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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

George C. James, Jr., Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

v.

DESMOND GREEN,

APPELLANT

APPELLATE CASE NO. 2015-000726

RECORD ON APPEAL

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INDEX

INDEX.....	i
PRE-TRIAL HEARING TRANSCRIPT (March 24, 2015).....	1
ARGUMENT ON MOTION <i>IN LIMINE</i>	1
TESTIMONY	
KYLE BRELAND	
Direct Examination by Mr. Holland	16
Cross Examination by Ms. Saxon.....	21
ARGUMENT ON MOTION <i>IN LIMINE</i> (CONT.).....	23
TRIAL TRANSCRIPT (March 25, 2015).....	30
MOTIONS	33
RULING BY THE COURT.....	43
OPENING STATEMENT BY MR. HOLLAND.....	50
OPENING STATEMENT BY MS. SAXON.....	53
TESTIMONY	
TASHA HAUPT	
Direct Examination by Mr. Holland	55
Cross Examination by Ms. Saxon.....	60
Redirect Examination by Mr. Holland (In Camera).....	61
Recross Examination by Ms. Saxon (In Camera)	62
KYLE BRELAND	
Direct Examination by Mr. Holland	69
Cross Examination by Ms. Saxon.....	80
Redirect Examination by Mr. Holland	81
JEFF VORTISCH	
Direct Examination by Mr. Holland	82
DIRECTED VERDICT MOTION AND RENEWAL OF MOTIONS.....	89

RULING ON MOTIONS95

CLOSING ARGUMENT BY MR. HOLLAND 100

CLOSING ARGUMENT BY MS. SAXON 103

VERDICT 108

SENTENCING 109

INDICTMENT 110

CERTIFICATE OF COUNSEL..... 112

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

State’s Exhibit 1 (Dispatch call), State’s Exhibit 2 (Body mic and car camera), State’s Exhibit 3 (Jail calls), and State’s Exhibit 5 and 6 (Photographs of victim)

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In the Court of General Sessions for the
State of South Carolina, County of Beaufort

Case No.: 2014GS0702009

State of South Carolina,
Plaintiff(s),

vs.

Transcript of Record

Desmond Green,
Defendant(s).

PRE-TRIAL HEARING

March 24, 2015
Beaufort, South Carolina

BEFORE:

The Honorable George c. James

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25

INDEX

WITNESS:

PAGE:

TASHA HAUPT

Direct Examination By Mr. Holland 7

DYLAN HIGHTOWER

Direct Examination By Mr. Holland 11

Voir Dire Examination By Ms. Saxon 15

Direct Examination Continued By Mr. Holland 18

KYLE BRELAND

Direct Examination By Mr. Holland 32

Cross Examination By Ms. Saxon 37

STATE'S EXHIBITS:

Marked:

Received:

1 911 call CD 8

3 jail call CD 14

2 body mike CD 35 35

1 MS. SAXON: I have substantive objections too.

2 THE COURT: All right. Well, I will be able to
3 rule on the hearsay part accordingly. But let me
4 hear the content of it and then you can ask
5 questions of the witness or make your other
6 objections then, okay.

7 MS. SAXON: All right.

8 THE COURT: You can go ahead and play Exhibit
9 3.

10 MR. HOLLAND: Your Honor, just for purposes of
11 the record, this disc contains approximately seven
12 to eight phone calls. The State is not seeking to
13 introduce all of them. Some are simply not relevant
14 to the proceeding.

15 THE COURT: They are all from the Defendant
16 though?

17 MR. HOLLAND: Yes. Yes, sir, they are.

18 THE COURT: I'm only going to listen to the
19 ones that you offer. That will satisfy any concern
20 that you have on that. Play the ones that you want
21 me to hear.

22 MR. HOLLAND: Thank you, Your Honor.

23 THE COURT: You might want to make it call
24 number one, call number four, or whatever you want
25 to describe them as.

1 (Playing audio CD.)

2 MR. HOLLAND: Your Honor, those are the only
3 calls that the State seeks to introduce.

4 THE COURT: What is your objection to those,
5 Ms. Saxon? Let me preface that by saying, I can't
6 understand what they are saying. If it makes a
7 difference. I guess it will if the jury is going to
8 hear it. I couldn't understand what the lady -- I
9 don't know who the lady was. The first one, I would
10 assume that it was Ms. Robinson. All I could hear
11 was that he was trying to get her to tell a judge
12 that he didn't hit her in the head with a chair. I
13 couldn't hear anything that she said. So, what is
14 your objection?

15 MS. SAXON: Well, Your Honor, as to the calls,
16 first, especially in dealing with the first call, I
17 would say that there are no admissions in there. I
18 hear negative statements, I did not hit you in the
19 head with the chair, you said that I hit you with a
20 chair in the head.

21 THE COURT: He said I want you to tell the
22 Judge that I didn't hit you in the head with the
23 chair. He didn't say, I didn't hit you in the head
24 with a chair. At least what I heard.

25 MS. SAXON: There is a statement, I mean, and I

1 have marked it on my copy, there is a statement
2 where he said, I didn't hit you in the head with no
3 chair, and her response is, I know.

4 THE COURT: Well, then why don't you want that
5 in?

6 MS. SAXON: I still -- I mean, I think that
7 it --

8 THE COURT: I can tell you one thing, the
9 reference that he makes to, This is a CDV third,
10 that is not going to come in. It is not going to
11 come in through any of the lawyers or any of the
12 witnesses either. With that said, the State is
13 going to have to do something to take that out if
14 the rest of it comes in.

15 MS. SAXON: Right. Your Honor, it also comes
16 back around -- this all ties back into the issue of
17 Ms. Robinson not being here. With her not being
18 here and her testimony of what happened being the
19 basis of the charge. There is no other evidence in
20 this case that would stand to corroborate this
21 alleged statement.

22 THE COURT: Well, where is she?

23 MR. HOLLAND: We have attempted to subpoena Ms.
24 Robinson on multiple occasions. She's spoken to our
25 victim's advocate on multiple occasions, and she's

1 constantly informed our office that she has no
2 desire to pursue any of these charges.

3 THE COURT: But you could if you wanted to
4 subpoena her?

5 MR. HOLLAND: We have attempted to subpoena
6 her, Your Honor.

7 THE COURT: Again, I couldn't understand her
8 especially. I could understand Mr. Green. He was
9 upset about being in jail. Didn't have any money.
10 And tell the Judge I didn't hit you in the head with
11 no chair. Did she say, I know you didn't?

12 MR. HOLLAND: She, she might have shortly after
13 he told her, You have got to make something up. I
14 mean, there's self-serving statements in there,
15 there's not no doubt about it.

16 THE COURT: Go ahead, Ms. Saxon. I will come
17 back to the State in just a minute.

18 MS. SAXON: Without more, without Ms. Robinson
19 here to take the stand and testify as to, A, what
20 happened, no one else seen it. There were no other
21 witnesses to this alleged incident. When Officer
22 Breland arrived on scene she was the person that was
23 there. The report is very clear as to what their
24 conversation was, that doesn't come in under
25 Crawford. So, that is out. With that out --

1 THE COURT: Why wouldn't it come in under
2 Crawford?

3 MS. SAXON: Because it would be her testimony
4 and I don't have the opportunity to cross-examine
5 her.

6 THE COURT: Okay. But you have got some
7 hurdles to establish for Crawford. I guess the
8 Brockmeir is one of the more recent cases in South
9 Carolina, but you can't just say -- in other words
10 it's not -- let me see if I can find that.

11 MR. HOLLAND: Your Honor, are you looking for
12 Brockmeir?

13 THE COURT: I have it. 406 South Carolina 324.
14 What is testimony about a statement that she's
15 giving to the Defendant? If it wasn't solicited
16 under circumstances where a reasonable person would
17 think that it would be used --

18 MS. SAXON: I'm talking about what she said to
19 the officer.

20 THE COURT: Oh, I thought you were talking
21 about what she said to him.

22 MS. SAXON: Well, it comes back to the issue of
23 why it shouldn't come in. I am talking about what
24 she said to Officer Breland in a testimonial
25 statement. And that -- everything kind of stems

1 from a Crawford issue in my opinion, Your Honor.
2 She is not here. The only statement as to what
3 happened comes from her to Officer Breland. Under
4 Crawford that is a direct confrontational clause
5 issue. That is her testimonial statement in this
6 entire situation.

7 If you take that out the State is left trying to
8 submit jail phone calls where, in my opinion, there's
9 no admission. But their opinion is that there is an
10 admission. Either way, it is an uncorroborated
11 statement by a Defendant. There's no corpus selecti
12 there, you don't get far enough to move forward with
13 the case.

14 THE COURT: Well, then, I think that I would
15 probably have to hear what she said to the policeman
16 before we can even address that, don't I? Do they
17 have photographs? Do you have photographs of her?

18 MR. HOLLAND: Yes, sir, we do.

19 THE COURT: All right. You can keep going. I
20 just want to make sure that we are not putting the
21 cart before the horse. I have got your
22 authentication argument. I understand that.

23 MS. SAXON: Right.

24 THE COURT: Your 803 argument, I understand
25 that. I'll come back to the State in a minute and

1 ask what the relevance of the phone calls tend to
2 prove.

3 MS. SAXON: Right. Your Honor, that was my
4 other argument. It is statements that are -- the
5 Defendant's statements are admissible, relevant and
6 they generally tend to show a confession. The phone
7 calls in my review of them do not rise to that
8 level. They don't appear to be relevant. There are
9 obviously conversations about what was going on, or
10 what might have gone on or what could have gone on,
11 and how he wanted to get out of jail, not be in
12 jail. So there's not one point where he said, I
13 took this chair and hit you with it.

14 THE COURT: No, there's not, he's telling --
15 begging her to tell the Judge that he didn't do
16 that. So, why wouldn't you want it in? Assuming
17 that everything else is going to come in that hurts
18 you.

19 MS. SAXON: It still, Your Honor, I think that
20 it is still -- I think that it hurts more than it
21 helps, in my opinion. It's one of those 403 issues
22 where you are balancing probative versus prejudice.
23 And hearing him say something to her -- I don't
24 understand how a jury is going to interpret that. I
25 couldn't guess. If I could I would be a millionaire

1 because I wouldn't just be a public defender I would
2 be this great criminal trial lawyer if I could
3 predict juries.

4 THE COURT: Okay.

5 MS. SAXON: But a jury hearing him beg, as Your
6 Honor characterizes it, beg for her not to say
7 something to a Judge or to say something to a Judge
8 in particular, that is prejudicial to me. That
9 doesn't help my case in any way, shape or form.

10 THE COURT: Okay. All right. I'll come back
11 to you in just a minute. What does -- first of all,
12 what does the tape say and what does it tend to
13 prove?

14 MR. HOLLAND: Your Honor, the tape, the portion
15 of the first -- let's start with the first phone
16 call when he's speaking to what we presume to be,
17 who we would presume to be the victim in this case.
18 He's telling her, You have to come to the bond
19 hearing, you have to tell the Judge this, you have
20 to tell the Judge this, make something up. I think
21 that's -- it's not an admission, he's not saying
22 that, Yeah, I hit you with a chair and you know it.
23 He knows that it's being recorded. He's making
24 self-serving statements. But every once in a while
25 he slips up. "Make something up" I think is one of

1 those.

2 When you move on to the second phone call and
3 he's talking to an unidentified female who is not the
4 victim, she is telling him, I know why you got picked
5 up.

6 THE COURT: She also said, You were at
7 somebody's house when you weren't supposed to be
8 there. You can't get that in.

9 MR. HOLLAND: Right, and these were -- this is
10 why we were doing it pretrial. The State can
11 certainly edit something out if need be. And he
12 says to her, Do you remember when I told you that I
13 hit her in the head with that chair? That is an
14 admission in my point of view. I mean --

15 THE COURT: Again, I guess you probably
16 listened to these things several times?

17 MR. HOLLAND: More than a couple of times.

18 THE COURT: Maybe it is the acoustics, but I
19 sure couldn't understand much of anything.

20 MR. HOLLAND: Your Honor, that is part of the
21 problem.

22 THE COURT: Do you admit, Ms. Saxon, in the
23 second phone call he says, Do you remember when I
24 told you that I hit her in the head with the chair;
25 is that in there?

1 MS. SAXON: Yeah, I heard that.

2 THE COURT: All right, Go ahead.

3 MR. HOLLAND: So we are good there.. There's
4 nothing testimonial about these phone calls. I
5 understand what Ms. Saxon is saying about the
6 statements to the officer, but that's separate and
7 apart from what we are dealing with here.

8 THE COURT: All right.

9 MR. HOLLAND: These are statements -- admission
10 of a party and are not hearsay under the rules.
11 What the witnesses on the other end are saying is
12 also not hearsay because what they are saying there
13 is not trying to be admitted by the State for the
14 truth of the matter asserted, they are simply
15 collateral statements made while talking to the
16 Defendant.

17 THE COURT: Ms. Saxon, why isn't it admissible
18 in the second call where he says, You know when I
19 told you that I hit her in the head with the chair?

20 MS. SAXON: Your Honor, and this is something
21 maybe we can do it again, my cocounsel said that he
22 thought he heard, Remember when I said I got charged
23 with hitting her in the head.

24 THE COURT: Okay. But let's assume he said,
25 You know when I told you that I hit her in the head

1 with the chair, isn't he stuck with that if that's
2 what he said?

3 MS. SAXON: Yes.

4 THE COURT: I mean, that is kind of a
5 rhetorical question. But, I mean, you can dispute
6 all day long what he said. And I certainly can't
7 understand it. But what is your objection to the
8 second call? And the voice of the lady didn't sound
9 the same as the voice of the first lady. I don't
10 know who that was and we will never know.

11 MS. SAXON: Right.

12 THE COURT: So, what is your objection to call
13 number two?

14 MS. SAXON: May I have a moment, Your Honor?

15 THE COURT: Yes, ma'am.

16 (Pause.)

17 MS. SAXON: Your Honor, I keep coming back to
18 this, but my issue again hinges on Crawford. I
19 think that I have to argue my points on the Crawford
20 issue and how that affects, because that is what
21 kind of hinges on whether or not I think that this
22 case really moves forward. So I think --

23 THE COURT: The Crawford starts with the body
24 mike issue?

25 MS. SAXON: Any statements that would have been

1 given, taken or received, or heard or given during
2 Officer Breland's interview.

3 THE COURT: Okay. Maybe the context will be
4 better after I hear that. How long is that?

5 MR. HOLLAND: Approximately half of an hour,
6 Your Honor.

7 THE COURT: Let's go ahead. And let me make
8 this observation, I have read Rule 803(6), why not
9 just get Mr. Vortisch here? I assume that he's
10 right down the street.

11 MR. HOLLAND: Well, because he's semi-retired
12 it is a guessing game as to whether or not he's
13 there or not. We did, as I told you, we spoke with
14 him, we subpoenaed him. He thought it better since
15 our office was the one that burned the calls,
16 listened to the calls and put it on the disc.

17 THE COURT: If I let it in and you get a
18 conviction you might not be able to keep it. But
19 I'm going to have to analyze that. I am not going
20 to base my decision on whether or not I am trying to
21 make him feel better about not having to come.

22 MR. HOLLAND: If Your Honor -- I understand, I
23 am sorry.

24 THE COURT: I would caution you about not
25 calling the witness just because you don't want to

1 inconvenience him.

2 MR. HOLLAND: I agree, Your Honor.

3 THE COURT: The Defendant is entitled for the
4 rules to be followed. Now, I'm not so sure that
5 even though this witness is certainly qualified and
6 has access to those things, he didn't make it and he
7 didn't -- he does not work for the entity that
8 houses the data. He just had the keys to the
9 kingdom, he got to extract it. So, you can take
10 your chances with it and I might rule with you but
11 you might not be able to keep it.

12 Okay. You can step down, sir.

13 MR. HOLLAND: Point taken, Your Honor. Thank
14 you. The State calls Deputy Kyle Breland.

15 Thereupon,

16 KYLE BRELAND

17 was called as a witness, having been first duly sworn,
18 was examined and testified as follows:

19 THE CLERK: You may be seated. Please state
20 and spell your name for the Court's record.

21 THE WITNESS: Kyle Breland, B-R-E-L-A-N-D.

22 DIRECT EXAMINATION

23 BY MR. HOLLAND:

24 Q Deputy Breland, who do you work for?

25 A Beaufort County Sheriff's Office.

1 Q For how long?

2 A Almost four years.

3 Q What is your rank?

4 A Lance Corporal.

5 Q What are your duties?

6 A Right now I'm assigned to the school resource
7 officer division.

8 Q And would you -- that is right now?

9 A Correct.

10 Q Were you employed in that capacity on
11 October 14, 2014?

12 A No, I was not. I was in the Patrol Division.

13 Q Okay. Did you respond to a call about a
14 domestic incident on that date?

15 A Yes.

16 Q Do you recall what time it was?

17 A If I can look at my report. It was received at
18 approximately 12:17 a.m.

19 Q Do you recall the location that you were called
20 to?

21 A , Seabrook, South
22 Carolina, Beaufort County.

23 MR. HOLLAND: Your Honor, am I correct in
24 assuming that we are not going to challenge the
25 authentication of the video so I am just going to --

1 THE COURT: Ms. Saxon, are you challenging the
2 authentication of the body mike audio?

3 MS. SAXON: No, Your Honor.

4 MR. HOLLAND: May I approach, Your Honor?

5 THE COURT: Number two?

6 MR. HOLLAND: Yes, Your Honor.

7 BY MR. HOLLAND:

8 Q Deputy Breland, what is that?

9 A It is a recording of my audio and video from
10 that night.

11 Q And do -- at my request, did you review that
12 disc?

13 A Yes, sir.

14 Q Did you make any identifying marks on it?

15 A Yes, sir, I put the date and my initials.

16 Q Okay. Did you determine that it was a complete
17 and accurate copy of the body mike audio and the in-car
18 video I believe as well?

19 A Yes.

20 Q Okay.

21 MR. HOLLAND: Your Honor, the State would seek
22 at this time to admit Exhibit 2 for purposes of
23 pretrial.

24 THE COURT: For purposes of this hearing. Go
25 ahead.

1 *(Whereupon, State's Exhibit No(s). 2 marked for*
2 *identification and received in evidence.)*

3 MR. HOLLAND: There is video as well. I don't
4 know if it's turned on.

5 . (Video CD playing.)

6 MR. HOLLAND: Your Honor, I'm going to stop it
7 there. I'm not going to waste the Court's time. I
8 just don't know -- I mean, going forward you can
9 argue that he's treating an ongoing emergency, but
10 you can also argue that it's testimonial in nature.
11 So, really now that I'm listening to it again, I
12 think the State would really only seek to admit the
13 initial portion.

14 THE COURT: The initial portion would be what?

15 MR. HOLLAND: When he arrives he asks her -- I
16 mean, he asks her if there's anyone in the house,
17 asks her where he is. She says, He took off running
18 down the road. He goes into the house and speaks
19 with someone. I believe that it is a child. I
20 don't know that we could really get into that
21 either.

22 THE COURT: Who was "he" in the tape? I know
23 that we know who we think it is. But is the video
24 or audio defined where the -- who the "he" is that
25 ran down the road?

1 MR. HOLLAND: It does later on, but I just
2 don't think -- I don't see any way that it's not as
3 a result of him questioning the victim.

4 THE COURT: Right. The more that I listened to
5 it the more that I would agree. And I was strolling
6 up other Crawford cases on this point. Do you not
7 have here a case with an unwilling victim and you
8 are just trying to piece it together with evidence
9 that is a little bit mysterious and a little bit
10 problematic?

11 MR. HOLLAND: I would say possibly both of
12 those. I mean, we do have a non-willing victim but
13 the victim is not -- the State of South Carolina is
14 prosecuting this case on the victim's behalf.

15 THE COURT: I understand that.

16 MR. HOLLAND: I know you do.

17 THE COURT: She doesn't get to make that call?

18 MR. HOLLAND: No, she doesn't.

19 THE COURT: Regardless of what the Defendant
20 and others, perhaps similarly situated, might think.

21 MR. HOLLAND: And Deputy Breland is going to
22 testify about the injuries that he observed, about
23 whether or not he was able to determine a suspect
24 based on the investigation at the scene and those
25 sorts of things?

1 THE COURT: Which would be her statements to
2 him?

3 MR. HOLLAND: In a round-about kind of way.
4 What he actually -- I think the name of the
5 Defendant was given to him by dispatch before he
6 ever arrived on the scene.

7 THE COURT: Who got it from her as part of an
8 emergency response?

9 MR. HOLLAND: That is right.

10 THE COURT: Okay. So, do you want to cease the
11 playing of the audio and you want to get in just the
12 initial part of the call where he would, I guess,
13 parenthetically explain to the jury, that is me, I'm
14 walking up there, and the lady that I'm talking to
15 identified herself to me to be so forth and so on?

16 MR. HOLLAND: Yes, Your Honor.

17 THE COURT: All right. Do you have any
18 questions of the witness?

19 MS. SAXON: Just one matter to clarify.

20 CROSS EXAMINATION

21 BY MS. SAXON:

22 Q You testified that you were called out for CDV;
23 is that right? Is that what I heard?

24 A The initial call was a domestic and then as we
25 were en route it turned into more than a domestic.

1 Q My understanding was that the initial call was
2 for --

3 A An escort.

4 Q -- an escort for a trespassing, correct?

5 A Correct.

6 Q That is what I wanted to clarify.

7 THE COURT: What is an escort for a
8 trespassing?

9 THE WITNESS: Your Honor, if someone calls in
10 and just requested that somebody be asked to leave
11 or that person has a trespass notice.

12 THE COURT: You get them off of the property?

13 THE WITNESS: Yes, sir.

14 THE COURT: Then it developed into a criminal
15 domestic violence call?

16 THE WITNESS: Yes, sir.

17 THE COURT: Okay. Because I thought that I
18 heard on the 911 call, what I wrote down was, I have
19 a question. How do I get somebody from my house who
20 ain't supposed to be here?

21 All right. That explains that one. All right.
22 Any additional questions?

23 MS. SAXON: That was the one matter that I
24 wanted to clarify.

25 THE COURT: Any follow-up questions?

1 MR. HOLLAND: No, Your Honor.

2 THE COURT: Thank you, sir. You may step down.

3 All right. Now, so where are we now on motions
4 and so forth? Do you object to him putting in
5 anything on the -- from the body mike or car cam?

6 MS. SAXON: Yes, Your Honor.

7 THE COURT: Tell me about your objection.

8 MS. SAXON: Well, the -- okay, the objection,
9 again, Your Honor, it goes to the hearsay and
10 Crawford issue. If she's not here to testify and we
11 are not offered the opportunity to cross-examine her
12 in a meaningful manner in front of the jury, we run
13 into the confrontation clause on the Crawford issue.

14 THE COURT: Right. I understand the law on
15 that.

16 MS. SAXON: Right, and I admit that there's
17 exceptions to the Crawford issues -- or to the
18 Crawford case and to the confrontation clause. I
19 don't see any of them in this case. When it comes
20 to what the State is seeking to admit, as far as
21 Deputy Breland's body mike and camera, he just
22 testified that he went out there on a domestic
23 escort trespassing call.

24 So he's not going into what he would perceive to
25 be an emergency situation, he's walking into a

1 domestic escort to help just make sure that someone
2 leaves the property. Now he gets there, they have a
3 conversation and in that conversation he is asking
4 her, What happened, how many kids do you have, do you
5 guys live together.

6 THE COURT: Did she ever answer him about what
7 he did?

8 MR. HOLLAND: Later.

9 THE COURT: Is that what you would attempt to
10 play?

11 MR. HOLLAND: No, Your Honor.

12 THE COURT: Are you just trying to get a little

13 --

14 MS. SAXON: To me there's nothing relevant in
15 what they are trying to admit. It is merely a
16 crying woman, which is going to do nothing but serve
17 to inflame the passions of the jury.

18 THE COURT: Okay. Well, that is a different
19 argument from Crawford?

20 THE WITNESS: Well, I think that it's both. I
21 don't think that they are mutually exclusive.

22 THE COURT: All right. So, what are you going
23 to prove with this? Setting the stage, so to speak?

24 MR. HOLLAND: I'm going to set the stage.
25 Deputy Breland is going to testify that when he

1 arrives -- that at some point between that call to
2 dispatch ending and Deputy Breland arriving Ms.
3 Robinson is injured and she's bleeding from a gash
4 in the back of her head. That is what he sees when
5 he gets there, she is distraught, she is crying, she
6 is bleeding. I think that as soon as he sees that
7 that constitutes an emergency.

8 THE COURT: Well, he would be able to testify
9 that when he arrived she was distraught and bleeding
10 and crying?

11 MR. HOLLAND: Yes, Your Honor, we didn't get
12 into all of that today due to time.

13 THE COURT: So, what does she tell him?

14 MR. HOLLAND: She tells him -- first of all,
15 she tells him that he ran off down the road. I
16 think that the jury can insinuate flight.

17 THE COURT: Who is he? Does she ever say who
18 he is?

19 MR. HOLLAND: Later in the tape.

20 THE COURT: Are you going to play that?

21 MR. HOLLAND: No, Your Honor.

22 THE COURT: So, what you want to get in through
23 the deputy is when he arrived she was distraught
24 crying and bleeding?

25 MR. HOLLAND: Yes, Your Honor.

1 THE COURT: What else?

2 MR. HOLLAND: Her statement --

3 THE COURT: That he ran off?

4 MR. HOLLAND: Yes, Your Honor.

5 THE COURT: So, what is your objection to that?

6 MS. SAXON: Your Honor, it comes down to,
7 without her here to testify as to the cause of the
8 injuries, we are skirting around the issue. We are
9 not talking about a crime that happened. We are
10 saying there is a woman that is injured over here,
11 there is a 911 call for trespass over here. We are
12 just kind of going to let all of these things in and
13 let the jury infer guilt on a bunch of pieces.

14 THE COURT: That is circumstantial evidence
15 later on, but all kind of building blocks come in in
16 cases before you get to a directed verdict stage.
17 And I would agree with you that if all we have is, I
18 got there, she was distraught, crying and bleeding
19 and said, He ran off down the road. And then you
20 have a 911 call that says, What do I do to get
21 someone off of my property, nothing implicates the
22 Defendant.

23 And I guess the State would say, Yet. So, that
24 would be the sum and substance of your 911 and your
25 Deputy Breland testimony or evidence?

1 than one chair. I may not let that photograph of
2 the chair in. So, talk to me about the photographs
3 of the back of her body.

4 MR. HOLLAND: Well, he testified -- he
5 testified or he will testify, Deputy Breland, to the
6 blood on the Defendant is one of the reasons that he
7 knew that there was an emergency situation. In this
8 picture, at the very top of the picture, and this is
9 not the best copy, but there is a gash on the back
10 of her head. That is a photo of the injury.

11 THE COURT: He would be able to say that he saw
12 that too?

13 MR. HOLLAND: Yes, sir. There is blood in her
14 hair, which is difficult to see but he can describe
15 it for the jury.

16 THE COURT: Okay. Yes, ma'am, anything else?

17 MS. SAXON: I just come back around to what I
18 said before, Your Honor, that he can testify that he
19 saw a cut on her head but not how it occurred.

20 THE COURT: Well, I agree with you there.
21 Because I don't think they are going to try to get
22 into that even though he may have said something a
23 little bit different a minute ago. You said that it
24 had led him to believe that there is an emergency
25 situation, which indicates to me that you are going

1 to try to bring a Crawford exception into this. But
2 a police officer can say, In the normal scheme of
3 things I saw the purported victim, she was upset,
4 crying and bleeding. Photographs don't really add
5 anything more to that.

6 What I have got to determine, I think that it
7 may be later on in the trial, whether or not this
8 survives a directed verdict motion, not whether or
9 not this evidence is admissible.

10 What I heard from the State, you are going to be
11 very limited on the body mike and Deputy Breland's
12 information. You want the two calls from the jail
13 and you want the 911 call which -- I don't really see
14 a problem with that. It doesn't implicate the
15 Defendant. And frankly, the body mike stuff doesn't
16 implicate the Defendant either. At least that's
17 what -- and then you want to circumstantially link
18 the Defendant to this event by use of call one and
19 call two?

20 MR. HOLLAND: Yes, Your Honor.

21 THE COURT: It might wind up being a pretty
22 weak rope. But you can't blame me, can't blame
23 Deputy Breland. I'm clear on everything, but I
24 don't want to foreclose you from saying anything
25 else that you want to say.

1 MS. SAXON: Your Honor, I don't know if I
2 addressed in full my issue with the 911 call.

3 THE COURT: Okay.

4 MS. SAXON: You were correct in saying that it
5 doesn't implicate my Def -- Mr. Green in any way,
6 and that is true, but I think because of the
7 statements given by what we are assuming to be
8 Ms. Robinson, with her not here to testify they
9 aren't -- they don't fall under any exceptions to
10 the rules that I can think of. They are not giving
11 descriptions of Mr. Green. They are not offering
12 relevant info as to what he's actually charged with,
13 which is criminal domestic violence, but trespassing
14 which is what the call was for.

15 THE COURT: Okay.

16 MS. SAXON: And then, again, I think that the
17 exception that you would probably try to get through
18 in Crawford is that they were given in the heat of
19 the moment or in an emergency in an attempt to get
20 help, which this was not. She didn't call 911, she
21 called non-emergent dispatch.

22 THE COURT: Well, that could be -- you could
23 use that as cross examination.

24 MS. SAXON: I just wanted to put it on the
25 record, Your Honor.

CASE CAPTION

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INDEX PAGE

1		INDEX	
2	Jury Selection		Page 20
	Jury Sworn		Page 64
3	Opening statement by Mr. Holland		Page 72
	Opening statement by Ms. Saxon		Page 75
4			
5	WITNESS:		Page:
6			
	TASHA HAUPT		
7	Direct Examination By Mr. Holland		77
	Cross Examination By Ms. Saxon		81
8	Redirect Examination By Mr. Holland		83
	Recross Examination By Ms. Saxon		84
9			
	KYLE BRELAND		
10	Direct Examination By Mr. Holland		91
	Cross Examination By Ms. Saxon		102
11	Redirect Examination By Mr. Holland		103
12	JEFF VORTISCH		
	Direct Examination By Mr. Holland		104
13			
14			
15	STATE'S EXHIBITS:		
16		Marked:	Received:
17	1 CD of 911 call	80	80
	4 CAPS report	81	
18	2 body mike disc	95	
	5 Picture	98	99
19	6 victim photo	100	100
	3 jail phone CD	107	107
20			
21			
22			
23			
24			
25			

MOTIONS

1 THE COURT: Okay. And it says what?

2 MS. SAXON: What it states --

3 THE COURT: What is the specific ruling that it
4 makes about photos? Excuse me, conversation.

5 MS. SAXON: Conversation. Your Honor, the
6 specific ruling is that when there's not an ongoing
7 emergency and the questions by the officer are
8 elicited, that the statements made are inherently
9 testimonial and that they are not allowed in because --

10 THE COURT: I didn't hear him ask what her name
11 was. I don't -- I couldn't -- all I saw was him walk
12 up and I heard one of the lawyers say yesterday that --
13 excuse me, I heard a female say, He's gone. I didn't
14 hear her say her name, did I?

15 MR. HOLLAND: Not in that portion.

16 THE COURT: I didn't hear -- I didn't hear anybody
17 say what happened. I didn't hear a reply.

18 MS. SAXON: I mean, they do go through the number
19 of children that they have together, how long they have
20 been together.

21 THE COURT: Well, that is not going to come in.

22 MS. SAXON: I heard something to the effect, He
23 punched me in the stomach, which is not an allegation
24 that is made anywhere in the reports.

25 THE COURT: See, I can't tell from listening and

MOTIONS

1 watching where you are going to stop the tape. She's
2 got a valid point. You cannot prove your case because
3 she -- with her not being here you cannot prove your
4 case by alternative means because they have the right
5 to examine her.

6 MR. HOLLAND: That is exactly right. But I can
7 ask the officer who responded that, As a result of his
8 investigation he was able to determine if there was a
9 relationship between the parties, if he is able to
10 determine?

11 THE COURT: That is hearsay.

12 MR. HOLLAND: I'm not asking him what she said, AE
13 I'm just asking if he was able to determine in the
14 course of his investigation if they found out.

15 THE COURT: That is what they do in magistrate
16 court. I'm not sure if they follow the rules, and I'm
17 speaking of the other jurisdictions, I don't know
18 anything about Beaufort County, but what would your
19 reason be to get in the fact that they have children
20 together?

21 MR. HOLLAND: I have to establish that they are
22 household members.

23 THE COURT: You sure do. And you won't be able to
24 do it with testimonial evidence.

25 MR. HOLLAND: That is with the 911 call that she

MOTIONS

1 makes.

2 THE COURT: I didn't hear that.

3 MR. HOLLAND: She says -- actually, I think she
4 uses the term, Baby daddy, but it's also in the CAD
5 report.

6 THE COURT: All right. Go ahead, Ms. Saxon.
7 Anything else?

8 MS. SAXON: Your Honor, Davis also applies to 911
9 calls and it makes the same argument that there has to
10 be an ongoing emergency. As I stated yesterday, the
11 call that the State is seeking to admit is
12 non-emergency dispatch, it is not actually a 911 call.
13 She's calling --

14 THE COURT: All I heard -- all I heard her say on
15 the phone call was, How do I make somebody leave my
16 house who is not supposed to be here.

17 MR. HOLLAND: That is the first phone call where
18 the line disconnects.

19 THE COURT: Then what did she say?

20 MR. HOLLAND: Dispatch calls her back. She says,
21 I need an officer to come out to my residence because
22 I'm having a problem.

23 THE COURT: Me and my baby daddy, he ain't
24 supposed to be here?

25 MR. HOLLAND: Exactly.

MOTIONS

1 THE COURT: Where was the ongoing emergency?

2 MR. HOLLAND: Well, she's requesting an officer.

3 First of all, it is a business record as we determined
4 through Ms. Haupt yesterday. I don't believe it --

5 THE COURT: So, why is that not testimonial? What
6 is the ongoing emergency? She sounds calm to me. I
7 mean, she hung up twice.

8 MR. HOLLAND: Well, she hung up or someone hung up
9 for her.

10 THE COURT: No, you are not going there. That is
11 speculation.

12 MR. HOLLAND: Sure, that is an inference that the
13 jury can draw.

14 THE COURT: That is a speculation that the jury
15 can't draw.

16 MR. HOLLAND: Okay. I would argue that someone
17 doesn't call the sheriff's office unless they are
18 requesting help. She asked for an officer when they
19 called her back. Dispatchers, when the line
20 disconnects they call her back, doing their job trying
21 to figure out if she needs help. They don't know what
22 the emergency is. They are not asking these questions
23 for the purposes of this trial. They are asking these
24 questions to determine if there is an emergency.

25 THE COURT: Okay. Okay. What is the case law

MOTIONS

1 that says some 911 calls are testimonial? Tell me what
2 the distinctions are.

3 MS. SAXON: In Davis as well, your Honor. And
4 what it states is that for the 911 call to be admitted
5 it has to be -- there has to be the ongoing emergency
6 and a clear cry for -- the exact words are a cry for
7 help. And that the -- and Davis, one of the cases that
8 they cite is this where she calls 911 not non-emergent
9 dispatch, but calls 911 and says, My former boyfriend
10 is jumping on me again, and says what is going on at
11 that moment.

12 THE COURT: You need to sit down until I ask for
13 you.

14 MR. HOLLAND: I am sorry.

15 MS. SAXON: And says what is going on at that
16 moment at which point when the victim didn't appear for
17 trial in that case the Court said, Well, that was an
18 on-going emergency. She said, it's happening right
19 now, I need help right now, I'm being beat up.

20 THE COURT: So, you are basing that on the
21 particular number she called in that case?

22 MS. SAXON: No, how she said it. She called 911
23 and said --

24 THE COURT: Well, that is a different. Once you
25 get past Crawford they have to prove that it comes

MOTIONS

1 under hearsay exception too, excited utterance but we
2 have not gotten there yet.

3 MS. SAXON: We are not there yet, yes, right, Your
4 Honor.

5 THE COURT: So, these wouldn't necessarily always
6 be pretrial issues that we would have to hash out but I
7 understand that you all would like to do it beforehand.
8 But if I'm making an in limine ruling on this, it's not
9 like a suppression hearing, I'll make a ruling that the
10 evidence is in or it is out and then everybody goes on
11 about their business and it depends on the ruling.
12 These things have to be fledged out and objections have
13 to be made when the things are offered.

14 We did spend a lot of time yesterday and I didn't
15 hear these arguments yesterday about Davis, the 911
16 call. All we talked about was mostly the body one.
17 But I guess what I -- the main question that I have for
18 the State is you are going to prove your case by
19 Officer Breland and a 911 tape and a jail tape and no
20 victim?

21 MR. HOLLAND: Yes, Your Honor, that is what the
22 State was going to do.

23 THE COURT: All right. Anything else Ms. Saxon?

24 MS. SAXON: No, Your Honor.

25 THE COURT: Okay. Any other responses that you

MOTIONS

1 have to what she said?

2 MR. HOLLAND: I think that some of that was a
3 little bit of a misstatement of the law, not
4 intentionally.

5 THE COURT: Go ahead and tell me about it.

6 MR. HOLLAND: Davis actually deals with two cases,
7 Your Honor, Davis v. Washington and Hannon v Indiana.
8 They are two separate and distinct cases wherein the
9 Court addresses two separate and distinct incidences.
10 The first 911 call is not testimony, they allowed it
11 in. I will argue that our call is a present
12 impression, it is a business record and it falls --
13 it's not testimonial when it falls under those hearsay
14 objections.

15 THE COURT: Now, 911 custodial record, but how
16 about the hearsay exception? What she says.

17 MR. HOLLAND: It's still a business record and
18 it's a present sense of impression, she's describing
19 the scene as she sees it right then.

20 THE COURT: You have hearsay upon hearsay. I have
21 got you on the business record, I'm not worried about
22 that.

23 MR. HOLLAND: Okay.

24 THE COURT: If I picked up the phone and called
25 somebody and said something but I didn't testify in

MOTIONS

1 court you wouldn't be able to get it in just because
2 it's on a recording unless it otherwise fell within --

3 MR. HOLLAND: That wouldn't be a business record.

4 THE COURT: I know it wouldn't be a business
5 record, that's what I'm saying.

6 MR. HOLLAND: I know.

7 THE COURT: But if I were to call 911 up on the
8 phone and say, I am in Beaufort. That is hearsay if I
9 didn't testify. Your Honor, this call proves that he
10 was in Beaufort. Well, it's hearsay, it's offered to
11 prove that I was there.

12 Now, if I call up and say, I'm in Beaufort and I
13 just shot a guy in the head on the corner of Elm and
14 Main Street, that comes in because it is probably a
15 hearsay exception. So, if you are saying that this is
16 a statement describing or explaining an event or
17 condition made by the declarant was perceiving the
18 event or condition, or immediately thereafter. So it
19 ain't a business record as far as what she said.

20 MR. HOLLAND: Right. It is a business record as
21 far as the call itself. The statements that she made
22 are a present sense of impression. That is the
23 argument that I'll make for the Court.

24 THE COURT: All right. And how about the evidence
25 at the scene? How about the photographs?

MOTIONS

1 MR. HOLLAND: The photographs, I understand the
2 argument that Ms. Saxon is making, but we have the
3 person who took the photographs here as he was
4 perceiving them. He can tell us what he saw and the
5 jury can see them themselves.

6 THE COURT: He can't testify as to what she said
7 how the stuff got caused.

8 MR. HOLLAND: No, that's correct.

9 THE COURT: I think that the photographs can come
10 in. Photographs are not necessarily testimonial. It
11 is when the person said, I took these photographs, this
12 is what they show and she told me -- that is where you
13 can't go.

14 MR. HOLLAND: Correct, and the State would not
15 seek to ask him --

16 THE COURT: The chair photographs are out at least
17 right now because they are speculative and they are
18 described as being the weapon, that wouldn't be
19 necessarily based on what the officers' questions
20 elicited from the victim.

21 MR. HOLLAND: Okay. Regarding the jail call. I
22 mean, the jury is going to hear whatever they hear.

23 THE COURT: It might not have been that chair.

24 MR. HOLLAND: Right. Okay, that is fine.

25 THE COURT: Okay. And quite honestly, the biggest

MOTIONS

1 question that I had yesterday, and I didn't say
2 anything, was the household member part. I don't know
3 what a baby mama is and a baby daddy. I know that
4 everybody says it, but that's your link to establishing
5 household member.

6 MR. HOLLAND: It is as well as Officer Breland's
7 investigation.

8 THE COURT: How are you going to establish that
9 the baby daddy she was talking about is him as opposed
10 to another baby daddy?

11 MR. HOLLAND: She says his name on the call.

12 THE COURT: You still have not been able to find
13 the victim.

14 MR. HOLLAND: We have not been able to subpoena.
15 I spoke to the Sheriff's Office yesterday. They have
16 attempted, at last count, twice I think, maybe three
17 times to find her and subpoena her and have been unable
18 to do so.

19 THE COURT: All right. We are going to -- any
20 counter arguments before I bring in the jury? We are
21 going to pick the jury at least because they have been
22 here for 20 minutes at least.

23 MS. SAXON: Not at this time, Your Honor.

24 THE COURT: Okay. Will you bring in the jury?

25 THE BAILIFF: Yes, Your Honor.

JURY SELECTION

1 rulings on the matters raised by the Defendant, unless
2 anybody has any additional argument, not anything
3 that's plowed over already.

4 But anything else, Ms. Saxon?

5 MS. SAXON: No, Your Honor.

6 THE COURT: Mr. Holland?

7 MR. HOLLAND: No, Your Honor.

8 THE COURT: Okay. Aside from the fact -- and I
9 understand the State's predicament. It is all too
10 common where you have a witness in situations like this
11 who does not appear otherwise to participate; let's --
12 let's put it that way. There are certain motivations
13 for that, and I have no way to look into her mind and
14 determine what those are, nor would it be relevant.

15 The ruling on -- my ruling on the Crawford
16 question on the 911 call or the non-911 call, whatever
17 that is, pertaining to the two questions or the two
18 statements she made that I was able to understand. She
19 said, "I have a question. How do I get somebody out of
20 my house who ain't supposed to be here? And the other
21 one, "My baby daddy, he ain't supposed to be here," and
22 then she says his name. I didn't hear her say his
23 name. But the State says it's in there. My
24 determination is that they do not fall under Crawford
25 because I consider them to be non testimonial. I don't

JURY SELECTION

1 think that a reasonable person in her position would
2 expect those statements would ever been recorded as
3 testimony in any type of proceeding.

4 The next question on that same topic about whether
5 or not they fall into some type of hearsay exception.
6 But the second one is the most important. The first
7 one just says, "I have a question. How do I get
8 somebody from my house who's not supposed to be here?"
9 That could arguably be offered to prove that somebody
10 who's not supposed to be there is there. It doesn't
11 say it's him, so I'm going to move on to the next one
12 where she talks about, "Me and my baby daddy, he ain't
13 supposed to be here." I do find, as argued by the
14 State, that is present tense instruction under 8031.
15 That is the only evidence that I heard that they --
16 that establishes that particular element of the crime
17 charged.

18 The unfortunate, I will call it that, tact --
19 tactically unfortunate phone calls that the Defendant
20 made from the jail, call one and call two, the State
21 must edit any reference to, "Hey, man, this will be
22 all," whatever he said, "This is going to be my third
23 offense." That's going to come out of there. That --
24 that's not going to come out.

25 And call number two, those certainly aren't

JURY SELECTION

1 Crawford issues. They're just statements the Defendant
2 for some reason made, but the fact that he was being
3 recorded having just been told to him. But as we all
4 know that happens all the time. I -- I don't know -- I
5 don't really recall what your objection was, but he
6 said it aside from his admission that this would be a
7 third offense, I'm going to let those -- those calls in
8 as played by the State earlier. I'm still unclear on
9 where the State says it's going to cut off the
10 audio/video of Corporal -- Corporal Bre --

11 MR. HOLLAND: Lance Corporal.

12 THE COURT: I'm sorry, Lance Corporal Breland. I
13 assume he's going to say he responded to a location
14 pursuant to a dispatch, and that when he arrived, "This
15 is me getting out of the car, and this is me walking
16 up."

17 Are you going to have him testify from the stand
18 that the person identified herself to him as Shavon
19 Wilson?

20 MR. HOLLAND: Robinson, Your Honor.

21 THE COURT: Robinson.

22 MR. HOLLAND: I believe so, yes.

23 THE COURT: And why is that not hearsay? It's
24 offered to prove that's her.

25 MR. HOLLAND: I guess the State's argument would

JURY SELECTION

1 be that it was something that Deputy Breland learned in
2 the course of his investigation. She -- in addition to
3 the fact that she identifies herself to him, there's
4 the call where she identifies herself, I believe, to
5 the dispatcher.

6 THE COURT: And gave an address -- or actually I
7 don't know if they -- she gave an address or not.

8 MS. SAXON: She did.

9 THE COURT: They responded, I guess, to the
10 database where it lights up on a map.

11 MR. HOLLAND: I'm sure Ms. Haupt can clarify that.

12 THE COURT: Okay. Why is that not hearsay? It's
13 offered to prove the proof of the matter asserted and
14 that's -- and that being that she is the victim.

15 MR. HOLLAND: I suppose that, Your Honor, the
16 State would just that it was learned in the course of
17 his investigation and as a result -- I -- I know that
18 we've had this discussion and --

19 THE COURT: All right. Well, I'm going to let the
20 photographs in and absent the chairs. All right. If
21 he -- if he took the photos, I assume, that he was
22 there when they were taken. That -- those aren't
23 Crawford issues in my judgment. They are not -- there
24 are not any other hearsay issues or any other
25 evidentiary issues about the photographs. We'll just

JURY SELECTION

1 go forward and I'll -- I'll have to -- as we go through
2 the officer's testimony you will just have to make your
3 objections, and please make sure you make all of the
4 objections to the ones -- the rulings I've made in
5 limine or you lose those. I can't assure you ahead of
6 time that you're protected; you will have to make that
7 determination. I'm going to let the photos in. And,
8 of course, the officer is going to be able to testify,
9 all right, and the normal objection and the
10 give-and-take is going to have to go on that.

11 As far as the audio and video, I'm going to allow
12 it to the point where the State -- where I understand
13 that you're going to stop. Because you -- you said
14 yesterday when you just cut it off, you said, "I'm not
15 going to use any more than that." She said some things
16 on there, "He's gone." That's fine. We will let that
17 in. But I frankly couldn't understand what she was
18 saying. I could understand him perfectly.

19 MR. HOLLAND: Your Honor, I --

20 THE COURT: She identifies the Defendant as her
21 baby daddy again. Why is that not hearsay?

22 MR. HOLLAND: That -- that's -- see, that's the
23 part of the video -- that comes later. That -- that
24 comes later on and that -- I think that it would be
25 considered testimonial.

JURY SELECTION

1 THE COURT: All right. Well, we'll -- we'll just
2 have to watch that very closely. We may get to it
3 before lunch; we may not. I don't know. Okay.

4 MR. HOLLAND: He will be my second witness, Your
5 Honor.

6 THE COURT: He will. Okay. All right. Well
7 then, we will get to it before lunch.

8 Anything else before we go?

9 The State's case right now is held together with
10 paper clips.

11 MS. SAXON: Nothing right now, Your Honor. I will
12 object as we go through things.

13 THE COURT: And then we'll -- we'll deal with any
14 appropriate directed verdict motions at the end which
15 may end up being dispositive. Depending on how you --
16 how the case is presented, you're -- everybody has been
17 in your position, so don't feel like you're alone.

18 MR. HOLLAND: Thank you.

19 THE COURT: Okay. Have they picked the
20 foreperson?

21 THE BAILIFF: They have.

22 THE COURT: Who is it?

23 THE BAILIFF: Mr. Powell.

24 THE COURT: All right. Mr. Billy Powell, juror
25 number 248, is the foreperson.

JURY SELECTION

1 Okay. Ms. Saxon, what I typically tell juries,
2 unless you tell me otherwise, is that you can make an
3 opening statement if you want, which you don't have to.
4 You cannot make one at all or you can make one or you
5 can wait till the State closes. I'll leave that up --
6 do you know ahead of time what you might want to do?

7 MS. SAXON: Yes, Your Honor, I'll be making an
8 opening.

9 THE COURT: Okay. All right. You can bring in
10 the jury.

11 MR. HOLLAND: Your Honor, just for the record,
12 those -- the -- the jail calls are unable to be edited
13 per se, so I'll just have to stop it, and I'll be
14 controlling the mute button.

15 THE COURT: Okay. So you know where it is?

16 MR. HOLLAND: I certainly hope so.

17 THE COURT: Is that going to be your first one?

18 MR. HOLLAND: No, Your Honor, the 911 calls will
19 be first.

20 THE COURT: Y'all remember what happened on
21 Tuesday, yesterday.

22 THE BAILIFF: The jury is entering the courtroom,
23 Your Honor.

24 (The jury enters the courtroom at 11:00 a.m.)

25 THE COURT: Okay. Thank you, ladies and

JURY SWORN/OPENING REMARKS

1 have all of that until the very end of the case. So it
2 would be totally improper for you to begin discussing
3 the case or begin making up your mind until you have
4 seen and heard everything.

5 Don't begin making up your mind after you've heard
6 one witness or two or three. You've got to wait until
7 you've seen everything before you begin deliberating.
8 I'll give you the signal when you can do that. I'm
9 going to give you that instruction many times that you
10 can't talk about the case until I tell you that you
11 can.

12 All right. Any objection to those remarks? From
13 the State?

14 MR. HOLLAND: Nothing from the State, Your Honor.

15 THE COURT: Ms. Saxon?

16 MS. SAXON: No, Your Honor.

17 THE COURT: All right. Mr. Holland.

18 OPENING STATEMENT BY MR. HOLLAND

19 MR. HOLLAND: Thank you, Your Honor. May it
20 please the Court.

21 Ladies and gentlemen, the Defendant, Desmond
22 Green, has a temper. On the morning of October 14th,
23 2014, that temper boiled over, and that's the reason
24 that we're all here today. Shortly after midnight on
25 that date the victim in this case, Shavon Michelle

OPENING STATEMENT BY MR. HOLLAND

1 Robinson, I'm going to refer to as Michelle, called
2 Beaufort County Sheriff's Office.

3 The first call was short. She just wanted to ask
4 a question, how to get somebody out of her house. Then
5 the line was disconnected. But the dispatchers doing
6 their job called her back. It was at that point that
7 she asked them to send an officer. Said she was having
8 a problem. But the baby daddy -- on the name that she
9 gave was of the Defendant, Desmond Green. Once again
10 the line disconnected. This time the dispatcher
11 couldn't get her back on the phone. You're going to
12 hear testimony that a few minutes after that call ended
13 that Kyle Breland of the Beaufort County Sheriff's
14 Office arrived, , in
15 Seabrook. What he found was the victim, Michelle
16 Robinson, outside. He's going to tell you that she was
17 distraught. He will tell you that she was crying.
18 He's going to tell you that she was bleeding from a
19 gash in the back of her head.

20 Desmond Green wasn't on the scene. He was gone.
21 You're going to hear some phone calls made by the
22 Defendant, Desmond Green. A couple of those phone
23 calls were made to the victim, Ms. Robinson. You're
24 going to hear at least one of them. And in it you're
25 going to hear that temper that I told you about first.

OPENING STATEMENT BY MR. HOLLAND

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He made another phone call to an unidentified female. We don't know who it was, but I want you to listen very carefully when that call comes up to the reason that he gives her for why he was arrested. Just listen. That is all that I ask.

What you're most likely not going to hear is the victim, Michelle Robinson, on the witness stand. That's just the way it is. But this is not Michelle Robinson versus that man. This is the State of South Carolina versus that man. You don't have to hear from Ms. Robinson. The Judge told you that the burden is on us. The burden is on me. The burden is on my cocounsel, Ms. Swanson, to prove to you beyond a reasonable doubt that the Defendant, Desmond Green, is guilty of the crime of criminal domestic violence.

So all I ask is that you listen. Pay attention to witnesses. Look at the evidence. And I am confident that when it comes time you will find that the State has met its burden and you will find the Defendant guilty of criminal domestic violence.

Thank you.

THE COURT: Thank you, Mr. Holland.

Ms. Saxon.

OPENING STATEMENT BY MS. SAXON

OPENING STATEMENT BY MS. SAXON

1 MS. SAXON: Thank you, Your Honor. May it please
2 the Court.

3 Have you ever sat down to do a puzzle and you get
4 to the end and find that there's ten pieces missing and
5 you can't finish it and you're really frustrated? I
6 know that drives me crazy when I'm trying to complete a
7 picture and I don't have the pieces there to do it.
8 And as you go and you get a puzzle of 500 pieces and
9 you open the box to do it and only less than half are
10 there, how frustrating would that be? You couldn't
11 even begin to put it together.

12 What the State is trying to do in this case is
13 give you a puzzle box missing almost all of its pieces.
14 They're going to give you a couple of puzzle pieces and
15 then ask you to make assumptions and speculations and
16 conclusions. That's not your job. The State's job is
17 to give you a complete picture. This is a -- this is
18 our evidence. This is the picture of what happened.
19 You have to weigh that. Not I'm going to give you a
20 little bit over here and maybe a corner piece over
21 there and have you fill in the holes. Justice is not .

22 . . .

23 What you have to wonder -- what you have to ask
24 yourself is why. Well, they said -- they told you
25 Ms. Robinson won't be here. And you should ask why.

OPENING STATEMENT BY MS. SAXON

1 The person who's accused Desmond of committing a crime,
2 the person who has put his liberty at stake is not
3 going to be here to testify? That should bother you.
4 It bothers me.

5 They want -- the State wants to give you a handful
6 of evidence, a small cupful, and say, "Take this and
7 make the assumption that Desmond Green is guilty and
8 convict him." That is not justice, and that is not why
9 you're here. You're here to listen to what little
10 evidence the State has produced and then decide if that
11 reaches the level of overcoming reasonable doubt. And
12 that is a very high burden resting with you. And that
13 is the basis of our Constitution. That is what brings
14 us into a courtroom when someone is charged with a
15 crime. And they have the right to say, "I didn't do
16 that and you have to prove it beyond a reasonable
17 doubt." A high burden. The State can't do that.

18 What you'll hear, you'll hear some -- some phone
19 calls. You'll hear -- what the State classifies as a
20 911 call, it's actually called a non-emergent dispatch.
21 But you will hear all of that. And then you're not
22 going to learn a whole lot more though. And that's
23 what you need to remember. What am I not hearing is
24 just as important as what I am hearing. What is not
25 presented -- what is not proven is just as important as

WITNESS - TASHA HAUPT

1 Q Who do you work for?

2 A I work for Beaufort County Sheriff's Office.

3 Q And how long have you been with Beaufort County
4 Sheriff's Office?

5 A Nine years.

6 Q Nine years. And which department do you work in?

7 A I work for the Emergency Management Division.

8 Q Okay. And what is your position with the
9 Emergency Management Division?

10 A I am the NCIP tech, terminal agency coordinator
11 and the email records custodian.

12 Q Okay. That's a mouthful.

13 A Yes.

14 Q Can you sort of describe that for the jury,
15 please?

16 A Yes. Basically, I respond to requests from the
17 public, from the Solicitor's Office, Public Defender, and
18 the Freedom of Information Act requests for information, CAD
19 records and tape requests.

20 Q Did you receive any requests for phone calls
21 related to this case?

22 A Yes, sir.

23 Q Did you make copies of those calls?

24 A Yes, sir.

25 Q I hand you --

WITNESS - TASHA HAUPT

1 MR. HOLLAND: Your Honor, may I approach?

2 THE COURT: Yes, sir.

3 BY MR. HOLLAND:

4 Q Ms. Haupt, I'm going to hand you what's been
5 marked for identification as State's Exhibit 1. Do you
6 recognize that?

7 A Yes, sir.

8 Q What is it?

9 A This is the copy of the audio, the tape that was
10 requested.

11 Q Okay. And at my request have you reviewed that
12 disc?

13 A Yes, sir.

14 Q Do you make any kind of marking on it to show
15 that -- that you reviewed it?

16 A Yes, sir, my initials and the date.

17 Q Okay. And were you able to determine that that is
18 an accurate and complete record of the calls --

19 A Yes.

20 Q -- related to this case?

21 A Yes.

22 Q Has it been altered in any way?

23 A No, sir.

24 MR. HOLLAND: Your Honor, at this time the State
25 would move to admit Exhibit 1 into evidence.

WITNESS - TASHA HAUPT

1 MS. SAXON: Your Honor, I object on hearsay and
2 confrontation Clause.

3 THE COURT: All right. Objection is overruled.
4 You can proceed.

5 MR. HOLLAND: Thank you, Your Honor. Permission
6 to publish to the jury.

7 THE COURT: All right.

8 *(Whereupon, State's Exhibit No(s). 1 marked for*
9 *identification and received in evidence.)*

10 (911 call CD played.)

11 BY MR. HOLLAND:

12 Q Ms. Haupt, is that a complete record of the calls
13 for this case?

14 A Yes, sir.

15 Q You mentioned earlier in your testimony a CAD
16 report or a CAPS report. What is that?

17 A That is the Computer Aided Dispatch report and the
18 Computer Application on Public Safety report. Basically, it
19 keeps the times that the data is entered into the Computer
20 Aided Dispatch computer.

21 Q Okay. So, the -- can you sort of explain how it
22 works? When the call comes in, is it a written record?

23 A It is a computer kept record of all the data that
24 the dispatcher physically puts into the computer, as far as
25 complainants' names, addresses, phone numbers and whatever

WITNESS - TASHA HAUPT

1 information they get.

2 Q And is that something that is generated in the
3 ordinary course to your business?

4 A Yes, sir.

5 MR. HOLLAND: I beg the Court's indulgence, Your
6 Honor.

7 THE COURT: All right.

8 *(Whereupon, State's Exhibit No(s). 4 marked for*
9 *identification.)*

10 MR. HOLLAND: All right. I understand that
11 Ms. Saxon has an objection to the State's next exhibit.

12 THE COURT: Mark it first, please, for
13 identification.

14 MR. HOLLAND: It has been marked, Your Honor, as
15 State's Exhibit 4.

16 THE COURT: Would you hand it to me, please?

17 MR. HOLLAND: Yes, sir.

18 THE COURT: Come on up, please.

19 *(Off-the-record discussion held.)*

20 THE COURT: All right. You can continue with the
21 questioning, Mr. Holland.

22 MR. HOLLAND: Your Honor, the State has no further
23 questions for Ms. Haupt.

24 THE COURT: All right. Ms. Saxon.

25 MS. SAXON: Thank you.

WITNESS - TASHA HAUPT

1 CROSS EXAMINATION

2 BY MS. SAXON:

3 Q Ms. Haupt?

4 A Haupt.

5 Q Did I get it right? Okay. I just have a couple
6 brief questions.

7 First of all, the call that came in came to
8 the non-emergent dispatch line; is that correct?

9 A Phone number.

10 Q And there's a different number -- that's a
11 different number from 911?

12 A Correct.

13 Q And the line -- and we hear a disconnect. And
14 that is a disconnect on the caller's end, correct?

15 A Correct.

16 Q That's not a disconnect --

17 A From dispatch.

18 Q -- from dispatch?

19 A No.

20 Q And when he called -- they call back and it
21 disconnects again, and again that's on the caller's end?

22 A Correct.

23 MS. SAXON: No further questions, Your Honor.

24 THE COURT: All right. Ladies and gentlemen, if
25 you would please step into the jury room for just a

WITNESS - TASHA HAUPT

1 minute. Of course, do not discuss the case in any way.

2 All right. Thank you.

3 (The jury exits the courtroom.)

4 THE COURT: Is the door shut?

5 THE BAILIFF: The jury has left the courtroom,
6 Your Honor.

7 THE COURT: Okay. Go ahead and question her,
8 Mr. Holland, on Exhibit 2. So, if it comes to where it
9 is deemed admissible, you would have to call her back
10 later.

11 MR. HOLLAND: That's fine, Your Honor.

12 THE COURT: All right. Go ahead and ask her the
13 questions that you wanted to ask her.

14 MR. HOLLAND: Okay. One second.

15 THE COURT: All right.

16 THE REPORTER: Do you want this copy?

17 MR. HOLLAND: Would you give her that for me?

18 (Exhibit given to the witness.)

19 REDIRECT EXAMINATION

20 BY MR. HOLLAND:

21 Q Ms. Haupt, are you familiar with the paperwork
22 that the --

23 A Yes, sir.

24 Q -- reporter just handed you? Listed on -- go
25 ahead, what is that?

WITNESS - TASHA HAUPT

1 A I can't exactly say because I wasn't the
2 dispatcher that did it. More than likely, the phone number
3 that comes up on the caller ID is how they were able to
4 trace back that through to calls for service and found that
5 phone number they see is.

6 Q And that's how they got the address?

7 A That's the way --

8 Q Usually, in the normal course of things?

9 A Yes --

10 THE COURT: Let her -- let her finish so the court
11 reporter won't be . . .

12 A Yeah. In the normal course of things, yes, that's
13 how we would trace it back.

14 BY MS. SAXON:

15 Q And that was how the name, Michelle Robinson, got
16 put on this?

17 A I can't say for sure, but that's the way that it
18 seems on this, yes.

19 Q Okay. So, it just -- the information that you're
20 typically given is a trace back to an address?

21 A Yes, and the phone number and a name.

22 Q And the phone number?

23 A Yes.

24 Q And maybe -- and who it is registered to?

25 A Yes.

WITNESS - TASHA HAUPT

1 THE REPORTER: I'm sorry, I missed that last
2 question.

3 THE COURT: And who it's registered to.

4 MS. SAXON: Who it's registered to.

5 THE REPORTER: Okay.

6 BY MS. SAXON:

7 Q Ms. Haupt, you just say that you weren't the one
8 who took this call, correct?

9 A No, ma'am.

10 Q And you weren't the one that generated this
11 report?

12 A No, ma'am.

13 Q So you don't know how this information came to
14 be --

15 A No.

16 Q -- on here?

17 THE COURT: Mr. Holland, any further questions?

18 MR. HOLLAND: No, Your Honor.

19 THE COURT: Any objection to me asking the witness
20 a question?

21 MS. SAXON: No, Your Honor.

22 MR. HOLLAND: No, Your Honor.

23 THE COURT: When you say registered to, you
24 talking about the -- somehow the system yields a phone
25 number?

WITNESS - TASHA HAUPT

1 THE WITNESS: Yes, sir.

2 THE COURT: And is that -- is it a land line or a
3 cell phone?

4 THE WITNESS: It appears to be a cell phone just
5 from looking at the phone number.

6 THE COURT: Okay, but how did you -- how did your
7 machine or system identify who the person is on the
8 other line, not who the phone number is registered to,
9 but the person who is talking?

10 THE WITNESS: Sometimes it will have a name
11 associated with caller ID, but if not -- that's what
12 I'm saying -- it seems they got it from the prior calls
13 for service.

14 THE COURT: If you were using the bailiff's
15 phone --

16 THE WITNESS: Yes, sir.

17 THE COURT: -- to call that number where your
18 operator was, whose name is going to come up, yours or
19 the bailiff's?

20 THE WITNESS: The bailiff's.

21 THE COURT: All right. And so, you're saying that
22 another source of information might be prior calls for
23 service at that location?

24 THE WITNESS: Yes, sir, using that phone number.

25 THE COURT: All right. Any follow-up questions,

WITNESS - TASHA HAUPT

1 Mr. Holland?

2 MR. HOLLAND: No, Your Honor.

3 THE COURT: Any from the Defense?

4 MS. SAXON: No questions, Your Honor.

5 THE COURT: Okay.

6 MS. SAXON: Just argument.

7 THE COURT: Your -- your argument, your objection
8 is again what?

9 MS. SAXON: Your Honor, I'm objecting under the
10 hearsay rule. I know that the State is trying to admit
11 this as a business record, and I didn't think this
12 qualifies, as reports in numerous cases, reports
13 showing that law enforcement officials do not qualify
14 as business records or public records in criminal
15 cases. That is directly from Melinda Diaz in
16 Massachusetts, Your Honor.

17 The other issue I have is with foundation. The --
18 the State has no way to show that the person speaking
19 is Michelle Robinson. She doesn't identify herself as
20 anyone. We don't know who else might live there. That
21 could have been anyone on the phone calling about
22 Mr. Green being there. She doesn't identify herself.
23 Ms. Haupt just testified that if she called from a
24 different cell phone, it would show not her name as the
25 caller but the bailiff as the caller. That's the -- a

WITNESS - TASHA HAUPT

1 serious chain issue and a foundation issue that the
2 State cannot overcome.

3 THE COURT: Mr. Holland.

4 MR. HOLLAND: Then that's a question of fact for
5 the jury. That goes to the weight. Not admissibility.
6 I mean, they can, for themselves, decide if that was
7 Michelle Robinson or not. It was from her phone and it
8 was from that address. I think the CAD report shows
9 that. And as far as the business records --

10 THE COURT: What if she had been using a friend's
11 phone? Would the Defendant be entitled to have the
12 jury draw that same conclusion, that it was not
13 Ms. Robinson who was calling but it was the friend?

14 MR. HOLLAND: That's the jury's prerogative, I
15 suppose, Your Honor.

16 THE COURT: All right. Now the objection at this
17 stage to that exhibit is sustained, of whether it's a
18 business record under 8036 or a public record or report
19 under 8038. The rule 8038 specifically says, "In
20 criminal cases matters observed by police officers and
21 other law enforcement personnel are admissible.
22 However, notes involving opinions, judgments or
23 conclusions are not admissible. This witness has not
24 been able, quite candidly she said, to determine how
25 that information got on there; the only thing she knows

WITNESS - TASHA HAUPT

1 is that it's on there. And I think the listing of the
2 person's name who made the call is just a bit
3 speculative. It would fall short of being even an
4 opinion or a judgment or a conclusion; it is
5 speculative.

6 All right. Anything else before we bring the jury
7 in?

8 MR. HOLLAND: Nothing from the State, Your Honor.

9 MS. SAXON: No.

10 THE COURT: All right. When the jury comes back
11 in, I'll allow you to release the witness from the
12 stand, okay?

13 MR. HOLLAND: Thank you.

14 THE COURT: All right. If you find another way to
15 get that in, certainly you can offer it later.

16 MR. HOLLAND: Yes, Your Honor.

17 (The jury enters the courtroom.)

18 THE BAILIFF: The jury is entering the courtroom,
19 Your Honor.

20 THE COURT: Thank you.

21 Okay. Any additional questions of the witness
22 from the State?

23 MR. HOLLAND: No, Your Honor.

24 THE COURT: Any additional questions?

25 MS. SAXON: No, Your Honor.

WITNESS - TASHA HAUPT

1 THE COURT: Thank you, ma'am. You can step down.

2 MR. HOLLAND: Your Honor, I would ask that she be
3 excused.

4 THE COURT: Any objection?

5 MS. SAXON: No, Your Honor.

6 THE COURT: Thank you, Ms. Haupt, you can leave if
7 you like or you can stay if you like.

8 THE WITNESS: Thank you.

9 THE COURT: Next witness.

10 (The witness exits the witness stand.)

11 MR. HOLLAND: The State calls Deputy Kyle Breland.

12 Thereupon,

13 KYLE BRELAND

14 was called as a witness, having been first duly sworn,
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. HOLLAND:

18 Q Good morning, Deputy Breland.

19 A Good morning, sir.

20 Q How long have you worked for the Beaufort County
21 Sheriff's Office?

22 A Almost four years.

23 Q And what are your duties?

24 A Currently I'm assigned to the School Resource
25 Officer Division.

WITNESS - KYLE BRELAND

1 Q On October 14, 2014, were you assigned to the
2 School Resource Division?

3 A No, sir, I was part of the Patrol Division.

4 Q And what did your duties with the Patrol Division
5 include?

6 A Respond and assist the public in needs and
7 emergencies.

8 Q On the date that I mentioned, October 14, 2014,
9 did you respond to a call about a domestic incident?

10 A Yes, sir.

11 Q Do you recall the time that that call was made?

12 A If I can look at my report, approximately 17
13 minutes after midnight.

14 Q What was the location of that call?

15 A , Seabrook, South
16 Carolina, Beaufort County.

17 Q Beaufort County. When you arrived on scene, did
18 you meet with anyone?

19 A Yes.

20 Q And who was that?

21 A Shavon Michelle Robinson.

22 Q What was Ms. Robinson's demeanor?

23 A Ms. Robinson was extremely emotionally upset. She
24 was crying.

25 MS. SAXON: Objection, Your Honor.

WITNESS - KYLE BRELAND

1 THE COURT: Yes, ma'am.

2 MS. SAXON: Just based on my previous arguments.

3 THE COURT: All right. Objection is overruled.

4 BY MR. HOLLAND:

5 Q Sorry. Go ahead, deputy.

6 A She was very emotionally upset, crying.

7 Q Did you notice any injuries on Ms. Robinson?

8 A Yes.

9 Q What were they?

10 A I noticed a laceration to the back of her head.

11 MS. SAXON: Objection, Your Honor.

12 THE COURT: Okay.

13 MS. SAXON: Same arguments as prior.

14 THE COURT: Overruled. Thank you.

15 A Laceration to the back of her head. Blood was
16 dripping down the center of her back. I noticed her shirt
17 she had on also had a fairly decent sized bloodstain to the
18 base of it.

19 Q When you arrived was the vehicle you were driving
20 equipped with any sort of technology?

21 A Yes.

22 Q What was that?

23 A It's an audio and video recording.

24 Q Were you yourself equipped with any technology?

25 A Yes, on my person I had a body mike for audio.

WITNESS - KYLE BRELAND

1 Q And was that body mike functional and active,
2 turned on?

3 A Yes, sir.

4 MR. HOLLAND: Your Honor, may I approach?

5 THE COURT: Yes, sir.

6 BY MR. HOLLAND:

7 Q Deputy, I'm going to hand you what's been marked
8 as State's Exhibit Number 2 for identification. Do you
9 recognize that?

10 A Yes, sir.

11 Q What is it?

12 THE COURT: Is it Number 2?

13 MR. HOLLAND: Number 2, Your Honor. It's --

14 THE COURT: I had 2 for ID.

15 MR. HOLLAND: It --

16 THE COURT: Okay. We can get it straight.

17 What number would this be in your order?

18 THE CLERK: Two.

19 THE COURT: Okay.

20 THE CLERK: Two. Yes.

21 THE COURT: All right.

22 THE CLERK: I had premarked the exhibit.

23 THE COURT: All right. So the other one I'll have
24 to change the number.

25 MR. HOLLAND: I apologize, Your Honor.

WITNESS - KYLE BRELAND

1 THE COURT: That's okay.

2 *(Whereupon, State's Exhibit No(s). 2 marked for*
3 *identification.)*

4 BY MR. HOLLAND:

5 Q Okay. Did you at my request review that disc?

6 A Yes.

7 Q Did you make any identifying markings on that
8 disc?

9 A I put my initials and the date.

10 Q Were you able to determine that that was a
11 complete and accurate record of the incident that you
12 recorded that evening?

13 A Yes, sir.

14 Q Has it been altered in any way?

15 A No, sir.

16 MR. HOLLAND: Your Honor, at this point the State
17 would seek to admit Exhibit No. 2.

18 THE COURT: Just make sure that the record will
19 end up being clear. This is Number 2. That is a disc.
20 Because we have two number 2's right now.

21 MR. HOLLAND: Yes, Your Honor, it was premarked
22 yesterday from pretrial, so.

23 THE COURT: So, so, 2, as this witness is talking
24 about. Your objection?

25 MS. SAXON: Yes, Your Honor, I'm objecting under

WITNESS - KYLE BRELAND

1 the hearsay as well as confrontation clause.

2 THE COURT: All right. Subject to the limitations
3 described I'll allow the exhibit.

4 MR. HOLLAND: Thank you, Your Honor.
5 Permission to publish to the jury.

6 THE COURT: Yes.

7 (Video CD played.)

8 MR. HOLLAND: Your Honor, I'll end it there. That
9 is as much as the State would seek to admit of that.

10 THE COURT: Okay. You can continue with the
11 witness.

12 MR. HOLLAND: Thank you.

13 BY MR. HOLLAND:

14 Q Deputy Breland, is that you on the video?

15 A Yes.

16 Q And what was the location?

17 A , Seabrook, South
18 Carolina, Beaufort County.

19 Q When you got there, you spoke with the woman that
20 we saw in the video?

21 A Yes.

22 Q Were you able to identify who that was?

23 A Yes.

24 Q And who was it?

25 A Shavon Michelle Robinson.

WITNESS - KYLE BRELAND

1 Q As a result of your investigation --

2 MS. SAXON: Objection, Your Honor..

3 THE COURT: I don't know what the question is yet.

4 You can ask -- you can ask the question.

5 BY MR. HOLLAND:

6 Q As a result to your investigation, were you able
7 to develop a suspect in this case?

8 A Yes.

9 MS. SAXON: Objection, Your Honor.

10 THE COURT: All right. Come on up, please.

11 (Off-the-record discussion held.)

12 THE COURT: All right. Objection is overruled.

13 BY MR. HOLLAND:

14 Q Deputy Breland, I'll reiterate the last question.
15 Were you able to develop a suspect in this case?

16 A Yes, sir.

17 Q And who was that suspect?

18 A Desmond Green.

19 Q What did you do after leaving the scene in regard
20 to the Defendant?

21 A I obtained an arrest warrant.

22 Q Did you take any photographs while you were on
23 scene?

24 A Yes.

25 MR. HOLLAND: Your Honor, may I approach?

WITNESS - KYLE BRELAND

1 THE COURT: Yes.

2 Same objection?

3 MS. SAXON: Yes, Your Honor.

4 THE COURT: Okay. Those have been premarked too.

5 Please show -- please show them to Ms. Saxon so we can
6 make sure.

7 (Photographs shown to Counsel.)

8 THE COURT: Okay. Objection is overruled.

9 MR. HOLLAND: Thank you, Your Honor.

10 Excuse me, I'm changing the exhibit numbers.

11 *(Whereupon, State's Exhibit No(s). 5 marked for*
12 *identification.)*

13 MR. HOLLAND: Now may I approach the witness, Your
14 Honor?

15 THE COURT: Yes, sir.

16 BY MR. HOLLAND:

17 Q Deputy Breland, I'm going to hand you what's been
18 premarked for identification as State's Exhibit 5. Do you
19 recognize that?

20 A Yes.

21 Q What is it?

22 A It's a picture of the victim's injuries.

23 Q Did you take that picture?

24 A Yes.

25 Q Is it a fair and accurate representation of the

WITNESS - KYLE BRELAND

1 victim as you saw her that night?

2 A Yes.

3 MR. HOLLAND: Your Honor, at this time the State
4 would seek to admit Exhibit Number 5 into evidence.

5 THE COURT: Any other objections other than
6 previously stated?

7 MS. SAXON: Just the previous ones, Your Honor.

8 THE COURT: Okay. Thank you. I'll allow Number 5
9 in.

10 *(Whereupon, State's Exhibit No(s). 5 received in*
11 *evidence.)*

12 MR. HOLLAND: Thank you. May I publish to the
13 jury, Your Honor?

14 THE COURT: Yes.

15 (Picture published.)

16 BY MR. HOLLAND:

17 Q All right. Deputy Breland, can you describe for
18 the jury what you see in this picture?

19 A To start with the -- at, there's a laceration.
20 There's blood that is trailing down her back and that large
21 stain at the base of her shirt is a result of the blood
22 that's dripped down her back.

23 MR. HOLLAND: Your Honor, may I approach?

24 THE COURT: Yes, sir.

25

WITNESS - KYLE BRELAND

1 BY MR. HOLLAND:

2 Q I hand you what's been premarked by identification
3 as State's Exhibit 6. Do you recognize that?

4 A Yes, sir.

5 Q What is it?

6 A It's a -- it's also a picture of the victim's
7 injuries.

8 Q Is it a fair and accurate representation of the
9 victim as you saw her that night?

10 A Yes.

11 MR. HOLLAND: Your Honor, the State would seek to
12 admit Exhibit Number 6.

13 MS. SAXON: Subject to my previous objection.

14 THE COURT: Okay. Thank you. Number 6 is
15 admitted. You can publish it.

16 *(Whereupon, State's Exhibit No(s). 6 marked for*
17 *identification and received in evidence.)*

18 MR. HOLLAND: Thank you, Your Honor.

19 (Picture published.)

20 BY MR. HOLLAND:

21 Q Deputy Breland, can you describe for the ladies
22 and gentlemen of the jury what you see in this picture?

23 A Yes. The -- in the center of the victim's head is
24 the laceration with also blood dripping down her back.

25 MR. HOLLAND: Your Honor, this is kind of

WITNESS - KYLE BRELAND

1 difficult to see. May I pass these around to the jury?

2 THE COURT: Yes. Ladies and gentlemen, he's going
3 to pass the photos through the jury box. Please make
4 sure you continue to listen. In other words, don't be
5 distracted by what you're looking at in front of you at
6 the expense of continued testimony.

7 BY MR. HOLLAND:

8 Q Deputy Breland, when you arrived at the home, were
9 there any other people present besides the victim?

10 A Yes, there were small children.

11 MS. SAXON: Objection, Your Honor.

12 THE COURT: Well, that's -- that -- that question,
13 the answer is fine. That will stay like it is, okay.
14 Objection to that question is overruled. There were
15 small children there according to the witness. All
16 right.

17 MR. HOLLAND: Beg the Court's indulgence, Your
18 Honor.

19 BY MR. HOLLAND:

20 Q Deputy Breland, you said as a result of this you
21 obtained an arrest warrant; is that correct?

22 A Yes.

23 Q Who was it for?

24 A Desmond Green.

25 Q Do you see that man in the courtroom today?

WITNESS - KYLE BRELAND

1 A Yes.

2 Q Can you point him out?

3 A Yes. It's the gentleman wearing the black and red
4 shirt.

5 MR. HOLLAND: Your Honor, let the record -- may
6 the record please reflect that the deputy has
7 identified the Defendant, Desmond Green?

8 I have no further questions.

9 THE COURT: All right. Ms. Saxon.

10 MS. SAXON: Thank you.

11 CROSS EXAMINATION

12 BY MS. SAXON:

13 Q Deputy Breland, you were initially dispatched out
14 for a domestic escort, correct?

15 A Correct.

16 Q And a domestic escort is classified as a non
17 emergent situation where they're just requesting officer
18 presence for help, correct?

19 A Correct.

20 Q And the -- third what we heard, the reason you
21 were dispatched was because there was a trespassing issue,
22 correct?

23 A Correct.

24 Q Okay. When you arrived on scene, no one else was
25 there as you stated, correct? No other adults were there?

WITNESS - KYLE BRELAND

1 A Correct.

2 Q And that evening no one was arrested, correct?

3 A Correct.

4 Q And while you were there, you did not see what
5 caused the laceration to Ms. Robinson's head, did you?

6 A No.

7 MS. SAXON: That is all that I have, Your Honor.

8 THE COURT: All right. Redirect?

9 MR. HOLLAND: Briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. HOLLAND:

12 Q Deputy Breland, at some point did the nature of
13 that call change?

14 A Yes.

15 Q When was that?

16 A When I arrived on scene and observed the victim
17 had injuries and after interviewing the victim.

18 MS. SAXON: Objection, Your Honor.

19 THE COURT: That part is fine, okay.

20 BY MR. HOLLAND:

21 Q Why was no one arrested that night?

22 A The suspect was no longer on scene.

23 MR. HOLLAND: I have no further questions, Your
24 Honor.

25 THE COURT: Anything else?

WITNESS - KYLE BRELAND

1 MS. SAXON: No, Your Honor.

2 THE COURT: All right. Thank you.

3 Deputy Breland, you can step down.

4 (The witness exists the witness stand.)

5 MR. HOLLAND: The State calls Jeff Vortisch.

6 THE COURT: And while he's coming in, could the
7 lawyers come up for just a minute?

8 (Off-the-record discussion held.)

9 Thereupon,

10 JEFF VORTISCH

11 was called as a witness, having been first duly sworn,
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. HOLLAND:

15 Q Good morning or afternoon, Mr. Vortisch. Who do
16 you work for?

17 A Beaufort County Detention Center.

18 Q And in what capacity?

19 A Training officer in the Office of Professional
20 Standards and I administer the inmate phone system.

21 Q Okay. You mentioned the inmate phone system.
22 That's part of your responsibility?

23 A It is.

24 Q Can you explain for the jury the manner in which
25 the phone system works?

WITNESS - JEFF VORTISCH

1 A Yes, sir.

2 Q Could you go ahead and do that for me?

3 A Oh, please, sir. When someone is booked into our
4 jail, they go through a process -- a -- inmate processing
5 procedure. At the end of that they're given a nine digit
6 number. It's a unique number assigned to that particular
7 person. And they go to the phone system and we have voice
8 biometrics on our phone system. They -- they have to enroll
9 into the system. They pick up the phone. They input this
10 nine digit number first, and then they read a predefined
11 script of about 20 different sentences; takes about three
12 minutes. And if they do it correctly, it -- it takes one
13 time or they have to repeat it until the phone has to
14 guess -- get our -- gets their voice identified with that
15 nine digit number. And then they say United States three
16 times and then they're asked to say their name three times.
17 And at the end of it, the voice informed -- the telephone
18 informs them enrollment is complete.

19 So at that point in time, they hang up and
20 they make a phone call. When they make a phone call, they
21 punch in the nine digits, and the phone will prompt them to
22 either say United States or their name. And it's comparing
23 that answer to the voice it has recorded biometrically for
24 that number to make sure it is the right person making that
25 phone call. And if it doesn't, then it says a voice ID

WITNESS - JEFF VORTISCH

1 fails and it doesn't make the phone call.

2 Q So, if the voice on -- if the voice making phone
3 call does not match the previously recorded biometric
4 recording, it is, what, kicked out?

5 A No, it don't -- the phone is disconnected and they
6 get a recording -- a message that says "voice ID failure."

7 Q Lieutenant Vortisch, I'm going to hand you --

8 MR. HOLLAND: If I may, Your Honor, approach.

9 BY MR. HOLLAND:

10 Q -- what's been marked as State's Exhibit No. 3.
11 Do you recognize that?

12 A Yes, sir. This was a disc that I reviewed this
13 morning that has my initials on it and today's date on it.

14 Q Okay. And did you review the items on that disc?

15 A I did, sir.

16 Q Were you able to determine that they were accurate
17 and complete?

18 A Yes, sir, I did.

19 Q Have they been altered in any way?

20 A No, sir.

21 MR. HOLLAND: Your Honor, I would move to admit
22 State's Number 3 disc into evidence.

23 THE COURT: All right.

24 Ms. Saxon?

25 MS. SAXON: Subject to my prior objections, Your

WITNESS - JEFF VORTISCH

1 Honor.

2 THE COURT: Okay. Objections overruled.

3 *(Whereupon, State's Exhibit No(s). 3 marked for*
4 *identification and received in evidence.)*

5 MR. HOLLAND: May I publish, Your Honor?

6 THE COURT: Yes, sir.

7 (Jail phone call CD played.)

8 MR. HOLLAND: We will move on to the next call.

9 THE COURT: Okay. Same objection?

10 MS. SAXON: Yes, Your Honor.

11 THE COURT: All right. It's overruled.

12 (Jail phone call CD played.)

13 MR. HOLLAND: Your Honor, I have no further
14 questions for Lieutenant Vortisch.

15 THE COURT: All right. Cross examination?

16 MS. SAXON: No questions for this witness, Your
17 Honor.

18 THE COURT: Thank you, sir. You may step down.

19 THE WITNESS: Thank you, sir.

20 (The witness exits the witness stand.)

21 THE COURT: All right. Mr. Holland.

22 MR. HOLLAND: Your Honor, at this point the State
23 rests its case.

24 THE COURT: All right.

25 All right. Ladies and gentlemen, we're going to

CASE CAPTION

1 In the Court of General Sessions for the
2 State of South Carolina, County of Beaufort

3

4

Case No.: 2014-GS-07-02009

5 State of South Carolina

6 Plaintiff(s),

7 vs.

Transcript of Record

8 Desmond Green,

9 Defendant(s).

10

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VOLUME 2

12

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15

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March 25, 2015

17

Beaufort, South Carolina

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22 BEFORE:

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The Honorable George C. James

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APPEARANCES

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	INDEX	
1		
2	PROCEEDING:	PAGE :
3	Sworn colloquy with Desmond Green	Page 122
4	Defense rests	Page 130
5	Closing arguments by Mr. Holland	Page 132
6	Closing arguments by Ms. Saxon	Page 135
7	Jury Charge	Page 139
8	Jury Verdict	Page 156
9	Sentencing	Page 162
10	Certificate Page	Page 173
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

INDEX

PROCEEDINGS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
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MS. SAXON: Thank you, Your Honor. I would renew all of my prior motions, Your Honor, and I would like to add to what has been previously ruled upon by this court. In particular to the issue here, it's clearly framed as a confront issue, be that we have gone over it ad nauseam. But I think it's important that we look at it because the only evidence the State has been able to proffer to a jury here is this -- this three pieces of unconnected -- unconnected information that -- that the Defense maintains is inadmissible and therefore -- and that's the only thing they've been able to build their case on, Your Honor.

Particularly, if we look again at the non-emergen -- the dispatch call that Your Honor ruled was non testimonial under Crawford and fell within a hearsay exception, I fear that the hearsay affection -- exception has been compounded and that the State has not offered any proof of who made that call. So, we have hearsay within hearsay and we don't even know who is saying it. And that is a huge problem.

And we also -- Your Honor, I believe the photos fall under hearsay. As our rules state, Rule 801(a) states, "The statement, in quotes, is an oral or written assertion or nonverbal conduct of a person, if"

MOTIONS

1 it's intended to prove -- "it is intended by the person
2 as an assertion." That picture is a nonverbal
3 assertion that Mr. Green committed an injury against
4 Ms. Robinson, and that is -- is a direct hearsay
5 violation and there's nothing within the rules that
6 would allow that in.

7 Your Honor, if all of that is -- when it comes
8 down, really, I believe to what is a corpus delicti
9 issue in this case. And I mentioned this earlier and I
10 want to go into it a little bit more here. But the
11 State has to prove a number of elements. The State has
12 to at least offer some proof before it can go to a
13 jury.

14 We have talked about the family household member
15 element of this case, Your Honor. All that we have is
16 an unknown caller saying "baby daddy." That is what
17 the State has stated they were going to rely on. The
18 unknown caller, who they cannot prove was Michelle
19 Robinson, stating, "my baby daddy," and then saying
20 "he" meant Desmond Green.

21 We had a jail phone call where she said, "I need
22 to take care of the kids," but she never said your kids
23 or my kids. She just said kids. There's nothing
24 there. There's no proof at all that these two
25 individuals lived together, resided together, have

MOTIONS

1 children in common or are related by blood or marriage.

2 We have no ev -- no evidence of an assault outside
3 of what statement -- the phone call that we just heard.
4 That -- that is the statement relies on to prove the
5 assault. But that is a direct corpus delicti issue,
6 because they can't prove anything else in the case.

7 And as the court -- case law states, "A defendant
8 may not be convicted on extrajudicial confession unless
9 it is corroborated by a proof of the corpus delicti."
10 And this rule applies whether a statement may not show
11 confession or merely constitutes an admission. Your
12 Honor, at State v. Osborne the cite is 335 S.C. 172.

13 The corpus delicti is not a prerequisite to the
14 admission of the extrajudicial confession. Rather, if
15 the State fails to prove the corpus delicti and the
16 sole evidence of guilt left is the defendant's
17 confession, then a directed verdict in favor of the
18 defendant is required. Carried at State v. Williams at
19 321 S.C. 381 as well as State v. Macomb which is 335
20 S.C. 123.

21 We have no proof of household family member. We
22 have no showing that there would be fear or
23 apprehension on the part of the victim. We have no
24 proof of an actual -- that -- that Mr. Green attempted
25 any assault upon Ms. Robinson other than this jail

MOTIONS

1 call, which is an out of court statement that the State
2 is using to base their case around.

3 Your Honor, the highest court in our land has said
4 that the Constitution is more important than one non
5 cooperating victim or one prosecuting agency's decision
6 to move forward on a case. And that is what this
7 entire matter is boiling down to. The court, here
8 right now, is the only avenue that we have for proper
9 relief. Because with the sentencing range we're
10 looking at on this case, by the time the appeal goes
11 through, Mr. Green will have served any time that Your
12 Honor would impose if a guilty verdict came back.

13 Respectfully, Your Honor, the State has not met
14 its burden. It has not submitted even a scintilla of
15 proof. Everything is circumstantial and the law
16 requires substantial circumstantial evidence.

17 THE COURT: Mr. Holland.

18 MR. HOLLAND: Thank you, Your Honor. May it
19 please the Court.

20 I'm trying to figure out where to start. We could
21 start with the corpus delicti issue. I mean, yes, it
22 is an out of court statement. But we have pictures.
23 We have the body mike. We have Deputy Breland. We
24 have the call that was made to the dispatchers. I -- I
25 think that is plenty of corpus delicti right there. In

MOTIONS

1 a -- as you well know, in a directed verdict motion the
2 evidence should be viewed in the light most favorable
3 to the State. And in addition to -- I will admit that
4 this is largely a circumstantial case.

5 THE COURT: Well, it is, until you get to those
6 phone calls.

7 MR. HOLLAND: Until you get to the phone calls,
8 right.

9 But we can put Mr. Green at the scene with the
10 victim. We can put the victim injured. We can put her
11 saying he ran off down the road. We can put Lance
12 Corporal Breland saying that he developed Mr. Green as
13 a suspect. You combine all of that with the statements
14 made and the jail phone calls, and I think this --

15 THE COURT: Did he say in the second call to
16 whoever that lady was, did he say, you know, "When I
17 told you I hit her in the head with the chair?" Is
18 that what he said?

19 MR. HOLLAND: Do you -- the way I heard it and the
20 jurors, you can hear it however you like. The way I
21 heard it was, "Do you remember when I told you I hit
22 her in the head with that chair."

23 THE COURT: That -- that's what I heard just now.
24 Now, y'all may say something different. Let the record
25 show I'm talking to the Defense. All right. Go ahead.

MOTIONS

1 MR. HOLLAND: You know the -- the dispatch call, I
2 mean, this does go back to the State v. Davis and M v.
3 Hammond.

4 THE COURT: I don't want to -- I don't want to
5 revisit Crawford. I've already ruled on it.

6 MR. HOLLAND: Then in that case I have nothing
7 further to say. So, I think we have gone over and over
8 it. And we have gone back and forth. The State will
9 stand by its previous argument. The -- as my cocounsel
10 is pointing out, we have both direct and circumstantial
11 evidence in this case that the defendant is the one
12 that committed the crime. I believe the State has met
13 its burden. I think that there's enough for it to go
14 to the jury and have them make up their minds.

15 THE COURT: All right.

16 Ms. Saxon, anything else?

17 MS. SAXON: Yes, Your Honor. I would just like to
18 point out when Mr. Holland stated that they can prove
19 Mr. Green was at the scene of the crime and they
20 absolutely cannot. The phone call was a 911 non
21 emergency dispatch from an unknown caller.

22 THE COURT: We've already been over that.

23 MS. SAXON: Well, I understand that. But that --
24 I mean that's important. That's import -- what he's
25 saying, that the State has offered proof that Mr. Green

MOTIONS

1 was at the scene, but they haven't.

2 THE COURT: Well, she said it on the phone.

3 MS. SAXON: Someone said it on the phone. That he
4 would -- and -- and they traced the call to a cell
5 phone back to an address. That doesn't put him at the
6 trailer on the scene.

7 THE COURT: But the witness identified the picture
8 of the person bleeding from the head as being
9 Ms. Robinson. He said that was her, and that is what
10 he said.

11 Okay. If he had not made those phone calls from
12 the jail, this case would be dismissed. He made --
13 otherwise you have bits and pieces and specs and
14 sparkles and spits of evidence that indicate mere
15 suspicion. He made phone calls. The first phone call
16 he -- begging her to make something up to the judge.
17 "Tell him we got robbed," is what he said. I think
18 that's what he's saying. Is that what he's saying?
19 "Tell them I got -- tell them that we got robbed."

20 MR. HOLLAND: I -- I think he was actually robbed.
21 That was the reason that the --

22 THE COURT: He got robbed later then?

23 MR. HOLLAND: He -- he got robbed on the night of
24 November 12th.

25 THE COURT: Okay. Whatever -- whatever the case

MOTIONS

1 is, then in the next phone call to that person, whoever
2 it was, he could have been talking to himself like that
3 guy who's in the HBO show. He could have been talking
4 to himself. He says, what I heard anyway, and the jury
5 can conclude it. It's not definitive just because I
6 say it. "You know when I told you I hit her in the
7 head with that chair." If he hadn't said that, we
8 wouldn't be here. He said it.

9 And you have made excellent arguments for a
10 directed verdict and you would probably or most
11 definitely be right but for especially that second
12 phone call. The photos aren't nonverbal assertions
13 that she made. Those are recordings of observations
14 made by the officer. If your standard were to apply,
15 then no photograph could ever be introduced of anything
16 unless the subject of the photo also testified. You
17 know, sometimes some things are inanimate objects. I
18 think there is a corpus delicti on a very limited
19 basis.

20 I think the case is held together with paper
21 clips. But what I've got to decide is whether or not
22 there's direct evidence or substantial circumstantial
23 evidence that would allow a reasonable jury to conclude
24 that he committed this offense. I don't know what the
25 jury is going to do, but I'm going to allow the jury to

MOTIONS

1 resolve that question because this is probably one of
2 the weakest, if not the weakest case that I've ever let
3 go to a jury. But I still think there's enough there.

4 All right. Please stand. Raise your right-hand.

5 Thereupon,

6 DESMOND GREEN

7 was called as a witness, having been first duly sworn,
8 was examined and testified as follows.

9 THE COURT: All right. Mr. Green, we've reached
10 the stage in the trial now during which you may offer
11 your own defense. You can stay standing. Just make
12 sure that we can hear each other.

13 Included in any presentation of a defense would be
14 your right to testify as a witness in this case. Do
15 you understand that?

16 THE DEFENDANT: Right.

17 THE COURT: Now, the Fifth Amendment to the
18 Constitution of the United States states in pertinent
19 part says that no person in any criminal case shall be
20 compelled to be a witness against himself. What that
21 means is that there's no one on this earth who can make
22 you testify in this case. I can't. The prosecutor
23 can't. Even your own lawyers can't make you testify
24 against your will. The reason for that is that the
25 rights you have under the Fifth Amendment are personal

SWORN STATEMENT OF DESMOND GREEN

1 THE COURT: And I guess since we're still on the
2 record and Mr. -- Mr. Green has counsel, do you have
3 any written charges you want to hand up --

4 MR. BAX: No, Your Honor.

5 THE COURT: -- for me to decide?

6 MR. BAX: Your Honor, I will want to double-check
7 with Ms. Saxon, but I don't believe that we have any
8 request to charge other than the standard at this point
9 in time.

10 THE COURT: Okay. All right. When she comes back
11 in, I'll go over any other -- or do you have anything
12 specific you want me to charge, Mr. Holland?

13 MR. HOLLAND: Beg the question, Your Honor. I
14 guess I would inquire as to whether the standard charge
15 that you're going to give does include evidence of
16 flight from the scene.

17 THE COURT: I don't charge that. That would be up
18 to you to argue. It would be improper for me to charge
19 that under the most current law. I can't tell the jury
20 they can consider that. That is something that you can
21 tell them that the evidence might allow them to infer.

22 MR. HOLLAND: Thank you, Your Honor.

23 THE COURT: All right. Ms. Saxon, Mr. Bax said he
24 would defer to you on any written charges you might
25 have to hand up or any input on any charges you want to

SWORN STATEMENT OF DESMOND GREEN

1 of time going over the jury charges and the verdict
2 form as we're required to do.

3 And you do have the verdict form? Does either
4 side object to that?

5 MS. SAXON: No, Your Honor.

6 MR. HOLLAND: No, Your Honor.

7 THE COURT: All right. You can bring in the jury.

8 (The jury enters the courtroom.)

9 THE BAILIFF: The jury is entering the courtroom,
10 Your Honor.

11 THE COURT: All right. Ladies and gentlemen,
12 thank you for your patience. The State has rested and
13 the facts are in evidence.

14 Anything from the Defendant?

15 MS. SAXON: No, Your Honor. At this time the
16 Defense would rest and renew any prior -- all -- any
17 and all prior objections and motions made.

18 THE COURT: Thank you, ma'am.

19 All right. Ladies and gentlemen, the Defense
20 advised me of that when we reconvened. We were
21 certainly in here on time. I don't want you to think
22 we were goofing off. So what I did in the next few
23 minutes was do something that I would have to do any
24 way under the rules that I mentioned to you. I'm
25 required under the law to review with the attorneys

SWORN STATEMENT OF DESMOND GREEN

1 mischaracterize or misquote any law, but if they happen
2 to misquote it or somehow misstate it, you go with the
3 law exactly as I give it to you in your review. I'll
4 talk to you more specifically about that in just a few
5 minutes. The order of arguments will be the State
6 first and then the Defense.

7 All right. Mr. Holland.

CLOSING ARGUMENT BY MR. HOLLAND

8
9 MR. HOLLAND: Thank you, Your Honor. May it
10 please the Court.

11 THE COURT: Yes, sir.

12 MR. HOLLAND: Good afternoon. Ladies and
13 gentlemen, I told you at the beginning of this trial
14 that it was about Desmond Green's temper. You heard
15 evidence of it. You heard the calls. You saw the
16 results. When his temper exploded on October 14, the
17 result was the pictures, both of them, of Michelle
18 Robinson bleeding from the back of her head.

19 You heard Deputy Breland. He arrived.
20 Ms. Robinson was distraught; she was crying; she was
21 injured. She said, "He ran off down the road." You
22 heard the name Desmond Green in the call. You know who
23 he was. You know he did it. I mentioned the pictures.
24 You saw them. You saw the injury. You know what blood
25 looks like. You know what a cut on the head looks

CLOSING ARGUMENTS BY MR. HOLLAND

1 like.

2 Then you heard the jail calls. Lieutenant
3 Vortisch explained to you how everything is
4 authenticated, PIN number, the inmate ID number. You
5 heard Desmond Green call the victim, Michelle Robinson.
6 Think about that call. Think about how she sounded.
7 Think about how he sounded.

8 I wrote a couple of things down, because I don't
9 want to try and misstate. As the Judge told you, if
10 your memory is different than mine, go with yours. You
11 better tell the Judge I did not hit you. You have got
12 to make something up. You have got to tell them you
13 hit your head on something.

14 Michelle Robinson sounded tired, sounded meek,
15 sounded afraid. And Ms. Saxon said in her opening that
16 you should be concerned about the fact that she's not
17 here. She's right. You should be. But why is she not
18 here? Think about how she sounded on that call.
19 Michelle Robinson is afraid of that man.

20 MS. SAXON: Objection, outside the evidence.

21 THE COURT: Sustained.

22 MR. HOLLAND: I apologize.

23 THE COURT: The jury will disregard that
24 statement.

25 MR. HOLLAND: Let's talk about the second call.

CLOSING ARGUMENTS BY MR. HOLLAND

1 Again made by the Defendant. Again, I don't want to
2 alter your memory in any way. He said to the female,
3 "This is what I heard." Remember when I told you, "I
4 hit her in the head with that chair"? The female
5 replied, "Yep."

6 As the Judge said, he is going to give you the
7 law. So, if I say something differently than he does,
8 go with what he says. South Carolina criminal domestic
9 violence requires a household member to cause injury to
10 another household member. That is kind of the quick
11 and dirty version.

12 When Michelle Robinson called dispatch you heard
13 her say she was having trouble with her baby daddy.
14 Who was the baby daddy? Desmond Green. You saw the
15 pictures. You saw the injury.

16 Now as I told you at the beginning, the State has
17 the burden. The burden of proof is on us to prove
18 every element of that crime beyond a reasonable doubt.
19 And the Judge is going to explain to you what
20 reasonable doubt is. I'll tell you what it's not.
21 It's not beyond all doubt. It's not beyond any doubt.
22 It's not beyond shadow of a doubt. What it doesn't say
23 is that if you are firmly convinced of the Defendant's
24 guilt, then the State has met its burden.

25 I would submit to you that we have met our burden.

CLOSING ARGUMENTS BY MR. HOLLAND

1 You know who committed this crime. We've given you the
2 truth. And despite what the Defense would have you
3 believe, this is not a victimless crime. Just because
4 Michelle Robinson is not in the courtroom today doesn't
5 mean that the State of South Carolina is going to turn
6 its head and look the other way.

7 Ladies and gentlemen, just think about it. Think
8 about what you saw. Think about what you heard. Think
9 about what you know. When you go back in that room I
10 know that you will reach the right decision, and that
11 decision is that Desmond Green is guilty of the crime
12 of criminal domestic violence.

13 Thank you.

14 THE COURT: Ms. Saxon.

15 CLOSING ARGUMENTS BY MS. SAXON

16 MS. SAXON: Thank you. Your Honor. May it please
17 the Court.

18 It's been a quick day. A non-emergency dispatch.
19 call asking for help with a trespass. A picture of an
20 injury with no explanation of how it occurred. And
21 then an out of context jail phone call. Those were the
22 three things that the State has offered evidence of.
23 That is what they have offered to you. Ladies and
24 gentlemen, that is a light puzzle. Three things.
25 Three things they want you to rest your hat on and say

CLOSING ARGUMENTS BY MS. SAXON

1 Desmond is guilty because of those three things.

2 What should happen in a trial is that the State
3 presents you with a full picture. They should present
4 you with enough evidence that you can know what
5 happened, be able to determine whether or not what you
6 are being told is factually true or not. Your job is
7 not to make conclusions. It's not to make assumptions.
8 It's not to fill in holes. It's to weigh the evidence
9 as it has been given to you. It is to weigh those
10 three things as they have been given to you and that is
11 all.

12 I did ask you to think about the fact that
13 Michelle Robinson isn't here. She's not here. She is
14 the one who brought us into this courtroom who has the
15 12 of you sitting here hearing the case, but she didn't
16 come to testify. She didn't swear an oath and take
17 this stand and say, "Here is what happened." And so,
18 what are we left with? We don't know. No one in this
19 room can tell you what happened except for that woman
20 who did not show up.

21 I want to just talk about these three separate
22 pieces of evidence. Now, the State wants you to
23 believe that that non-emergency -- that non-emergent
24 call to dispatch was from Ms. Robinson. But what proof
25 did they offer? There's a female who calls, says she's

CLOSING ARGUMENTS BY MS. SAXON

1 having trouble with someone, doesn't identify herself
2 and hangs up. They dial back. She answers again.
3 Doesn't identify herself. Says that, "I need to get my
4 baby daddy out of my house. It's Desmond Green. He
5 needs to leave." And she hangs up again. At no point
6 does she identify herself. At no point does she
7 testify that she is the person who made that call.
8 They want you to make that assumption without any
9 proof.

10 We have got a picture. We have got a picture of a
11 wound and some blood on the back, but we don't know how
12 that happened. What testimony has been given to you to
13 say this is how this occurred? There is none. The
14 State can't provide it.

15 And the jail call. That's their shining star.
16 That's what they really want you to rest this on. But
17 let's think about it. The judge is right and
18 Mr. Holland is right. What you hear, you have to be
19 the decision maker of what you hear. And you have to
20 interpret it the way you hear it. What I hear is
21 someone saying multiple times, "I didn't hit you with a
22 chair," and her response being, "I know."

23 And then we have a second phone call where he's
24 talking to someone. We don't know who. And he says
25 something about hitting her in the head with a chair.

CLOSING ARGUMENTS BY MS. SAXON

1 Well, who is her? Who says that the wound in her head
2 was caused by a chair? And, ladies and gentlemen, even
3 if you take that statement as true and you choose to
4 leap to the assumption that the chair caused injury on
5 the back of her head, you have to ask why. Was it an
6 accident? Was Mr. Green defending himself from
7 something? We don't know. And we don't know because
8 Michelle Robinson did not bother to show up and tell us
9 what happened.

10 There's also a very simple issue that the State
11 didn't cover. They didn't ever prove a familial
12 relationship between these people. Where is it that
13 they are a household member or a family member? Where
14 is that testimony? How has that been offered? And it
15 hasn't. I asked you at the beginning to consider not
16 only what you heard but what you didn't hear because it
17 is so important. You have to consider everything. You
18 have to consider why laws are written the way they're
19 written and why people come in to testify in court.
20 You can't just pick out a couple of pieces of the
21 puzzle box and say, yeah, that completes the picture.

22 Ladies and gentlemen, I said earlier you have the
23 power and you do. The State is attempting to take away
24 the liberty of Mr. Green, and you are the 12 people who
25 decide whether or not that happens. You must decide as

CLOSING ARGUMENTS BY MS. SAXON

1 a group -- first, you must decide as individuals. Each
2 one of you needs to bring your own experience and your
3 own background and knowledge, education into the
4 deliberation room. You have to look to your own
5 conscious and make the decision, and then speak with
6 one another. You have to make the decision personally
7 and then make it as a group.

8 You see what the State has given you. It is a
9 very light puzzle box. There's not a whole picture.
10 We don't know what happened. If we did, maybe things
11 would be different, but we don't. Your biggest piece
12 of evidence is not that jail phone call. It's the lack
13 of Michelle Robinson. And that is a giant gaping hole
14 in reasonable doubt. You can't overlook that. Those
15 three pieces of evidence can't be enough to take away
16 that man's liberties.

17 When you go back into your deliberation room take
18 your time. It's been a quick case, but it doesn't have
19 to be a quick deliberation. Consider everything that
20 you heard and that you haven't heard. Give it the
21 proper thought and then come back with the only
22 possible outcome, which is not guilty.

23 Thank you, Your Honor.

24 JURY CHARGE

25 THE COURT: Thank you, Ms. Saxon.

JURY VERDICT

1 THE CLERK: In the State of South Carolina versus
2 Desmond Green, as the charge of CDV, we unanimously
3 find the Defendant guilty.

4 THE COURT: All right. Ladies and gentlemen, if
5 this was your verdict and is still your verdict, please
6 signify that by raising your right hand.

7 (All jurors raise their right hand.)

8 THE COURT: All right. All of the jurors did
9 raise their right hand. Any matters pertaining to the
10 polling from the Defense?

11 MS. SAXON: Yes, sir, please poll the jury.

12 THE COURT: All right.

13 THE CLERK: Juror 190, please stand. Was this
14 your verdict?

15 THE JUROR: Yes.

16 THE CLERK: Is it still your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Juror 248. Was this your verdict?

19 THE JUROR: Yes.

20 THE CLERK: Is it still your verdict?

21 THE JUROR: Yes.

22 THE CLERK: Juror 179. Was this your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Is it still your verdict?

25 THE JUROR: Yes.

SENTENCING

1 Of course you will get credit for all of the time that
2 you have done. The maximum is five years. But
3 something is going to have to happen so that you don't
4 kill her. And you say that you want some help or you
5 want some treatment, you need to go ahead and get that
6 before you get into these situations again.

7 You can't come to court and after the fact say, I
8 have done it three times, now I want some help. That
9 is not the way that it works. Now, under the
10 sentencing scheme imposed by the Legislature the
11 maximum is five years.

12 I'm going to commit you to the Department of
13 Corrections for a period of four years. You will get
14 credit for the time that you have done. I'm hoping
15 when you get out you are not an angry man and I hope
16 that you don't want to go out and hit women, or hit
17 anybody.

18 Your record isn't extremely terrible except for
19 the CDV and other assault and battery, it's just got to
20 stop somewhere. All right. Thank you.

21

22

23

24

25

WITNESSES

Breland BCSO

ARREST WARRANT NUMBER

2014A0710200355

ACTION OF GRAND JURY

True Bill

Wright
Foreperson of Grand Jury

Date: 01/29/2015

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS0702009

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

January Term 2015

THE STATE

vs.

Desmond Green

Indictment for

Criminal Domestic Violence; 3rd offense within 10 years

SC Code: 16-25-0020(A)

CDR Code:3055

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

May 4, 2016



Laura R. Baer
Appellate Defender

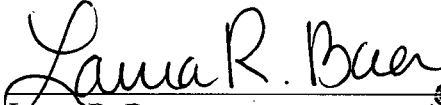
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ATTORNEY FOR APPELLANT

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May 4, 2016



Laura R. Baer
Appellate Defender

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MAY 04 2016

SC Court of Appeals

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