

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

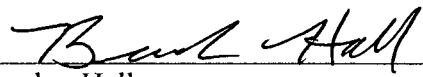
V.

CLARENCE LOGAN,

APPELLANT

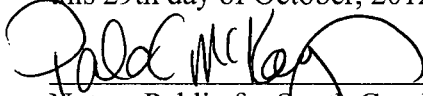
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; this 29th day of October, 2012.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 29th day of October, 2012.



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

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SC Court of Appeals

STATE OF SOUTH CAROLINA

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APPEAL FROM CHARLESTON COUNTY

Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CLARENCE LOGAN,

APPELLANT

APPELLATE CASE NO. 2011-194406

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON 2010-GS-10-03060
 2010-GS-10-3061

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
)
) June 8 & 9, 2011
CLARENCE LOGAN, JR.,)
) Charleston, South Carolina
)
) Defendant.)

B E F O R E:
The Honorable Roger M. Young, Sr., Judge, and a Jury.

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Circuit Court Reporter

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24

25

(June 8, 2011.)

1 going to draw a jury for another case which we will begin
2 after lunch, but we're going to go ahead and draw the
3 jury this morning, and that way those of you who don't
4 get picked can head on out for the rest of the day.

5 Now, the case that we are going to try is the
6 case of the State of South Carolina versus Clarence
7 Logan, Junior. Mr. Logan is facing two charges: First
8 charge is an indictment for strong-arm robbery. That's
9 indictment 2010-GS-10-3061, and it alleges that in
10 Charleston County, South Carolina, on or about February
11 4, 2010, the defendant, Clarence Logan, Junior, did take
12 and carry away personal property from the person or
13 presence of Jarvia O'Neal, by means of force, threat, or
14 intimidation of Jarvia O'Neal of such property. Such
15 property is described as a South Carolina driver's
16 license and \$20 cash. This is in violation of the common
17 law of South Carolina and section 16-11-325 of the code
18 of laws of South Carolina as amended.

19 Mr. Logan has pled not guilty to that charge.
20 He's also been indicted by the grand jury, indictment
21 2010-GS-10-3060, for a charge of attempted criminal
22 sexual conduct first degree, and that indictment charges
23 that on -- that in Charleston County, South Carolina, on
24 or about February 4, 2010, the defendant, Clarence Logan,
25 Junior, did attempt to commit a sexual battery upon the

1 victim, Jarvia O'Neal, without her consent and with the
2 use of aggravated force, to wit the defendant grabbed the
3 victim around her neck, choking her, and struck her with
4 a closed fist about the face and body, all in violation
5 of 16-3-652 of the South Carolina code of laws, and
6 Mr. Logan has pled not guilty to that as well.

7 So it becomes incumbent upon State of South
8 Carolina to provide Mr. Logan with a trial by a jury and
9 to attempt to prove to that jury that he is guilty of
10 these charges beyond a reasonable doubt.

11 Mr. Logan does not have to prove that he is
12 innocent of these charges. The only thing Mr. Logan has
13 to do is show up for trial, and that is what he has done.
14 The State of South Carolina, again, has to prove he is
15 guilty. He does not have to prove that he is innocent.

16 So the first thing I want to ask, is there
17 any member of the jury panel who knows anything at all
18 about these charges? If so, would you please stand. All
19 right. I find none.

20 Now, when the State of South Carolina
21 prosecutes a case, they do so through the local
22 solicitor's offices, and our local solicitor's office --
23 we are in the Ninth Judicial Circuit, which is in
24 Charleston County and Berkeley County, and our solicitor
25 is Ms. Scarlett Wilson, and Ms. Wilson has designated two

1 yourself, somebody could volunteer to be the jury
2 foreperson. I didn't do that this time. Does anybody
3 volunteer to do it? What is your name?

4 A PROSPECTIVE JUROR: Jonathan Lewis.

5 THE COURT: What number are you?

6 A PROSPECTIVE JUROR: 166.

7 THE COURT: All right. Well,
8 congratulations. You're the jury foreman. All right?

9 Now, before I begin, I need to have y'all
10 take an oath of office, so if you would stand and raise
11 your right hand and the clerk will administer your oath
12 to you.

13 (Jury duly sworn.)

14 THE COURT: We're going to go ahead and get
15 started on this trial now. As I told you before we
16 started, the state has charged Mr. Clarence Logan, Junior
17 with attempted criminal sexual conduct, first degree, and
18 strong-arm robbery. He has pled not guilty to both of
19 these charges, so it's incumbent upon the state to now
20 provide him with a jury trial and attempt to produce
21 enough evidence to convince 12 of you folks beyond a
22 reasonable doubt that he is guilty of these charges.

23 Mr. Logan does not have to do anything other
24 than what he has done, and that is show up for trial. He
25 does not have to prove that he's innocent. The state has

1 to prove that he is guilty, and that is an important
2 constitutional right that not only he possesses but each
3 of us possess, and so he doesn't have to do anything
4 other than show up for trial. He doesn't have to call
5 witnesses, if he doesn't want to, and he doesn't have to
6 testify if he doesn't want to, and if he doesn't end up
7 testifying, then you are not to hold that against him in
8 any way, shape, or form, during your deliberations.
9 You're not even to discuss that matter in the jury room.

10 That is an important constitutional right
11 again that each of us have. Now, he doesn't even have to
12 tell me at this point if he wants to put up a defense or
13 if he plans to testify or not testify. We'll deal with
14 that later on, but I just want you to keep that in mind
15 because, again, the burden of proof rests entirely with
16 the state.

17 As far as the law is concerned, Mr. Logan
18 sets there as an innocent man, and, again, that
19 presumption of innocence stays with him from the time he
20 got arrested through the time that there has been enough
21 evidence presented to convince 12 of you of his guilt
22 beyond a reasonable doubt.

23 Now, you keep hearing me talk about this
24 phrase beyond a reasonable doubt. Well, that is a burden
25 of proof. If any of you have served in a civil jury

1 before, you probably heard the burden of proof being a
2 preponderance of the evidence, or the greater weight of
3 the evidence, maybe if you heard it called that way, and
4 that simply means that whoever is trying to prove
5 whatever they allege in their complaint, it's more likely
6 true than not true, and if you're like me, you probably
7 are still going, I don't get it, and I'm a visual
8 learner.

9 So if you're like me, you might imagine a set
10 of scales, and right now you got both parties, the scales
11 are even. But in a civil case, the party that brings the
12 lawsuit is the plaintiffs, and the defendant is the
13 person that gets sued, so the party that is trying to
14 prove whatever they allege in their complaint in the
15 civil trial just has to tip those scales a little bit and
16 they have met their burden of proof in a civil case, and
17 that is called preponderance of the evidence or greater
18 weight of the evidence.

19 But in a criminal case, the state has a much
20 heavier burden of proof, proof beyond a reasonable doubt.
21 If you would imagine those scales, those scales really
22 have to tip in favor of the state, so they're not allowed
23 to just come in and tip the scales slightly in their
24 favor. You have to imagine them a lot heavier, and in
25 lay people's terms, the law describes beyond a reasonable

1 doubt as the evidence, when viewed as a whole, leaves you
2 firmly convinced of the defendant's guilt.

3 If after you've heard all of the evidence in
4 the trial and after I've told you about the law and you
5 have had a chance to deliberate the verdict amongst
6 yourselves, if you're firmly convinced, then you must
7 convict. On the other hand, if you're not firmly
8 convinced of the defendant's guilt, then you must return
9 an acquittal, and find him not guilty. All right?

10 Now, the state, having the burden of proof,
11 goes forward first with their case. So they will call
12 witnesses first, and they will have the first opportunity
13 to ask questions of the witness.

14 Whoever calls the witnesses first, that is
15 called direct examination, and when the other side
16 examines them, this is called cross examination. We
17 usually allow one round of direct, one round of cross,
18 and then we go on the shorter round, presumably, of
19 redirect and recross, and then we move on to the next
20 witness, all right?

21 Things important to remember, and it sounds
22 so simple as a concept, but it's really difficult to
23 sometimes get your head around as a practical matter:
24 Keep an open mind. Until you've heard all the evidence
25 in this case, it's not proper for you to begin to make up

1 your mind, because trials are like life. You know, you
2 hear things, you start to feel a little bit towards one
3 way, and then you go, you know what? There is usually
4 maybe two sides to every story. That's the adversarial
5 process, examination, cross-examination, witnesses and
6 other witnesses, and so it's not until you've heard all
7 the witnesses in the trial is it proper for you to make
8 up your mind, so keep an open mind until the end of the
9 trial.

10 This trial is not going to be, from what I
11 understand, a real long one. We very likely might finish
12 it by midday tomorrow, but you're going to hear from more
13 than one witness, so just keep that in mind. Now,
14 everybody in this courtroom has a role. The lawyers have
15 a role, the court reporter has a role, you and I have a
16 role. You're the judges of the facts. I'm the judge of
17 the law.

18 As judges of the facts, you're going to
19 decide what actually happened. There's always going to
20 be a discrepancy in the facts; otherwise, we wouldn't be
21 here, but whatever it turns out y'all figure out, sort
22 through, the conflict in evidence, whatever you decide
23 factually happened, we live with that.

24 By the same token, as the judge of the law,
25 whatever I tell you the law is that applies to the facts

1 as you find them, that is what you're bound by to come up
2 with in order to determine whether or not the state has
3 met its burden of proof and you find him guilty or not
4 guilty.

5 I also have a second role in the trial, and
6 that is to provide both sides with a fair trial. All
7 right? So I have to make sure that both sides follow the
8 rules of evidence, follow the rules of procedure. In one
9 respect, I'm a lot like you. We did not go through a
10 formal process of asking these people questions. It's
11 incumbent bond me that if I know anything about the case
12 or any of the parties such that it would affect my
13 ability to be fair and impartial, they would get another
14 judge to try this case, but I don't know any more about
15 this case than you do at this point, so I don't have a
16 dog in the fight, just like you don't have a dog in the
17 fight, so that is why they picked me to try the case.
18 All right?

19 Sometimes you'll hear the lawyers will pop up
20 and say, I have an objection. That is just them trying
21 to alert me that something is coming up. I want to make
22 sure the evidence you hear is proper evidence, it's what
23 you're supposed to hear or not hear, because the bottom
24 line is, when it's all said and done and your verdict is
25 in, if somebody doesn't like the outcome of it, the only

1 thing they can appeal is whether or not I made a mistake,
2 because whatever you factually decide, we're bound by it.
3 All right?

4 But if I charged you the law improperly or I
5 didn't follow the rules of procedure properly or let
6 something in that wasn't supposed to come in or kept you
7 from hearing something you were supposed to be able to
8 hear, I made a mistake, and they'll say, Okay. Got to
9 send it back. We'll do it again.

10 I don't want to do it again. We want to do
11 it one time. So I may, in the context of the objection,
12 just go, overruled, sustained. Sometimes I may bring
13 them up; sometimes I may have to send you out so I can
14 hear what a witness is going to say in order to make a
15 judgment as to whether or not it's something you should
16 or should not hear.

17 We're not trying, again, to keep anything
18 from you. We're just trying to do it one time. That's
19 the only thing that is there. No hidden agenda.

20 All right. So in a minute we're going to
21 begin with opening statements, and opening statements are
22 the lawyers getting up and giving you a brief overview of
23 what the facts are in this case, what the case is about,
24 so they will help you follow a little bit as you hear the
25 witnesses testify a little bit.

1 What is most important about this opening
2 statement is that the lawyers are not witnesses. They
3 weren't there. They didn't see anything. If they were
4 witnesses, they wouldn't be allowed to act as lawyers.
5 They would be called as witnesses. They be would sworn
6 in, and they would tell you what heard, they touched,
7 they felt, they smelt, that sort of thing.

8 So when they get up to talk, remember, they
9 aren't testifying. Whatever they're saying is not
10 evidence. They're only talking about the evidence that
11 you are likely to hear at this point in the trial. So
12 keep that in mind, both in opening arguments and
13 throughout the trial and in the end for closing
14 statements. So, for instance, when a lawyer asks a
15 witness a question, that's not evidence. The answer to
16 the question is evidence. Okay? So keep that in mind.

17 After we have the opening statements, we'll
18 then move into the first witnesses that the state calls,
19 and then we'll probably go till, you know, around 5:00
20 today and then we'll break for the day and come back in
21 the morning at about 9:30 and finish up.

22 So depending on where we are with witnesses
23 and that, we might go a little before 5:00, we might go a
24 little after. We'll just kind of get a flow, and we'll
25 talk throughout the trial to see where we're going,

1 because we understand. We're inconveniencing you, and
2 you've got homes, you've got things to take care of.
3 We're not going to keep you here late, and we're not
4 going to bring you in unmercifully early. We're just
5 going to work through and try to get everything done in a
6 reasonable amount of time.

7 Remember, this is important to not only the
8 state, but Mr. Logan, all right? This is their day in
9 court, and the state is entitled to a fair trial.
10 Mr. Logan is entitled to a fair trial, and they're
11 entitled to your attention, and so we will now begin with
12 the opening statements, and, Mr. Solicitor, if you're
13 ready, you may begin.

14 MR. FINCH: I am Timmy Finch. I work in the
15 Ninth Solicitor's office. I want to start off by
16 thanking you for your service and for taking your time.
17 Like the judge said, it's an important case, important to
18 everybody involved, not just to the state, but also
19 Mr. Logan, the defendant in this case.

20 I want to tell you a little bit about what
21 the case is and what's alleged and the evidence that
22 you're going to hear. Again, I'm not -- what I'm saying
23 isn't evidence. I want to give you an introductory, tell
24 you a story of what brings us into the courtroom.

25 This all revolves around an incident that

1 of its own citizens two of the most serious crimes we
2 have on the books in the State of South Carolina, robbery
3 and attempted criminal sexual conduct, but for all
4 practical purposes, let me make this clear: They're
5 charging Clarence Logan with attempted rape.

6 We don't use that term. I don't know why.
7 The statute and laws uses the word criminal sexual
8 conduct, but it's sanitized, but it's a nicer way of
9 saying rape. Make no mistake about it. They are saying
10 that Clarence Logan is a would-be rapist and an
11 accomplished robber, and whatever you do, do not blink
12 because this is going to be quick, and it's going to be
13 quick for a reason.

14 What you will have before you to make this
15 determination, what they are asking you to say about him
16 will not take a matter of weeks. It will not take a
17 matter of days. The critical testimony, the testimony
18 that is about the only thing that really matters in this
19 case, will not even take hours. It is the word of one
20 person and one person only, and that is Jarvia O'Neal.

21 On February 4, 2010, about 1:46 in the
22 morning, Jarvia O'Neal, she tells police, she's alone at
23 club Lovey Dovey, and if you're not familiar with club
24 Lovey Dovey, don't be embarrassed. You probably
25 shouldn't be. It's little more than a storage shed.

1 converted into a dive bar by the side of the road in
2 North Charleston, and Clarence was there and Jarvia was
3 there, and what happened that night happens,
4 unfortunately, all too often, all across the country,
5 every night, any night, and it's not a crime.

6 Jarvia and Clarence got into an argument, and
7 then they got into a scuffle. And, yes, it turned
8 physical, and, yes, there will be evidence that he hit
9 her. It's not nice, but it's not robbery and it's
10 definitely not attempted rape, no matter what you call
11 it. A matter of seconds in this room, and then they both
12 leave.

13 Jarvia doesn't call 911 when she leaves. She
14 doesn't go to the emergency room. She doesn't go to the
15 police station. She goes to her friend's house. The
16 next morning, she doesn't call 911. She doesn't go to
17 the emergency room. She doesn't go to the police
18 station.

19 That afternoon Jarvia O'Neal does not call
20 911. She does not go to the emergency room. She does
21 not go to the police station to admit that someone had
22 tried to rape her. That evening doesn't report anything.
23 It's not until 10:20, the next night, 20 hours after she
24 was in the bathroom with Clarence at club Lovey Dovey
25 does she go to the emergency room and reports to the

1 his family are desperate for you to learn that lesson,
2 because for the last 16 months, he has been branded as a
3 would-be rapist based upon the word of one, and today
4 that story will be tested for the first time, not by
5 police officers, not by lawyers, not even by a judge, but
6 by you.

7 Now, 13, ultimately 12, citizens of the
8 community will decide, will hold this story to the light
9 and see that it's just not true. It didn't happen. He's
10 not guilty. And in a day or so, I'm going to ask you to
11 so find. Thank you.

12 THE COURT: All right. Folks, before we
13 begin, I've got -- I've actually completed another -- we
14 finished up another trial this morning. The jury has
15 been out deliberating, and they have sent in a note.

16 I have to deal with something on that right
17 now, so I need to send y'all to the jury room and deal
18 with that, and then we'll bring y'all back here in a few
19 minutes, so, again, don't begin discussions or talk about
20 the case in any way. We'll have you back in a few
21 minutes.

22 (Recess taken.)

23 (In open court, jury present.)

24 THE COURT: All right. Be seated. All
25 right. Thank you for your patience there, folks. We

1 will now resume with the state calling the first witness.

2 MR. FINCH: Thank you, Your Honor. The state
3 calls Jarvia O'Neal.

4 JARVIA O'NEAL,
5 having been first duly sworn,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 THE COURT: Go ahead.

9 MR. FINCH: Thank you, Your Honor.

10 BY MR. FINCH:

11 Q. Good afternoon, Jarvia. If you would, tell the
12 Court how old you are.

13 A. I'm 30 years old.

14 Q. And if you need -- I think there are tissues over
15 there on your left, if you need them. Where do you live,
16 now, Jarvia? What town do you live in?

17 A. I live in Atlanta, Georgia now.

18 Q. And where did you used to live?

19 A. In Charleston.

20 Q. And how long did you live in Charleston?

21 A. All my life.

22 Q. And what took you to Atlanta?

23 A. Because I couldn't do it in Charleston anymore
24 because of the things that was happening with me with
25 guys. I left. I'm scared to be in Charleston. I hate

1 it. I don't like coming home.

2 Q. I want to talk to you about one of those things
3 that happened back on February 4, 2010. Do you remember
4 that day?

5 A. Yes, sir.

6 Q. Okay. And, actually, I'm going to go the day
7 before, to February 3rd. That would have been just the
8 night before, because we're talking about something that
9 happened early in the morning, right?

10 A. Uh-huh.

11 Q. And what were your plans for that night and early
12 morning?

13 A. We were going to head out to Lovey Dovey and get
14 some crabs and go back home. You need to dress for the
15 club, and I wasn't planning on doing any drinking or
16 anything, and we went there to eat crabs. So that was
17 just the outcome of what we were going to do that night.

18 And besides that, we went to the club at 1:45
19 because it was a last minute thing because we knew we
20 were going to get some crabs and leave.

21 Q. Is that a place where you normally go?

22 A. Yes, sir, to eat crabs.

23 Q. What is Lovey Dovey like for people who haven't
24 been there?

25 A. It's a social club where you can eat crabs and

1 socialize with your friends, and it's never been a bad
2 place until this happened. They don't have cops coming
3 there. People don't fight, except this incident, and
4 that is why I went there, because it was never a place
5 where police officers or fights ever break out.

6 Q. Who did you know at Lovey Dovey?

7 A. I knew Aaron and a couple other people that
8 usually comes there on a regular. Lovey Dovey was always
9 like a place where the regular customers came and where
10 everybody knew each other.

11 Q. Who went with you to Lovey Dovey that night?

12 A. My friend Andrea and my friend Virgil.

13 Q. How did you get to Lovey Dovey?

14 A. My friend Virgil took me to Lovey Dovey.

15 Q. Was anybody else in the car with you?

16 A. Yes, Andrea was.

17 Q. And where -- okay. So do you remember what time
18 you got to Lovey Dovey?

19 A. It was around 1:45.

20 Q. And that was 1:45 a.m., on February 4, 2010?

21 A. And the club is over at 2:00.

22 Q. And tell the Court, if you would, what happened
23 when you got to Lovey Dovey.

24 A. When I got to Lovey Dovey, we went in. I never
25 went too far back into the club because I only came there

1 for crabs, and I didn't come there to socialize with
2 anyone and I really wasn't dressed. I was only dressed
3 to eat crabs that night, so I never went to the back of
4 the club. I stayed further more to the front by the door
5 where the owner was fixing the crabs until the crabs were
6 already done.

7 When the crabs were done, the only time I moved is
8 when I went to the bathroom to freshen myself up and to
9 go outside to eat some crabs, to comb my hair, maybe, and
10 get myself together, because I knew I was going to go
11 outside to eat crabs. So I went in the back in order to
12 grab some napkins and kind of clear myself up, you know,
13 so I could look decent to walk around in the club because
14 I wasn't dressed, so that is pretty much it.

15 Q. And when you walked into Lovey Dovey, who was
16 there?

17 A. Who do you mean, like with me?

18 Q. Well, sure. Who was with you?

19 A. Virgil and Andrea was there, but when we were
20 standing by the door, the owner, Aaron, was also there
21 with me. I never left by the door until I went to the
22 rest room and to eat crabs when Aaron told me the crabs
23 were done.

24 Q. I'm going to show you some pictures that have been
25 previously marked as State's Exhibits 1 through 14 and

1 just ask if you could -- just take a look at these
2 photographs and tell me if you can identify them.

3 A. Yes. This is the club Lovey Dovey. Yes, sir.
4 This is the club. This is the club. Yes.

5 Q. What are those all pictures of?

6 A. This is the bathroom where it happened here. This
7 is the long hallway that I walked to by myself.

8 Q. But all 14 of those pictures are all pictures of
9 the club?

10 A. Inside and out.

11 Q. Okay. And we'll go through those one at a time,
12 but do those fairly represent the club?

13 A. Yes, sir.

14 MR. FINCH: At this point state would move
15 for admission of State's 1 through 14.

16 MR. BUTLER: No objection.

17 THE COURT: They're admitted. You can
18 publish.

19 (Photographs marked for identification and
20 admitted into evidence as State's Exhibit Nos. 1 through
21 14.)

22 BY MR. FINCH:

23 Q. I'm just going to go through these one at a time.
24 These are going to appear on the screen behind you, Ms.
25 O'Neal.

1 Would you tell us what we're looking at in
2 that picture there? This is State's Exhibit 1.

3 A. That is the outside of the Lovey Dovey.

4 Q. And is that the door you would have been in?

5 A. Yes, sir.

6 Q. And State's Exhibit No. 2, what are we looking at
7 here?

8 A. That is the inside. That is the inside of the
9 Lovey Dovey.

10 Q. Would that be what we would be looking at when you
11 just open the door?

12 A. Yes, sir.

13 Q. How about this photograph?

14 A. That is right by the door where I was standing at
15 where I never moved till I went to the bathroom.

16 Q. Okay. So you were -- I was having trouble hearing
17 you. You said you were standing there?

18 A. Yes, until I went to the bathroom. I never moved
19 from by the front door.

20 Q. Who was -- was anybody standing there with you?

21 A. Virgil was and Aaron.

22 Q. And Virgil was who?

23 A. He was my friend when I went to the club besides
24 Andrea.

25 Q. And what was happening when you were standing

1 there talking to Aaron?

2 A. The guy keep -- he was so drunk. He was so drunk
3 he kept coming by me, trying to get with me and trying
4 to, you know, take me home and asking me out and just
5 doing what a man, a drunk man, do to a woman who is
6 trying to tell him to leave her alone, I guess.

7 Q. Okay. And what did you say to him when he was
8 saying these things to you?

9 A. I was telling him to leave me alone in a very
10 consistent way, like, cursing him out and being mean to
11 him, like telling him no. And I saw a ring on his
12 finger, and I said, Why do you want to talk to me? He's
13 married. I didn't want to be bothered. His breath
14 smelled like the whole bar. He was leaning all over me.
15 It was disgusting, and I just didn't want to be bothered.
16 That's all I ask.

17 Q. And do you remember anything he said to you?

18 A. Yeah. When I asked him why does he keep trying to
19 talk to me, he said, So? I don't care. I got a wife at
20 home? I don't give a F about her. I just want to see
21 what is going on with you and see if I can get with you.

22 Those were his exact words with me, and we started
23 arguing. And I cursed him and told him to leave me the
24 F alone, don't fuck with me because I really don't feel
25 like this tonight and telling him to get off me.

1 He was leaning over me and stuff. It was very
2 overwhelming for me. I couldn't deal with it, and he
3 kept on doing it, over and over again.

4 Q. Did anybody else see this?

5 A. Well, Virgil and Aaron was standing there so they
6 was just there. They didn't say anything at the time
7 when the guy was there except just looking like, what's
8 wrong with him? That was about it.

9 Q. Do you remember if they said anything or did they
10 say anything to him?

11 A. No, sir. I didn't see them say anything to him.

12 Q. What were Aaron and Virgil doing at this time?

13 A. At the time, Aaron and Virgil were standing there
14 because Aaron was checking, waiting for the crabs to get
15 done. So Aaron and Virgil was just standing there where
16 this guy was begging me for my number and to do it and
17 oh, my God, they were just standing there. And Aaron
18 walked off and when to the crabs, to check on the crabs
19 to get it done. So me and Virgil was up there by ourself
20 by that time. Virgil still didn't say anything to this
21 guy.

22 Q. And then what happened, after Aaron went to go
23 check on the crabs?

24 A. I went to the bathroom to get myself together to
25 go out and eat crabs. I went to brush my hair down a

1 little bit, you know, before I actually walked through
2 the club because I looked horrible, wasn't really
3 dressed, because I only came out there to eat crabs and
4 leave.

5 And when Aaron left to come back in to get the
6 crabs, that is when I went to the rest room as he was out
7 attending to the crabs.

8 Q. Okay. And where is the rest room located in the
9 Lovey Dovey?

10 A. The rest room is all the way in the back, down a
11 long hallway. It was very small where no one can see
12 you, so I was pretty much walking down the hallway by
13 myself. The bathroom is like way back, in, like, a cut.

14 Q. I just put up on the screen State's Exhibit No. 7.

15 A. That's the bathroom right there.

16 Q. Let me hand you this pointer. Just push that
17 button, and if you could just indicate on that photograph
18 where the women's bathroom is.

19 A. This is the women's bathroom right here.

20 Q. If you would, tell the jury, what is that bathroom
21 like?

22 A. It's a really, really small, like a small
23 bathroom. It's really small, and it's just big for one
24 person to actually get in, but another person could fit
25 themselves in. They have to force themselves in the

1 bathroom. And the hallway is so dark. There is no light
2 in the hallway for you to even see somebody else there
3 with you in the bathroom, but I was still taking a chance
4 to go to the rest room in a nightclub because I didn't
5 think nobody was going to do this to me in a nightclub,
6 just using the bathroom. It's never happened to me
7 before.

8 Q. Tell us about the rest of the club. I mean, what
9 is the volume like in there?

10 A. The music is always loud. The music is very loud.

11 Q. How about other people in there? How many other
12 people were in the club?

13 A. There was a lot of people. There was no way that
14 anybody could hear me screaming. There was no way.

15 Q. What were the other people -- when you walked from
16 the front to the bathroom, what were the other people
17 doing?

18 A. Everybody was just around, socializing, drinking,
19 having a good time.

20 Q. Do people dance at this club?

21 A. Yeah.

22 Q. Were people dancing or not?

23 A. Yeah. People were dancing on the floor. People
24 were dancing. The music was very loud. People were
25 hanging out, playing pool.

1 Q. So you went to the bathroom.

2 A. Yes.

3 Q. I want to show you State's Exhibit 14.

4 A. That's is the bathroom right there where all of
5 that happened.

6 Q. This is another view of that bathroom. Is that
7 the same bathroom?

8 A. Yes. That's the bathroom.

9 Q. This is State's Exhibit --

10 A. This is where I was standing, and this is where he
11 was standing over here on the wall, choking me, and I was
12 on this side. My purse was there on the top -- on the
13 counter right there.

14 Q. Okay. Let's just go back to when you walked
15 through the club and then you went to the bathroom. All
16 right? Why don't you please tell the jury what happened
17 from the time you started walking down that hall towards
18 the women's room.

19 A. From the time I started walking down the hall, at
20 this time I walked by myself in the rest room. When I
21 got on top of the ramp, there is a ramp on the bottom,
22 like, a step you have to step up on top of that. By the
23 time I got in to close the door, the guy was standing
24 there, forcing his self inside the bathroom with me.

25 Q. Is this picture --

1 A. And I was already in the bathroom.

2 Q. Does this picture show the step?

3 A. There is the step right there.

4 Q. Okay. And that is State's Exhibit No. 12. So you
5 got up inside the bathroom, and then --

6 A. When I got in the bathroom, I was already in the
7 bathroom, stepping on top of the step. He pushed --
8 forced the door open on me. When he forced the door
9 open, he took me by my neck and threw me right here on
10 the top, lifted me from off of my feet, like, lifted me
11 literally off of my feet, with my hair, off this wall
12 here.

13 I was struggling, trying to fight him. He was
14 choking me like this. I was fighting him with both my
15 arms. He was choking me with his left arm. With his
16 right arm, he was, like, loosening his pants as I am
17 fighting, trying to fight him in the air. I'm fighting
18 because this guy is choking me, like this. He's
19 literally choking me.

20 Q. Did he say anything to you?

21 A. Yeah. He said, Bitch, you think you all that, but
22 I'm going to fuck you tonight.

23 That's what he said to me.

24 Q. What happened next in the bathroom?

25 A. And then he just beat the crap out of me because I

1 wouldn't have sex with him. That's what he did. And
2 nobody didn't understand. No, I told him no, and he did
3 not understand. I was scared for my life in that
4 bathroom by myself.

5 In the bathroom, he choked me on that wall and he
6 loosened his pants as he was choking me, and he tried to
7 loosen my pants. And he got his pants loose. He was
8 choking me up against the wall with his hand, and I can't
9 beat a guy, but I was trying my best. He was so strong.
10 I was trying my best to get out of the bathroom. The
11 last time when he was trying to fix himself up from
12 holding me up here, when I punched him in his face, he
13 got me good, right here in the middle of my nose, and I
14 kicked him between his legs. That's when he went down,
15 and that is when I got out of the bathroom.

16 Q. Okay. Let's talk --

17 A. Oh, and I left out with him digging in my purse.
18 I had my driver's license, and I had \$20 wrapped around
19 my driver's license and he took my driver's license and
20 my \$20 out of my purse.

21 Q. Okay. Let's go back just a little bit. After
22 he's come in here and he's got you against the wall --

23 A. Choking me.

24 Q. And then you said he was loosening his pants?

25 A. Yeah.

1 Q. Were you able to fight back -- or how were you
2 able to fight back?

3 A. Well, he had me on this wall right here, choked up
4 like this, because he was on this wall right here. When
5 he had me choked up with this arm, he was loosening his
6 pants like this, because I was fighting him on this wall
7 with both of my hands like this while his neck -- while
8 his hand was choking me up in the air, kicking and
9 fighting him and everything.

10 When this guy got his pants loose, from opening
11 his pants with this hand, that's when he hold my hand
12 again and he unloosened my jeans. By that time, I got
13 scared out of my wits. He pulled me off of the wall. I
14 started swinging on him more. By this time, he got
15 serious with me. He seen I was fighting him, literally
16 fighting him back, like, literally trying to get him off
17 me, that is when he really started punching me with all
18 his strength.

19 I'm a woman. He's a man. He started punching me
20 by then, punching real hard. He turns me around, choking
21 me, and I'm, like, Please, stop. I'm a female. I'm a
22 female. Let me go. He didn't care about any of that, so
23 what I did was I kicked him, like this, between his leg.
24 He let me go. I go down, and I went out of the bathroom.

25 Q. Okay. Where did he punch you? Where did the

1 punches land?

2 A. In my face. He punched me in the back of my head.
3 My forehead was swollen, my nose was open, bleeding. I
4 got a big knot in the back of my head back there, and he
5 was -- he punched me, punched me and punched me wherever
6 he wanted to punch me, but it's mainly in my face.
7 That's where he punched me at.

8 Q. Let's talk about the digging in your purpose.

9 A. Okay. When I was on the wall there, when he
10 grabbed me to turn me around like this, to choke me
11 around like this, and I, like, kicked him between his
12 leg, before all that happened the first time, he punched
13 me there in my face, and I went back, forward like that.
14 That is when he dug inside my pocketbook to get my ID and
15 my \$20 out of my purse.

16 Q. Okay. Did you see that happen?

17 A. I did.

18 Q. Did you say anything at that time?

19 A. I asked him, why was he doing this? I said, Why
20 are you doing this?

21 And he was, like, Bitch, you think you all that.
22 I'm going to fuck you tonight. I'm going to fuck you
23 tonight. You think you're all that. That's what he said
24 to me.

25 Q. And after -- how much time passed between him

1 grabbing your license until you kicked him and were able
2 to start making your way out?

3 A. Well, he got my license and my money first before
4 I got out of the rest room. Repeat the question again.
5 You said how much time --

6 Q. Yeah, how much long after he grabbed your money
7 did you kick him and start making your way out?

8 A. He grabbed my money first, out of my wallet, out
9 of my pocketbook with my ID wrapped around it. He
10 grabbed that first out of my purse before I kicked him
11 between his legs. When I saw him with my ID, he got my
12 ID, I had to get away out of there.

13 Q. Did you try to get your ID back from him?

14 A. I didn't. I was scared -- I didn't.

15 Q. After you kicked him, what happened next?

16 A. After I kicked him between his legs, he went down
17 like this, and I got out of the bathroom.

18 Q. And how did that -- did you have to unlock the
19 door? Was the door open?

20 A. The door was locked. The door wasn't -- you mean
21 before I went in the bathroom?

22 Q. No, when were you leaving?

23 A. While we were in the bathroom? While we were in
24 the bathroom, the door was locked, but, of course, I had
25 to unlock the door to get out of the bathroom.

1 Q. That is what I was asking you. So after you
2 kicked him, you had to unlock the door to get out.

3 A. Yeah, yeah.

4 Q. And tell us what happened after you unlocked the
5 door.

6 A. I got -- he got -- first of all, he got out of the
7 bathroom first before I unlocked the door. He let me
8 loose, and he went out before me and I came out after
9 him.

10 Q. And how did that go? I mean, who opened the
11 door --

12 A. I unlocked the door, and when I unlocked the door,
13 he see I had the door open. That's when he went out
14 before me, and I was still in the bathroom.

15 Q. And what condition was he in when he left? What
16 did he look like when he left?

17 A. He was fixing up his clothes and trying to get his
18 self together and -- I guess he left. I didn't see him
19 anymore after I came out of the bathroom. He was fixing
20 up his clothes and stuff like that.

21 Q. Who did you see when you left the bathroom, or
22 what was the first thing you saw after you left the
23 bathroom?

24 A. Everybody was scattering the club and coming
25 towards me, trying to see if I was okay and looking for

1 me and seeing, you know, what was going on.

2 Q. And do you know how long you had been in the
3 bathroom at that point?

4 A. I can't --

5 Q. Can you estimate? Do you think it was 30 seconds,
6 two minutes, just some estimation of time.

7 A. We were in that bathroom.

8 Q. If you don't know, it's okay. It's a yes or no
9 question.

10 A. I'm going to be honest. I don't know.

11 Q. Okay. So after you got people walking towards
12 you, what happened after that?

13 A. They wanted to know what was going on and who was
14 in the rest room with me.

15 Q. What did you say?

16 A. I told them that guy was in there trying to rape
17 me and beating on me, and he took my driver's license and
18 my money out of my purse.

19 Q. And who did you tell that to?

20 A. I told that to Virgil and I told it to Aaron.

21 Q. And did anybody do anything at this point?

22 A. They didn't. The only thing Aaron did was comfort
23 me and ask me questions and I left.

24 Q. Who did you leave with?

25 A. Virgil and Andrea.

1 Q. Did you ask anybody to call the police?

2 A. No, because I was scared. This guy took my
3 driver's license, and he knew where I was living. I was
4 scared to call the police because I felt like if I had
5 called the cops with this guy having my driver's license,
6 God knows what this guy would have done to me.

7 So I was scared to call the police because he had
8 already had my driver's license. I didn't know if he was
9 going to come to my house. I didn't know if he was going
10 to come look for me. I didn't know, so I didn't go to my
11 house. I went to my friend's house that night because I
12 was scared to go home because this guy had my driver's
13 license. I couldn't go home.

14 Q. Where did you go in the club after you got out of
15 the rest room? Did you leave immediately?

16 A. I left immediately.

17 Q. Who did you go with?

18 A. Virgil and Andrea. I left.

19 Q. Those were the two people you came with?

20 A. Uh-huh.

21 Q. Where did you go after that?

22 A. We went to my friend Adisha's house.

23 Q. And what did you do there, call the police there?

24 A. No. When I got there, I was very scared. I was
25 bleeding all over the place, trying to get myself

1 together, and he was trying to get me to go to the
2 hospital because I was scared. I was scared to report it
3 because he took my driver's license. I was scared to
4 report it. That's why I didn't call the police.

5 Q. What did you do that night, or after you got back
6 to Adisha's?

7 A. I couldn't sleep. I stayed awake all night. My
8 head was pounding. I had blood from everywhere. I
9 couldn't sleep. I couldn't. I was scared.

10 Q. And how about the next day? Did you eventually
11 fall asleep or did you stay up?

12 A. No, the next day, I went to sleep for a little
13 while. I couldn't really sleep because, like I said, I
14 had knots on my head. I didn't sleep. I really
15 couldn't.

16 Q. And did you eventually -- did you eventually seek
17 medical attention?

18 A. I did.

19 Q. And do you remember what time that was?

20 A. That was in the afternoon I went there. It was
21 not 10:00 at night.

22 Q. Where did you go?

23 A. I went to MUSC -- I think it was MUSC.

24 Q. And why did you decide to wait that long?

25 A. Because my family and friends told me I needed to

1 report this because I shouldn't let this happen to me.
2 Just because it happened before, I shouldn't let it
3 happen to me like that. I need to go report. I need to
4 go tell somebody, and that is when I went and reported
5 it.

6 Q. Okay. So you went to the hospital, and did
7 they -- do you remember what they told you at the
8 hospital, as far as your injuries? Did they tell you
9 anything?

10 A. The police came out and they -- they told me
11 anything about my injuries?

12 Q. Yes.

13 A. They gave me -- they put some cotton -- like, a
14 wet swab thing on here because it was bleeding real bad
15 and my forehead was -- I had knots on it, and they told
16 me I could get some Tylenol for the headaches. And he
17 checked out the back of my head, and that was pretty much
18 it, really.

19 Q. Did you get any stitches?

20 A. I didn't, but I had a big gash there over my nose,
21 and my forehead was swollen.

22 Q. And then you said the police came.

23 A. Uh-huh.

24 Q. And did you speak to the police?

25 A. I did speak to them, and I told him what happened

1 and he filled out an incident report and he looked at my
2 face.

3 Q. Did he take any pictures?

4 A. No, sir.

5 Q. What did you do after you left the hospital?

6 A. After I left the hospital, I went to find out who
7 this guy was.

8 Q. How did you do that?

9 A. I called Aaron, the person who owned the club. I
10 called him.

11 Q. And what did you ask?

12 A. I asked him if he knew the guy in the club, and he
13 said he didn't know him by his real name. He knew him by
14 Blackout.

15 MR. BUTLER: I object. Hearsay at this
16 point.

17 THE COURT: Sustained.

18 BY MR. FINCH:

19 Q. Don't tell us what Aaron said. Tell us what you
20 did in response to things that Aaron said.

21 Let me ask it a different way: Did you get any
22 information from anybody as to who this was?

23 A. Yes.

24 Q. What kind of information did you get?

25 A. I got his nickname and what kind of car he drove.

1 Q. And what was the description of the car he gave?

2 A. It was a powder blue Thunderbird, like the
3 Tarheels color kind of -- I don't know if it's a football
4 team or basketball team, but it was Tarheels and there
5 was a powder blue Thunderbird.

6 Q. Did he give you any other information about the
7 vehicle?

8 A. No. It had tinted windows and a license plate.
9 That was it.

10 Q. And what did you do after that?

11 A. After I got all the information?

12 Q. Uh-huh.

13 A. From Aaron?

14 Q. Uh-huh.

15 A. I actually called the cops so I could inform them
16 who it was.

17 Q. Okay. And what made you call the police after
18 that?

19 A. Because Aaron already let me know who it was, and
20 my family and friends wanted me to do that because they
21 didn't want me to settle for less than -- just because he
22 took my ID and not do anything about it because I was
23 scared.

24 Q. Did anything cause you to call the police? When
25 you called the police, what did you tell them?

1 A. About the car?

2 Q. Yes.

3 A. I told him that I saw the guy who was bothering me
4 inside the nightclub and I needed to see if someone could
5 come out and try to figure out who he was because I only
6 had a nickname. I didn't have a real name.

7 Q. And so you told the police you saw the car?

8 A. Yeah.

9 Q. Where did you see the car?

10 A. The first time I saw it was at the Greyhound bus
11 station, and then several days after that, he kept on
12 coming by my apartment.

13 Q. And did you call the police the first time you saw
14 the car?

15 A. I did, the second time and the third time and so
16 on.

17 Q. Did you see the defendant in the car the first
18 time you saw the car?

19 A. I did not see him the first time in the car. I
20 only saw the car, and I knew it was a car by the color
21 and the license plate. I didn't see who was driving it.
22 I didn't see anybody in it, just the car.

23 Q. And when was the next time you saw the car?

24 A. The next time I saw the car it came by my house.

25 Q. And tell the jury about what happened when the car

1 came by your house.

2 A. The first time the car came by my house, I was
3 inside my car, and I was cleaning my room and I saw the
4 car come by where -- into my apartment complex where the
5 dirt is. He spin the bend, stick up his middle finger,
6 and kept on going, and I ran outside, called the cops.

7 Q. I'm going to show you some photos that have been
8 labelled State's 15, 16, and 17. Tell me if you can
9 identify those photographs.

10 A. Yes. This is my apartment where I lived.

11 MR. FINCH: Your Honor, at this time the
12 state would move for admission of 15, 16, and 17.

13 MR. BUTLER: No objection.

14 THE COURT: Admitted.

15 (Photographs marked for identification and
16 admitted into evidence as State's Exhibit Nos. 15 through
17 17.)

18 BY MR. FINCH:

19 Q. What are we looking at here?

20 A. That is my apartment where I lived.

21 Q. That looks like a duplex. Which side did you live
22 on?

23 A. I lived on this side.

24 Q. Where was your room?

25 A. My room was here. My window was up.

1 Q. What happened while you were there in your room,
2 you said?

3 A. I saw the car come from around the way, on this
4 part right there.

5 Q. Does that help?

6 A. This is the entrance where the car came at, sped
7 around, and he drove off, stick up his middle finger on
8 the way here, kept on going. I called the cops
9 instantly.

10 Q. Were you able to see who was driving the car?

11 A. I did this time. It was him. It was him.

12 Q. And when you say him, who are you referring to?

13 A. Clarence.

14 Q. And is that person in the courtroom today?

15 A. Yeah. He's right over there.

16 MR. FINCH: Let the record reflect the
17 witness identified the defendant.

18 BY MR. FINCH:

19 Q. And you said he came by several times. What other
20 times did you see that car come by your house?

21 A. He came by another time when I was on the porch
22 with my family members, with my nephews and my cousins
23 and my brothers. Then he came around another time when
24 it was just me and my mom and my sister.

25 Q. And was anybody around this first time when he

1 came down this dirt road?

2 A. It was just -- it was my mom, but they were in the
3 house. My sister, they were in the house. They didn't
4 come outside until after they saw me freaking out and
5 calling the cops.

6 Q. And the next time he came by the house, who was
7 around?

8 A. My nephew, my brother, my other nephew, and some
9 of our friends were on the porch when they came by that
10 time.

11 Q. And what were you guys doing?

12 A. We were just standing around, just talking and
13 hanging out, and I saw a car and I took off running. I
14 took my shoes and I took off running, calling the police
15 on my cell phone, trying to keep up with him, and I lost
16 him.

17 Q. And then you called police?

18 A. Uh-huh.

19 Q. Did you make another report?

20 A. I did.

21 Q. Was that on the phone or did the police come to
22 your house?

23 A. No, they came to my house.

24 Q. And then a couple days later, were you asked to
25 come into the station?

1 A. And identify him, yes, sir.

2 Q. Do you recall who called you?

3 A. The officer.

4 Q. Yes.

5 A. Detective Schmidt, S-c-h-m-i-d-t.

6 Q. Schmidt?

7 A. Yeah.

8 Q. And he called you, and what did you do after he
9 called you?

10 A. He called me in to do -- to see, you know, if I
11 saw the person that had done that to me, and I picked it
12 and I signed my name on it.

13 Q. Okay. These have all been premarked as State's
14 Exhibit 19. Can you identify what these are.

15 A. Yeah. Those were the pictures he was showing me.

16 Q. How many different photographs did he show you?

17 A. He showed, me, like, six different ones until I
18 knew exactly who it was.

19 Q. And were you able to pick somebody out?

20 A. Yes, sir.

21 Q. And how did you -- how do you know -- is that
22 picture among those pictures there?

23 A. If it was among these pictures?

24 Q. If it was in that pile of pictures there, that one
25 you identified?

1 A. Yes, sir.

2 Q. How do you know it's the one you identified?

3 A. Because I signed my name on it, and I knew that
4 was him.

5 Q. So you know that's the same one because you signed
6 your name. Is there a date on that?

7 A. Yeah.

8 Q. What is the date on that?

9 A. 2/9/2010.

10 Q. You were able to identify the defendant and sign
11 your name, but had you ever seen him before February 4,
12 2010?

13 A. No, sir. Not when this incident happened to me,
14 no, I've never seen him before. That was the first time
15 I saw him in that club.

16 Q. And then at this time did you know his name?

17 A. His real name?

18 Q. Yes.

19 A. At this time, I didn't know the real name. I only
20 knew the nickname.

21 Q. What was the nickname you knew?

22 A. Blackout.

23 Q. Did you know his name at the club?

24 A. No, I didn't.

25 Q. Did you know his nickname at the club?

1 A. No. I didn't know him at all.

2 Q. Jarvia, I want to talk to you about something
3 else, and let me start with this: When you were in the
4 bathroom, you testified earlier that you -- well, did you
5 fight with the defendant?

6 A. Did I fight back?

7 Q. Yes.

8 A. I did.

9 Q. Okay. And I want to talk to you about another
10 time that you fought with somebody and actually led to
11 some -- did it lead to some charges?

12 A. Yes, it did.

13 Q. And what was just the general nature of that
14 situation? What was going on there?

15 A. It was three guys that tried to gang me, and the
16 guy had had a weapon and he dropped it and I picked it
17 up. They -- the three guys held me was -- one guy beat
18 me. I just came from church that night, and those were
19 my friends. Where the apartment was that I went to,
20 those were my friends, and they came over to invite me
21 over, and I waited a while then I went over there.

22 They were drinking in there and, you know, doing
23 drugs, and one of the guys, Darryl, had asked me if I
24 wanted a drink and I told him no --

25 MR. BUTLER: Judge, I'm sorry. May we

1 approach?

2 (Discussion held at sidebar.)

3 BY MR. FINCH:

4 Q. Jarvia, you can just continue telling us what --

5 A. We were in there and the guy asked me if I wanted
6 a drink and I told him I didn't want one, and we started
7 arguing and he punched me in my face.

8 I was sitting on the stool. He punched me in my
9 face off of the stool, and when I tried to get up, the
10 other three guys, they were holding me and this guy was
11 fighting me.

12 And he had a box cutter, trying to fight me with
13 the box cutter because I was fighting him back, and they
14 dropped it and I picked it up, and I just started
15 swinging so everybody could get off of me, and I stabbed
16 him.

17 Q. And you were convicted?

18 A. Yes, sir. Three guys --

19 Q. What were you convicted of?

20 A. I was convicted of assault and battery with intent
21 to kill.

22 Q. And did you do some time for that?

23 A. I did.

24 Q. And after this incident with Lovey Dovey with the
25 guy you only knew as Blackout, what was going through

1 your mind?

2 A. I'm going through this all over again. That's the
3 only thing that went through my mind. I don't know --
4 somebody would think who is going through this again. I
5 don't want to do it. I was just going to let it happen
6 and just didn't do anything about it, because I go
7 through it so much. That's all I could think about it,
8 my flashbacks.

9 Q. Did you think about doing anything other than
10 calling the police?

11 A. To him?

12 Q. Yes.

13 A. To this guy?

14 Q. Yes.

15 A. You want me to be honest?

16 Q. I want you to be honest, of course.

17 A. You sure? I did.

18 Q. What did you think about?

19 A. Same thing I did to him, because -- to defend my
20 life because it's not fair for them to have me and try to
21 hurt me, and I can't do anything about it, and I wanted
22 to do the same thing to him because I was so hurt.

23 Q. When you say the same thing, what do you mean?

24 A. I wanted to hurt him back for trying to hurt me
25 like the other guy had hurt me, and I tried to hurt him

1 back.

2 Q. But you didn't do that?

3 A. I didn't.

4 Q. What did you do instead?

5 A. I went to the cops for help.

6 MR. FINCH: No further questions at this
7 time.

8 MR. BUTLER: Judge, may we approach?

9 (Discussion held at sidebar.)

10 THE COURT: All right, folks. We are going
11 to go ahead and break for today, and I've got to finish
12 up this thing with this other trial right now.

13 We will resume tomorrow morning with
14 cross-examination at 9:30, so if you would, be in the
15 jury room by about 9:25. They will show you where to
16 report to, where you have been going.

17 Just go in that door, and they'll tell you
18 where to come in the morning. Don't begin deliberations
19 or discussions about the case. Obviously, when you get
20 home tonight, they're going to ask, did you get picked on
21 a jury?

22 You're going to say, yes, I did. The judge
23 said I'm really not supposed to talk about the case, and
24 the reason should be clear, but I'll just reemphasize,
25 what you make your decision on is what you hear in this

1 courtroom, not what other people think about what you
2 heard in this courtroom, not outside influences, not
3 anything else.

4 It's not fair to anybody for you to have
5 discussions about the case or anybody to try to influence
6 you, even subtly or otherwise, about the case, so just go
7 home and relax and we will see y'all in the morning at
8 9:30. Thank you.

9 (Jury recessed.)

10 THE COURT: Okay. We'll resume in the
11 morning before get Mr. Butler what he needs.

12 Ma'am, you're not allowed to talk to anybody
13 about the testimony tonight. You can't talk to the
14 lawyers; you can't talk to anybody about your testimony.
15 You can talk about other things, of course, but it's not
16 proper for you to discuss your testimony, okay? All
17 right. We'll see you in the morning.

18 (Jury recessed.)

19 (June 9, 2011.)

20 THE COURT: Ready?

21 MR. BUTLER: Yes, sir.

22 THE COURT: All right. Bring the witness
23 back up. All right. Bring the jury in.

24 Ma'am, I'll remind you you're still under
25 oath.

1 (In open court, jury present.)

2 THE COURT: Okay. Be seated.

3 All right. You can have the notepads if you
4 want.

5 Okay, folks. We are about to resume now
6 where we left off yesterday, and that is with
7 cross-examination of the witness. Mr. Butler?

8 MR. BUTLER: Thank you. If it please the
9 Court.

10 THE COURT: You may proceed.

11 CROSS-EXAMINATION.

12 BY MR. BUTLER:

13 Q. Ms. O'Neal, I want to talk to you first about club
14 Lovey Dovey in general and that night, okay? You
15 testified yesterday that you arrived at the club at 1:46
16 in the morning, right?

17 A. 1:45.

18 Q. 1:45 is when you arrived, and you were there for
19 crabs only.

20 A. Uh-huh.

21 Q. You said that, I think, three, four, five times,
22 right?

23 A. Uh-huh.

24 Q. Weren't there to drink, you said that as well?

25 A. Uh-huh.

1 Q. Only for the crabs?

2 A. Uh-huh.

3 Q. You dressed for the crabs?

4 A. Uh-huh.

5 Q. You weren't necessarily done up to go out on the
6 town. You were there for the crabs.

7 A. Yes, sir.

8 Q. But you knew that the place closed at 2:00, right?

9 A. Yes, sir.

10 Q. 15 minutes after you said you arrived?

11 A. Yes, sir.

12 Q. Okay. And you also testified that Aaron, who is
13 the owner of club Lovey Dovey --

14 A. Yes, sir.

15 Q. -- while you were there at one point left to go
16 check on the crabs that were cooking?

17 A. Yes, sir.

18 Q. So even though the place was going to close in 15
19 minutes, he was still cooking crabs?

20 A. Yes, sir, the last batch.

21 Q. You sure you hadn't been there a lot longer than
22 15 minutes?

23 A. No, sir.

24 Q. You also testified that you had never seen
25 Clarence Logan before that night.

1 A. Yes, sir.

2 Q. You are a regular patron of club Lovey Dovey?

3 A. Yes, sir.

4 Q. And Aaron is the owner?

5 A. Yes, sir.

6 Q. And you knew Aaron well?

7 A. Yes, sir.

8 Q. And club Lovey Dovey is an establishment where
9 everybody knows everybody?

10 A. Yes, sir.

11 Q. And from what you testified to yesterday, Aaron
12 knew Clarence well enough that he had his phone number,
13 right?

14 A. If I knew he had his phone number?

15 Q. Aaron gave you Clarence's phone number?

16 A. No. I didn't say --

17 Q. To help you identify who the person was that you
18 say attacked you.

19 A. No, no. Aaron didn't give me the phone number.

20 Q. So you never told police that, right?

21 A. That Aaron gave me his phone number? No.

22 Q. That Aaron gave you Clarence Logan's phone number.

23 A. No.

24 Q. He knew him well enough to give you a license
25 plate number?

1 A. And the car description, uh-huh.

2 Q. But you had never seen Clarence at club Lovey
3 Dovey or anywhere before that night?

4 A. Right.

5 Q. You also worked at club Lovey Dovey?

6 A. Yes.

7 Q. I think in a prior proceeding you said in an
8 unofficial capacity?

9 A. Repeat that?

10 Q. Unofficially, you didn't have -- you didn't fill
11 out a W-2. It wasn't like you got a paycheck.

12 A. No, sir.

13 Q. And you worked as an entertainment promotor for
14 club Lovey Dovey?

15 A. Yes, sir.

16 Q. And what would that entail?

17 A. That entail -- I helped Aaron with parties,
18 getting people to promote, cards and flyers and stuff for
19 him for his parties, different people have different
20 venues, things like that for parties and upcoming events,
21 different occasions that they had there. I helped him a
22 lot with that, because I knew pretty much a lot of
23 people.

24 Q. Okay. All right. Moving on to more about that
25 night, your testimony, as I understand it, is you were

1 there with Virgil?

2 A. Yes.

3 Q. And who is Virgil?

4 A. Yes.

5 Q. And who is Virgil?

6 A. My friend.

7 Q. Andrea?

8 A. Yes, sir.

9 Q. And she's your friend?

10 A. Yes.

11 Q. And Aaron, the owner?

12 A. Yes, sir.

13 Q. And your testimony yesterday was that you were
14 with Virgil and Aaron at the bar the entire time; is that
15 right?

16 A. No. My testimony wasn't that I wasn't with Virgil
17 and Aaron at the bar the entire time. That wasn't my
18 testimony. My testimony was I was with Virgil and Aaron
19 by the door the entire time, by the entrance.

20 Q. My mistake, and that Clarence was there and he was
21 very drunk.

22 A. Yes. He was wasted.

23 Q. He was obnoxious?

24 A. Yes.

25 Q. And persistent?

1 A. Yes, sir.

2 Q. And obviously so?

3 A. Yes, sir.

4 Q. To anybody at all who was paying attention?

5 A. Yes, sir.

6 Q. So much so that you, and tell me if these are your
7 words, cursed him out a lot?

8 A. I did, yes, sir.

9 Q. That was your testimony yesterday.

10 A. Yes, sir.

11 Q. So we can assume that Virgil saw all of this.

12 A. Virgil was standing there.

13 Q. And Aaron saw all of this?

14 A. Uh-huh.

15 Q. And neither one of them intervened in any way?

16 A. No.

17 Q. Neither one said, Hey, man, you know, just leave
18 her alone. She's just here for the crabs?

19 A. I'm not sure -- I'm not sure what their
20 conversation was.

21 Q. Okay. Aaron never said, Hey, you're in my club.
22 This is my place of business. You need to behave?

23 A. Once again, I'm not sure what their conversation
24 was.

25 Q. I want to talk to you now a little bit about what

1 happened in the bathroom.

2 A. Yes, sir.

3 Q. Your testimony yesterday was that you didn't see
4 Clarence until you had already made your way into the
5 bathroom.

6 A. Yes, sir.

7 Q. And I assume, based upon the way that you've
8 described his behavior, had you known he was following
9 you, you wouldn't have gone to the bathroom, right?

10 A. Right. If I had known he was following me, I
11 wouldn't have gone to the bathroom, yes, sir.

12 Q. Okay. And your testimony is that once in the
13 bathroom, he's choking you with his left hand.

14 A. He forced his self in the rest room, yes.

15 Q. Lifted you up off of your feet.

16 A. Yes, sir.

17 Q. With his left hand.

18 A. Yes, sir, with his hand, yes, sir.

19 Q. And while holding you up with one hand, he is able
20 to remove his pants with the other.

21 A. Unbutton his pants, yes, sir.

22 Q. And then tries to take your pants off --

23 A. Yes, sir.

24 Q. -- as well.

25 A. Yes, sir.

1 Q. But you were able to unlock the door with your
2 left hand.

3 A. I was unable to unlock the door when he twisted me
4 around, like this. I was unable to unlock the door, but
5 still yet I couldn't get out, but I unlocked the door.
6 When I kicked him between his legs, he buckled and I fell
7 and that is when he got up first.

8 Q. Okay. I was going to get to that. So you were
9 able to unlock the door, but you couldn't open the door?

10 A. Right, because he -- like, yeah, he was squeezing
11 me to death.

12 Q. Okay. While that warms up, let me ask you a few
13 more questions. You kicked him in the groin, right?

14 A. I did.

15 Q. And that put him to the floor.

16 A. He buckled, uh-huh.

17 Q. Did he go all the way to the floor?

18 A. No, he did not.

19 Q. Okay. All right. And that's what allows you to
20 get away?

21 A. Well, when I did that, he buckled. I fell to the
22 ground, and he got out before me. I was still in the
23 bathroom.

24 Q. So even though you had kicked him and dropped him,
25 he was able to leave the bathroom first.

1 A. I kicked him, he buckled, and he dropped me. I
2 dropped. He still had me like this, right here, in the
3 air. And I couldn't breathe, trying to catch my breath,
4 of course I couldn't breathe, so when he dropped me down,
5 as soon as I kicked him, he buckled. He released me, and
6 he got out of the bathroom first.

7 Q. Well, except from what you testified yesterday,
8 for some reason before he leaves he goes through your
9 purse.

10 A. Yeah, yeah.

11 Q. So he goes through your purse, gets your driver's
12 license and the \$20, yet he still leaves the bathroom
13 before you.

14 A. Yeah.

15 Q. And you saw him doing this?

16 A. I did. I was in the rest room with him.

17 Q. As soon as you were free, you didn't just exit the
18 bathroom as soon as you possibly could because --

19 A. He exited bathroom --

20 Q. No, you did not.

21 A. Well, I had to catch my breath, because imagine
22 someone choking you, like choking you, like this. You
23 can't breathe. I had to fall to my knees to catch -- to
24 actually catch my breath.

25 Q. Okay. And that is when you saw him going through

1 your purse?

2 A. No. I saw him going through my purse when -- he
3 switched me around like this and dug inside my purse.
4 That's when I saw him do that.

5 Q. So he still had you with one hand while he was --

6 A. Digging in my purse.

7 Q. Opening the purse and then going through it?

8 A. It was already open. My purse was already open.

9 Q. And you also noticed that before you leave and
10 before he leaves, you see him adjusting his clothes.

11 A. If I said I saw him adjusting his clothes? No, I
12 didn't see what he did because he left. Like I said, he
13 was already out the bathroom before me. I only can tell
14 you where I was because I was there in the bathroom by
15 myself, and I was trying to catch my breath on the floor.
16 So I had to catch my breath and I adjusted my own
17 clothes.

18 What he did after he escaped out the bathroom
19 before me, I don't know. I didn't see any of that. I
20 didn't see him after that.

21 Q. I misunderstood. I thought you said yesterday he
22 was adjusting his clothes.

23 A. No. I told you he loosened his pants. I don't
24 think I ever told you he adjusted his clothes.

25 Q. I understand. So after he exits the bathroom and

1 you leave, as you describe, you've been choked, right?

2 A. Yes, I was choked.

3 Q. Lifted off your feet by your neck.

4 A. Yes, sir.

5 Q. Right? And referring to State's 14, would you
6 turn around for me, please. And I take it then when you
7 say he picked you up by your neck, you're in this area
8 here?

9 A. Yes.

10 Q. Okay. And it's also in this area that you're able
11 to reach over here and unlock the door or you moved at
12 that point?

13 A. Repeat the question, please.

14 Q. When he's holding you up off your feet, is it in
15 this area here?

16 A. Yes, he was on that side.

17 Q. He's on this side and you're on that side, and the
18 toilet is in between you?

19 A. My purse was there open, my little purse was there
20 open.

21 Q. And the door is over here.

22 A. Yeah, the door -- yeah.

23 Q. Would be here?

24 A. Yeah.

25 Q. You can turn back around, ma'am. And so when you

1 leave, you've also been struck repeatedly in the face.

2 A. Yes.

3 Q. And --

4 A. No, I got struck repeatedly in my face in the rest
5 room.

6 Q. Yes, ma'am. When you left, this is all where it
7 happened. You've been struck in the face repeatedly?

8 A. Uh-huh.

9 Q. By a man who is much larger than yourself.

10 A. Uh-huh.

11 Q. Your testimony is that your forehead was swollen,
12 and you were pleading?

13 A. Uh-huh, and the ring had bust my nose open there.

14 Q. And Virgil is your friend, right?

15 A. Yeah.

16 Q. And Andrea is your friend?

17 A. Uh-huh.

18 Q. And Aaron is your friend?

19 A. Uh-huh.

20 Q. And they don't insist on calling 911?

21 A. Well, at the end, they tried, but I was so scared
22 because the guy had got my driver's license, I just
23 wanted to leave, and I was so embarrassed. I wanted to
24 leave, and that is what I did. I left. Aaron did
25 comfort me. I didn't want to hear anything he had to

1 say, Virgil or Andrea. I just wanted to get out of
2 there, but my friends were there for me.

3 Q. They didn't insist on taking you to the emergency
4 room?

5 A. They did, but I didn't listen to them.

6 Q. Okay.

7 A. Like I said, I was scared because the guy had
8 taken (sic) my ID.

9 Q. All right. And I did want to ask you about that.
10 Because he had taken your ID, that didn't mean he would
11 be at the emergency room, would it?

12 A. No, but he could go to where I live.

13 Q. Why wouldn't that be all the more reason to call
14 the police if you were afraid he would be where you live?

15 A. Because I felt like if he had my ID, that means if
16 I had called the police, he could have come and tried to
17 hurt me at my house. So I was kind of scared to call the
18 police because he already had my ID, and I wouldn't want
19 to come and tell the police that this guy had my ID and
20 he come to my house and kill me or my mom or anybody
21 else.

22 Q. But won't telling the police get them to arrest
23 him and also have them protect you?

24 A. Well, right now, not in this generation now. If
25 someone has your ID and you try to go to the police, they

1 will kill you. And I didn't know what this guy would
2 have done to me after what he done to me in this
3 bathroom.

4 Q. Yes, ma'am. Well, in the subsequent days when you
5 think you saw the car, or you say you saw his car, you
6 called the police immediately then.

7 A. Right.

8 Q. You called 911 right then, right?

9 A. Right.

10 Q. Okay. And based on your testimony yesterday, you
11 even chase after who you say is him, right?

12 A. Right.

13 Q. Barefoot?

14 A. Right.

15 Q. Down the street?

16 A. Right.

17 Q. Not running away from him, running after --

18 A. The car, trying to get the license plate and to
19 calling the cops because I was on the phone.

20 Q. Wait a minute now. This would have been -- trying
21 to get the license plate on the 6th, right?

22 A. I had to make sure it was him. The car was right
23 and also the license plate. Before I called the cops for
24 false information, I had to be truthful.

25 Q. Aaron had already given you the license place the

1 day before?

2 A. Right.

3 Q. So you wouldn't have needed to chase the car to
4 get the license plate.

5 A. You can't go by hearsay. I needed to see the
6 license plates for myself.

7 Q. All right. And when you went to the emergency
8 room, later the next night, they didn't admit you into
9 the hospital, right?

10 A. No, sir.

11 Q. They didn't give you any stitches.

12 A. No, sir.

13 Q. They didn't do any X-rays, CT scans, or MRIs or
14 anything like that?

15 A. No, sir.

16 Q. They didn't refer you to a doctor for a follow-up
17 visit.

18 A. No, sir.

19 Q. They put a bandage on your nose?

20 A. Uh-huh.

21 Q. And gave you some Tylenol.

22 A. Uh-huh.

23 Q. They didn't have to treat any part of your neck
24 from where you had been held up.

25 A. No, sir.

1 Q. Okay. While at the emergency room, you talked to
2 an officer with North Charleston police department,
3 Officer Gray. Do you remember speaking with him?

4 A. Yes, sir.

5 Q. Okay. And is your testimony yesterday and today
6 was you were at the club with friends, right?

7 A. Yes, sir.

8 Q. Do you recall telling Officer Gray -- and you know
9 he's there to help you, right?

10 A. Yeah.

11 Q. And at that point, now that you've reported it,
12 you want to be honest with him?

13 A. Of course.

14 Q. And as you said, failing to be honest, even when
15 you're a victim, can result in you being charged with
16 false information?

17 A. Of course.

18 Q. So you wanted to tell him everything that he would
19 need to know to help solve this crime. Right?

20 A. Of course.

21 Q. And help find this person that, from what you're
22 saying, knew where you lived and would be looking for
23 you, right?

24 A. Of course.

25 Q. And so, of course, telling him about other

1 witnesses would have been critical. You would have
2 needed to tell him, right, about other people, other
3 witnesses, who saw either what happened before or what
4 happened after, right?

5 A. Uh-huh.

6 Q. Okay. But what you told him was you were at the
7 club by yourself, right?

8 A. Huh-uh.

9 Q. Okay.

10 A. At the club by myself?

11 Q. You didn't tell officer Alex Edward Gray with the
12 North Charleston police department when he met with you
13 at the hospital at 10:22 that you were at the club by
14 yourself?

15 A. He must have meant, like, in the bathroom or where
16 I was standing by myself, but I don't think I told him I
17 was absolutely there alone by myself.

18 Q. Okay. And your testimony is that you cursed
19 Clarence, cursed him out, more than once, because of how
20 obnoxious he was being, right?

21 A. Yes.

22 Q. Do you recall telling Officer Gray that you
23 politely told him that you were not -- you did not want
24 to talk to him and you walked away?

25 A. The first time.

1 Q. Okay. Well, and then, February 9th, five days
2 later, you go to the North Charleston police department,
3 right?

4 A. Uh-huh.

5 Q. Headquarters right?

6 A. Uh-huh.

7 Q. And you give a written statement?

8 A. Uh-huh.

9 Q. All right. And now you've had five days to recall
10 everything that happened, right?

11 A. Uh-huh.

12 Q. Make sure that you tell the police everything that
13 they need to know?

14 A. Uh-huh.

15 Q. Right?

16 A. Yes, sir.

17 Q. And they had you write it all out.

18 A. Yes, sir.

19 Q. And you wrote it out in your handwriting.

20 A. Yes, sir.

21 MR. BUTLER: Beg the Court's indulgence.

22 Have this marked just for ID, please. May I approach the
23 witness?

24 THE COURT: You may.
25

1 (Statement marked for identification as
2 Defendant's Exhibit No. 1.)

3 BY MR. BUTLER:

4 Q. I show you Defendant's 1 just for identification.
5 Let me ask you if you recognize that as the statement
6 that you gave to the police on the 9th. Do you recognize
7 that?

8 A. Uh-huh.

9 Q. Because your signature is here, right?

10 A. Uh-huh.

11 Q. They allowed you to write it out in your own
12 handwriting, right?

13 A. Uh-huh.

14 Q. They had you read over it.

15 A. Uh-huh.

16 Q. Told you if you needed to make any changes to do
17 so.

18 A. Uh-huh.

19 Q. And actually you did right there. You didn't
20 agree with that answer, so you crossed it out, initialed
21 it, right?

22 A. Uh-huh.

23 Q. They told you if you needed to add anything you
24 left out you could do that, right?

25 A. Uh-huh.

1 Q. And then they had you sign it, saying this
2 statement is true and correct to the best of my
3 knowledge, and you did that, twice?

4 A. Uh-huh.

5 Q. And just as you told Officer Gray, you said in
6 response to what you told Clarence, I gave him the same
7 answer the whole night. No, thank you, I'm good. Right?

8 A. Uh-huh.

9 Q. So, of course, if you would be so put off by his
10 drunkenness and his obnoxiousness, you would cuss him
11 out, right?

12 A. Yes, sir.

13 Q. But you didn't tell the police that you cussed him
14 out.

15 A. I didn't want the police to know that I cursed the
16 guy out, just being mean, so I just told them I told him
17 leave me alone, get away from me.

18 Q. So you told them something that wasn't true.

19 A. I told them the truth, that I told him to go away,
20 leave me alone, I used it in a proper form instead of
21 saying I cussed you out.

22 Q. No, thank you, I'm good?

23 A. Yes. No, thank you. I'm good.

24 Q. You also told him, unlike your testimony today,
25 that you had only been there for 15 minutes. Later, a

1 couple of hours passed. It was 1:46 when I got to use
2 bathroom, right?

3 A. Uh-huh.

4 Q. That's what you told him.

5 A. Uh-huh.

6 Q. So instead of saying you had only been there 15
7 minutes, or arrived at 1:45, you're saying that by the
8 time you go to the bathroom at 1:45, a couple hours had
9 passed.

10 A. It was 1:45.

11 Q. So you had been there, according to what you told
12 police --

13 A. No, I wasn't there more than 1:45.

14 Q. Okay.

15 A. We wasn't there that long.

16 Q. Make sure I'm reading this right. And this is
17 your handwriting?

18 A. Yeah.

19 Q. I gave him the same answer the whole night: No,
20 thank you. I'm good. Right?

21 A. Yeah.

22 Q. So you would have said that first.

23 A. Uh-huh.

24 Q. Later, a couple of hours pass. It was 1:46 when I
25 got up to use the bathroom because I was on my way home

1 after that.

2 That's what that says?

3 A. Uh-huh.

4 Q. And you wrote that.

5 A. Uh-huh.

6 Q. And you said that was the truth.

7 A. Uh-huh.

8 Q. You never changed it, okay?

9 A. Uh-huh.

10 Q. So does that not say you had been there a couple
11 of hours before 1:46?

12 A. I actually wasn't there before 1:46.

13 Q. I understand that is what your testimony is, but
14 that is what the statement says?

15 A. I must have misunderstood that is what it says. I
16 wasn't there a couple hours. I know I got there at 1:46
17 when I went in that bathroom. I wasn't in there that
18 long before the club was going to be over.

19 Q. So it wouldn't be -- instead of arriving --

20 A. At 1:46, let's say 1:40, maybe, but I know we came
21 in the club -- it was after 1:30 that we came there
22 because the club closed at 2:00.

23 Q. So it wouldn't be that instead of arriving --

24 A. I said we arrived at 1:46. I would say 1:40. I
25 apologize I put 1:46.

1 Q. So it wouldn't be that instead of arriving 15, 20,
2 or 30 minutes before a place closes after 1:00, 1:30 in
3 the morning, it wouldn't be that you actually showed up
4 hours earlier to participate in the evening. It wouldn't
5 be that, right?

6 A. I didn't want to go out earlier because I just
7 wanted the crabs.

8 Q. I got it, just the crabs.

9 A. Yeah.

10 Q. And back to your testimony today and yesterday,
11 you didn't see Clarence until he was already forcing
12 himself, as you say, in the bathroom, right?

13 A. Uh-huh.

14 Q. Tell me if I'm reading this correctly, again, in
15 Defendant's 1, what you told the police: As I walked on
16 the other side of the club down the dark hallway to get
17 to the rest room, this guy was right behind me.

18 A. Uh-huh.

19 Q. So what you told police was that he was behind you
20 going down the hallway.

21 A. No. He was behind me when I got in the bathroom
22 and I saw him. When I got in the bathroom, I saw the guy
23 was right behind me, as soon as I stepped up on the step
24 to get in the rest room.

25 Q. Because, of course, if you had seen him, given the

1 way he had been acting, obnoxious and drunk and
2 persistent, if you had seen him following you down the
3 hallway, you wouldn't have gone to the bathroom?

4 A. Right.

5 Q. Of course. But what you told police was that you
6 did see him, following you down the hallway. Make sure
7 I'm reading this correctly. Please correct me.

8 A. As I walked to the other side of the club down the
9 dark hallway to get into the rest room, this guy was
10 right behind me. Like I said in there, as I got into the
11 rest room, the guy was behind me, as I got into the rest
12 room.

13 Q. The first part of it, as I walked on the other
14 side of the club, down the dark hallway to get to the
15 rest room, this guy was right behind me?

16 A. To get to the rest room, which I was already to
17 the rest room, already to the rest room, the guy was
18 right behind me.

19 Q. And just as when you talked to Officer Gray at the
20 emergency room on the 5th, certainly now on the 9th,
21 after you've had some time to reflect and think about
22 what happened, you would want to tell North Charleston
23 police department the witnesses that they would need to
24 speak to. Right?

25 A. Uh-huh.

1 Q. Most importantly, Virgil, right?

2 A. Uh-huh.

3 Q. Andrea?

4 A. Uh-huh.

5 Q. And Aaron, right?

6 A. Uh-huh.

7 Q. Take as much time as you need to look over
8 Defendant's 1; your written statement. Tell me if there
9 is anything mentioned of Virgil, Andrea, or Aaron in that
10 statement.

11 A. As witnesses to what -- what happened in the rest
12 room?

13 Q. Being with you at all.

14 A. I didn't have to put on there -- I had to tell him
15 that they were there -- in the club with me, but they
16 were not in the bathroom with me, so I couldn't tell them
17 where Andrea or Virgil or anybody was in the bathroom
18 with me to witness that because they didn't see him in
19 the bathroom with me.

20 Q. I understand. But you don't mention them at all
21 in that statement?

22 A. I didn't because the officer asked me what
23 happened to me in the bathroom. They weren't there with
24 me in the rest room.

25 Q. Well, you talk about when you arrived and that you

1 were going to leave, but in any case, there is no mention
2 anywhere about Andrea, Virgil, or Aaron?

3 A. They wasn't in the bathroom with me. They were
4 only in the club with me when they came there. They
5 didn't come in the bathroom, so they couldn't have
6 witnessed what happened in the bathroom.

7 Q. And there is no mention of Clarence being drunk
8 anywhere in that statement, is there?

9 A. No, sir.

10 Q. Okay. I want to talk about the license tag on the
11 car. Your testimony is Aaron gave you that tag number?

12 A. And a description of the car, uh-huh.

13 Q. And a description of the car, on the 5th.

14 A. Uh-huh.

15 Q. You never tell police that, that Aaron gave it to
16 you.

17 A. They asked me how I knew what kind of car he
18 drove. I didn't know him, and I did tell them that Aaron
19 told me.

20 Q. The tag number. For example, in the statement
21 that you just went over, there is nothing in there about
22 Aaron giving you the license tag number.

23 A. On this?

24 Q. Yes, ma'am.

25 A. No. There is no statement on there that says

1 Aaron gave me the license tag number, because this was
2 primarily consistent on what had happened to me in the
3 hospital and what went on in the rest room. That is what
4 this report consists of, me explaining what happened.

5 Q. I understand, but after Aaron gives you the
6 license plate number, you call the police to say you
7 think you've seen his car, and here is the tag number,
8 right?

9 A. No, I didn't say that the next day. I didn't call
10 the police the same exact day Aaron gave me the license
11 plate and tag number. That was the next day I saw the
12 car.

13 Q. At the bus station, that's on the 5th?

14 A. Yes.

15 Q. You just testified Aaron gave you the tag number
16 on the 5th.

17 A. I don't remember what day he gave me the tag
18 number, but of course I didn't call the cops the same day
19 Aaron gave me the tag number and the car. I didn't see
20 the car.

21 Q. Why -- of course. Why didn't you say --

22 A. I called the cops after I seen the car. Then I
23 called -- when I saw it by the Greyhound bus station and
24 Aaron had already given me the information about the
25 license plate tag number and also the description of the

1 car.

2 Q. You were still trying to figure out who this
3 person was?

4 A. I was.

5 Q. Okay. And so when Aaron gives you the tag number,
6 that is so you can give it to police so that they can
7 track down the person that owns the car, right?

8 A. Uh-huh.

9 Q. But you never told police that Aaron gave you that
10 tag number, right? You told them, I saw the car. Here
11 is the tag number.

12 A. Yeah, and they asked me how did I know it was the
13 car and who the person -- you know --

14 Q. I understand that. You told them Aaron gave you
15 the description, but bottom line is, you didn't want to
16 tell them that Aaron gave you that tag number, because
17 Aaron didn't want people to know that. Right?

18 A. If that's what you --

19 Q. So you then had to say you saw the car at the bus
20 station?

21 A. No.

22 Q. And that is how you know what the tag number is?

23 A. No. I saw the car at the bus station, and Aaron
24 had already gave me the description of the car and the
25 tag number, and I know what I saw. When I saw the car

1 there, that is when I called the police and told them I
2 saw the car, who gave me the description of the car. The
3 owner is the person that done that to me.

4 Q. Even though you had never seen the car before,
5 right?

6 A. Aaron told me what kind of car it was.

7 Q. You saw a blue Thunderbird and you said that must
8 be the car Aaron told me about?

9 A. It matched the tag that Aaron gave me. The next
10 day, not the same day.

11 Q. So you're also not saying that when you called the
12 police when you say Clarence drove past your house, you
13 were calling him to give them the tag number?

14 A. I was calling them to tell them he was driving
15 past my house.

16 Q. You already had the tag number, so there would be
17 no reason to give it to them?

18 A. The police?

19 Q. Yeah.

20 A. Yeah, why not? They could find out his right name
21 and they said the car was registered to someone else.

22 MR. BUTLER: Beg the Court's indulgence.

23 BY MR. BUTLER:

24 Q. In 2003 you were convicted of assault and battery
25 with intent to kill, correct?

1 A. Yes, sir.

2 Q. And that was for slicing somebody's neck from
3 behind with a box cutter.

4 A. Yes, sir.

5 Q. I understand that your -- from your testimony
6 yesterday, that you were just coming home from church?

7 A. Uh-huh.

8 Q. Right. And minding your own business, right?

9 A. Uh-huh.

10 Q. And there was some guys who were drinking and
11 doing drugs, right?

12 A. Uh-huh.

13 Q. And they offered you a drink --

14 A. They came over to get me. You left that part out.
15 They came to my house to knock on my door to get me.

16 Q. And they offered you a drink?

17 A. And I went over to their house, yeah.

18 Q. And they offered you a drink?

19 A. Yeah.

20 Q. And you politely declined?

21 A. I was like, I'm good. I just got out of church.
22 I don't want to drink.

23 Q. All right. Get this marked, Defendant's 2 for ID.

24 (Statement marked for identification as
25 Defendant's Exhibit No. 2.)

1 MR. BUTLER: May I approach the witness?

2 THE COURT: You may.

3 BY MR. BUTLER:

4 Q. Showing you Defendant's 2 for identification, and
5 I ask if you recognize that, your statement to Charleston
6 County sheriff's department, September 22, 2002 in
7 regards to the incident with the box cutter. Do you
8 recognize that statement?

9 A. (Nods head.)

10 Q. And just as with this, you wanted to tell them
11 everything you knew. You wanted to be truthful, right?
12 Do you recall writing, We started talking. They was all
13 smoking weed and drinking beer, so I came over to ask for
14 a beer.

15 A. Uh-huh.

16 Q. Okay.

17 A. Later, uh-huh.

18 Q. It wasn't that they offered you a beer and you
19 politely declined, you went over there asking for a beer?

20 A. Yeah, but I didn't know how they were until I got
21 in there.

22 Q. Okay. I thought you just said because you came
23 from church you wouldn't be interested in a beer.

24 A. Yeah. I came from church, and I wasn't interested
25 in a beer, but when I got over there and saw how they all

1 were acting, I really didn't want a beer then.

2 Q. But you asked them for one?

3 A. Yeah.

4 Q. But they wouldn't give you one?

5 A. No. It wasn't the fact that they wouldn't give me
6 one. Darryl got smart and was saying some things.

7 Q. Referring to Defendant's 2 again. I came over to
8 ask for a beer later. I asked Darryl, and he was, like,
9 he wasn't giving it to me.

10 A. Right.

11 Q. Okay. Then you hit him.

12 A. He hit me first.

13 Q. Okay.

14 A. Punched me off the chair.

15 Q. And you cut him from behind, a four inch slash to
16 his neck with a box cutter.

17 A. Well, he had the box cutter.

18 Q. I understand. Your testimony is that you were
19 able to disarm Darryl?

20 A. No. I didn't say I was able to disarm him. There
21 was three guys holding me. Darryl had the box cutter at
22 me. He dropped the box cutter, and I picked the box
23 cutter up.

24 Q. And the only person that was charged was you.

25 A. Right. After three guys had jumped me and Darryl

1 had punched me and beat me up, I was the only one that
2 was charged.

3 Q. And --

4 A. And Darryl didn't press any charges. He came to
5 my house the next day -- days after that to apologize to
6 me.

7 Q. He testified against you in a jury trial.

8 A. After the state picked it up.

9 Q. And 12 people convicted of you assault and battery
10 with intent to kill.

11 A. Uh-huh.

12 Q. Did not believe you were defending yourself,
13 right?

14 A. So they said.

15 Q. Okay. The judge gave you five years in prison,
16 right?

17 A. Right.

18 Q. And the Court of Appeals affirmed your conviction.

19 A. Right.

20 Q. All because of Play Station and a beer, right?

21 A. A Play Station?

22 Q. They were playing Play Station, video games.

23 A. Oh, okay.

24 Q. And what I understand is that somehow that
25 incident is what prevented you from calling the police

1 this time; is that right?

2 A. Darryl -- have I called the police this time for
3 him?

4 Q. No. The reason you didn't call the police right
5 away is because of that incident.

6 A. For Darryl?

7 Q. Yes.

8 A. They called the cops.

9 Q. Okay.

10 A. And I left home. I left.

11 MR. BUTLER: Beg the Court's indulgence.

12 BY MR. BUTLER:

13 Q. Ms. O'Neal, yesterday you testified that the car
14 you saw was Tarheel blue, and that was the color?

15 A. Uh-huh.

16 Q. Do you recall testifying outside of the presence
17 of the jury the word Tarheel somehow somewhere appeared
18 on the car?

19 A. I think so. I know the car was the Tarheel
20 colors, powder blue.

21 Q. But you also testified in a pretrial hearing that
22 the word Tarheel somehow appeared on the car and that is
23 how you recognized it?

24 A. And it was a powder blue Thunderbird.

25 MR. BUTLER: That's all I have.

1 THE COURT: Redirect?

2 MR. FINCH: Briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. FINCH:

5 Q. Ms. O'Neal, Mr. Butler asked you about that prior
6 ABWIK charge.

7 A. Uh-huh.

8 Q. And he showed you an exhibit labelled Defense
9 Exhibit 2 and asked you about calling the police. Would
10 you take a look at the end of that document. Tell me if
11 that refreshes your memory as to who called the police
12 that night.

13 A. (Reading.) I tried to get him off of me --

14 MR. BUTLER: I'm sorry. She can't read the
15 statement.

16 THE COURT: You got to read that to yourself.

17 THE WITNESS: Okay. No problem. Okay.

18 BY MR. FINCH:

19 Q. In your statement there, you said you called the
20 police?

21 A. Yeah, and they did too, but he asked me if they
22 called the police. Yeah, I called the police.

23 Q. And you testified earlier that you're the only one
24 charged?

25 A. Uh-huh, yes, sir.

1 Q. And that the victim, Darrell, dropped the charges?

2 A. Yes, sir.

3 Q. And how much time did you spend in prison on that?

4 A. A year, two years. I can't remember. I think it
5 was a year -- maybe two years, a year to two years. I
6 can't remember.

7 Q. And Mr. Butler asked you if you were sentenced to
8 five years. Do you recall whether that sentence was
9 actually five years suspended to two years?

10 A. Yes, sir.

11 Q. Okay.

12 MR. FINCH: At this time, the state would
13 move for admission of State's Exhibit No. 2.

14 MR. BUTLER: May we approach?

15 MR. FINCH: Nothing further, Your Honor.

16 THE COURT: Okay. Let's take a ten-minute
17 break before we start up with the next witness. Don't
18 begin deliberations or discussions about the case, and
19 we'll give you ten minutes to use the rest room and we'll
20 come on back and finish up before lunch. We'll finish up
21 whatever we finish up by lunch.

22 (Recess taken.)

23 (In open court, jury present.)

24 THE COURT: Okay. Be seated. All right. We
25 will resume with the state calling their next witness.

1 MR. FINCH: State calls Andrea Bell.

2 ANDREA BELL,

3 having been first duly sworn,

4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 THE WITNESS: My name is Andrea Nicole Bell.

7 My last name is spelled B-e-l-l.

8 BY MR. FINCH:

9 Q. Good morning, Ms. Bell.

10 A. Good morning.

11 Q. If you would, tell the Court where you're
12 employed.

13 A. At Harborview Inn.

14 Q. And what do you do at Harborview Inn?

15 A. I'm a housekeeper.

16 Q. And how old are you?

17 A. Twenty-five.

18 Q. Do you have any kids?

19 A. My son is eight.

20 Q. I want to talk to you about an incident that took
21 place on February 4, 2010 at the Lovey Dovey. Do you
22 know what I'm talking about?

23 A. Yes, sir.

24 Q. Were you at the Lovey Dovey that night?

25 A. Yes, sir.

1 Q. And how did you get there?

2 A. I rode with Jarvia and Virgil.

3 Q. Where did you ride to?

4 A. Jarvia's house in Goose Creek, where she was
5 staying at at the time in Goose Creek.

6 Q. Where she was staying in Goose Creek?

7 A. Yes, sir.

8 Q. Okay. And what were you going to club Lovey Dovey
9 for?

10 A. Just to have a good time, to have drinks, and I
11 think it was crab night. I'm not too sure.

12 Q. And Virgil was driving?

13 A. Yes, sir.

14 Q. Do you remember what time you got to the club?

15 A. It was kind of early. I really can't recall
16 exactly what time it was.

17 Q. And do you remember what time you left the club?

18 A. We wasn't in there a good 30 minutes, 30, 45
19 minutes at the most.

20 Q. Okay. When you got in the club, describe the
21 atmosphere in there.

22 A. It was, like -- it wasn't that much people in
23 there. So -- it was, like, closing or whatever.

24 Q. It was about closing time?

25 A. No. It was still kind of early, still early in

1 the afternoon or something.

2 Q. Okay.

3 A. Not too early, but it was already dark.

4 Q. It was dark?

5 A. Yeah.

6 Q. Okay. When you got in there, what did you do?

7 A. When we got in, as soon as we got in, we were
8 standing outside talking to Aaron for a good three, five
9 minutes at the most. When we got in, me and Jarvia were
10 in conversation. She gave me \$20 to get some drinks. Me
11 and Jarvia were standing there having another
12 conversation, and I went to the bar.

13 Q. Where was Jarvia when you went to the bar?

14 A. I went to the bar, and Jarvia was going to the
15 bathroom.

16 Q. She was going to the bathroom?

17 A. Uh-huh.

18 Q. What happened after that?

19 A. I don't recall. All I know is after Jarvia went
20 to the bathroom, I was still standing by the bar, and I
21 saw a young dude, came out pulling up his pants with a
22 white T-shirt on. When he was coming out, that is when I
23 found out it was Jarvia in bathroom. I remembered Jarvia
24 was in the bathroom, and somebody at the bar said, Is
25 something going on in the bathroom? And that is when I

1 walked in bathroom.

2 Q. What did you see when you walked in the bathroom?

3 A. All I see was she was upset, and her face was
4 swollen. Like, I think it was her eye and her lip that
5 were swollen.

6 Q. Her eye and her lip were swollen?

7 A. Uh-huh.

8 Q. Was she bleeding, did you see?

9 A. I don't remember that part.

10 Q. And the person you saw come out of the bathroom
11 that evening, do you see him in the courtroom today?

12 A. To be honest with you, I can't really recall. I
13 remember him having on a white shirt and dark colored
14 jeans.

15 Q. And what was he doing when he came out?

16 A. He was, like, pulling up his pants, finger in his
17 pocket or something. I guess he was looking for
18 something. I don't know.

19 Q. Did you hear him say anything?

20 A. No. I was still by the bar.

21 Q. After you went into the bathroom, did Jarvia --
22 did she say anything to you?

23 A. She just said she just didn't want to talk about
24 it. She was ready to go. She was hysterical.

25 Q. When you say hysterical, could you describe that?

1 A. She was, like, upset, if anything.

2 Q. Like crying?

3 A. Emotional, yes, sir.

4 Q. And what did you do after that?

5 A. We just -- I told her it would be all right and
6 come on, let's go. We went to find Virgil. Virgil was
7 already by the door, so we just ended up leaving.

8 Q. You and Jarvia and Virgil left?

9 A. Yes, sir.

10 Q. And, again, was Virgil driving or who was driving?

11 A. Virgil was driving.

12 Q. Where did you go?

13 A. Back to Jarvia's place in Goose Creek.

14 Q. And what was -- was Jarvia saying anything in the
15 car?

16 A. Not really. I could understand her position at
17 the time. She was upset, so I know it was a hard thing
18 for her to talk about.

19 Q. Do you know why she was upset?

20 A. I didn't even need to know why, but her face, and
21 the way the person came out of the bathroom, it was in a
22 bad manner, so I would rather not talk about it. I could
23 understand she would have been upset because her face
24 was -- and that was enough said.

25 Q. Did you ask her if she needed to go to the

1 hospital?

2 A. To be honest with you, I can't remember.

3 Q. I'm sorry. I didn't hear that.

4 A. To be honest, I can't really exactly remember.

5 Q. Do you remember if you asked her to call the
6 police or --

7 A. Yeah, we did when we were still in the club.

8 Q. And what happened there?

9 A. She was just ready to go home. She didn't want to
10 talk about it. She was just ready to go home.

11 Q. Did she later tell you what happened in the
12 bathroom?

13 MR. BUTLER: Objection. May we approach?

14 (Discussion held at sidebar.)

15 BY MR. FINCH:

16 Q. Just a yes or no question here. Did she
17 eventually tell you what happened in the bathroom?

18 A. No.

19 Q. She did not?

20 A. No.

21 Q. Did you ever have any future discussions with her
22 about what happened in the bathroom?

23 A. No.

24 Q. Okay. But you saw her when she came out of the
25 bathroom?

1 A. Yes. I went in the bathroom to her.

2 Q. Were you with Jarvia for the rest of the night?

3 A. Yes, sir.

4 Q. You stayed at the house in Goose Creek?

5 A. Yes, sir.

6 Q. What was her demeanor then?

7 A. It was still, like, she didn't want to be
8 bothered. She just, like, shut down. I could understand
9 that she was upset and didn't want to talk about it, so
10 that was that.

11 Q. So you weren't able to get any information out of
12 her?

13 A. No. I just know that something happened in the
14 bathroom.

15 Q. Was anybody else attending to her or tending to
16 any injuries or anything?

17 A. It was me and Adisha.

18 Q. And who is Adisha?

19 A. It was her ex-girlfriend, or a girlfriend. I
20 don't know.

21 Q. Just briefly, you said you got to the club. It
22 was early but it was dark out.

23 A. Yeah.

24 Q. What would early mean to you?

25 A. Early would probably be, like, before it gets

1 packed, like probably before 10:30, 12:00, probably.

2 Q. Before 10:30, 12:00 before it gets packed, but you
3 know you stayed for 30 minutes or so?

4 A. Probably 30, 45 minutes. I didn't even get a
5 drink, so I know it wasn't that long.

6 Q. Okay. When you were at the club for 30, 45
7 minutes, you said you didn't get a drink. Did you see
8 Jarvia get a drink?

9 A. No, because I went to the bar to get me and her a
10 drink.

11 Q. And did you guys have any crabs?

12 A. No.

13 Q. Did you see anybody have having any crabs as far
14 as --

15 A. No. I didn't even make it that far to get to the
16 back where the crabs are located.

17 Q. Did you see anybody talking to Jarvia at the
18 front?

19 A. Yeah. When we first got in, me and her was
20 already talking to Aaron. And when we got back in, then
21 we was coming in, we stopped to talk to Aaron again, and
22 she had another conversation. And when she was having
23 that conversation, she was handing me the money to go to
24 the bar.

25 Q. So she stayed up at the front when you went to the

1 bar?

2 A. No. It's, like, she was holding a conversation,
3 that she was handing me money. Both of us was going our
4 separate ways.

5 Q. And you went to the bar and she went to the
6 bathroom.

7 A. Yes, sir.

8 MR. FINCH: Nothing further at this time,
9 Your Honor.

10 MR. BUTLER: No questions.

11 THE COURT: You don't have any questions?

12 MR. BUTLER: No.

13 THE COURT: You can step down. Next witness?

14 MR. DURANT: State calls Virgil Washington.

15 VIRGIL WASHINGTON,

16 having been first duly sworn,

17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 THE WITNESS: Virgil Washington,

20 W-a-s-h-i-n-g-t-o-n.

21 BY MR. DURANT:

22 Q. Mr. Washington, good morning.

23 A. Good morning.

24 Q. Would you please tell the jury where you're
25 employed.

- 1 A. Fades barbershop.
- 2 Q. How long have you been there?
- 3 A. About 14, 15 years.
- 4 Q. That's a good amount of time.
- 5 A. Too long.
- 6 Q. Where is that located?
- 7 A. North Charleston.
- 8 Q. And how old are you?
- 9 A. Forty-one.
- 10 Q. Forty-one?
- 11 A. Yes, sir.
- 12 Q. Let me ask you about a couple people. Do you know
- 13 who Jarvia O'Neal is?
- 14 A. Yes, sir.
- 15 Q. Who is that?
- 16 A. I can't tell you much about that. I just seen her
- 17 at the clubs.
- 18 Q. How long have you known her?
- 19 A. Maybe a couple years. I don't know her, but I see
- 20 her at the clubs.
- 21 Q. Just see her at the club?
- 22 A. Uh-huh.
- 23 Q. You would consider her a friend?
- 24 A. No.
- 25 Q. Just an acquaintance, somebody you know?

1 A. Just at the clubs.

2 Q. What about Andrea Bell?

3 A. No.

4 Q. You don't know who that is?

5 A. No.

6 Q. What about Aaron Green? Do you know who that is?

7 A. Yes, sir.

8 Q. You do know Aaron?

9 A. Yes.

10 Q. Who is Aaron?

11 A. He owns club Lovey Dovey.

12 Q. Have you been to club Lovey Dovey?

13 A. Have I been there?

14 Q. Yes.

15 A. Yes, sir.

16 Q. Do you frequent it often?

17 A. No, sir.

18 Q. How often do you go there?

19 A. Last time I was there, probably maybe eight months
20 ago.

21 Q. About eight months ago. What kind of place is
22 that?

23 A. A social club.

24 Q. People have fun there?

25 A. I guess.

1 Q. They're known for their crabs?

2 A. Say again?

3 Q. Are they known for their crabs?

4 A. Oh, yeah. They're known for their crabs.

5 Q. Do they have good crabs?

6 A. I don't eat crabs.

7 Q. I want to talk about September 4, 2010. Do you
8 remember that day?

9 A. I know what we're here talking about. I'm not
10 sure of the exact date, or what that date was.

11 Q. We're talking about going to Lovey Dovey that day
12 or that night.

13 A. Uh-huh.

14 Q. Do you remember doing that?

15 A. I guess -- if that was the date, then, yes, sir,
16 but I don't know what the date was.

17 Q. But you remember -- we're here to talk about an
18 incident from Lovey Dovey.

19 A. Exactly.

20 Q. Who did you go there with?

21 A. I went with Jarvia and the young female out there.

22 Q. Andrea Bell?

23 A. I don't even know her name, to be honest with you.

24 Q. How did that end up happening? How did y'all end
25 up going to the club?

1 A. Like I said, I knew Jarvia from the club before,
2 and she needed a ride to the club. And since I know
3 Aaron, Aaron called me to pick her up. I picked her up
4 and took her to the club.

5 Q. Okay. So Aaron called you to go get Jarvia?

6 A. Right.

7 Q. And does Jarvia live far from the club?

8 A. That night, yeah, it was pretty far.

9 Q. What is far to you?

10 A. I think it was probably about maybe -- at least
11 five miles, I guess, from where I picked her up from.

12 Q. Do you remember about what time that was?

13 A. Maybe 10:00, after 10:00 maybe.

14 Q. After 10:00?

15 A. Yes, sir.

16 Q. Kind of hard to say?

17 A. Hard to say.

18 Q. Other than Aaron just asking you to pick up
19 Jarvia, was there any other reason to pick up Jarvia that
20 night?

21 A. No.

22 Q. Nothing specific, like, Go get her. She wants to
23 eat some crabs, or anything like that?

24 A. It was just like going to the club, hanging out at
25 the club.

1 Q. All right. And so you brought her back to the
2 club.

3 A. Yes.

4 Q. What happened when you got back?

5 A. To the club?

6 Q. Right. What is the first thing, probably went
7 inside?

8 A. Yeah, yeah. I think he wanted us to pay, but we
9 didn't want to pay to get in, but, yeah, went inside.

10 Q. They charge a cover to get in there?

11 A. Yeah. I'm pretty sure that night it was.

12 Q. Do you know why they do that?

13 A. Why they charge a cover?

14 Q. Yeah.

15 A. No, I don't know.

16 Q. But, anyway, did y'all go inside?

17 A. Yes, sir.

18 Q. Do you remember where you were inside when you
19 first got back?

20 A. Well, I usually just go to the bar and stand at
21 the bar and talk to Aaron.

22 Q. What about Jarvia and the other girl?

23 A. I'm not exactly sure where they went.

24 Q. Did you notice where they may be or were they
25 around you?

1 A. It was a lot of people in the club that night, and
2 it could have been -- I mean, the club is not that big,
3 so they couldn't have been far. I'm pretty sure they was
4 in there, but exactly where they were, no, I couldn't
5 tell you.

6 Q. And as far as you know, the way the club was, at
7 least that night, you said there was a lot of people in
8 there?

9 A. Uh-huh.

10 Q. What was the noise level like in there? Was it
11 loud or was it kind of light?

12 A. Well, it was dark, and you got music playing and a
13 small environment, so it's pretty loud.

14 Q. So it's dark and loud and a lot of people. Did
15 you see Jarvia again?

16 A. Yes.

17 Q. When was the next time you saw her?

18 A. As far as time, I can't give you the exact time,
19 but I guess it was after the incident occurred.

20 Q. So after walking into the club, the next time you
21 saw her was after the incident?

22 A. After the incident.

23 Q. And how did you know there had been an incident?

24 A. I saw a whole lot of people crowded around the
25 bathroom door.

1 Q. A whole lot of people crowded around the bathroom
2 door. Where were you when you saw that?

3 A. At the bar.

4 Q. How far is the bar from the bathroom door?

5 A. About from here to maybe that door --

6 Q. One of these doors over here behind the judge?

7 A. Behind the young lady.

8 Q. Behind the young lady. And just the layout of

9 Lovey Dovey, the bathroom is in the back, right?

10 A. It's off to the side of the bar.

11 Q. It's over to the side of the bar?

12 A. The bar is here. Bathroom is to the side.

13 Q. And you were up at the bar.

14 A. Yes.

15 Q. Were you up at the bar kind of near the front
16 entrance?

17 A. What do you mean, the front entrance?

18 Q. Well, let's just look at some of these pictures.

19 Behind you, I'm going to put up a -- this is State's 1.

20 Do you know what we're looking at there?

21 A. Right.

22 Q. And that is Lovey Dovey?

23 A. Yes, sir.

24 Q. That's the front entrance?

25 A. Yes, sir.

1 Q. When you noticed a lot of people crowded near the
2 bathroom door, just inside that front door, about how
3 close were you to that front door?

4 A. About from here to there, that door.

5 Q. So were you not close to the front door?

6 A. No. This entrance door, no, sir.

7 Q. You were more toward the back of the club?

8 A. Right, where the bar is.

9 Q. Okay. What about State's No. 2? What does that
10 appear to be?

11 A. Say it again?

12 Q. What are we looking at?

13 A. That's inside the club.

14 Q. And that is looking at it from the front door
15 towards the back?

16 A. Right. There is the pool table. There is some
17 chairs and the bar. Those things wasn't there during
18 that time.

19 Q. Okay.

20 A. That wasn't there.

21 Q. Well, can you use this picture to kind of tell us
22 where you were?

23 A. Here is the bar, and I was in this area
24 (indicating).

25 Q. And where is the bathroom area?

1 A. Off to the side, somewhere over there. This is
2 the DJ booth. Got one on the other side of it. Here is
3 the DJ booth, and in between the DJ booth is the dance
4 floor, maybe about 12, 15 feet, maybe. And then there is
5 a little -- I guess a hallway, and then there is a
6 bathroom.

7 Q. And so that is where you were, up at the bar, when
8 you saw a lot of people crowded by the bathroom?

9 A. By the bathroom.

10 Q. What happened when you saw all those people near
11 the bathroom?

12 A. What happened? You mean what did I do?

13 Q. Yeah. What did you do?

14 A. Well, I was trying to see what was going on, and
15 usually in the club, if you see a lot of people crowding
16 around, it's probably time to get out of the club. I
17 don't know if somebody is going to cause some problems,
18 so I was kind of hesitant to see what was going on, and I
19 saw Aaron going over there, so I was kind of concerned
20 for him because he's a friend of mine.

21 So I went over there and asked him what was going
22 on, and that is when I saw Jarvia coming out of the
23 bathroom, and --

24 Q. So you saw Jarvia actually come out of the
25 bathroom?

1 A. Right.

2 Q. What did she look like?

3 A. She look like?

4 Q. I mean, what was her demeanor? What did she look
5 like --

6 A. She was upset. She was highly upset. I saw some
7 blood on her face.

8 Q. Was that pretty noticeable to you?

9 A. Yeah.

10 Q. Right off, no doubt, she looked upset?

11 A. Right.

12 Q. And you saw blood?

13 A. Yeah.

14 Q. Was she crying?

15 A. I don't remember seeing tears, but just, like,
16 upset.

17 Q. And you don't really even know her, do you?

18 A. No, not really.

19 Q. What about now? Are you friends with her now?

20 A. I haven't seen her since that night.

21 Q. Since that night?

22 A. Since that night.

23 Q. Did you want to know what had gone on? What had
24 happened?

25 A. Did I want to know?

1 Q. Did you want to know?

2 A. Well, everybody was asking what was going on, what
3 happened?

4 Q. Did you try to find out?

5 A. Yeah, I asked her what happened.

6 Q. You asked Jarvia?

7 A. Yeah. I said, What's going on? What happened?

8 Q. Did she tell you what happened? I'm not asking
9 you what she told you. I'm just asking you if she told
10 you what happened.

11 A. Well, she was kind of like in -- I guess if you're
12 upset, you kind of just shouting what happened, it's not
13 like she detailed anything to me, so she -- yeah, she did
14 mention that he hit her.

15 Q. So your understanding was that something happened
16 in that bathroom.

17 A. Right.

18 Q. Did you try to help Jarvia out?

19 A. I took her home.

20 Q. Immediately?

21 A. Probably -- I'm not sure how long it was. There
22 was a lot of chaos, so I said, Why don't I just go ahead
23 and take you on back home.

24 Q. Was anybody trying to figure out who did this?

25 A. Could be. I don't know.

1 Q. Did you ever figure out who did this?

2 A. No, no, sir.

3 Q. You still don't know who did this?

4 A. I wasn't trying to figure out who did it.

5 Q. Were you trying to get out of there?

6 A. Just trying to get out of there, before something
7 else happens, to me.

8 Q. So do you remember walking in to just -- you said
9 you remember walking into the club and saw Jarvia when
10 you walked in, and the next time you saw her was when
11 people were crowded around that bathroom.

12 A. Right.

13 Q. So you don't ever remember being with her at the
14 bar?

15 A. Sitting there and talking with her at the bar?

16 Q. Right.

17 A. No.

18 Q. Had nothing else to do with her, just those two
19 moments inside the club, right?

20 A. Right.

21 Q. Who all did you take home that night?

22 A. It was Jarvia and the other young lady that was
23 outside.

24 Q. Did you take her back to the same place you picked
25 her up from?

1 A. No. I took her to -- somewhere in Goose Creek, I
2 think it was.

3 Q. Were you at all concerned about her health?

4 A. You mean as far as the injuries?

5 Q. Right.

6 A. Well, I mean, yeah. That's why I wanted to get
7 her out of there, take her home.

8 Q. Did you do anything to maybe see if she needed
9 some help?

10 A. You mean if I took her to the hospital or anything
11 like that?

12 Q. Did you ask her if she --

13 A. No, I didn't ask her. She didn't mention it to
14 me.

15 Q. So you just took her back to Goose Creek?

16 A. Took her home.

17 Q. And you dropped her off and the other lady?

18 A. Yes, sir.

19 Q. Do you remember what time that might have been?

20 A. I can't tell you.

21 Q. So have you seen Jarvia since you dropped her off
22 there?

23 A. No.

24 Q. Have you talked to her since that time?

25 A. No.

1 Q. Do you have any idea who this man sitting over
2 here is?

3 A. I guess he's the one that they say did it.

4 Q. But you don't know him, do you?

5 A. No, sir.

6 Q. About Jarvia's injuries, did you see her again
7 when she got in your car?

8 A. Yes, sir.

9 Q. Where did she sit in your car? Was she in the
10 front or the back?

11 A. I think she was probably in the front. I think
12 she was in front. I think that the other young lady was
13 in the back.

14 Q. Did you see her face and stuff again when she was
15 in your car?

16 A. I probably did, yeah.

17 Q. I mean, did you or --

18 A. Well, I mean --

19 Q. Do you remember seeing her?

20 A. Yeah. She was in my car.

21 Q. Did you see any -- if you would, just describe for
22 the jury the kind of injuries that you saw on her.

23 A. Well, I saw -- all I seen was a cut to the lip and
24 maybe a cut somewhere else on her face, on the same side
25 where the cut on the lip was, you know. That's all I

1 saw, and she was bleeding.

2 Q. She was bleeding.

3 MR. DURANT: Thank you. Please answer any
4 questions the defense may have for you.

5 MR. BUTLER: I don't have any questions.

6 THE COURT: You may step down. Thank you.
7 Call your next witness.

8 MR. FINCH: The state calls Aaron Green.

9 AARON GREEN,
10 having been first duly sworn,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 THE WITNESS: Aaron Bernard Green, G-r-e-e-n.

14 BY MR. FINCH:

15 Q. Good morning, Mr. Green.

16 A. Good morning.

17 Q. What do you do for a living?

18 A. Right now I manage, like, associated with three
19 different buildings, rental halls and still two clubs.

20 Q. You run two clubs?

21 A. No. I manage one of them, and I work at another
22 one and also manage a rental hall.

23 Q. Is one of those clubs Lovey Dovey?

24 A. Yes.

25 Q. And do you have any other business enterprises?

1 A. Not right now.

2 Q. How long have you run Lovey Dovey?

3 A. A little over three years now.

4 Q. And do you have any children?

5 A. Yes, three.

6 Q. What are their ages?

7 A. 19, 17, and 3.

8 Q. Regarding Lovey Dovey, what kind of place is that?

9 A. It's pretty much an older place, been around for a
10 long time. They just do different things there,
11 different events in there, a pretty older place.

12 Q. And the different things you do, is that all just
13 to generate income?

14 A. Yes.

15 Q. Do you try to get a varied crowd in there?

16 A. Yes.

17 Q. How many nights is it open?

18 A. Right now, it varies. Probably about three to
19 four.

20 Q. And is the crowd pretty regular crowd?

21 A. Mostly right now it's regular people.

22 Q. About a little over a year ago, back in February
23 2010, pretty much the same situation?

24 A. Pretty much.

25 Q. I want to talk to you about February 2010, more

1 specifically February 4th, 2010. Do you remember that
2 date?

3 A. Somewhat, yeah. I know what you're talking about.

4 Q. Okay. What was going on? What was going on in
5 the club that night?

6 A. I think I was having some kind of seafood event,
7 some event. I'm not exactly sure, but I think it was an
8 event, but I probably was having seafood with it, so just
9 pretty much a regular night.

10 Q. And do you remember Jarvia O'Neal coming in there?

11 A. Yes.

12 Q. How do you know Jarvia?

13 A. She used to be a regular off and on, come into the
14 club a couple times, you know.

15 Q. Did she also help promote some things there?

16 A. Yeah. She did that a couple times.

17 Q. How long have you known Jarvia?

18 A. Couple years, a few years, something like that.

19 Q. Would you consider you guys friends?

20 A. I mean, associate. She was pretty cool. We never
21 had no problem.

22 Q. You remember she came to the club that night.

23 A. Yes.

24 Q. And did you have a conversation with her?

25 A. Yeah, I'm pretty sure.

1 Q. What were you doing in the club that night?

2 A. Well, every time I'm there, I'm just managing, a
3 little bit of everything.

4 Q. Okay. Where do you -- do you roam around the
5 club? I know it's not that big, or do you sort of
6 station yourself in one place or do you roam around?

7 A. I usually roam.

8 Q. Do you recall spending some time by the front
9 door?

10 A. Yes.

11 Q. Do you check IDs there?

12 A. Yeah. Usually having somebody do that, and I be
13 there back and forth too.

14 Q. Where is that in the club?

15 A. That's up front.

16 Q. Referring to State's Exhibit No. 4, and is that a
17 place where you might stand if you're checking IDs and
18 things?

19 A. No. Over to the right side of it.

20 Q. Closer to the door?

21 A. Yeah, by the door.

22 Q. And --

23 A. Usually check it outside, but if someone checking
24 inside, right on the other side of that jukebox.

25 Q. Okay. Do you remember spending some time in that

1 area right there, with Jarvia O'Neal?

2 A. Back and forth, yeah, a couple times.

3 Q. Do you remember -- did anybody approach you?

4 A. Different people. We was talking. I know I was
5 back and forth, and she probably be talking to a couple
6 people. There was other people standing there.

7 Q. And was it pretty loud in there?

8 A. Yes.

9 Q. People like the music loud?

10 A. Yeah, always.

11 Q. Pretty crowded?

12 A. It wasn't too crowded.

13 Q. What does that mean? About how many people in
14 there?

15 A. 20, 25. I don't think that many, about 20.

16 Q. Anybody causing any trouble early on?

17 A. No.

18 Q. When you saw people talking to Jarvia, could you
19 hear anything they were saying?

20 A. No.

21 Q. Is that because of the music?

22 A. Yeah. Always because the music real loud. It's a
23 small place, so you can't hear over the music. You got
24 to be right next to them.

25 Q. In order to hear somebody, right up next to them?

1 A. Uh-huh.

2 Q. So sometimes people might talk mouth to ear?

3 A. Yeah.

4 Q. Did you also cook the crabs?

5 A. Yes.

6 Q. And how late do you have the crabs going?

7 A. It all depends on the amount of people there, so,
8 you know, if a little bit of people come early, we're out
9 early.

10 Q. If it's not that busy, it might last a little
11 longer?

12 A. Yeah.

13 Q. What time does the club close?

14 A. 2:00.

15 Q. Do you sometimes cook all the way up to closing?

16 A. Probably, no. Usually stop before the end of the
17 evening.

18 Q. On that night, did you see Mr. Clarence Logan
19 talking to Jarvia O'Neal?

20 A. Yes.

21 Q. Do you know Clarence Logan?

22 A. I just know him -- I know him through another
23 friend of his. Well, a friend of mine brought him to the
24 club.

25 Q. Do you recognize him?

1 A. Yes.

2 Q. Would you point him out in the courtroom?

3 A. Yes, right there. (Indicating.)

4 Q. And so you saw him talking to Jarvia.

5 A. Yes.

6 Q. But you didn't know what they were talking about?

7 A. Huh-uh.

8 Q. At some point did you leave that front area to go
9 check on the crabs?

10 A. Either -- yeah, I left. It could have been for
11 different things, but I know I left for that, maybe a
12 couple times.

13 Q. And whenever you returned, was Jarvia there or was
14 she moving around? Do you remember?

15 A. I don't really recall.

16 Q. How about one time when you went out to get the
17 crabs? You walk down -- how do you get there? Do you
18 walk down that bathroom hall?

19 A. Yeah. There is a door right there next to the
20 bathroom.

21 Q. And that leads to the outside?

22 A. Yes.

23 Q. If you refer to State's 7, is that the hallway
24 we're talking about?

25 A. Yes.

1 Q. And if you could just indicate where on that
2 picture where the bathrooms are.

3 A. These two doors to the left.

4 Q. There is a pointer if you want to use that. Push
5 that button. Use that.

6 A. That is one, and that is one right here.

7 Q. And how many bathrooms are there?

8 A. Two.

9 Q. One for men, one for women?

10 A. Yeah. That's the women; that's the men.

11 Q. And how big are those bathrooms?

12 A. Four by five, four by -- something like that. One
13 of them may be six by six and the other one is a little
14 small.

15 Q. Do you know which one is small?

16 A. The female one is a little small.

17 Q. So maybe four feet by four feet, something like
18 thank?

19 A. Yeah, close to that.

20 Q. And typically people go in there one at a time?

21 A. Usually.

22 Q. Does the door lock?

23 A. From the inside.

24 Q. Is there a handle or is there a dead bolt or --

25 A. Handle.

1 Q. Just on the handle. Did you see some people -- do
2 you know if anything happened in that bathroom that
3 night?

4 A. Well, I mean, afterwards, I didn't see nothing
5 going on. Afterward, when I saw -- when I saw them
6 coming out.

7 Q. What did you see when you saw people coming out?
8 What did you see?

9 A. Jarvia came out and -- I don't know by his name,
10 we -- when they came out, all I saw them coming out the
11 bathroom, and pretty much that was it. Jarvia was -- it
12 was, like, she was -- her hair was pretty wild and stuff
13 like that.

14 Q. Where were you when you saw that?

15 A. I pretty much was, like, coming into the hallway
16 at the same time.

17 Q. From the outside?

18 A. No, actually I was inside. I was coming, like,
19 from the bar area towards the outside.

20 Q. Were you planning on going outside?

21 A. Yes.

22 Q. And when you said you saw people coming out, you
23 saw the guy whose name you didn't know, and what was he
24 doing?

25 A. When he was coming out he just said he was looking

1 for his cell phone. He was ready to leave, that's all.

2 Q. Was he doing anything?

3 A. No. He was just looking around for his cell
4 phone, saying he was looking for his phone, that's it.

5 Q. Did you notice anything about his clothes, his
6 shirt, his pants?

7 A. I mean, it was, like, baggy. You know, I ain't
8 remember.

9 Q. And what about Jarvia? What was she doing?

10 A. She was just coming out and -- she came out. I
11 don't remember what was said, I don't remember actually
12 what happened. She was saying they got into a
13 confrontation, and I asked her did she want me to do
14 anything, call the police or anything? And she said no,
15 she was ready to go home. And after that moment,
16 probably three minutes after that, she was gone.

17 Q. Describe her appearance. What did she look like
18 when you saw her?

19 A. Her hair was, like, wild, and there was a bruise
20 somewhere on her face. I could tell it was, like,
21 bleeding, that's all, but I can't remember exactly where
22 it was.

23 Q. A bruise and some bleeding?

24 A. Yes.

25 Q. And her hair was messed up.

1 A. Yeah.

2 Q. And you asked her if she wanted you to call 911 or
3 something?

4 A. Yes.

5 Q. You were okay with calling 911?

6 A. Yeah, all the time. We deal with the police on
7 the regular.

8 Q. Lovey Dovey?

9 A. I'm talking on behalf of regulars that come by. I
10 call the police too because I know several of them.

11 Q. Jarvia didn't want you to call the cops?

12 A. No.

13 Q. Where was Mr. Logan at that time? Did you see
14 him?

15 A. At the time -- no, he was just -- he was looking
16 for his phone, and he pretty much was gone, probably when
17 I was talking to her. He was right there. He looked
18 around for his phone. I think he just left then. I
19 don't remember speaking to him.

20 Q. Do you remember which way he went out?

21 A. He went out the front.

22 Q. Do you remember how much time that took?

23 A. Several minutes. It was -- like I say, she was
24 gone after him, but it had to have been a total of --
25 less than five minutes altogether, that she was there.

1 He left --

2 Q. He left first. Then she left, and the whole thing
3 is less than five minutes. Did you see him get into a
4 car?

5 A. No. I wasn't outside. I have no idea.

6 Q. Do you know what kind of car he drives?

7 A. After the fact, yeah.

8 Q. And how did you learn that?

9 A. Like his friend, the guy I met him through, told
10 me what kind of car he drove.

11 Q. So you had never -- you've never seen him driving
12 a car?

13 A. Huh-uh.

14 Q. But the friend told you what kind of car he drove?

15 A. Yeah.

16 Q. Did he give you any other information, a name or a
17 nickname or anything?

18 A. The nickname for --

19 Q. For the guy who you saw coming out of the
20 bathroom?

21 A. I didn't -- I met him. I know him by Blackout.

22 Q. Okay. Did the friend that you knew him through
23 give you any other information, say, describe the car?

24 A. Yeah. I think he said -- not powder blue, royal
25 blue. I think it was a Thunderbird or something. I

1 can't remember.

2 Q. After Jarvia left for that night, did you see who
3 took her out of there?

4 A. No. Later on I found out who took her, but --

5 Q. Who was that?

6 A. A guy named Virgil.

7 Q. Is he a friend of yours?

8 A. Yes.

9 Q. When is the next time you spoke to Jarvia?

10 A. I don't know if it -- it was probably a couple
11 days. Maybe it was the next day, I don't remember. I
12 know it was a short period after that.

13 Q. What did you guys talk about? What was the
14 subject you talked about?

15 A. I just asked her what was going on, what had
16 happened.

17 Q. What did she tell you?

18 A. She told me --

19 MR. BUTLER: I'm going to object to the
20 hearsay, knowing the parameters.

21 BY MR. FINCH:

22 Q. Did she disclose to you that somebody had tried to
23 assault her, sexually assault her.

24 A. Yes.

25 Q. Did she say where that happened?

1 A. Yes.

2 Q. Where was that?

3 A. In the bathroom.

4 Q. Did she say when that happened?

5 A. You mean at night? Yeah, that particular night,
6 the last time I saw her in there.

7 Q. She told you that the night before when you saw
8 her in the bathroom?

9 A. If that was the night before. I don't recall if I
10 talked to her the next day. It could have been a couple
11 days.

12 Q. But the night you saw her in the club, it happened
13 that night in the bathroom. Okay. Did you -- did she
14 want you to help her figure out who this guy was?

15 A. She asked me and I told her -- I didn't know him
16 at all.

17 Q. Were you going to try to help her?

18 A. Well, I didn't really have no way. Like I said, I
19 only know him through the other guy.

20 Q. Were you able to give her -- what information
21 could you give her about him?

22 A. Only thing I think we talked about was his car.
23 That was it.

24 Q. And you gave a physical description, the color and
25 the kind of car it was?

1 A. I think that was it, yeah.

2 Q. How about the license plate number? Did you do
3 that?

4 A. No.

5 Q. You didn't give her the license plate number?

6 A. No, I don't think -- no, I didn't know that. I
7 didn't know the license plate number.

8 Q. Okay. Did you talk to Jarvia after that?

9 A. I think I may have talked to her once or twice, I
10 don't recall. I mean, I think after that night, I talked
11 to her several times, at the most, maybe three or four
12 times. I think.

13 Q. At the most three or four times. Is it all right
14 around that same time or was it later? Have you talked
15 to her recently?

16 A. No.

17 Q. When was the last time you think you talked to
18 her?

19 A. Seem like it been about a year.

20 Q. Over a year?

21 A. Yeah.

22 Q. So close in time to when this happened?

23 A. Yeah. I haven't seen her neither.

24 MR. FINCH: No further questions at this
25 time. Please answer any questions the defense may have

1 for you.

2 THE WITNESS: All right.

3 CROSS-EXAMINATION

4 BY MR. BUTLER:

5 Q. Good morning, Mr. Green. I just have a few
6 questions. You're the manager of club Lovey Dovey?

7 A. Yes.

8 Q. I think we may have promoted you to owner over
9 last few days, but just so it's clear, you manage it but
10 somebody else owns it?

11 A. Yes.

12 Q. Okay. And while you're managing it, part of your
13 duties is to make sure there is no trouble in the club,
14 right?

15 A. Yes.

16 Q. Okay. And if there is any trouble in the club --
17 I mean, I don't know if it happens in your club, but when
18 people drink and there is men and there is women, there
19 can be trouble, right?

20 A. Yes.

21 Q. Okay. And when there is trouble in a club, if
22 somebody is being obnoxious, for example, right, or
23 bothering a woman, right, or starting trouble, right, you
24 would be the person to know about that, right?

25 A. Sometimes.

1 Q. Well, you would want to know about it.

2 A. Yes.

3 Q. And if you saw it, you would put a stop to it.

4 A. Yes.

5 Q. All right. And there was no trouble at all until
6 the incident in the bathroom, and you only saw what
7 happened after?

8 A. Yes.

9 Q. All right. And what Jarvia said to you was she
10 had a confrontation, I believe is the word you said, in
11 the bathroom?

12 A. Yes.

13 Q. And as I understand your testimony, you never gave
14 Jarvia a license plate number?

15 A. No, I don't remember doing --

16 Q. You don't remember or you know that you didn't?

17 A. I don't remember at all.

18 Q. Or a phone number?

19 A. No, I don't know about the phone number.

20 Q. So you may have or you don't remember, or you
21 remember that you didn't?

22 A. I don't remember that. I don't.

23 Q. Okay. And the only thing that you noticed about
24 the man coming out of the bathroom is he was looking for
25 his cell phone.

1 A. Yeah.

2 MR. BUTLER: Beg Court's indulgence.

3 That's all I have, Mr. Green. Thank you.

4 THE COURT: Redirect?

5 MR. FINCH: Thank you, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. FINCH:

8 Q. Mr. Green, just to recap, when you saw the man
9 coming out of the bathroom, he didn't have any injuries
10 on him.

11 A. No, I don't think so, no.

12 Q. The only injuries you saw were to Jarvia.

13 A. Yes.

14 Q. And the club is loud, right?

15 A. Yes.

16 Q. So you can't hear what everybody is saying to each
17 other, can you?

18 A. No.

19 Q. Do you know if anybody was being rude to Jarvia,
20 saying rude things?

21 A. No.

22 Q. Do you know any of these people involved, really?
23 Are you friends with any of them?

24 A. No.

25 MR. FINCH: Nothing further.

1 THE COURT: You can step down. Okay. I
2 think this is where we'll go ahead and break for lunch.

3 Folks, if you would, you are free to go
4 wherever you want to go for lunch, and you can go with
5 any member of the jury panel if you want, but please do
6 not discuss the case, comment on any of the witnesses,
7 talk about the case in any way, shape, or form, and if
8 anybody approaches you to talk about that, please report
9 that back to me.

10 If you would, be back in the jury room at
11 1:30 and we'll begin at that time. Thank you.

12 (Jury recessed.)

13 A F T E R N O O N S E S S I O N

14 (In open court, jury not present.)

15 MR. BUTLER: Judge, I wanted to place an
16 objection on the record.

17 THE COURT: What is it?

18 MR. BUTLER: Never mind. Thank you.

19 (In open court, jury present.)

20 THE COURT: Okay. Be seated.

21 All right. We'll resume with the state
22 calling their next witness.

23 MR. FINCH: Thank you, Your Honor.

24 The state calls officer Alex Gray.

25

1 ALEX GRAY,
2 having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 THE WITNESS: Officer Alex Gray, North
6 Charleston police department, G-r-a-y.

7 BY MR. FINCH:

8 Q. Good afternoon, Officer Gray.

9 A. Good afternoon.

10 Q. If you would, tell the Court where it is that
11 you're employed.

12 A. North Charleston police department.

13 Q. And what is your position at NCPD?

14 A. I'm a patrolman.

15 Q. What are the duties and responsibilities of a
16 patrolman?

17 A. Primary duties, I respond to call for service, 911
18 calls, calls that come in on an admin line, things of
19 that nature.

20 Q. How long have you been with the NCPD?

21 A. Three years in November.

22 Q. Were you employed with NCPD around the time of
23 February 2010?

24 A. Yes, sir.

25 Q. And employed in the same capacity?

1 A. Yes, sir.

2 Q. Did you have occasion then to be dispatched or did
3 you respond to a call regarding an assault at the Lovey
4 Dovey?

5 A. Yes, sir.

6 Q. And did you get dispatched, or how did you get to
7 that call?

8 A. I was dispatched to Roper Hospital downtown with
9 regard to an assault that occurred the previous evening
10 at Lovey Dovey.

11 Q. And when you got there, what did you do?

12 A. I was led by security to one of the rooms where I
13 made contact with the victim of the assault, Jarvia
14 O'Neal.

15 Q. And do you have independent recollection of that
16 meeting?

17 A. No, sir.

18 Q. I mean, you remember it in your head?

19 A. Yes, sir.

20 Q. Okay. Do you recall Ms. O'Neal's physical state?

21 A. Yes.

22 Q. Did she have injuries to her?

23 A. Yes. Ms. O'Neal had a black left eye, laceration
24 across the bridge of her nose, and on the left side of
25 her face, cuts on the inside of her mouth that she showed

1 me, and a knot on the right side of her head.

2 Q. Do you know how big that knot was?

3 A. I don't recall.

4 Q. Do you recall if it was on the front or the back?

5 A. I do not recall.

6 Q. Did you take any photographs of those injuries?

7 A. No, sir, I did not.

8 Q. Why not?

9 A. I did not have a camera at the time and contacted
10 my supervisor, and he was not able to get the camera to
11 me, so I just documented the best I could in my report
12 and went forward from there.

13 Q. And what you just told us now, is that information
14 you recall from your report?

15 A. Yes, sir.

16 Q. Did you use your report to refresh your memory?

17 A. Yes, sir.

18 Q. Outside of what you read in your report, do you
19 remember anything else about -- anything physical about
20 Ms. O'Neal?

21 A. With regards to injuries or --

22 Q. Either, regarding injuries or her emotional state
23 or demeanor.

24 A. She was visibly upset. I noticed the injuries
25 upon walking into the room. It took a little bit of

1 coaxing to get her to talk about what had happened. She
2 was, like I said, visibly upset, reluctant to get
3 started, but once she got started everything kind of came
4 forward.

5 Q. Did she tell you that she would have been
6 assaulted at Lovey Dovey?

7 A. Yes, sir.

8 Q. And did she tell you the nature of that assault?

9 A. Yes, sir.

10 Q. Did she tell you where it happened?

11 A. Yes, sir. She said it happened in the women's
12 rest room at the Lovey Dovey.

13 Q. And did she tell you what date that happened?

14 A. Yes, sir. She said that happened on February 4,
15 2010.

16 Q. Were you able to get any other information about
17 the suspect at that time?

18 A. The only information she had about the suspect was
19 it was a black male, approximately, 5'10", known only to
20 her as the street name Blackout.

21 Q. Did you include all that in your report?

22 A. Yes, sir.

23 Q. What other investigative measures did you take
24 with regard to this case?

25 A. Upon -- I took the information that she gave me.

1 I completed the incident report, and that was as far as I
2 did.

3 Q. You may not know, but -- just what happened with
4 this report, but, in general, what happens to a report
5 after a patrol officer takes it?

6 A. Depending on the nature of the report, for
7 example, this report would get forwarded on to the
8 detective bureau and gets assigned to a detective, and
9 then they carry it forward with the investigation,
10 contacting us as needed for further information or
11 assistance.

12 Q. And did you have any further contact with this
13 file or this incident report?

14 A. I did not.

15 MR. FINCH: No further questions at this
16 time. Please answer any questions the defense may have.

17 THE COURT: Cross?

18 CROSS-EXAMINATION

19 BY MR. BUTLER:

20 Q. Good afternoon, Officer. I just have a couple
21 quick questions. Were you dispatched to Roper Hospital
22 February 4, at 10:25 in the evening?

23 A. Yes, sir.

24 Q. Okay. And you've already testified a little bit
25 about your report. Report writing is just something that

1 police officers do, as part of the job?

2 A. Yes, sir.

3 Q. You're trained at the academy in how to write
4 reports?

5 A. Yes, sir.

6 Q. Part of what you do, as any police officer, is
7 when you respond to crime scenes, you make
8 observations --

9 A. Yes, sir.

10 Q. Of -- the scene itself, not in this case, but of
11 the scene itself, of the people involved, witnesses,
12 victims, right?

13 A. Yes, sir.

14 Q. And then you document what you've observed or
15 learned in a report?

16 A. Yes, sir.

17 Q. That's so you can, as you've done today, look back
18 and recall what happened over a year ago. It's written
19 down?

20 A. Yes, sir.

21 Q. Okay. You pass it on to other people. Like, if
22 there is a lead detective, if he can't reach you, he can
23 look at your report, he's got it?

24 A. Yes, sir.

25 Q. And so for that reason, you're accurate, complete,

1 and true in things you write down?

2 A. Yes, sir.

3 Q. All right. And Ms. O'Neal told you when you
4 talked to her that she was at the club by herself, right?

5 A. Yes, sir.

6 Q. And that is what you wrote down in your report.

7 May I approach?

8 A. I got it.

9 Q. Okay. She told you she was there by herself?

10 A. Yes, sir.

11 MR. BUTLER: Okay. Beg Court's indulgence.

12 BY MR. BUTLER:

13 Q. While you were there with her, she's not admitted
14 to the hospital. They treat her and release her, right?

15 A. As far as I know. I don't recall, though, sir.

16 MR. BUTLER: Nothing further.

17 THE COURT: Redirect?

18 MR. FINCH: Briefly, thank you, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. FINCH:

21 Q. Officer Gray, you were not able to develop a
22 suspect based on your interview with Ms. O'Neal, were
23 you?

24 A. No, sir.

25 Q. Because she didn't know who this guy was, correct?

1 A. That's correct.

2 Q. Just the street name?

3 A. Yes, sir.

4 Q. And what was that?

5 A. Blackout.

6 MR. FINCH: Nothing further.

7 THE COURT: Recross?

8 MR. BUTLER: No.

9 THE COURT: You can step down. Next witness.

10 MR. FINCH: State calls Marquise O'Neal.

11 MARQUISE O'NEAL,

12 having been first duly sworn,

13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 THE WITNESS: My name is Marquise D'Angelo

16 O'Neal, O-N-e-a-l.

17 BY MR. FINCH:

18 Q. Good afternoon, Mr. O'Neal.

19 A. How are you?

20 Q. I'm doing well. How are you doing?

21 A. Doing pretty good.

22 Q. You have a baby on the way?

23 A. Yes, I do.

24 Q. Any day?

25 A. Any day.

1 Q. We'll try to get you out of here very quickly.

2 Where is home?

3 A. My home base is Charleston County, South Carolina.

4 Q. Where do you live now?

5 A. Whiteville, North Carolina.

6 Q. And how far of a drive is that?

7 A. Three-hour drive.

8 Q. And how long have you lived up there?

9 A. I've lived there since January 28th.

10 Q. Of this year?

11 A. This year.

12 Q. Where did you live before that in Charleston?

13 A. West Ashley.

14 Q. And you're related to Jarvia O'Neal?

15 A. Yes, sir. That's my aunt.

16 Q. And so you've known her your whole life?

17 A. Whole life.

18 Q. What do you do up there in Whiteville?

19 A. Well, I work at Smithfield, ham packing company.

20 Q. What do you do for them, pack the hams?

21 A. Yes, slaughter hogs, pack, cut, and pre-wrap.

22 Q. Like I said, I'm going to try to get you out of
23 here early because I do know you have a baby on the way.
24 I just want to take you through a couple things.

25 A. Okay.

1 Q. Do you recall an incident that your aunt was
2 involved in back in February 2010?

3 A. Yes.

4 Q. And just -- there was some assault at a club?

5 A. Yes.

6 Q. Okay. Back in February 2010, in that time frame,
7 you said you were living in West Ashley?

8 A. Actually, I was living with my mother in West
9 Ashley, and I moved to North Charleston.

10 Q. Did you have an occasion to be at [REDACTED]
11 [REDACTED]?

12 A. Yes.

13 Q. Who lives at [REDACTED]

14 A. My grandmother and my aunt.

15 Q. They don't live there anymore, do they?

16 A. No.

17 Q. Okay. I'm going to show you a picture. It's
18 going to come up in a minute. If you turn around, what
19 is that a picture of?

20 A. That is my aunt house and the front porch right
21 there.

22 Q. Okay. And February 2010, February 6th, 2010, were
23 you -- did you have occasion to be over at the house?

24 A. Yes, yes.

25 Q. What were you guys doing over there?

1 A. We were standing on the front porch. I had my
2 white Suburban truck parked on the side here. It was me,
3 my mother, and my aunt, family members generally standing
4 outside on the front porch area.

5 Q. Doing what?

6 A. Basically, we were out there because she was
7 letting us know what had happened and informed us of the
8 person that keep coming by the house.

9 Q. Okay.

10 A. Right.

11 Q. Who was this person coming by the house, do you
12 know?

13 A. I don't know the name; no, I don't.

14 Q. Who did you understand him to be?

15 A. The person that assaulted my aunt.

16 Q. And what, if anything, did you know about this
17 person?

18 A. Anything, just that the fact what she tell me
19 happened and what I saw.

20 MR. BUTLER: I object to hearsay.

21 THE COURT: Sustained.

22 BY MR. FINCH:

23 Q. Did you know this person's name?

24 A. No, I didn't.

25 Q. Did you know what he looked like?

1 A. No, I didn't.

2 Q. Did you -- were you aware of any kind of vehicle
3 he drove?

4 A. Yes.

5 Q. And what was that?

6 A. It was a greenish or blue Thunderbird.

7 Q. When you were out at this house, did this vehicle
8 ever come by?

9 A. Three times.

10 Q. While you were there?

11 A. Yes.

12 Q. What happened when this vehicle came by?

13 A. The first time, actually, I heard the vehicle
14 before I could see the vehicle. What I mean by that is
15 that the steering system that he had. I heard it before
16 I see it the first time. I caught the back end of the
17 vehicle, right, and the second time he sped past the
18 other way.

19 The third time was the last time that he came up
20 and came past the house again. Once that had happened,
21 my aunt, Jarvia O'Neal, she was screaming, That's him,
22 that's him, that's him, crying and screaming, running
23 after him, running after the car, down the street.

24 Q. Were you able to see the person driving the
25 vehicle?

1 A. I saw the figure. I didn't see the face, no, I
2 didn't.

3 Q. I'll show you another picture. What does that
4 picture show?

5 A. That basically shows the dead end street in front
6 of the house where my truck was parked where the trash
7 can was, and I was standing up in the street area in
8 front.

9 Q. Relative to -- you know, in relationship to where
10 you were standing, where did this vehicle pass?

11 A. The vehicle passed -- I forgot the name of the
12 street that was in front, in front of the apartment
13 complex.

14 Q. About how far away is that from where you were
15 standing?

16 A. I would probably say two or three feet, maybe.

17 Q. I'm sorry. Two or three feet?

18 A. Yes, away, yes.

19 Q. And did the person in the vehicle say anything?

20 A. No, he didn't.

21 Q. Did he make any hand gestures?

22 A. No, he didn't.

23 Q. Just drove up slowed down and sped off?

24 A. Yes.

25 Q. And you said that happened three different times?

1 A. Three different times, three times.

2 Q. Do you remember at any point in time whether this
3 person in the car said anything?

4 A. No.

5 Q. Okay. Have you ever been to club Lovey Dovey?

6 A. Yes, I have.

7 Q. And that is located on 2721 Carner Street?

8 A. Yes, sir.

9 Q. And you're aware that address is in Charleston
10 County?

11 A. Yes, sir.

12 Q. Do you frequent that place, go there a lot?

13 A. No. I went once.

14 Q. Okay. Not your cup of tea?

15 A. No.

16 Q. So just -- and how many different days did you see
17 this vehicle, or was it three times in one day?

18 A. Three times in one day.

19 Q. Time wise, was it in a short amount of time or
20 over how many hours or do you remember?

21 A. To me, it happened, like, minutes at a time,
22 basically. Mainly, in an hour, I would say an hour, I
23 probably saw the vehicle three times within an hour.

24 Q. And did anybody call the police about this?

25 A. From my understanding, my aunt did report it when

1 that happened and reported the vehicle riding past the
2 house.

3 Q. Were you there when the police arrived?

4 A. No, I wasn't. I left.

5 Q. Who else was at the house with you?

6 A. It was my aunt, myself. I had my cousins and
7 other family members and my mom.

8 Q. Okay.

9 MR. FINCH: No further questions at this
10 time. Please answer any questions the defense may have.

11 THE WITNESS: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. BUTLER:

14 Q. Mr. O'Neal, you never spoke to the police about
15 what you saw that day?

16 A. No, I haven't.

17 Q. Police never interviewed you; you never gave a
18 written statement?

19 A. I haven't.

20 MR. BUTLER: That's all I have. Thank you.

21 THE WITNESS: Okay.

22 THE COURT: Anything further?

23 MR. FINCH: Nothing further. We just ask the
24 witness be excused.

25 THE COURT: You can step down. Next witness.

1 MR. FINCH: State calls Rhonda DeVeaux.

2 RHONDA DeVEAUX,

3 having been first duly sworn,
4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 THE WITNESS: Rhonda Deveau, D-e-v-e-a-u-x.

7 BY MR. FINCH:

8 Q. Good afternoon, Ms. Deveau. Are you a little
9 nervous?

10 A. No, I just got a little cold, that's all.

11 Q. How long have you lived in the Charleston area?

12 A. Almost all of my life.

13 Q. And whereabouts in town do you live?

14 A. I live in West Ashley.

15 Q. And your son's Marquise?

16 A. Yes.

17 Q. And do you work?

18 A. No, I don't.

19 Q. Do you have any other children besides Marquise?

20 A. Yes, I do. I have two others.

21 Q. And how old are they?

22 A. Eighteen and three.

23 Q. And how about Jarvia? She's your sister?

24 A. Yes. That's my baby sister.

25 Q. And were you there -- where did you live when she

1 was living on [REDACTED]

2 A. Same place, West Ashley now.

3 Q. But did you go over and visit [REDACTED]

4 A. Yes, every day.

5 Q. And who else lives in that house?

6 A. My mom.

7 Q. Would you go over and visit your mom and Jarvia?

8 A. Uh-huh.

9 Q. And so did you go over and visit them around
10 February 2010?

11 A. Yeah.

12 Q. And do they still live there now?

13 A. No.

14 Q. Whereabouts does your mom live now?

15 A. With me.

16 Q. Okay. Makes it easier to visit, I assume?

17 A. Yeah.

18 Q. How about around February 6, 2010? Do you
19 remember that date?

20 A. Yeah.

21 Q. Do you remember? Were you over at your mom's
22 house?

23 A. Yes.

24 Q. What you were you doing over there?

25 A. Actually, I had gone over there for a little

1 while, just hanging out, watching TV, sitting on the
2 porch..

3 Q. And who else was there?

4 A. My mama and Jarvia.

5 Q. Was Marquise there?

6 A. Marquise came after -- they came, like, later on,
7 after -- not -- you know, not exactly the same time I was
8 there.

9 Q. When you were there, did you -- well, did Jarvia
10 tell you about an attack that had happened to her?

11 MR. BUTLER: I have to object. Hearsay.

12 THE COURT: Sustained.

13 BY MR. FINCH:

14 Q. Were you aware that Jarvia had been involved in an
15 incident?

16 A. Yes, sir, I was.

17 Q. And were people talking about that at the
18 residence?

19 A. We wasn't talking about that exactly that
20 particular -- at that time, but we had been talking about
21 that beforehand.

22 Q. Was anybody in that family looking for any -- was
23 anybody in the family concerned about anything regarding
24 that incident?

25 A. Actually, we was all upset about it because she

1 had already been in a similar incident before, and it
2 really took a toll on her and the family of the different
3 things she went through.

4 Q. Did you see -- were you aware of the type of
5 vehicle that somebody -- were you aware of the type of
6 vehicle that a suspect in this most recent incident was
7 driving?

8 A. Actually, I wasn't until -- excuse me. Can I --
9 do I just need to go ahead and explain -- to answer that
10 question?

11 THE COURT: Well, you really just need to
12 answer his questions.

13 THE WITNESS: Okay. I don't know type of
14 car, per se, you know, exactly what make, model, the car
15 is.

16 BY MR. FINCH:

17 Q. Do you know what color it was?

18 A. I think white or beige, something like that.

19 Q. Did you see this vehicle near [REDACTED]

20 A. I did. I was sitting on the porch, me and Jarvia,
21 and I was sitting on the porch, and he -- the car and the
22 young man was, like, driving past, doing little hand
23 things and --

24 Q. What kind of hand things?

25 A. Shooting the birdie.

1 Q. Middle finger?

2 A. Yes, and just riding back and forth past.

3 Q. I'm going to show you a picture that has been --
4 this is State's Exhibit 17, and that is the front of your
5 mom's house, mom's old house, correct?

6 A. Correct.

7 Q. Where was the person driving, on that road?

8 A. No, no. We was parked right here. It was on this
9 street right here.

10 Q. So the next street over?

11 A. Yeah. This is Meeting Street, or Meeting Street
12 Road here, and you got to come in here and turn in here
13 for, like, the driveway right here, and we was all
14 parked -- this where I normally park, right here in front
15 of the trash can, and we was all in the porch, and he
16 was, like, riding past on Meeting Street Road.

17 Q. And about how many times did you see that person?

18 A. Maybe two or three.

19 Q. And did Jarvia have any reaction to that?

20 A. Yes. She got really hysterical, so I called the
21 police, because she kept saying, That's him, that's him,
22 because at first I just saw the person, you know,
23 shooting the bird. I didn't think anything of it, and
24 that is when she said, That's him, that's him.

25 And then she said, well, I'm just going to call

1 the police.

2 Q. And did you call the police?

3 A. Yes, we called the police.

4 Q. And did the police arrive?

5 A. Yeah, the police came. It was, like, two police
6 officers, they came and we -- I explained what happened.
7 She was still upset, and he was telling her, you know,
8 she had to really calm down so he could understand
9 exactly what is going on.

10 And they had already got a couple of police calls
11 already before, prior to the address about the situation,
12 and he said he was going to handle it, and he said we
13 know -- I guess it's hearsay. But the police was just
14 telling us they knew the car of the person that was
15 driving.

16 Q. And did you give a statement to the police? Did
17 you write something down to the police?

18 A. No. We didn't write anything.

19 Q. Did you just tell them?

20 A. Yeah, we just told -- talked to them.

21 Q. Okay.

22 MR. FINCH: No further questions at this
23 time, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. BUTLER:

1 Q. The car you saw was white or beige?

2 A. Yes, sir.

3 MR. BUTLER: That's all I have. Thank you.

4 THE COURT: Do you have any further
5 questions?

6 MR. FINCH: Nothing.

7 THE COURT: You can step down. Next witness.

8 MR. FINCH: Your Honor, could I approach?

9 (Discussion held at sidebar.)

10 MR. FINCH: Officer Craig McAlhaney.

11 CRAIG McALHANEY,

12 having been first duly sworn,

13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 THE WITNESS: My name is Craig McAlhaney,

16 M-c-a-l-h-a-n-e-y.

17 BY MR. FINCH:

18 Q. Good afternoon, Officer McAlhaney.

19 A. Good afternoon.

20 Q. If you would, tell the Court where it is you're
21 employed.

22 A. City of North Charleston police department.

23 Q. What is your position with NCPD?

24 A. I'm a metro officer.

25 Q. What are your duties and responsibilities of that

1 position?

2 A. My position at the moment is patrolling the south
3 end of the town.

4 Q. And when you're patrolling the south end of the
5 town, you're responding to calls, making reports, things
6 like that?

7 A. Correct.

8 Q. Do you also have supervisory duties or no?

9 A. I do not.

10 Q. Is [REDACTED], is that considered in
11 the south end of town?

12 A. It is.

13 Q. Were you employed in that capacity in February of
14 2010?

15 A. I was.

16 Q. Did you have occasion to respond to a call to [REDACTED]
17 [REDACTED]?

18 A. I did.

19 Q. What was the nature of that call?

20 A. It was in reference to information about an
21 assault.

22 Q. And what information about an assault?

23 A. When I arrived, I met with Ms. O'Neal, who said
24 that while she was on her front porch that a blue Ford
25 Thunderbird drove past the front of her house. It had

1 bigger file? Do you have any further investigation with
2 that file, or was it handled by someone else?

3 A. It was handled by a detective.

4 Q. Aside from a description of the car, was there any
5 other vehicle information that you received?

6 A. She advised me of the tag of the vehicle. It was
7 [REDACTED]. I ran that registration through NCIC, and it
8 came back to 1993 Ford two-door, registered to a Lakeshia
9 Waters.

10 Q. And at that point were you able to develop a
11 suspect?

12 A. At that point, I searched the area for that same
13 vehicle and did not locate the vehicle, and that was the
14 end of my report.

15 Q. Were you familiar with that vehicle from
16 patrolling the south end?

17 A. I am not.

18 Q. Was the victim able to provide you any
19 descriptions of the suspects at that time?

20 A. She advised me that it was the same suspect that
21 assaulted her on the 4th.

22 Q. But no physical descriptions --

23 A. Black male, and that was about the general
24 information I obtained.

25 Q. And did you have any other -- well, let me ask you

1 this: What was Ms. O'Neal's demeanor when you
2 interviewed her?

3 A. She was upset due to the assault and suspect
4 driving by her house.

5 Q. When you say upset, can you describe that.

6 A. She was shaking a little bit, and you could just
7 hear it in her voice that she was upset about the
8 situation.

9 Q. Did you speak to anybody else at the scene?

10 A. I did not.

11 Q. Did you have any other investigative
12 responsibilities regarding this case?

13 A. No further effort after the supplemental report.

14 Q. You create the supplemental, and then you submit
15 it and that was it?

16 A. That was it. I was not the original case officer

17 for this case.

18 MR. FINCH: I have nothing further, Your
19 Honor. Please answer any questions the defense may have.

20 CROSS-EXAMINATION

21 BY MR. BUTLER:

22 Q. Good afternoon, Officer. When you go out there on
23 the 6th, right?

24 A. Correct.

25 Q. And the only person you spoke to was Jarvia

1 O'Neal?

2 A. Correct.

3 Q. You didn't speak to anybody else, and she provided
4 the license plate number that you just gave?

5 A. That's correct.

6 Q. And told you that she got that license plate
7 number when that car had driven past her house.

8 A. She advised me that she got that tag number from
9 acquaintances.

10 Q. Who were there?

11 A. Who were not on the scene that I talked to at that
12 time.

13 Q. But were there when the car drove past the house?

14 A. I don't really know for certain. She just
15 provided that information, and I went ahead and ran that
16 day.

17 Q. Was it your understanding that they got that
18 information right before you got there, when the drive-by
19 occurred, or some other time?

20 A. That was my understanding of it.

21 Q. The first thing?

22 A. Correct.

23 Q. They got it right then.

24 A. I'm --

25 Q. Or shortly before you got it?

1 A. She didn't specifically say a time, but I didn't
2 ask either, so I was assuming that it occurred before she
3 called the police.

4 MR. BUTLER: Got it. Thank you. Nothing
5 further.

6 THE COURT: Redirect?

7 MR. FINCH: Nothing, Your Honor.

8 THE COURT: You can step down.

9 THE WITNESS: Thank you.

10 THE COURT: You need a few nines? The last
11 state's witness is on the way. I think he's coming over
12 the bridge, so we just need about ten minutes, so go
13 ahead and go on back to the jury room.

14 Again, don't begin deliberations or
15 discussions, and we will resume here shortly. Thank you.

16 (Recess taken.)

17 THE COURT: All right. You got your witness?

18 MR. FINCH: Yes.

19 THE COURT: All right. Bring in the jury.

20 (In open court, jury present.)

21 THE COURT: Be seated. All right.

22 Call your next witness.

23 MR. FINCH: State calls Detective Omar
24 Faison.

25

1 OMAR FAISON,
2 having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 THE WITNESS: Omar Faison, last name
6 F-a-i-s-o-n.

7 BY MR. FINCH:

8 Q. Sergeant Faison, how are you doing today?

9 A. Great.

10 Q. Could you tell the Court, please, where it is that
11 you're employed.

12 A. Right now I'm currently employed at the city of
13 Hanahan.

14 Q. And what is your position at the city of Hanahan?

15 A. I'm a sergeant in uniform parole.

16 Q. How long have you been with city of Hanahan?

17 A. Approximately about one year.

18 Q. And back in February 2010, were you working with
19 Hanahan?

20 A. No, I did not.

21 Q. Where were you working then?

22 A. I was employed with the city of North Charleston.

23 Q. What was your position with North Charleston?

24 A. I was a detective in the person unit.

25 Q. And as a detective in the person unit, what are

1 the responsibilities of that position?

2 A. We handle crimes against person, assaults, sexual
3 assaults, anything.

4 Q. And on February 9th, 2010, did you have an
5 opportunity to be involved in investigation of an alleged
6 assault and battery at the Lovey Dovey club?

7 A. Yes, I did.

8 Q. What was your role in that investigation?

9 A. The lead detective, which is Detective Schmidt, he
10 came to me and said that he needed for me to show a photo
11 lineup to Ms. O'Neal, which I did when she got to the
12 police station, put her in our little interview room, and
13 I lined up the pictures and gave it to her. And she
14 pointed out an individual that did the assault to her,
15 and I gave it back to Detective Schmidt.

16 Q. And prior to your getting that assignment from
17 Detective Schmidt, did you know anything else about this
18 case?

19 A. At that time, no, I did not. She just came to me,
20 grabbed me, and asked if I could show her a photo lineup,
21 and I said yes.

22 Q. Is that standard operating procedure for lineups,
23 or was it at that time?

24 A. At that time, it was. It had to be an independent
25 person that don't know nothing about the case to actually

1 show them a photo lineup.

2 Q. What is the reason for that?

3 A. So it won't come up later on that he already knows
4 the suspect and the defendant, and he might had pointed
5 it out to the victim himself.

6 Q. So you had a collection of six photographs to show
7 the victim?

8 A. Yes, I did.

9 Q. And do you know why those six pictures were
10 together?

11 A. Usually when we do a photo lineup, we try to get
12 right around the same age, the same height, same kind of
13 facial feature, if the person had a tattoo, you try to
14 get them -- we try to back it up as best we can with the
15 individual that, you know, who actually may have
16 committed the crime at the time.

17 Q. So the suspect.

18 A. Yes.

19 Q. You take the suspect, and then you get people that
20 kind of look like them?

21 A. Yes.

22 Q. Okay. And do you know in this case how the
23 defendant became a suspect?

24 A. Yes. With the work of Detective Schmidt, after
25 everything was over with and she pointed out, I later

1 learned that he actually had --

2 MR. BUTLER: I'm sorry. I have to object to
3 hearsay at this point.

4 THE COURT: Sustained.

5 BY MR. FINCH:

6 Q. How was this lineup put together?

7 A. A series of pictures of the same person, of the
8 same height, weight, features, like I said before.

9 Q. I'm going to show you what's been marked State's
10 Exhibit 18, 7 pages. Just take a look at that and
11 identify that, if you would.

12 A. Yes. These are the six forms that I actually
13 showed Ms. O'Neal at the time on February the 9th.

14 Q. And was she able to identify?

15 A. Yes, and she identified by her signature and also
16 on the date that she signed it and also signed this form
17 that I have to sign, saying that I'm the one that
18 actually presented it to her and my name is right there.

19 Q. And when she chose that individual, was there any
20 hesitation?

21 A. No, sir.

22 Q. Did you indicate to her any -- who she should
23 choose?

24 A. No, sir. After I read these, I just gave her the
25 picture, and she took her time and pointed it out.

1 Q. And you said prior to that identification
2 procedure, you didn't have any knowledge of this case.

3 A. No, sir, I did not.

4 Q. How about afterwards?

5 A. Afterwards I did.

6 Q. And what do you know about this case?

7 MR. BUTLER: I'm sorry. Objection. Hearsay.

8 THE COURT: Sustained.

9 MR. FINCH: No further questions. Thank you,
10 Officer Faison.

11 MR. BUTLER: No questions.

12 THE COURT: You can step down. Anything
13 further from the state?

14 MR. FINCH: No. The state rests.

15 THE COURT: Okay. I'm going to send you back
16 to the jury room right now so we can take up some legal
17 matters and then prepare for the last phase of the trial.

18 So, again, don't begin deliberations or
19 discussions, and we'll have you back here in about 10, 15
20 minutes, max. All right?

21 (In open court, jury not present.)

22 THE COURT: Okay. Mr. Butler?

23 MR. BUTLER: I would move for a directed
24 verdict pursuant to I believe it's criminal Rule 19.

25 THE COURT: Well, I think there is enough

1 direct evidence based on the victim's testimony to get
2 past the directed verdict, so I'll deny those.

3 All right. What have you guys decided about
4 a defense?

5 MR. BUTLER: I invite the Court to inquire of
6 Mr. Logan, but my understanding is that we will not be
7 calling any witnesses, including Mr. Logan.

8 THE COURT: All right. Mr. Logan, will you
9 stand up there a second? We talked at the beginning of
10 the trial about your rights to put up a defense and not
11 put up a defense and to testify and not testify. Do you
12 recall that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Well, we're at that point in the
15 trial now where you have to make a decision as to whether
16 or not you want to put up a defense and whether or not
17 that would include you testifying.

18 Your lawyer has indicated to me that you do
19 not wish to call any witnesses to testify on your behalf;
20 is that correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And that includes you do not want
23 to testify and tell the jury your side of the story.

24 THE DEFENDANT: No, sir.

25 THE COURT: All right. Well, that is

1 certainly your right. I need to make sure that you
2 understand now that I will instruct the jury that they
3 are not to hold that against you while they are
4 deliberating, but, again, it is your --

5 MR. BUTLER: I'm sorry to interrupt. I need
6 a moment with him, if it please the Court.

7 (Discussion held off the record.)

8 MR. BUTLER: No, he will not testify. If you
9 want to get a final answer from him, that's fine.

10 THE COURT: Okay. Mr. Logan, now, you've
11 gone back and talked with your lawyer and some family
12 members and friends. Have you made a final decision
13 about whether or not you want to present any witnesses?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And what is your decision?

16 THE DEFENDANT: No, sir, I don't want to
17 testify.

18 THE COURT: You don't want to testify?

19 THE DEFENDANT: No, sir.

20 THE COURT: You want me to instruct the jury
21 they're not to hold that against you while they're
22 deliberating?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: That's what we'll do. Let's talk
25 about the jury charges then.

1 Does anybody have any changes they want to
2 talk about?

3 MR. BUTLER: I have an objection to -- I know
4 it's now routine, but the now standard direct and
5 circumstantial evidence charge, particularly the portion
6 that says -- beg the Court's indulgence -- the law makes
7 absolutely no distinction between the weight or value to
8 be given to either direct or circumstantial evidence.

9 I think that after our Supreme Court opinion
10 in Bostick that came out, I want to say, earlier this
11 year where the Supreme Court said that the trial Court
12 should have directed a verdict because the case was
13 entirely circumstantial, they appealed to four different
14 pieces of circumstantial evidence, this was a homicide
15 and an arson where they found some of the belongings of
16 the victim in a back yard fire that the defendant had
17 access to, that line of cases, Shropp and Arnold and now
18 Bostick, they are now dealing with this jury charge, so I
19 guess what I'm asking is to argue against precedent to
20 say that the standard charge, I think this is from Ripon,
21 that says that the direct and circumstantial evidence are
22 equally --

23 THE COURT: I'm not familiar with the exact
24 case you're referring to, but I usually on -- there is a
25 difference when it comes to directed verdict between

1 direct and circumstantial evidence.

2 MR. BUTLER: Yes.

3 THE COURT: But it has to be substantial
4 circumstantial evidence.

5 MR. BUTLER: Yes, sir.

6 THE COURT: I'm not sure if they have changed
7 that rule.

8 MR. BUTLER: In case they want to, I have to
9 give them the opportunity to do it, and I think the
10 proposition -- the law makes absolutely no distinction
11 between the weight or value to be given to either direct
12 or circumstantial evidence is no longer valid.

13 THE COURT: Okay. All right. I'll deny that
14 then. Anything else you want to bring out?

15 MR. BUTLER: No, sir, and I think it's
16 already clear you're not going to be charging assault and
17 battery high and aggravated nature.

18 THE COURT: Correct.

19 MR. FINCH: Your Honor, the state would ask
20 the inclusion of the assault and battery of the high and
21 aggravated nature as a lesser included and that the facts
22 of this case could easily bear on a conviction of assault
23 and battery of a high and aggravated nature. It's
24 perfectly reasonable to believe the jury could come to
25 the conclusion that the assault did, indeed, happen in

1 the rest room there and still discount, or not believe,
2 that the circumstances were with the intent to commit a
3 criminal sexual conduct.

4 THE COURT: Do you want to respond to that?

5 MR. BUTLER: Yes. I need to.

6 First of all, if they thought this was ABHAN,
7 they should have brought it as an ABHAN. I haven't
8 presented any testimony that would have altered their
9 perception of their case. If the evidence of the ABHAN
10 had come out through my witnesses, I could perhaps
11 understand it, but I didn't put up anything. This is all
12 their case.

13 If they thought it was an ABHAN, they should
14 have indicted an ABHAN, so I would just object on the
15 basis of just basic fairness. What they're trying to do
16 is their case, perhaps, has not gone as well as they
17 like, and they're trying to hedge their bets, so I would
18 object on that basis, but, also, the cases do not stand
19 for the proposition that ABHAN is always appropriate when
20 there is an indictment for criminal sexual conduct.

21 I think the case is State vs. Nicky White,
22 which is from Richland County, which is the first case
23 that recently recognized that ABHAN can be lesser
24 included.

25 There has to be some testimony in the record

1 that only an ABHAN occurred and not a CSC, so, for
2 example, let's say Mr. Logan did testify and said, yes, I
3 hit her, but I did not try to sexually assault her. Then
4 it will be appropriate, but the only person who testified
5 to any form of assault is Jarvia O'Neal, and she said
6 that it was an assault with intent to commit CSC, so
7 under these facts, the ABHAN would be inappropriate, even
8 if I wanted it.

9 THE COURT: Well, I have to agree with
10 Mr. Butler, there is only evidence in the record that
11 there was an attempt at criminal sexual conduct. There
12 is no attempt that there was anything other than that.
13 There was no -- there's no basis in the record other than
14 they just don't believe what the witness had to say as to
15 assault and battery of a high and aggravated nature. All
16 right.

17 MR. FINCH: Your Honor, just to be heard,
18 just the last bit on this is that the state would believe
19 that -- the state's position is that that is enough that
20 the jury could reasonably believe a portion of their
21 testimony, just like they're charged. They can believe a
22 portion of the witness's testimony regarding the assault
23 and disregard, not believe, the portion regarding the
24 intent and that the facts do bear for the inclusion of
25 charge on assault and battery of a high and aggravated

1 nature. The state has a right to request those lesser
2 included, particular facts would bear out the inclusion
3 from that charge.

4 THE COURT: All right. Well, I'm still going
5 to deny your request. All right?

6 So he has not put up any defense, so he gets
7 to close. How long are you going to need on your
8 closing?

9 MR. FINCH: Fifteen minutes.

10 THE COURT: All right. How long do you think
11 you'll need?

12 MR. BUTLER: Everybody always laughs,
13 especially the deputies, when I say 20, so I'll say 30,
14 but I'll aim for 20.

15 THE COURT: All right. Let's bring the jury
16 in.

17 (In open court, jury present.)

18 THE COURT: All right. Be seated. All
19 right. Does the defense wish to call any witnesses?

20 MR. BUTLER: No, sir.

21 THE COURT: All right. Now, folks, you have
22 heard all of the witnesses in this case. Now the defense
23 has rested, the state has rested, and so we are going to
24 move into the closing arguments, and I will instruct you
25 on what the law is and you will retire to deliberate and

1 game?

2 Also, there is some illusion to the idea that
3 you're not going to hear any testimony from the police
4 about what they saw that night, or DNA evidence or,
5 again, that's not stuff that was available. It does not
6 dispute -- the lack of that does not dispute what people
7 saw, the injuries they saw, the reactions they saw, and
8 there is -- it's absolutely understandable, as part of
9 your deliberations, to consider how someone responds, but
10 you must also consider that not every individual responds
11 in exactly the same way to violent crime, sexual crime,
12 crimes that leave someone injured.

13 Each individual, no matter how they are
14 situated, comes with their own past, comes with their own
15 information that makes them do what they do. Again, none
16 of that changes the undisputed testimony that Ms. O'Neal
17 went in the bathroom and she wasn't cut and bleeding and
18 swollen. When she came out of the bathroom, she was.
19 She told you what happened when she was in the bathroom,
20 and what the defendant said. She told you what his
21 intent was.

22 If he just wanted to beat her up, he just
23 wanted to show her what was what, he could have done that
24 out where they eat crabs. He could have done that
25 outside. He could have done that outside of the Lovey

1 You took an oath. Everybody in this process, witnesses,
2 judges, lawyers, we all take oaths, and that is to ensure
3 justice. That is to ensure that innocent people don't go
4 to prison based upon contradiction, physical
5 impossibility, lie, innuendo, gossip, and garbage, and
6 you took an oath. You took an oath to apply the law of
7 the State of South Carolina and render a verdict, and
8 that is whether you like it, whether people are popular,
9 whether you agree with the law or not.

10 That's your oath, and it's as simple as that.
11 I have to sound like a lawyer occasionally. Do you
12 believe Jarvia O'Neal beyond a reasonable doubt that this
13 happened the way she said it? And you can't, and that is
14 what justice is, and it's not about winning or losing.

15 You have no friends to reward or enemies to
16 punish. Just do your duty, and justice will be served
17 and justice today says 16 months for nothing is too long.
18 Justice today, not later.

19 Thank you.

20 THE COURT: All right. Well, folks, it is
21 that time where you have heard all the evidence and all
22 the arguments of the parties, and it is my job to explain
23 the law to you as it applies to the facts of this case.

24 As I explained at the beginning of the trial,
25 under the constitution and laws of this state, only you,

1 the jury, can make a finding of fact in this case, and
2 I'm not permitted to indicate to you how I might feel
3 about the facts, so if I have said anything or done
4 anything in this case which you think indicates to you
5 that I have an opinion about the facts of this case, then
6 you should disregard that.

7 You, the jury, must independently weigh the
8 evidence presented in this case and render a verdict
9 based solely on that evidence. Now, the same
10 constitution and laws that designate and make you finders
11 of facts make me the instructor of the laws, and if you
12 have some idea as to what you think the law is or what
13 the law ought to be and it does not agree on what I tell
14 you the law is, you're obligated, under the oath which
15 you have taken, to abandon that preconception on your
16 part and to accept and apply the law precisely as I now
17 state it to you.

18 Now, I remind you as I told you at the
19 beginning of the trial, the fact that the defendant was
20 arrested, charged, and indicted in this case is not
21 evidence in this case and cannot be considered by you as
22 evidence of guilt in this case, nor does it create any
23 presumption or inference of guilt.

24 The indictments are simply the formal written
25 instrument which contains the charges made against the

1 defendant. It is the formal document by which this case
2 is brought into this court, and, again, there are two
3 separate charges against the defendant.

4 The first is indictment 2010-GS-10-3060,
5 which charges the defendant with attempted criminal
6 sexual conduct in the first degree, and the second
7 indictment was 2010-GS-10-3061, which charged the
8 defendant with strong-arm robbery.

9 Each of these indictments contains a separate
10 and distinct offense. You must decide which
11 indictment -- or each time separately on the evidence and
12 the applicable law, uninfluenced by your decision as to
13 any other indictment. The defendant may be convicted or
14 acquitted on any or all of the charges.

15 You will be asked to write a separate verdict
16 of guilty or not guilty for each indictment. Now, the
17 defendant pled not guilty to this indictment, and that
18 plea casts a burden on the state to prove the defendant
19 is guilty beyond a reasonable doubt.

20 As I told you at the beginning of the trial,
21 a person charged with a crime in this state is never
22 required to prove himself innocent. This is an important
23 rule of law in this country, that a defendant in a
24 criminal trial will always be presumed to be innocent of
25 the charge for which he is indicted unless and until his

1 guilt has been proven by evidence satisfying you of that
2 guilt beyond a reasonable doubt.

3 The presumption of innocence is not a mere
4 legal theory. This isn't just a legal phrase. This is a
5 substantial constitutional right which every defendant is
6 entitled to. This presumption of innocence accompanies
7 the defendant from the time he is charged throughout this
8 trial until you reach a verdict of guilt, based upon
9 evidence satisfying you of that guilt beyond a reasonable
10 doubt.

11 Now, some of you may have served on a jury in
12 a civil trial, as I explained at the beginning of the
13 trial, and you were told there that it is only necessary
14 to prove a fact is more likely true than not true, such
15 as by the greater weight of the evidence. In criminal
16 cases, the state's evidence must be more powerful than
17 that. It must be beyond a reasonable doubt.

18 Proof beyond a reasonable doubt is proof that
19 leaves you firmly convinced of the defendant's guilt.
20 There are very few things in this world that we know with
21 absolute certainty, and in criminal cases, the law does
22 not require proof that overcomes every possible doubt.

23 If, based on your consideration of the
24 evidence you are firmly convinced that the defendant is
25 guilty of the crime charged, then you must find the

1 defendant guilty.

2 If, on the other hand, you think there is a
3 real possibility that the defendant is not guilty, then
4 you must give the defendant the benefit of the doubt and
5 find him not guilty. There are two types of evidence
6 generally presented in a trial. There is direct evidence
7 and circumstantial evidence. Direct evidence is
8 testimony of a person who claims to have actual knowledge
9 of a fact, such as an eyewitness, and this is evidence
10 which immediately establishes the main fact to be proved.

11 Circumstantial evidence is proof of a chain
12 of facts and circumstances which indicate the existence
13 of a fact, and this is evidence which immediately
14 establishes collateral facts from which a main fact may
15 be inferred.

16 Circumstantial evidence is based on inference
17 and not on personal knowledge or observation. The law
18 makes absolutely no distinction between the weight or
19 value to be given either direct or circumstantial
20 evidence, nor is a greater degree of certainty required
21 of circumstantial evidence than direct evidence.

22 You should weigh all the evidence in this
23 case, and, after weighing the testimony, if you are not
24 convinced of the defendant's guilt beyond a reasonable
25 doubt, you must find the defendant not guilty.

1 I also instruct and emphasize the fact that
2 the defendant did not testify is not a factor to be
3 considered by you in any way in your deliberation and in
4 your consideration on the question of guilt or innocence
5 of the defendant. It must not be considered by you in
6 any manner whatsoever. A defendant has a constitutional
7 right to remain silent, and the assertion of this right
8 must not be considered by you in your deliberations.

9 I repeat that under your oath you are to draw
10 no conclusion whatsoever to the fact the defendant in
11 this case did not testify. The fact that the defendant
12 did not testify should not even be discussed in the jury
13 room. The burden of proof, as I have stated to you, is
14 on the state, and the defendant is not required to prove
15 his innocence.

16 The burden of proof remains on the state to
17 prove guilt beyond a reasonable doubt. Now, necessarily,
18 you must determine the credibility of witnesses who have
19 testified in this case, and credibility simply means
20 believability. It's your duty as jurors to analyze and
21 evaluate the evidence and determine what evidence
22 convinces you of its truth.

23 In determining the believability of witnesses
24 who have testified in this case, you can believe one
25 witness over several witnesses or several witnesses over

1 one witness. You can believe part of the testimony of a
2 witness and reject the remaining part of the testimony of
3 that same witness. You may believe the testimony of a
4 witness in its entirety, or you can reject the testimony
5 of a witness in its entirety.

6 You may consider whether any witnesses
7 exhibited to you any interest, bias, prejudice, or other
8 motive in this case, and you can consider whether the
9 appearance -- and you can consider the appearance and
10 manner of a witness while on the witness stand.

11 I also instruct you that a person who has a
12 past criminal record is competent to testify during a
13 trial. A past record does not affect the ability of that
14 witness to testify. The past record may only be
15 considered by you, if at all, in determining the
16 witness's believability. Remember, you are the sole
17 judges of the facts in this case and the believability of
18 any and all witnesses.

19 Now, I'll go over with you first the
20 strong-arm robbery elements. The defendant is charged
21 with strong-arm robbery, which is the taking of something
22 of value from a person or in the immediate presence of a
23 person by violence or intimidation. When determining
24 whether a robbery was committed with intimidation, the
25 jury should determine whether an ordinary reasonable

1 person in the victim's position would feel a threat of
2 bodily harm from the perpetrator's act.

3 For you to find the defendant guilty of
4 strong-arm robbery, the state must prove beyond a
5 reasonable doubt that property was taken from the person
6 of another or in his presence, that not only must the
7 taking be without the consent of the owner, it must be
8 accomplished by violence or putting the person in fear.

9 His violence must be actual personal violence
10 or the threat of it. The degree of force used is
11 immaterial, so long as such force or threat of force is
12 actually sufficient to overcome the victim's resistance.
13 This violation or intimidation must either precede or be
14 contemporaneous with the taking.

15 Now, the second charge is attempted criminal
16 sexual conduct, first degree. An attempt is an effort to
17 accomplish a crime which does not succeed. Attempt
18 includes a specific attempt to do a particular criminal
19 act, along with an act falling short of the act intended.
20 The state must show more than mere threat -- excuse me,
21 the state must show more than mere preparation and
22 intent. There must be some overt act committed in the
23 effort to commit the crime.

24 Intent means intending the result which
25 actually occurs, not accidentally or involuntarily.

1 Intent may be shown by acts and conduct that the
2 defendant in other circumstances from which he may
3 naturally and reasonably infer intent. In order to prove
4 this offense, the state must first prove beyond a
5 reasonable doubt that the defendant attempted to engage
6 in a sexual battery with the victim.

7 Sexual battery is sexual intercourse,
8 cunnilingus, fellatio, anal intercourse, or any
9 intrusion, however slight, of any part of a person's body
10 or any object into the genital or anal openings of
11 another persons's body, except when the intrusion is
12 accomplished for medically recognized treatment or
13 diagnostic purposes.

14 If you find that the state has not shown
15 beyond a reasonable doubt that a sexual battery was
16 attempted, you would stop deliberating and your verdict
17 would have to be not guilty. If you find sexual battery
18 was attempted, then you must decide whether the state has
19 proven beyond a reasonable doubt that the defendant used
20 aggravated force to attempt to accomplish the sexual
21 battery.

22 Aggravated force means the use of physical
23 force or physical violence of a high and aggravated
24 nature to overcome the victim. This includes the threat
25 of using a deadly weapon. In determining the guilt or

1 innocence of the defendant, you cannot consider any
2 possible penalty for any particular crime.

3 The punishment for the crime is a matter for
4 me to determine and should never be considered by you in
5 any matter in arriving at a fair and impartial verdict as
6 to the guilt or innocence of the defendant.

7 Finally, your verdict must be unanimous. In
8 other words, all 12 must agree. Now, Mr. Foreman, this
9 is where you earn your pay. There is two indictments,
10 and I'll send them back to you, and, again, these are not
11 evidence. They're simply going back with you for the
12 purpose of writing what the verdict is on the back of it.
13 And on the back, you'll see there is a little red stamp
14 that says true bill.

15 Well, right underneath that is where it says
16 verdict, and you write what the verdict is, and the
17 choices are guilty or not guilty as to the strong-arm
18 robbery, and guilty or not guilty for the attempted
19 criminal sexual conduct, first degree.

20 Once you've reached a verdict on both of
21 those, you write that down, sign it, date it, let the
22 bailiff know you've reached a verdict. All right?

23 Now, I'm going to send you back to the jury
24 room. Don't begin your deliberations just yet. We have
25 to get the evidence together, and I have to give the

1 lawyers the opportunity to say if I misspoke something so
2 they can ask me to correct it. Just a formality we have
3 to do, and I'm sure in five minutes we'll have it back.

4 When I send the indictments and evidence
5 back, the bailiff will tell you you can begin
6 deliberations at that point. All right? Thank you.

7 (In open court, jury not present.)

8 THE COURT: Anything from the state?

9 MR. FINCH: Yes, Your Honor. Actually, when
10 I heard you reading the charge for criminal sexual
11 conduct first degree, I don't know why, but the first
12 time it's just -- I think when I was looking through the
13 jury charge, I saw assault and battery of a high and
14 aggravated nature. I don't know why. Maybe my eyes saw
15 assault on both pages, but you read the charge for
16 16-3652. He's actually charged with 16-3656, assault
17 with intent to commit first degree criminal sexual
18 conduct, and I had printed those, not attempted criminal
19 sexual conduct first degree. I printed those off of the
20 Charleston Bar web site, and I had them with me so I
21 quickly was reading as you were reading. I don't know --

22 THE COURT: You have in your indictment 652.

23 MR. FINCH: If that's is what was on the
24 indictment, I stand corrected. Okay.

25 THE COURT: Okay?

1 MR. FINCH: That's fine.

2 THE COURT: All right.

3 MR. FINCH: That's why I brought it up, just
4 in case.

5 THE COURT: Anything else?

6 MR. FINCH: Nothing from the defendant.

7 THE COURT: Anything from the defendant?

8 MR. BUTLER: Only my previously made
9 objections.

10 THE COURT: Anybody have an objection with
11 the charge going out?

12 MR. BUTLER: I do not.

13 MR. FINCH: I do not.

14 THE COURT: Let's get the evidence together
15 then.

16 (4:12 jury retires to deliberate.)

17 (5:56 p.m. verdict.)

18 (In open court, jury present.)

19 THE COURT: Be seated. All right.

20 Mr. Foreman. I understand the jury has reached a
21 verdict; is that correct?

22 THE FOREMAN: Yes, Your Honor.

23 THE COURT: That is as to both indictments?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: It's unanimous as to both?

1 THE FOREPERSON: Yes, Your Honor.

2 THE COURT: All right. Would you hand that
3 to the bailiff. Thank you.

4 All right. Mr. Logan, would you rise. The
5 indictment 2010-GS-10-3060, attempted criminal sexual
6 conduct first degree, the verdict is guilty. Indictment
7 2010-GS-10-3061, strong-arm robbery, the verdict is not
8 guilty.

9 If this, in fact, is your verdict, would you
10 indicate that by raising your right hand? Let the record
11 reflect that the jurors have all raised their right hand.
12 Do you wish to have them polled?

13 MR. BUTLER: Yes, as to only attempted
14 criminal sexual conduct.

15 THE COURT: As to the criminal sexual conduct
16 charges, will you poll the jury.

17 (Whereupon, the jury was polled, and all
18 jurors indicated their agreement with the verdict.)

19 THE CLERK: Judge, the jury has been polled,
20 and the verdict stands.

21 THE COURT: I want to thank you for your
22 service this week. This will complete your jury service
23 for the week. You don't have to call after 6:00, and you
24 don't have to come back tomorrow. We're finished up with
25 trials, and I'll be handling some pleas off the trial

1 docket tomorrow, but I want to sincerely thank you for
2 your service this week.

3 We always appreciate when people show up like
4 they're asked to, and it's always an interesting
5 experience, and I hope that y'all found the experience to
6 be enjoyable. Not everybody gets to be on a jury, but I
7 think, most folks, it's been my experience in talking to
8 them, that they enjoy it when they actually get to serve
9 on a jury. And, you know, you find out a lot about the
10 process. It's a lot different than what it appears in
11 the newspaper, certainly a lot different than TV, but you
12 read little things and get snippets in the newspaper and
13 there are times when I'm thinking, I don't think that
14 reporter was in the same room I was in, but even when
15 they do a good job, they don't get the whole flavor of
16 what you folks heard over a couple of days, and so it's
17 an interesting experience.

18 In government, we have three branches,
19 judicial, executive, and legislative, and we had you
20 participating in the judicial branch this week.
21 Typically, people just get asked to vote and pay taxes,
22 and that is all you get to do, but this is important. We
23 thank you for your service.

24 You're free to go. I know traffic -- it's a
25 little bit late, so if you're heading toward the north

1 part, the bad stuff is gone. You're not required to stay
2 any longer, so we want to thank you for your service.

3 (Jury dismissed.)

4 THE COURT: All right. What would the state
5 like to tell me before sentencing?

6 MR. FINCH: Well, Your Honor, if you would
7 like to hear from the victim regarding sentencing.

8 THE COURT: Sure, if she would like to say
9 something.

10 THE WITNESS: I would like to say I feel like
11 this was very fair for me because I have been through
12 this a lot, and I'm very, very happy about the conviction
13 because I haven't had my life for myself since then. I
14 haven't worked since then. I don't go out. I don't do
15 anything. I haven't had a crab since that night. I hate
16 the smell of it, and I just need my life back, and the
17 fact that I can get back on track now and I'm glad I'm
18 ready to put this behind me because I needed this for me
19 to go on, and I'm not coming back to Charleston.

20 I like my life where I'm living, but now I
21 have a sense now of who I am, just for me to know that I
22 can stand up for myself and I don't have to deal with
23 what people have for me.

24 I don't need it, and, Your Honor, I would
25 just like to tell you thank you very, very much and

1 everybody who was on my side and the support for
2 believing in me and trusting in me, and I just can't stop
3 thanking y'all.

4 That's about it. I thank y'all so much.

5 THE COURT: I hope you begin your healing
6 process. All right. Anything else from the state?

7 MR. FINCH: Just that due to the serious
8 nature of the crime, of course, the state is asking for
9 time to run consecutive to any federal time -- the state
10 is asking for time to run consecutive to the federal
11 crime.

12 THE COURT: What is the prior record?

13 MR. FINCH: My investigator is bringing it
14 over. I believe he has a 2002, 2003 conviction. I
15 believe one was possession of marijuana. I'm just going
16 off the top of my head, and Mr. Butler might have it in
17 front of him. I know there is a 2010 conviction for
18 federal drug crimes. I do not know what that was, and my
19 investigator is going to get his record. It's printed
20 out. Everything is drugs, in his past.

21 THE COURT: Okay. So it's just prior drugs.

22 MR. FINCH: All prior drugs, I believe 2002,
23 2003, and 2010. They're all drugs.

24 THE COURT: All right. Mr. Butler?

25 MR. BUTLER: Well, obviously, this is my

1 least favorite part of the job because I'm not used to
2 having to give mitigation for something my client
3 maintains he didn't do, but I would have to point out
4 that he has no prior record of violence.

5 He's going to do an 85 percent federal
6 sentence for 78 months for which he's gotten no credit
7 for the 16 months he's been in jail, unless they start
8 giving him credit for Monday when you granted the
9 PR bond.

10 So I think consecutive time would be unduly
11 punitive. I don't want to minimize the impact this would
12 have had on Ms. O'Neal; however, he is 25 with no prior
13 record of violence. He's married. His wife is here.
14 His mother is here. The other family is here. He has
15 two children, ages seven and four. At the time of his
16 arrest, he was working at the shipyard, so we would ask
17 the Court to consider whatever time to be concurrent.
18 Let me see if anybody has anything to say.

19 THE COURT: I thought the feds wouldn't give
20 him concurrent time.

21 MR. BUTLER: Well, I think that it can --
22 since our last conversation, if you put the magic
23 language in the sentencing sheet, which I'll have to find
24 out, but it's that he is released from state custody
25 starting now, and that the sentence was to run concurrent

1 with the federal sentence.

2 Everybody will be here tomorrow. I can find
3 out exactly what the magic language is, if that's what
4 Your Honor wants me to do, but that is what his federal
5 public defender responded to me in an e-mail earlier
6 today, is that if it's clear that he is now in --
7 released from state custody -- I don't know if I'm going
8 to get that right, so I should probably just ask to
9 figure it out, and maybe get back to you tomorrow if I
10 can do that. I don't know if anybody wants to speak on
11 his behalf.

12 Judge, his mother would like to speak.

13 THE WITNESS: Nell Drayton Logan. I stand
14 here because I know my son, and I know that he worked
15 hard and he tried to live a good life. Yeah, granted, he
16 made some mistakes along the way, but for him to have to
17 go through this, and he already lost 16 months of his
18 time in jail and 16 months he missed his children and his
19 children missed him.

20 I'm constantly hearing his daughter ask,
21 Granny, when daddy coming home? When daddy coming home?
22 And I'm trying to keep her from thinking that he isn't
23 here, but lying to her, telling her that, Your daddy is
24 working out of town, and don't worry. He'll be home
25 soon.

1 And I know he's a good person and I know he
2 didn't hurt anybody like that because I taught him
3 differently. I taught him to love God and to love the
4 righteous life. That's it.

5 THE COURT: All right. Mr. Logan, you want
6 to say anything?

7 THE DEFENDANT: Yeah. Your Honor, I
8 apologize for being in front of you. I'm not guilty of
9 these charges. I'm a married man. I got a wife I be
10 home with every night, man.

11 Sir, I've been on the monitor two years and
12 get in no trouble, just go to work, go home. I love my
13 kids. They ain't involved in that. I made mistakes
14 messing with drugs years ago, Your Honor. I wish this
15 person -- I wish this young lady here would be up front
16 and really tell y'all what really went on. For her to
17 stand up in front of the jury, in front of you, Your
18 Honor, and all these people and lie? Your Honor, yes, I
19 was convicted, but I didn't try to rape her. How could
20 people be so heartless? That's what I don't understand.
21 How could people be so heartless? My wife -- I can't get
22 into the details why I was there, because there would be
23 no proof, but I should have just take my time and just
24 go.

25 MR. BUTLER: I can actually speak to that. I

1 told him he can't talk about it, but Clarence had pled
2 guilty but had sentencing deferred in federal court for
3 his crimes in federal court and was working with the
4 federal government, and I guess I'll leave it at that.

5 He was trying to reduce his sentence, and
6 they agreed to let him out to do that, and that is why he
7 was at -- why he's always told me he was at club Lovey
8 Dovey that night.

9 THE COURT: Well, you know, the jury found
10 that you were guilty of what you got charged with. I
11 don't know what happened that night. It sounded like a
12 lot of different discrepancies and things, but,
13 ultimately, they found that you attempted to sexually
14 assault this young lady, and that was the thrust of the
15 charge. The particulars of when exactly it happened, I
16 guess they worked through that. All things considered,
17 you were facing up to 30 years for the charge.

18 I think, under the circumstances, I find the
19 sentence of ten years to be appropriate. I will allow it
20 to run concurrent with the federal time, and you'll get
21 credit for the 16 months that you've been in jail while
22 you were incarcerated pending trial.

23 Good luck.

24 - - -

25 (Whereupon, the proceedings were concluded.)

190 CH20100200848

WITNESSES

JEREMY SCHMIDT
North Charleston Police Department

AGENCY CASE NUMBER

2010005272

ARREST WARRANT NUMBER

K610895

DATE OF ARREST

February 10, 2010

ACTION OF GRAND JURY

TRUE BILL

Dan Swerns
Foreperson of Grand Jury
Date:

VERDICT

Guilty

Justin L.
Foreperson of Petit Jury

Date: 6/9/11

INDICT

DOCKET NO. 2010GS1003060

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

May Term 2010

THE STATE

vs.

CLARENCE LOGAN JR
DOB

B/M

Indictment for

Attempted Criminal Sexual Conduct
1st Degree

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on May 10, 2010 the Grand Jurors of Charleston County present upon their oath:

Attempted Criminal Sexual Conduct 1st Degree

That in Charleston County, South Carolina, on or about February 4, 2010, the Defendant, CLARENCE LOGAN JR, did attempt to commit a sexual battery upon the victim, Jarvia O'Neal, without her consent, and with the use of aggravated force, to wit: the defendant grabbed the victim around the neck, choking her, and struck her with a closed fist about the face and body; all in violation of Section 16-3-652, Code of Laws of South Carolina, (1976, as amended).

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


TIMMY FINCH
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.
CLARENCE LOGAN JR

AKA: _____

Race: BLACK Sex: M Age: 25

DOB: _____ SS# _____

Address: _____

City, State, Zip: NORTH CHARLES, SC 294060000

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Assault w/ Intent to Commit CSC 1st Degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS1003060

A/W#: K610895

Date of Offense: 2/4/2010

S.C. Code § : 16-03-0656, 0652(2)

CDR Code #: 0253

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0656, 0652(2) of the S.C. Code of Laws, bearing CDR Code # 0253
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 78223
Finch, Timmy SC Bar# _____ Defendant Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: py
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 16 months

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$133.90

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: 10 years concurrent to any Federal
sentence and SCDC is NOT to take the
Defendant into custody until the Federal
sentence is served if there is any more
time remaining on the State sentence. py
☐ Appointed PD or appointed other counsel,
§ 47-12 requires \$500 be paid to Clerk
during probation.

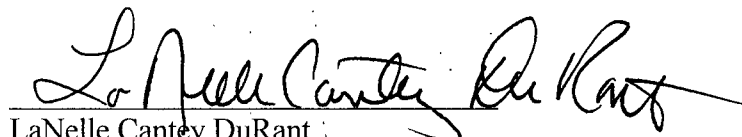
Clerk of Court/ Deputy Clerk [Signature]
Court Reporter: Amanda Steffenstein
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code: 2134
Sentence Date: 6/9/11

CERTIFICATE OF COUNSEL FOR APPELLANT

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

October 29th, 2012

A handwritten signature in black ink, reading "LaNelle Cantey DuRant". The signature is fluid and cursive, with the first name "LaNelle" being the most prominent.

LaNelle Cantey DuRant
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