail time.

MS. WHITE: April 18th of this year, Your Honor, and then a few days ---

MS. BOLEN: He had about a week on the other in jail.

THE COURT: Well, are you saying April 18th and then plus?

MS. BOLEN: Right, plus ---

THE COURT: So, have you counted up from April 18?

MS. BOLEN: I can do it, Your Honor.

THE COURT: Uh?

MS. BOLEN: I can do it.

THE COURT: All right. How about you doing that right quick? I like to go ahead and calculate that and write it on here so SCDC doesn't have to spend money writing up here and the County spend money writing back.

MS. BOLEN: It's two hundred thirty-two (232) days, Your Honor, since the April incarceration and then you would need to add ---

THE COURT: And I give him seven, I'll give him seven on that, you know so that I believe that is 239. All right, anything else, Ms. Bolen or Ms. Nelson?

MS. BOLEN: Nothing further.

THE COURT: All right and Mr. Brandenburg, anything you would like to say? You don't have to but I am going to give you the opportunity.

MR. BRANDENBURG: My intentions have been honorable the whole time, sir.

THE COURT: I'm sorry?

MR. BRANDENBURG: My intentions have been honorable the whole time.

THE COURT: All right. Well, I am sure that you were, that you did have at least in your mind, good intentions but your judgment was not what it should have been.

All right, now Mrs. Brandenburg I ask you as part of his probation, I am going to, he is going to be sentenced and at the end of serving the sentence he is going to have a term of probation and I am asking you do you want me to include a No Contact Provision as a term of probation? I know there is already that Restraining Order as far as the Family Court and I presume that it will be some type of provision like that perhaps in any future Family Court Order, but I can also make that a term of any probation if you want me to.

MRS. BRANDENBURG: Yes, sir, and I would appreciate it if you would.

THE COURT: All right.

MS. BOLEN: Your Honor, could we add just one thing?

THE COURT: Yes, ma'am.

MS. BOLEN: He is, in the event that he is given visitation rights in the future in Family Court, would there be an alternate person he could contact to see about visitation?

THE COURT: Well, let me read you the language and then we'll see what you want me to do as far as any modification is concerned.

MS. BOLEN: Thank you, Your Honor.

THE COURT: All right. Well the special terms are going to be a mental health evaluation per the Family Court Order now, and any further Orders of the Family Court. Visitation with the children only per Family Court Order, no contact with Angela Brandenburg except by Family Court Order.

So, I am basically turning over any future contact but it's also a term of probation so that if you violate that in any way, Mr. Brandenburg, you can be dealt with here in the

Circuit Court as well as anything that the Family Court may do. So you got double jeopardy so to speak in regard to this and all, in a way, -- not the constitutional double jeopardy but nevertheless, you got two things involved as far as any future conduct is concerned. Whatever the Family Court orders and also what I just said as far as this is concerned because you are going to serve some time and then you are going to be out on probation and these conditions apply during that probation. If you violate, you go to prison. Do you understand that?

MR. BRANDENBURG: Yes, sir.

THE COURT: All right. All right. Well, as I said, you do get credit for jail time and that is right at eight months and all and by the time the Department of Corrections gives you good time credits and so forth that's probably going to equal about a year in terms of what a sentence would mean. I do think that you deserve a taste of what -- you have already served time in the Abbeville County Jail and although this is not amongst the most serious of these types of offenses, nevertheless, I think that as a deterrent you should, at least, experience some

further confinement with SCDC. So that is why I am going to do what I am going to do.

The sentence on this is three (3) years in the penitentiary, but that is suspended on the service of sixteen (16) months with SCDC with five (5) years of probation to follow that.

As I said, you get credit for two hundred thirty-nine (239) days jail time, credit toward that with special terms and conditions, or as I mentioned earlier, and I have written on this Order. Good luck to you.

MS. WHITE: Thank you, Your Honor.

MS. BOLEN: Thank you, Your Honor.

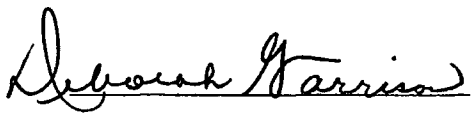
(COURT ADJOURNED)

1

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF CHARLESTON)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 9th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action heard on December 4-5, 2013 before The Honorable Thomas L. Hughston, Jr. as prepared from the audio notes of Vivian Cross, assigned court reporter;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.



Deborah Garrison

Charleston, South Carolina
March 17, 2014

WITNESSES

Chris Wilkie

Abbeville Police Department

WARRANT NUMBER

2013D0100100103

Foreman of the Grand Jury

Date: DEC 02 2013

TRUE BILL

VERDICT

Guilty of Harassment First Degree.

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

December Term, 2013

Indictment # 13GS01-0418

THE STATE

vs.

Charles Moody Brandenburg

INDICTMENT FOR

STALKING
16-03-1730

CDR: 2406

306

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

INDICTMENT FOR

STALKING
16-03-1730

At a Court of General Sessions, convened on the 2nd day of December, 2013, the Grand Jurors of Abbeville County present upon their oath:

That Charles Moody Brandenburg, in Abbeville County, between the dates of September 1, 2012 and February 28, 2013, did willfully and unlawfully stalk Angela Brandenburg, by using a pattern of words or conduct that was intended to cause and did cause the targeted person and would have caused a reasonable person in the said targeted person's position to fear: death; assault; bodily injury; kidnapping; and/or damage to property, of the said targeted victim and/or a member of her family, in violation of the provisions of Section 16-3-1700 and Section 16-3-1730 of the South Carolina Code of Laws, 1976, as amended.

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

Assistant Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 13, 2014

Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Abbeville County

Thomas L. Hughston, Jr., Circuit Court Judge

RECEIVED
JUN 13 2014
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CHARLES MOODY BRANDENBURG,

APPELLANT

APPELLATE CASE NO. 2013-002655

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 13th day of June, 2014.

Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 13th day of June, 2014.

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