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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from York County

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Honorable Daniel D. Hall, Circuit Court Judge

FEB 13 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DEAN GUISEPPI DISTASIO

APPELLANT

APPELLATE CASE NO. 2015-002130

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT # 1 (CAIN’S 911 CALL), STATE’S EXHIBITS # 2, 3, AND 4
(PHOTOS), AND DEFENDANT’S EXHIBIT # 4 (DISTASIO’S 911 CALL).**

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of York	)	2015-GS-46-01730
	)	
State of South Carolina,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Dean Guisseppi Distasio.	)	
	)	
	)	
	)	

September 30th, 2015
York, South Carolina

BEFORE:

THE HONORABLE R. SCOTT SPROUSE, JUDGE and a jury.

APPEARANCES:

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Attorney for the State

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Attorney for the Defendant

AMINAH R. HARDY, CM
Official Court Reporter

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P R O C E E D I N G S

THE COURT: Do we have any matters to take up before we bring our jury in?

MR. HOGGE: Yes, Your Honor, just a few. The next case for trial is the State vs. Dean Guisseppi Distasio on indictment number 2015-GS-46-1730. That is a direct indictment, and as such, I'm prepared to arraign the Defendant unless he would wish to waive arraignment.

MR. MOORE: We would waive.

THE COURT: Arraignment is waived. Okay.

MR. HOGGE: I'll give you a certified copy of the indictment.

Next, Your Honor, the State intends to present evidence of previous difficulties between the Defendant and the victim. One week prior to this CDV, the Defendant went by the victim's workplace and had an argument with her and ended up throwing her laptop against the wall. The State would seek to introduce that evidence at trial. And I would hand up State vs. Bush, provide a copy to Defense counsel, and the relevant portion is highlighted. It's 211 S.C. 455.

THE COURT: Thank you.

MR. HOGGE: And in that case, involving a homicide case, where the State at trial presented evidence whereby the Defendant in the case had been to the victim's house

1 prior, had an argument with her and the State elicited
2 that testimony on the stand. There was also testimony
3 about the reasons for their separation. On appeal, the
4 court held that it was proper to go into those previous
5 difficulties, but it was not proper to go into the
6 underlying reasons for the separation. And I've
7 highlighted on the second page the rule as well settled in
8 assault and battery cases and homicide cases, evidence
9 that the accused and prosecuting witness or the deceased
10 had a previous difficulty is admissible, but is improper
11 to admit the details of such difficulty.

12 The evidence to the previous difficulty in this case
13 was appropriate only to show the animus of the parties and
14 thus aid the jury in reaching a conclusion as who was
15 probably the aggressor and what demeanor each party had
16 reason to expect from the other when they met and the
17 fatal difficulty occurred. The general details of the
18 previous trouble were properly excluded.

19 In this case, the court held that under that rule it
20 was proper to admit that on the defendant's last visit
21 prior to the alleged assault, he was drinking and
22 disorderly, made threats against Drakeford, the victim,
23 and was directed not to return to the home again.

24 In this case, I would seek to introduce evidence that
25 the Defendant a week prior to this incident had come by

1 the office, argued, caused a scene at the work, and threw
2 her laptop against the wall. Much as in this case, they
3 felt that it was appropriate to introduce evidence that
4 the last visit he was drunk and disorderly, made threats
5 against Drakeford and was told not to come back.

6 I would by that same token seek to suppress the
7 general details of divorce that's going on between the
8 parties in this case, what is leading up to the divorce,
9 all the things they've been going through with their
10 divorce, but I would like to introduce evidence of the
11 last time he came by the business.

12 THE COURT: Yes, sir, would you please state your
13 name?

14 MR. MOORE: I was going to, Judge. I'm so sorry for
15 not doing it earlier. My name is Jake Moore, Judge. I'm
16 from Lexington. It's good to be in your courtroom today.

17 Judge, in response to that, I have -- I really didn't
18 know they had intended to introduce that sort of evidence
19 and I certainly haven't had a chance to really thoroughly
20 examine this 1948 State v. Bush. But what I would say is
21 that it is odd or ironic to me, at least, that they want
22 to introduce evidence of a prior event, possibly, a week
23 earlier, yet suppress details of the parties' divorce and
24 matters involved in that divorce and reasons for the
25 parties' separation.

1 Basically, if I'm understanding this right -- and
2 again, I say this with the utmost respect. Mr. Hogge has
3 been an absolute pleasure to work with and has done
4 nothing but accommodate me thus far. But I will say that
5 I do not believe it appropriate or fair for the State to
6 pick and choose which events it wants to introduce and get
7 into. I will say that my client and the victim are going
8 through a horrible divorce. It has been probably over a
9 year now since initial pleadings were filed. I represent
10 my client in that matter. They absolutely despise each
11 other. And if Your Honor allows us to delve into all of
12 the nonsense these parties have been involved in over the
13 last year, we will be here for three weeks, at least.

14 However, the issue today is whether my client on
15 November the 5th engaged in conduct which would be
16 considered criminal domestic violence. What happened a
17 week ago, two months ago, six months ago is completely
18 irrelevant to the issue at hand. And I would argue that
19 not only should they truly --

20 You know, the one thing I will say is there is going
21 to be, I believe, testimony that an event occurred at a
22 business and my client was at that business. I have a
23 family court order that basically says my client can come
24 to that business and be at that business, but that is the
25 only particular matter that I intend to introduce in this

1 case with regard to the parties' divorce. But any other
2 matter dealing with prior altercations or fights or
3 fussing or squabbling or whatever I think is irrelevant
4 and would be unfairly prejudicial to my client. But
5 that's all I have on that matter, Judge.

6 THE COURT: All right. Mr. Hogge, how do you respond
7 to the Defense's argument that if you let in one aspect of
8 the domestic dispute, you have to let in everything?

9 MR. HOGGE: Well, Judge, the Court of Appeals, I
10 believe it's the Court of Appeals -- no, Supreme Court,
11 rather, disagrees and held in this case that it is
12 appropriate to go into a previous difficulty. In that
13 case, the Defendant prior to the homicide case had gone by
14 his wife's house, caused a disturbance, they told him not
15 to come back. Whenever he came back -- essentially, the
16 case is saying that that prior visit is proper to show the
17 animus of the parties and the demeanor that was expected
18 to be found if he ever showed back up.

19 THE COURT: All right. I understand your argument as
20 to the individual incident, but my question is -- and I'm
21 relying on my experience as a family law practitioner for
22 many years before I took the bench. I understand there's
23 going to be a series of incidents that may or may not have
24 violence. And what I'm hearing from Mr. Moore is --

25 Mr. Moore, how many years has this case been in

1 litigation?

2 MR. MOORE: At least -- it was dismissed on 365-day
3 rule about three months ago, I believe. It is, at least,
4 a year and three months into a very -- they own a business
5 together, a trucking business, and it's just -- it's
6 nasty. It is awful.

7 THE COURT: Mr. Hogge, were any charges leveled
8 against the Defendant as a result of this laptop incident?

9 MR. HOGGE: No, Your Honor. But as to the prior
10 squabbling and not going into that, I believe that would
11 be more prejudicial than probative. And this case held
12 that you are not to go into all of that. In this case,
13 they stated, But we are unable to see the relevancy of the
14 question of who was at fault in bringing on the
15 separation. It is true that the court stated the State
16 would not be permitted to go into the details, but
17 notwithstanding this testimony complained of was
18 thereafter admitted.

19 So in that case, they went into the dirty, nasty
20 divorce, but they found it was proper to go into the last
21 time the defendant was there at the property. So I wish
22 to show that to show who the primary aggressor was in this
23 case.

24 THE COURT: This is what I'll allow. I'll allow each
25 party to state that the parties have been engaged in a

1 contentious divorce. I will not allow the specific
2 evidence about the laptop. I feel that any probative
3 value that would have would be outweighed by the
4 prejudicial effect. But each party --

5 And Mr. Moore, again, I'm not going to -- I
6 understand your client may have things in the divorce he
7 wants to bring up. We're not going to litigate the
8 divorce case in this litigation.

9 MR. MOORE: Yes, sir. Yes, sir.

10 MR. HOGGE: Yes, Your Honor.

11 THE COURT: But you may put in evidence that the
12 parties have been engaged in a contentious divorce.
13 That's what I'm hearing from each side.

14 MR. HOGGE: Yes, Your Honor.

15 THE COURT: Okay. Anything further?

16 MR. HOGGE: Your Honor, I would make as Court's
17 Exhibits the previous convictions for criminal domestic
18 violence against the Defendant. And I assume that the
19 Defense would wish to stipulate the jurisdiction being
20 here in general sessions as opposed to magistrate's court.
21 So I put these into evidence.

22 (WHEREUPON, Court's Exhibit Nos. 1A and 2 were marked
23 for identification.)

24 MR. HOGGE: Your Honor, that's all the State has in
25 terms of pretrial.

1 THE COURT: Okay.

2 Yes, sir?

3 MR. MOORE: May it please the Court, Judge. I do
4 have two matters. And they kind of sort of bear on each
5 other, so I'll hit you with both of them at once.

6 Judge, the first matter I would raise is that this is
7 the first time I am seeing the indictment for which we are
8 here on today. But again, I cannot stress enough the fact
9 that Mr. Hogge has been just an absolute pleasure to work
10 with. He's done nothing wrong. He's done everything
11 within his power to accommodate me and produce everything
12 that he has in his file. But this is the first time I'm
13 seeing this indictment.

14 Now, there was a criminal domestic violence second
15 offense indictment that took place in this case and I have
16 seen a copy of that. Last week, I believe, I talked to
17 Mr. Hogge and he told me the wording of the CDV second
18 indictment was the exact same thing as the third. I took
19 his word for it and, in fact, that is the case.

20 But Judge, I certainly stipulate that the Court of
21 General Sessions has jurisdiction over a criminal matter
22 of this sort; however, prior to the jury being sworn and
23 pursuant to State v. Gentry, I am making a motion -- I am
24 moving to quash the indictment based upon a deficiency in
25 the indictment.

1 The indictment itself is a notice document and has to
2 basically give us notice of what we are here to defend
3 ourselves against. I'm well aware that we are charged
4 with criminal domestic violence. I understand that
5 there's a date in this indictment. But all this
6 indictment does is go through and list the elements of
7 criminal domestic violence. There is no to-wit section.
8 There is absolutely nothing in here that could be
9 construed as fact as to what it is they're saying we did.
10 And State v. Gentry basically says the indictment is the
11 charge of the State against the defendant and the pleading
12 by which he is informed of the facts and the nature and
13 scope of the accusation.

14 You read the indictment on its face. It very clearly
15 goes through the elements of CDV, but it basically says
16 that on November the 15th in York County, we caused
17 physical harm to or offered or attempted to cause physical
18 harm to Dione Distasio. My question is, which is it? We
19 don't even know. We don't know if we're here to defend
20 ourselves against actual physical contact or verbal
21 threats according to just the face of the indictment. I
22 think that if all -- all that needs is just some minimal
23 factual allegation as to what we did. Did we kick her,
24 did we hit her, did we push her, did we threaten to hit
25 her, kick her, push her? But there's just absolutely

1 nothing in the indictment.

2 Now, the second issue, Judge, again bears on this
3 because I'm moving to quash the indictment which would
4 have the ultimate effect of continuing the case. But,
5 Judge, I would also move for a continuance. Mr. Hogge
6 provided me yesterday -- I just -- I was going through
7 some things. There were some -- there's some video and
8 some 911 tapes. And my client has been adamant and is
9 clear on the in-car police video that my client made a 911
10 call. Mr. Hogge was able to get his hands on that 911
11 call that my client made yesterday and he immediately,
12 like he's supposed to, turned it over to me.

13 The problem with it is this, when you listen to it --
14 my client, again, has been adamant that he called the
15 police before any sort of physical altercation took place
16 and had the police on the telephone while his wife was
17 beating the heck out of him. And what you hear on the
18 tape is a 911 dispatcher basically talking to another 911
19 dispatcher saying okay, we've got this guy named Dean on
20 the phone. I think you're on the phone with somebody else
21 out there. I'm going to send him to you, essentially, is
22 what it boils down to. And then you hear another 911
23 operator talking and then it's -- it suddenly cuts into my
24 client talking and he's now outside of the business.

25 I believe that there exist more 911 tape of my client

1 talking. If my client is actually on the phone talking to
2 the police and you can hear the wife beating him or even
3 hearing him say, Stop, get off me, which we believe that's
4 what he said, that's crucial. And with my client facing
5 five years in prison today, we would like to have the
6 opportunity to have that tape.

7 Now, quite frankly, I don't know if it exists or not,
8 but I can -- after talking with Mr. Hogge, I don't think
9 either one of us can say with certainty whether it exists
10 or not. That being the case, at the very least, Your
11 Honor, what I'd like is for somebody to -- for the case to
12 be continued and somebody make an effort to find it
13 because I do believe it exists, but I can't be sure of it.

14 But Judge, for those two reasons, I do believe the
15 indictment is defective. I'd ask you to quash it and have
16 them resubmit it with some sort of factual allegation. If
17 you're not going to do that, I'd ask you continue the case to
18 basically allow me to hear what's on this tape.

19 THE COURT: Mr. Hogge?

20 MR. HOGGE: Your Honor, I'll pass up South Carolina
21 Code 17-19-20. Under that statute, it states every
22 indictment shall be deemed and judged sufficient and good
23 in law which, in addition to allegations as to time and
24 place, as required by law, charges the crime substantially
25 in the language of the common law or the statute

1 prohibiting the crime.

2 And then I would also hand up State v. McIntire,
3 which is 221 S.C. 504. And in that case, our Supreme
4 Court stated the true test of the sufficiency of
5 indictment is not whether it could have been made more
6 definite and certain, but whether it contains the
7 necessary elements of the offense intended to be charged
8 and sufficiently apprise the defendant of what he must be
9 prepared to meet.

10 I would also hand up, which was cited earlier by the
11 Defense, State v. Gentry. And in that case, I've
12 highlighted the relevant portion on Page 4. If the
13 objection was timely made -- and it was timely made in
14 this case, Your Honor -- the circuit court should judge
15 the sufficiency of the indictment by determining whether
16 one, the offense is stated with sufficient certainty and
17 particularity to enable the court to know what judgment to
18 pronounce and the defendant to know what he is called upon
19 to answer and whether he may plead an acquittal or
20 conviction thereon; and two, whether it apprised the
21 defendant of the elements of the offense that is intended
22 to be charged. And then it goes on to state further
23 whether the indictment could be made more definite or
24 certain is irrelevant.

25 In this case, Your Honor, we have spelled out the

1 elements of criminal domestic violence. It happens all
2 the time where we could be at a trial and I could argue to
3 the jury if you do not find that he physically assaulted
4 the victim, it is also a crime to assault someone and have
5 the present apparent ability to do so. So this is common
6 in indictments here in this circuit that we will spell out
7 all the elements. And if it's an or -- an either/or, we
8 will include those as well. I don't think the indictment
9 can fail or be insufficient because it leaves options.

10 And I'll pause there and address the issues of the
11 911 call at the appropriate time if you wish to respond.

12 THE COURT: I've looked at -- and I'm familiar with
13 State v. Gentry and I've looked at the case and I've
14 looked at the indictment. And I find that the indictment
15 is sufficient to enable the Court to know what judgment to
16 pronounce, also, to know -- for the Defendant to know what
17 he's called upon to answer. It also includes all the
18 elements of criminal domestic violence. So, Mr. Moore,
19 I'll deny your motion on the indictment.

20 MR. MOORE: Yes, sir.

21 THE COURT: Mr. Hogge, let me hear about this 911
22 tape. Is there an additional 911 tape?

23 MR. HOGGE: Yes, Your Honor. Whenever I first got
24 the case, I immediately requested all the 911 calls. I
25 requested the CAD report, the detailed call for service

1 report. In that report, it lists out the times and the
2 callers of each call made to 911 or to any law enforcement
3 entity.

4 And it states in that CAD report, which I provided to
5 the defense very early on in this case, it states,
6 Received a call from Dino Distasio, advised Dione was
7 hitting him, started because he was trying to get his
8 keys. And that is logged at 11:28:08. And it has before
9 that around 11:25, a new call from Heather Cain, who
10 worked at it -- I believe in argument of who called first,
11 that can be an argument for the jury.

12 But back to me getting this 911 call, as soon as I
13 got Heather Cain's phone call, I advised the Defense. The
14 CAD report, I provided to the Defense. I asked Ralph
15 Merchant, who handles these sorts of things, were there
16 any other phone calls made and he said that he could not
17 find any. I asked him a week ago if he could double-check
18 that for me. And then I asked him again yesterday could
19 he please double-check that for me. He provided me a
20 second 911 call, which I advised the Defense.

21 In that 911 call, you can hear someone speaking early
22 on and then you can hear Dean Distasio speaking to the
23 operator. And when I asked Ralph Merchant why he was late
24 in getting that, he told me in an e-mail, I quote, It was
25 a transfer from another county so it wasn't on the 911

1 system. It was just like a regular phone call, which we
2 get hundreds of a day. I'm sorry, but it can be looking
3 for a needle in a haystack sometimes.

4 I don't think it changes anything in the case that
5 much. I don't think there's anything else -- there's no
6 more tapes than what we have. The only 911 calls that we
7 have are the calls made by Heather Cain, the call made by
8 Dean Distasio. I have no other recordings of him speaking
9 to anyone else. I don't believe the continuance would
10 remedy any of that. And in the first place, the State
11 provided the CAD report and the Defense could see in that
12 CAD report where Dean Distasio called. He has the power
13 of subpoena and he could have subpoenaed someone to look
14 for this.

15 THE COURT: Who was the person who wrote on the
16 report that -- let me back up. Which one of your
17 witnesses was he talking to on the -- do you have the 911
18 operator down as a witness?

19 MR. HOGGE: I have one 911 operator down as a
20 witness, Ralph Merchant. He wasn't the actual operator,
21 he just oversees all of this.

22 THE COURT: But you mentioned earlier that the
23 Defendant said that his wife was hitting him. That was
24 in -- you read that to me.

25 MR. HOGGE: That was in the CAD report, Your Honor.

1 That was taken down by the operator in the CAD report.

2 THE COURT: Who was the author of that CAD report?

3 MR. HOGGE: I think it compiles various people who
4 work there for 911. And it's got listed Shannon Thomas.
5 And I believe that Tripp Alwine was the one who was
6 speaking with Mr. Distasio. So Shannon Thomas was the
7 operator and recording information as to Heather Cain's
8 call. When I read, Received a called from Dean Distasio,
9 that was done by Tripp Alwine.

10 THE COURT: Was that information provided to the
11 Defense in your response to their --

12 I assume, therefore, you filed a Rule 5 in this case?

13 MR. MOORE: I did, Your Honor.

14 MR. HOGGE: Yes, Your Honor, that Rule 5, I provided
15 a CAD report which states that.

16 THE COURT: Okay. Mr. Moore?

17 MR. MOORE: Yes, sir. I certainly have the CAD
18 report and that's another reason I asked them to
19 double-check and make sure that there's no additional
20 tape. And apparently, there exists a tape. I just --
21 it's my position that there's probably more to it than
22 what they've given me, but again, I'm not saying Matthew's
23 done anything wrong at all.

24 I always hear this, you know, the State comes in and
25 says oh, it's not that important in the case. It's not

1 going to change anything. The jury can make up their
2 minds. When we're facing five years in jail, it matters a
3 lot. You know, if I have a tape where the victim is
4 screaming in the background and you can hear her, you
5 know, ripping my client's shirt and him saying get off,
6 which you can in one -- there's a -- one 911 call where
7 you can barely hear in the background my client basically
8 saying, Get off, get off, get off. But if you have clear
9 audio of the actually event taking place, that's crucial.

10 And it may be looking for a needle in a haystack, but
11 all I ask is somebody just -- you know, somebody verify to
12 me that there -- what they have is what they have and
13 that's it or that there's more to this video. Because, I
14 mean, it's hard for me to believe that somebody can pick
15 up 911 and make a telephone call and part of it's recorded
16 and part of it's not. It's just -- maybe that's the way
17 they do it, I don't know, but it would just be hard for me
18 to believe that all of these calls aren't recorded. And
19 if they have it to give me now, I think they can certainly
20 go back and find it today. But I think it's crucial. I
21 do believe that it is crucial.

22 MR. HOGGE: Heather Cain called 911, Dean called 911.
23 You can hear in Heather's phone call the incident
24 happening in the background. You can hear the Defendant
25 in her 911 call, the first 911 call that we provided, him

1 saying, Get off me, get off me. In his 911 call, which we
2 provided yesterday, you can hear him outside of the
3 business saying, My wife jumped on me. She broke my
4 glasses. She ripped my shirt off. You can hear him
5 stating these events after the fact.

6 MR. MOORE: The problem in this case, it's going to
7 be -- you know, this is -- this is just -- what it is is
8 it's nonsense and it's going to be he said, she said and
9 just a free for all and it's going to be credibility. Who
10 do they believe? And my client is going to say one thing,
11 she's going to say a complete different thing. And you're
12 basically going to have the jury scratching their head
13 well, who do we believe and what's going to be the tipping
14 point? What better to tip it than hearing the actual
15 event? They may not be able to see it, but they'll, at
16 least, be able to hear what my client was trying to do.

17 THE COURT: Mr. Hogge, the individual in charge of
18 the 911 tape that you referred to before, is he available
19 this morning Mr. Moore can speak to him?

20 MR. HOGGE: I can contact him. I told him to be on
21 standby, I would let him know when I would need him, but I
22 told him that I wouldn't think it would be until
23 afternoon. But I can contact him and we could proffer him
24 if that would satisfy Your Honor.

25 I would state -- he says the tipping point is being

1 able to hear the actual incident. You can hear that in
2 Heather Cain's 911 call that we intend to introduce into
3 evidence. Even if Mr. Distasio called 911 himself, you
4 would only be hearing the same thing that you would hear
5 on Heather Cain's 911 call. But we can make Mr. Merchant
6 available to the Court and, perhaps, proffer him before
7 his testimony, before we put in this 911 call if that
8 would satisfy the Court.

9 THE COURT: Well, let's -- let's do this. What he's
10 telling you is there is not another 911 tape?

11 MR. HOGGE: Yes, Your Honor.

12 THE COURT: Is that correct?

13 MR. HOGGE: Yes, Your Honor.

14 THE COURT: Okay. And I fully understand Mr. Moore's
15 concern and he would like to be able to speak to this
16 individual before proceeding with the trial. Let's --
17 it's 10 o'clock. Let's plan on starting --

18 I'm going to deny your motion for a continuance, but
19 I'm -- we'll start the trial at two o'clock to give you an
20 opportunity to have Mr. Moore to talk to this individual.
21 I will hold the --

22 Well, I'll going to deny your motion for a
23 continuance at this time. If there is another 911 tape
24 that hasn't been provided to you, then we'll revisit that
25 issue at that time.

1 MR. MOORE: Quite frankly, Judge, I trust this man
2 with my life. I mean, if he's -- that's what I was going
3 to get to. If the 911 man is telling him there is no more
4 tape, I can accept that. The only problem I have is
5 yesterday, I get the tape and it doesn't appear to be a
6 whole tape. But if Mr. Hogge is telling me that's all 911
7 has, period, end of story, I can accept that literally.

8 THE COURT: Well, if you can accept that -- I'm
9 willing to give you an opportunity to track this guy down
10 and talk to him this morning.

11 MR. MOORE: That might not -- that still may be good,
12 let's do that. Thank you, Judge. I appreciate it.

13 THE COURT: And we'll start the case at two o'clock.

14 MR. HOGGE: Judge, I'll triple check with
15 Mr. Merchant. The jury is here. Would you prefer to go
16 ahead and select the jury so we're ready at 2:00?

17 THE COURT: Let's go ahead and select the jury. I
18 won't swear them right now, but let's go ahead and select
19 the jury and that way we can let the rest of the panel go
20 home.

21 MR. HOGGE: Absolutely.

22 THE COURT: Any requested voir dire from the Defense?

23 MR. MOORE: No.

24 THE COURT: Okay.

25 MR. MOORE: Judge, I stipulate this is a CDV third,

1 but I would hope that -- and ask that we not mention that
2 to the jury panel or the jury. It just basically be told
3 to them he's charged with criminal domestic violence.

4 THE COURT: Mr. Hogge?

5 MR. HOGGE: Yes, Your Honor.

6 THE COURT: I'll just in my preliminary instruction
7 tell them that it's a criminal domestic violence charge.
8 You stipulate jurisdiction?

9 MR. MOORE: Absolutely.

10 MR. HOGGE: And I'll also remind Your Honor not to
11 send that indictment back to the jury because it states
12 CDV third and his two priors.

13 THE COURT: Right. Right. If it were to result in a
14 conviction, the foreman or forelady of the jury would have
15 to conform that at the end, but the jury would not have
16 the indictment in the jury room.

17 MR. HOGGE: Yes, Your Honor.

18 (WHEREUPON, the jury entered the courtroom at 10:22
19 a.m.)

20 THE COURT: Good morning, ladies and gentlemen. The
21 next case is the State v. Dean Guisseppi Distasio.
22 Mr. Distasio is charged with criminal domestic violence.
23 The Defendant has pled not guilty to this charge. The
24 State therefore has the burden of proving each of the
25 elements of this charge beyond a reasonable doubt. And it

1 will be your duty, ladies and gentlemen, to decide whether
2 the State has met that burden if you are called to serve
3 on this jury.

4 You're called here this morning to form a pool from
5 which the parties will select a jury to determine to hear
6 this case. I asked you some questions yesterday to
7 qualify -- or day before yesterday and qualified you. And
8 I'm going to have to ask you some more. These are not to
9 pry into your personal lives, but merely to ensure that
10 each party receives a fair and impartial jury in the case.

11 Madame Clerk, would you swear our jury?

12 (WHEREUPON, the jury was sworn.)

13 THE COURT: Would each attorney stand and introduce
14 themselves and their clients?

15 MR. HOGGE: Good morning, everybody, I'm Matthew
16 Hogge. I'm with the York County Solicitor's Office. I
17 represent the prosecution in this case.

18 MR. MOORE: My name is Jake Moore. I practice law in
19 West Columbia. And this is my client, Dean Distasio.

20 THE COURT: Is any member of the jury panel related
21 by blood or marriage or has a close personal or social
22 relationship with the parties or the attorneys in the
23 case? If so, please stand.

24 (There was no response.)

25 THE COURT: No responses.

1 Has any member of the jury panel ever been
2 represented by one of the attorneys involved in the case
3 or their law firm? If so, please stand.

4 (There was no response.)

5 THE COURT: No responses.

6 The following is a list of potential witnesses in
7 this case: Dione Anita Distasio; Heather Cain; Heather
8 Tevella; Gina Hudson; Jenny Forsythe; Michael Doody; and
9 Ralph Merchant.

10 Are there any further names?

11 MR. HOGGE: No, Your Honor.

12 MR. MOORE: No, Your Honor.

13 THE COURT: Is any member of the jury panel related
14 by blood or marriage or has a close personal or social
15 relationship with any of these potential witnesses? If
16 so, please stand.

17 (There was no response.)

18 THE COURT: Okay. There are no responses.

19 Has any potential juror been prosecuted by the
20 Sixteenth Solicitor's Office or have a family member
21 prosecuted by the Sixteenth Solicitor's Office --
22 Sixteenth Circuit Solicitor's Office? If so, please
23 stand.

24 (There was no response.)

25 THE COURT: There are no responses.

1 THE COURT: Any motions or any matters from the State
2 before we go into recess?

3 MR. HOGGE: Nothing from the State.

4 THE COURT: Anything from the Defense?

5 MR. MOORE: Not at this time, Your Honor.

6 THE COURT: Okay. We'll go into recess --

7 As I understand, Mr. Hogge, you are going to attempt
8 to get --

9 MR. HOGGE: Mr. Merchant.

10 THE COURT: -- Mr. Merchant on the telephone so Mr.
11 Moore may speak to him.

12 And Mr. Moore, you're ready to proceed --

13 MR. MOORE: Absolutely.

14 THE COURT: -- once you speak to him?

15 Okay. We'll go into recess and let me know once that
16 telephone call is complete.

17 MR. MOORE: Yes, sir.

18 MR. HOGGE: Yes, sir, Your Honor.

19 (WHEREUPON, a recess was taken from 10:51 a.m. to
20 11:34 a.m.)

21 THE COURT: Anything before we bring our jury back in
22 from the State?

23 MR. HOGGE: Nothing from the State, Your Honor.

24 THE COURT: Anything from the Defense?

25 MR. MOORE: No, sir.

1 THE COURT: Okay. Mr. Bailiff, you may bring our
2 jury in for us, please, sir.

3 MR. MOORE: Your Honor, it is my intention to waive
4 my opening, but reserve the right to basically make it
5 prior to the presentation of our case. I just wanted to
6 say that now.

7 THE COURT: Any objection?

8 MR. HOGGE: No, Your Honor.

9 (WHEREUPON, the jury entered the courtroom at 11:36
10 a.m.)

11 THE COURT: Madame Clerk, would you swear our jury,
12 please?

13 (WHEREUPON, the jury was sworn.)

14 THE COURT: Ladies and gentlemen, I appreciate your
15 patience this morning. We had some legal issues we had to
16 deal with outside your presence. Before we get started, I
17 want to explain our roles in this trial. I am the judge
18 of the law. You must apply the law as I give it to you.
19 You are the judges of the facts. As the judge of the
20 facts, you have the duty to evaluate the evidence that is
21 presented. Evidence is the sworn testimony from the
22 witness stand or any exhibits that have been entered. You
23 alone determine the credibility of witnesses and how much
24 weight to give their testimony. Each attorney will have
25 the opportunity to outline their positions and the

1 evidence that he intends to present to support his claim
2 in an opening statement. The attorneys will also have an
3 opportunity to make closing arguments to you at the end.
4 Keep in mind that the statements of the attorneys are not
5 evidence, but merely tools they use to help you understand
6 their respective positions.

7 The State has the burden of proof in this trial. It
8 must prove beyond a reasonable doubt that the Defendant is
9 guilty of criminal domestic violence. If the State fails
10 to meet that burden, then you must find the Defendant not
11 guilty. On the other hand, if the State does prove its
12 case beyond a reasonable doubt, then you must find the
13 Defendant guilty. The Defendant is presumed innocent and
14 has no burden of proof in this trial.

15 Now, you're going to hear about this in much more
16 detail later, but I'll give you a preliminary definition.
17 A reasonable doubt is defined as a doubt which would cause
18 a reasonable person to hesitate to act.

19 A few more things before we get started. This is not
20 an endurance contest. We will take breaks as we go along.
21 If a jury member gets in distress and you need a break,
22 please let your bailiff know. They're here to help you.

23 Like I stated earlier, there's to be no independent
24 investigation of the facts or the law while we're in
25 recess. You will not be allowed to take notes. I get

1 that question. And the reason for that is some people are
2 good note takers and others are not good note takers. I
3 was always one of the ones who couldn't take good notes.
4 So your deliberations at the end should not turn into a
5 contest of who took the best notes.

6 Also, during the course of the trial, sometimes the
7 witness's appearance on the stand, which is referred to as
8 the demeanor of a witness, may be an important factor in
9 case. If your head is buried in a notepad taking notes,
10 you may miss something that's important in the trial. So
11 that's the rationale of why jurors are not allowed to take
12 notes.

13 You cannot discuss the case with any third parties.
14 Now, attorneys and the parties, they know they can't talk
15 to you. So if you run into them in the hallway, they're
16 not going to speak to you. It's not because they're
17 trying to be rude to you, they just know they're not
18 allowed to talk to you. If any third party attempts to
19 come up to you during a recess and talk to you about this
20 case, you let the bailiff know, they'll let me know and
21 I'll tend to that, but you cannot discuss the case with
22 any third party.

23 During the course of the trial, there may be
24 objections. Each side may make objections to the other's
25 presentation of evidence or question or some issue of law.

1 Do not interpret my ruling on any of those objections to
2 mean that I favor one side or the other as I most
3 decidedly do not. I'm just here to make sure each party
4 receives a fair and impartial trial.

5 I am going to ask you to go back to the jury room
6 right now. Your first order of business is going to be to
7 elect a foreperson. This will be a juror who presides
8 over your deliberations at the end. This will also be the
9 juror that communicates with the Court when you have any
10 questions or concerns. The communication with the Court
11 should be in the form of a written note.

12 So Madame Bailiff, if you would take our jury back
13 briefly so they might elect a foreperson.

14 (WHEREUPON, the jury exited the courtroom at 11:41
15 a.m.)

16 THE COURT: Any exceptions to my preliminary
17 instructions from the State?

18 MR. HOGGE: No, Your Honor.

19 THE COURT: Any exceptions from the Defense?

20 MR. MOORE: No, sir, Your Honor. I just have one
21 matter.

22 THE COURT: Okay.

23 MR. MOORE: Judge, just to protect the record, I know
24 we had some discussions in chambers about it, but I do
25 again renew my motion for a continuance. I was given a

1 911 tape yesterday of my client. It first came into
2 possession of the State yesterday -- or, actually, it was
3 Monday. They gave it to me Monday. We've had some
4 telephone calls with the 911 dispatchers who are over the
5 recordings and know what they're doing and it's my
6 understanding that there is a very high likelihood a
7 portion of that audio recording is housed, kept by
8 somebody at Mecklenburg County or Gastonia County in North
9 Carolina. So we would move for a continuance on that
10 ground.

11 The other issue I need to bring to Your Honor's
12 attention is there are some -- I have no idea what the
13 State plans to introduce today, but just while I'm
14 thinking about it and the jury is out, there are portions
15 of the audio/video recording where officers and witnesses
16 go into my client's record. And I would just move to
17 exclude anything concerning my client's prior record or
18 his prior convictions for CDV.

19 THE COURT: Mr. Hogge.

20 MR. HOGGE: We would not go into those prior CDVs.

21 THE COURT: Just make sure that the references of the
22 prior record are redacted from any reports or tapes that
23 you plan on putting into evidence.

24 MR. HOGGE: Yes, Your Honor.

25 THE COURT: And Mr. Moore, I have considered all the

1 circumstances and extensive conversation with counsel in
2 chambers and due to the circumstances, I'm going to deny
3 your motion for a continuance.

4 MR. MOORE: Thank you, Judge.

5 THE COURT: We'll be in recess for a few minutes
6 while the jury selects a foreperson.

7 (WHEREUPON, a recess was taken from 11:43 a.m. to
8 11:49 a.m.)

9 (WHEREUPON, State's Exhibit Nos. 1 through 5 were
10 marked for identification.)

11 THE COURT: I received a note back that Juror No.
12 123, Mr. Kastoek, I believe I pronounced that name right,
13 has been elected the foreman of the jury. Let's make this
14 a Court Exhibit.

15 (WHEREUPON, Court's Exhibit No. 1 was marked for
16 identification.)

17 (WHEREUPON, the jury entered the courtroom at 11:51
18 a.m.)

19 THE COURT: State ready to proceed?

20 MR. HOGGE: Yes, sir, Your Honor, may it please the
21 Court.

22 OPENING STATEMENT

23 BY MR. HOGGE:

24 Good morning. This is a case about domestic violence
25 showing its ugly head at the workplace. You will hear

1 testimony in this trial from Heather Tevella, Heather
2 Cain, I call them Heathers. They work at Double DD
3 Trucking in Lake Wylie. You will hear from Dione Distasio
4 in this trial, the victim in this case. And you will hear
5 from them and you will see it on their face what has
6 happened in this case to them as a result of this incident
7 that took place on November 5th of 2014.

8 Ms. Distasio and Mr. Distasio are going through a
9 messy divorce. He showed up at the workplace that day and
10 the evidence will show that he walked through the front
11 door, he walked back into an office that Ms. Distasio was
12 using as an office that day. He proceeded to argue with
13 Ms. Distasio, grabbed her face, called her a bunch of
14 nasty names, shoved her into Heather Tevella and tried to
15 steal her car keys.

16 As he tried to leave the business with her car keys,
17 her only means of transportation, she grabs onto the back
18 of his shirt. As she does that, he slams her against the
19 wall and chokes her, all in front of Ms. Distasio's
20 employees there at Double DD Trucking.

21 They know Dean. He used to be their boss. Mr.
22 Distasio and Mrs. Distasio used to operate this business
23 together. During the divorce, they were not working there
24 together. He had not been there for some time. That's
25 what the evidence in this case is going to show.

1 Now, I'm not going to preach a sermon to you about
2 the dangers of domestic violence and what it's doing to
3 our state and to our United States, but it's a problem.
4 And I'm going to rely on your common sense during this
5 trial. We rely here in the United States on the common
6 sense of jurors. If we were in England or somewhere else,
7 we might rely on a judge to tell us what happened here,
8 but as the Judge told you earlier you're here as judges of
9 the facts. He's here as the judge of the law. You are
10 the most important people in this room because at the end
11 of this trial, you will tell us what happened, the facts
12 of this case.

13 At the end of the trial, you will render a verdict.
14 The word verdict comes from the Latin ver, which means the
15 truth, and dict, which means to speak. So you will
16 literally be speaking the truth. We will rely on your
17 commons sense to tell us what happened in this case. Rely
18 on your common sense to look at these witnesses as they
19 take the stand and gauge their honesty, their credibility
20 and who is telling the truth in this case.

21 I look forward to presenting my evidence to you.
22 It's my duty, as the Judge pointed out to you, to prove
23 this beyond a reasonable doubt. I take that seriously.
24 It's a serious case, although it is a relatively simple
25 case. You will hear the testimony. You will see it on

HEATHER CAIN - DIRECT EXAMINATION BY MR. HOGGE

1 their faces. You will see the bruises that happened as a
2 result of this case. And at the end of this trial, I'll
3 talk to you again and I'll ask you for a verdict that
4 lines up with what happened in this case. Thank you.

5 MR. MOORE: Your Honor, we waive our opening until
6 the presentation of our case.

7 MR. HOGGE: Your Honor, the State calls Heather Cain
8 to the stand.

9 THE CLERK: Please raise your right hand and place
10 your left hand on the Bible.

11 HEATHER CAIN, after having first being sworn,
12 testified under oath as follows:

13 THE CLERK: Thank you. Have a seat.

14 DIRECT EXAMINATION

15 BY MR. HOGGE:

16 Q Good morning.

17 A Good morning.

18 Q Could you give us your name for the record?

19 A Heather Lynn Cain.

20 Q And where do you work, Heather?

21 A Double DD Trucking.

22 Q And what is Double DD Trucking?

23 A It is an export shipping company.

24 Q And what does that mean?

25 A We ship all over the United States, stuff that should

HEATHER CAIN - DIRECT EXAMINATION BY MR. HOGGE

1 have been there yesterday.

2 Q Okay. What do you do there?

3 A I am -- I do the accounting and HR.

4 Q Where is Double DD Trucking?

5 A It's in Lake Wylie.

6 Q Okay. Where -- for those of the jurors who might be
7 familiar with Lake Wylie, can you kind of point out to us
8 where it is?

9 A It's across the street from what used to be Cafe 49,
10 right before you get to the Buster Boyd bridge on the
11 left -- on the right.

12 Q Within York County?

13 A Yes.

14 Q How long you worked there?

15 A Two years almost. Next month will be two years.

16 Q Okay. And do you know Dean Distasio?

17 A I do.

18 Q Could you point him out for us?

19 MR. HOGGE: Your Honor, for the record, she has
20 pointed to the Defendant.

21 BY MR. HOGGE:

22 Q Can you tell us about -- could you give us a layout
23 of your office?

24 A My office is -- you come into the entrance and it's
25 the first door on the right.

HEATHER CAIN - DIRECT EXAMINATION BY MR. HOGGE

1 Q Okay. The office as a whole?

2 A Oh, as a whole. You come into it and there's a room,
3 entryway. And then down the hall, there are two offices
4 on the right and then in the back, there's a big office.

5 Q Okay. And where were you working again?

6 A I was in the front office on the right, the very
7 first office on the right.

8 Q Can you tell me about what happened on November the
9 5th of 2014?

10 A I was in my office and Dino walked into the office
11 and I was -- I just stayed in there because not to get in
12 anybody's business. He --

13 Q Let me stop you there. Does Dean regularly work at
14 Double DD Trucking?

15 A No.

16 Q When was the last time he was at the office before
17 this?

18 A I don't even remember because he was never there. I
19 don't remember.

20 Q So back to your story, I'm sorry I interrupted you.
21 He walked in the office?

22 A He walked in the office and I really just was like
23 oh, wow, he's here, you know, it was like why. So I
24 didn't really, you know, pay any mind until he started
25 raising his voice. And then that's when I was like, you

HEATHER CAIN - DIRECT EXAMINATION BY MR. HOGGE

1 know, oh, no. Because other times he's raised his voice,
2 it's never ended good.

3 Q Okay. Where was he when you heard that?

4 A When I first heard him, he was in the back office.

5 Q Who all was at work that day?

6 A It was me, Heather Tevella and Dione.

7 Q So you hear him raising his voice, what happens next?

8 A I hear him raising his voice and then I heard a bunch
9 of commotion. And I really was just like, you know, I
10 didn't -- I heard him -- I heard Ms. D tell him to give
11 her back the keys. And then that's when I was like, you
12 know, something serious is happening, so that's when I
13 called 911.

14 Q Could you say that a little louder?

15 A That's when I called 911.

16 Q I'm going to hand you what has been previously marked
17 for identification purposes only as State's Exhibit No. 1.

18 A Yes.

19 Q Do you recognize that?

20 A I do.

21 Q What is it?

22 A It's my 911 recorded call.

23 Q Have you listened to that before today?

24 A I have.

25 Q How do you know that that call is on that disk?

HEATHER CAIN - DIRECT EXAMINATION BY MR. HOGGE

1 A Because I initialed it.

2 Q Okay. And when you listened to that, was that a fair
3 and accurate depiction of what you said on 911 that day?

4 A I'm sorry?

5 Q When you listened to this, what you said on this
6 disk, does that fairly and accurately depict what you said
7 on 911 that day?

8 A Yes, sir.

9 MR. HOGGE: Your Honor, at this time, the State would
10 seek to introduce and publish State's Exhibit 1.

11 MR. MOORE: Subject to our prior objection.

12 THE COURT: Counsel approach.

13 (WHEREUPON, a bench conference was held in the
14 presence of the jury, but not within the hearing of the
15 jury.)

16 THE COURT: State's Exhibit No. 1 will be admitted.

17 (WHEREUPON, State's Exhibit No. 1 was admitted into
18 evidence.)

19 (WHEREUPON, 911 audio tape was played in open court.)

20 BY MR. HOGGE:

21 Q Heather, you mentioned -- I believe I heard in that
22 call he just slammed her against the wall. Could you tell
23 us what you were actually able to see?

24 A He literally like slung her into the wall, knocking
25 the mirror down and putting a small -- you could see where

HEATHER CAIN - DIRECT EXAMINATION BY MR. HOGGE

1 he had hit her into the wall and the mirror and it just
2 fell.

3 Q Okay. In that, where were you in relation to him as
4 this was all going on?

5 A I was standing -- I was literally standing a few feet
6 away from them.

7 Q Could they see you on the phone when this was
8 happening?

9 A Yes.

10 Q In that, we can here Dean say, Let go of me. Can you
11 talk to us about that?

12 A He was saying let go of him because Ms. D was trying
13 to get her car keys.

14 Q Okay. How was she holding him?

15 A She was just grabbing his shirt.

16 Q Okay. Did you witness her fight him beyond that?

17 A No.

18 Q And what happened after that?

19 A After he left or?

20 Q After -- so you see him sling her against the wall --

21 A Uh-huh.

22 Q -- tell us what happened after that?

23 A He is literally trying to get out the door because he
24 had seen me on the phone and it was like oh -- you know,
25 it was like -- he just was like okay, just let me go.

HEATHER CAIN - DIRECT EXAMINATION BY MR. HOGGE

1 He's trying to get out the door. So she was standing in
2 front of the door because she was trying to get -- she was
3 trying to make him give the cars keys before he left.
4 So -- because she needed her car keys. But he wouldn't do
5 it, he was just trying to get out the door. He was doing
6 all he could do, anything he could do to push her out from
7 under that door.

8 Q Okay. When he was in the office, did you see him
9 with a phone in his hand?

10 A No, unh-unh.

11 Q Did you ever see him call anyone with his cell phone?

12 A No.

13 Q When did the police show up on the scene?

14 A They showed up -- they showed up -- it was maybe five
15 minutes. It wasn't even -- it was pretty fast.

16 Q Okay. And did you speak to the police when they
17 showed up?

18 A I did.

19 Q Did you speak to Dean after this when the police came
20 up?

21 A No.

22 Q Did Dean say anything to you?

23 A No.

24 MR. HOGGE: Beg the Court's indulgence.

25 BY MR. HOGGE:

HEATHER CAIN - DIRECT EXAMINATION BY MR. HOGGE

1 Q One more time could you identify for the Court who
2 you saw slam Ms. Distasio against the wall?

3 A Dean Distasio.

4 MR. HOGGE: I have no further questions for you.
5 Please answer any questions Mr. Moore has for you.

6 CROSS-EXAMINATION

7 BY MR. MOORE:

8 Q Ma'am, let me ask you something. Who owns Double DD
9 Trucking?

10 A Dione Distasio.

11 Q Are you sure?

12 A Yes.

13 Q Are you 100 percent sure?

14 A Yes.

15 Q Are Dean and his wife, Dione, still married?

16 A Yes.

17 Q Did Dean have any role in Double DD Trucking ever?

18 A Maybe on paper.

19 Q Well, that's what I'm asking you about. What do you
20 mean that he may have had a role on paper?

21 A Because he might have his name signed somewhere for
22 ownership, but he never worked.

23 Q Let me ask you this, if he had his name on Double DD
24 Trucking, are you saying he had no ownership interest in
25 it at all?

HEATHER CAIN - CROSS-EXAMINATION BY MR. MOORE

1 A If he has his name somewhere, then yes. That would
2 mean he has --

3 Q Okay. So what you just told me when you said I'm a
4 hundred percent sure he doesn't have ownership interest,
5 you are now changing that answer to yes, I believe he has
6 an ownership interest, right?

7 A If his name is somewhere on some piece of paper.

8 Q Well, ma'am, you just told me that his name is on
9 some of the paper, right?

10 A If his name is somewhere on a piece of paper.

11 Q That's not what I asked you. You testified 30
12 seconds ago that you have seen his name on paperwork for
13 Double DD Trucking, right?

14 A No. You asked me if he owned any -- if he owned
15 Double DD Trucking.

16 Q Let me ask it again. Have you seen Dean's name on
17 any paperwork with Double DD Trucking?

18 A Have I seen personally, no, I haven't. It's all
19 Dione Distasio.

20 Q Who is your boss?

21 A Dione Distasio.

22 Q She could fire you, couldn't she?

23 A She could.

24 Q You answer to her, don't you?

25 A I do.

HEATHER CAIN - CROSS-EXAMINATION BY MR. MOORE

1 Q You do what she says do, right?

2 A Yes, sir.

3 Q One hundred percent loyal to Dione, right?

4 A Yes, sir.

5 Q Now, you gave -- your last name is Cain?

6 A Uh-huh.

7 Q Is that a yes?

8 A Yes, sir.

9 Q Did you give a statement to the police?

10 A I did.

11 Q Did you give a written statement?

12 A I did.

13 MR. MOORE: Your Honor, may I mark this just for
14 identification purposes, please?

15 THE COURT: Yes, sir.

16 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
17 identification.)

18 BY MR. MOORE:

19 Q Let me show you this. Do you recognize this? This
20 is Defense Exhibit No. 1 for just identification purposes.
21 Do you recognize that?

22 A Yes.

23 Q Is that your written statement?

24 A Yes, sir.

25 Q Now, on this written statement, it says he took the

HEATHER CAIN - CROSS-EXAMINATION BY MR. MOORE

1 keys out of Mrs. D's purse?

2 A Uh-huh.

3 Q She tried to get them --

4 MR. HOGGE: Judge, I would object. I would ask that
5 he put it into evidence if he's going to read it.

6 MR. MOORE: We'll put it into evidence, that's fine.
7 We move Defense Exhibit No. 1 into evidence.

8 THE COURT: Any objection?

9 MR. HOGGE: No, Your Honor.

10 THE COURT: Defense Exhibit No. 1 will be admitted
11 without objection.

12 (WHEREUPON, Defendant's Exhibit No. 1 was admitted
13 into evidence.)

14 BY MR. MOORE:

15 Q Ma'am, it says that he took the keys out of Mrs. D's
16 purse and she tried to get them and he slung her around,
17 right?

18 A Uh-huh.

19 Q Is that a yes?

20 A Yes.

21 Q Ma'am, your testimony on direct examination was that
22 you were in another office when Dean came in, correct?

23 A Uh-huh, yes.

24 Q And you heard Dione say, Give me back my keys, right?

25 A Yes.

HEATHER CAIN - CROSS-EXAMINATION BY MR. MOORE

1 Q You didn't see Dean take the keys out of the
2 pocketbook, did you?

3 A I did not. I was in the other office.

4 Q I'm sorry?

5 A I did not. I was in the other office.

6 Q Well, ma'am, let me ask you this, why is it that in
7 November --

8 A Uh-huh.

9 Q -- when the police officer gave you a piece of paper
10 and told you to write down accurately what happened, why
11 did you tell the police officer something that wasn't
12 true?

13 A I knew he had took her keys because she was telling
14 him to give them back.

15 Q That's not what this says. This says he took the
16 keys out of Ms. D's purse?

17 A Uh-huh.

18 Q That's what it says, right?

19 A Uh-huh.

20 Q Is that a yes?

21 A Yes.

22 Q But you did not see that happen, did you?

23 A I did not see it.

24 Q So you told the police officer something in this
25 statement that was not true, right?

HEATHER CAIN - CROSS-EXAMINATION BY MR. MOORE

- 1 A No.
- 2 Q Well, ma'am, did you see with your own eyes --
- 3 A No.
- 4 Q -- Dean --
- 5 A All right.
- 6 Q So if you didn't witness it, you certainly relayed
- 7 the information to the police officer that Dean had done
- 8 something like taking keys out of a pocketbook, right?
- 9 A Uh-huh.
- 10 Q Yes?
- 11 A Yes.
- 12 Q But you had no personal knowledge of that, did you?
- 13 A I didn't see it, no.
- 14 Q Okay. But you told the police officer you did?
- 15 A No.
- 16 Q You told the police officer that Dean took the keys
- 17 out of the pocketbook, right?
- 18 A Because that's what I heard.
- 19 Q Now, that's what you heard, but you're not a hundred
- 20 percent sure sitting here today that that's, in fact, what
- 21 happened, right?
- 22 A Because I didn't see it?
- 23 Q Right? Right?
- 24 A Right.
- 25 Q So you're not a hundred percent sure, are you?

HEATHER CAIN - CROSS-EXAMINATION BY MR. MOORE

1 A Because I didn't see it, no.

2 Q Okay. And just like you've testified to, these two
3 are going through a terrible nasty divorce, right?

4 A Uh-huh.

5 Q Fighting over property and all sorts of stuff, right?

6 A Yes.

7 Q All kinds of disputes, right?

8 A Yes.

9 Q Dispute over automobiles?

10 MR. HOGGE: Judge, I object to any of this.

11 THE COURT: Sustained.

12 BY MR. MOORE:

13 Q They're going through a nasty divorce. They were
14 arguing, certainly, over those keys, right?

15 A Yes.

16 Q Now, let's talk about this. You called the police
17 and your testimony here today is that you did not see Dean
18 on the telephone calling 911 himself, right?

19 A I did not see him.

20 Q Okay. Now, you testified on direct examination that
21 Dean was trying to leave the business, right?

22 A Yes, after he seen I was on the phone with 911.

23 Q All right. Regardless of his reasoning for wanting
24 to leave the building, why couldn't he get out?

25 A Because she needed her keys.

HEATHER CAIN - CROSS-EXAMINATION BY MR. MOORE

1 Q Okay. Well, because she needed her keys wouldn't
2 prevent him from getting out of the building, would it?

3 A No.

4 Q Why is it that Dean couldn't leave that building?

5 A Because Dione was not letting him leave without her
6 keys.

7 Q What do you mean that she was not letting him leave?

8 A She was just standing in front of the door trying to
9 get her keys.

10 Q It was impossible for him to leave that building
11 because she was blocking his escape, right?

12 A To that door, yes.

13 Q Okay. She was standing in the doorway, right?

14 A Yes.

15 Q She grabbed his shirt, right?

16 A Yes.

17 Q Grabbing somebody's shirt would be an act of a
18 physical nature, correct?

19 A Uh-huh, yes.

20 Q Now, did she just grab it or did she pull it?

21 A She grabbed it.

22 Q Did she pull it?

23 A I don't -- I mean, she grabbed it. Not that I'm
24 aware that she was --

25 Q Ma'am, you were watching this entire event, right?

HEATHER CAIN - CROSS-EXAMINATION BY MR. MOORE

1 A Yes.

2 Q You're certain Dione was standing in the doorway.
3 You're certain she grabbed his shirt. You're not certain
4 whether she pulled on it?

5 A She grabbed his shirt and he was trying to move.

6 Q Okay. So while she's grabbing his shirt, Dean is
7 trying -- still trying to get out; is that right?

8 A Yes.

9 Q Okay. So why is it that she would grab his shirt if
10 he's trying to leave?

11 A Because she did not want him to leave with her car
12 keys.

13 Q So she was physically trying to restrain him from
14 leaving the business, right?

15 A Yes.

16 Q Acts of a physical nature, correct?

17 A Yes.

18 Q Not only was she saying stop, give me back my keys,
19 but she was physically trying to restrain him, right?

20 A Yes.

21 Q Do you know if she cut him?

22 A No.

23 Q You never got that close to see his arm, did you?

24 A No.

25 Q Would it surprise you to learn that the police

HEATHER CAIN - CROSS-EXAMINATION BY MR. MOORE

1 documented he had a cut?

2 A No.

3 Q Wouldn't surprise you because they were involved in a
4 physical struggle, correct?

5 A Yes.

6 Q Part of it was due to Dione, wasn't it?

7 A Yes.

8 Q Part of it was grabbing the shirt and possibly
9 scratching him, right?

10 A Yes.

11 Q This 911 call that you made, certainly, you can hear
12 Dean in the background saying, Get off of me; is that
13 accurate?

14 A Yes.

15 Q How many times did he say, Get off of me?

16 A Several.

17 Q Why was he saying that?

18 A Because she was trying to grab -- she grabbed his
19 shirt and was trying to prevent him from leaving.

20 Q Okay. So he was saying, Get off of me, on top of
21 trying to get out the door, on top of her grabbing his
22 shirt and trying to prevent him from leaving?

23 A Yes.

24 Q Now, if they had an argument and it's been a nasty
25 divorce and you want to avoid conflict, one of the things

HEATHER CAIN - CROSS-EXAMINATION BY MR. MOORE

1 that you might try doing in avoiding a conflict is by
2 removing yourself from the situation, right?

3 A Right.

4 Q And that's what Dean was trying to do; wasn't he?

5 A So it seems.

6 Q Okay. So as we sit here today, we know that Dean had
7 a conflict with his wife, but was the one trying to remove
8 himself from the conflict, but couldn't because his
9 soon-to-be ex-wife was actually preventing him from
10 leaving and still wanted to engage in the conflict, right?

11 A She didn't want to continue to engage in it. She
12 just wanted her car keys.

13 Q If she had let go of his shirt and he had walked out
14 of the business, there would be no more conflict; would
15 there?

16 A I wouldn't say that.

17 Q How do you know? What do you mean?

18 A Because he wouldn't have left, he wouldn't have just
19 left it like that.

20 Q Well, maybe he came for the car keys and he got the
21 car keys and he left the business. Dispute over, right?

22 A No, he didn't just come for the car keys.

23 Q Okay. So this person that hadn't been up there in
24 ages, you knew every item on his agenda that particular
25 day with what he was going to do at that place and what he

HEATHER CAIN - CROSS-EXAMINATION BY MR. MOORE

1 wanted and what he wanted to take?

2 A No.

3 Q Okay. Well, then, if you don't know what his agenda
4 was, how can you possibly testify as to what else he
5 wanted to do that day?

6 A Because it's Dean Distasio and there's no telling
7 what he was going to do.

8 Q I see. So it was Dean Distasio, Nasty Dean, you have
9 no idea what he's going to do. But what we do know is he
10 was trying to remove himself from a bad situation and a
11 physical conflict that, at least, in part was engaged in
12 by to his soon to be ex-wife, correct?

13 A Yes, when he seen I was on the phone with 911?

14 Q I see.

15 MR. MOORE: All right. Your Honor, that's all I
16 have.

17 THE COURT: Mr. Hogge.

18 REDIRECT EXAMINATION

19 BY MR. HOGGE:

20 Q Ms. Cain, did Dean Distasio slam Dione Distasio
21 against the wall?

22 A Yes, he did.

23 Q When she stood in the door to prevent him from
24 leaving as you testified, was that before or after he
25 slammed her into the wall?

HEATHER CAIN -- REDIRECT EXAMINATION BY MR. HOGGE

1 A That was after.

2 Q Was there any altercation before they approached the
3 door?

4 A There was when he was still handling her and pushing
5 her around and shoving her and choking her.

6 Q What did she do to Dean during this?

7 A She was trying to get away from him. She was trying
8 to get him off of her.

9 Q But what were her actions in terms of his shirt
10 grabbing? How much force did she use in the situation?

11 A To be honest with you, it's not -- to me, it's not
12 that much force. I mean, it wasn't compared to what he
13 was doing.

14 Q Okay.

15 MR. HOGGE: Nothing further from the State.

16 THE COURT: Anything further from this witness?

17 MR. MOORE: No, sir.

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

19 Call your next witness.

20 MR. HOGGE: The State calls Dione Distasio.

21 DIONE DISTASIO, after having first being duly sworn,
22 testified under oath as follows:

23 DIRECT EXAMINATION

24 BY MR. HOGGE:

25 Q Good afternoon, Ms. Distasio. Could you give us your

DIONE DISTASIO -- DIRECT EXAMINATION BY MR. HOGGE

1 full name for the record?

2 A Dione Anita Distasio.

3 Q Do you know Dean Distasio?

4 A I do.

5 Q How long have y'all known one another?

6 A About 12 years.

7 Q How long have y'all been married?

8 A Five years.

9 Q Where did you guys first meet?

10 A Grand Rapids, Michigan.

11 Q And is that where you're originally from?

12 A Yes.

13 Q Do you have any children with Mr. Distasio?

14 A One child.

15 Q Tell us about that child.

16 A She's -- she just turned 11 on Monday. So we've --

17 anything else about her?

18 Q That's fine.

19 A She's just a little girl. She just turned 11 on

20 Monday.

21 Q And how long have you lived here in York County?

22 A I've been in York County about three years -- I'm

23 sorry, four years.

24 Q And what do you do for a living?

25 A Own Double DD Trucking.

DIONE DISTASIO -- DIRECT EXAMINATION BY MR. HOGGE

1 Q And what is Mr. Distasio's role in that business?

2 A Well, when we started out, we -- he did a lot of the
3 sales, recruiting, like bringing in customers, everything
4 that was the legal end of it as far as like the business
5 is a -- was a sole proprietorship. Everything was in my
6 name. I dealt solely with the DOT, Department of
7 Transportation, insurance, all the liability, customers,
8 was my responsibility.

9 Q What kind of business does Double DD Trucking do?

10 A It's expedite trucking. We ship -- pick up freight
11 all over the United States.

12. Q How many employees do you have working there?

13 A In the office, there's five.

14 Q Okay.

15 A And then there's drivers.

16 Q On November 5th, how many employees were there?

17 A It was two employees and myself.

18 Q Do you recognize Dean in the courtroom?

19 A I do.

20 Q Can you point him out for us?

21 A Right there.

22 MR. HOGGE: The record should reflect she's pointing
23 to the Defendant.

24 BY MR. HOGGE:

25 Q Was he a regular employee around November the 5th?

DIONE DISTASIO -- DIRECT EXAMINATION BY MR. HOGGE

1 A No.

2 Q Did he come around very often?

3 A He came around sporadically. He had not been around
4 for quite some time, then he started coming around again
5 in August, September, just very sporadically, usually in
6 the morning for a little bit if we saw him, then we'd go
7 weeks without seeing him. But he did regularly receive a
8 check.

9 Q Okay. Were y'all going through a divorce at this
10 time?

11 A We were going through a -- well, I think at this
12 point, we had filed -- or I had filed.

13 Q On November 5th, were y'all still living together?

14 A Actually, I moved out November 1st.

15 Q Is it fair to say it was a messy divorce?

16 A Yes, it is fair to say that.

17 Q Moving on to November 5th, what were you doing that
18 day?

19 A Work, as usual. I usually got -- I got the kids up
20 for school. Got to work. And I work like 80 to a hundred
21 hours a week.

22 Q You said the kids to school, you have other kids?

23 A Yes, I have an 18-year-old -- well, he's now an
24 18-year-old and a 16-year-old.

25 Q But they're not Dean's children?

DIONE DISTASIO -- DIRECT EXAMINATION BY MR. HOGGE

1 A Correct.

2 Q Were you expecting Dean to show up that day?

3 A No, not at all.

4 Q Can you tell us around what time did he show up?

5 A It was midday, maybe 11:00 -- maybe between 10:00 and
6 11:00 or something around there.

7 Q Okay.

8 A Right around that time period I would say.

9 Q Where in the office did he go once he arrived?

10 A To the dispatch office, which is the big office at
11 the end of the hallway.

12 Q Okay. And where were you working that day?

13 A I was working in the dispatch office.

14 Q Okay. At what point did you start -- the two of you
15 start arguing?

16 A Almost immediately -- well, actually, not
17 immediately. He was speaking to the other dispatcher,
18 Heather Tevella, and I didn't get involved in anything he
19 had to say. An e-mail came up that didn't make any sense
20 because we didn't have any trucks in that area, so I told
21 Heather, I said, Heather -- she asked me about it and I
22 said, Heather, I said, send that information back, I said,
23 and let them know they sent that to the wrong company
24 because we don't have any trucks in that area. And I
25 didn't want to get in trouble for, you know, not picking

DIONE DISTASIO -- DIRECT EXAMINATION BY MR. HOGGE

1 up freight. So I just knew it was an error. And at that
2 point, he said it was his load.

3 Q Is that what caused the argument?

4 A That is.

5 Q Were y'all getting loud with one another?

6 A No, he was -- his voice carries. He has a very deep
7 voice anyway, but I wasn't loud at all, no.

8 Q What kind of things was he saying to you?

9 A Very ugly things. He repeated --

10 Q Tell us what.

11 A He referred to me as a dumbass and if I wasn't such a
12 dumbass, then this company would be bigger than UPS. And
13 the reason the company is not self-sufficient and not
14 making more money is because I'm incompetent. And then he
15 called me the B word, bitch several times, you know, just
16 standard.

17 Q Okay. What was the first physical act that he did?

18 A Well, when I stood up -- he was standing up. I stood
19 up -- he went to get something off the printer and I stood
20 up because I said, What is that? Because I never know
21 what's going on ever, you know, when it -- you know, I'm
22 responsible for so much. Anyway, it was some paperwork.
23 I didn't look at the paperwork. And he grabbed me by the
24 cheeks and he did like this with my cheeks and he was
25 talking through his teeth and calling me every name in the

DIONE DISTASIO -- DIRECT EXAMINATION BY MR. HOGGE

1 book. He's about a foot taller than me. Screaming at me,
2 talking through his teeth like clenched teeth like -- and
3 then at that point, he let go of my cheeks and pushed me
4 into Heather Tevella's desk -- or chair, excuse me.

5 When --

6 Q You say -- where was Heather Tevella?

7 A She was sitting in a chair right behind me.

8 Q About how far away from her were you and Dean?

9 A Three feet, possibly, max.

10 Q How did he push you?

11 A With both hands, like towards my shoulder, towards my
12 upper body.

13 Q And tell us what happened to you after he pushed you.

14 A Well, I fell into Heather's chair. I was able to
15 regain myself because she has a chair, it's a tall chair,
16 so I didn't fall too far.

17 Q Did you like fall on the ground and have to use your
18 hands to get up or anything?

19 A No, no.

20 Q What happened after that?

21 A Well, I went down somewhat. When I went down, I
22 grabbed the chair. I felt -- my back fell into the chair.
23 I looked and I noticed my purse -- the contents of my
24 purse were all over the floor, which weren't, so I knew at
25 that point someone's been in my purse.

DIONE DISTASIO -- DIRECT EXAMINATION BY MR. HOGGE

1 Q Okay. What happened next?

2 A So I asked him, What did you take out of my purse?

3 And he proceeded to call me several more names. It
4 doesn't matter. And I said, Just tell me what -- and at
5 that point, he went to take off. Because I didn't know if
6 it was a wallet or whatever, but I did grab the back of
7 his shirt. I did not pull on his shirt. I grabbed the
8 back of his shirt trying to see what he had in his other
9 hand because he had it in his other hand. And when I
10 could see the metal, that's when I realized they were car
11 keys.

12 Q Was your car there?

13 A Yes.

14 Q At the business?

15 A Yes. Yes, sir.

16 Q Did you -- if he were to walk out with those car
17 keys, what would have happened?

18 A Well, our daughter has a medical condition, which he
19 is fully aware of, which she was diagnosed when she was
20 about a year old. Because of that, I have to have a
21 vehicle. I have to have her to the hospital within one
22 hour. She has to see an oncologist within one hour of any
23 kind of a fever or any kind of malaise or anything like
24 that. So -- and that's the only vehicle, the only vehicle
25 that I have.

DIONE DISTASIO -- DIRECT EXAMINATION BY MR. HOGGE

1 Q Okay. So it's fair to say those keys are important
2 to you?

3 A Extremely important.

4 Q When you say that you were holding onto him, did you
5 like touch his skin --

6 A No, no.

7 Q -- anything like at that?

8 A No.

9 Q Did you ever notice Dean to have a cell phone in his
10 hand?

11 A No.

12 Q Did you see Heather Cain standing by during all this?

13 A Yes. I -- when we got down the hallway, Heather was
14 on the phone.

15 Q Okay. And you got him by the shirt, you see his --

16 A No, and I didn't hold him by the shirt. I only had
17 him by the shirt for maybe a few seconds. I was actually
18 holding the keys because he had the keys in his hand. But
19 it's a big key ring so I grabbed part of the keys to say
20 just give me my keys back. That's all I wanted was just
21 give me my keys back.

22 Q Then what happened next?

23 A And then as we're going down the hallway, I'm trying
24 to walk and I'm trying to just grab my keys. He turned
25 and puts me up against the wall and starts choking me.

DIONE DISTASIO -- DIRECT EXAMINATION BY MR. HOGGE

1 Q How was he choking you?

2 A With both hands.

3 Q And how long was he holding onto you?

4 A It was probably seconds, but in that time, I was
5 trying to get him off of me because he had me up. I was
6 up off the ground, choking me up against the wall.

7 Q And how tall are you?

8 A Five feet.

9 Q Do you know how tall Dean is?

10 A Six feet.

11 Q Okay. And you start -- you said you were going
12 like --

13 A I started hitting him in the face to get him to let
14 go of me.

15 Q Then what happened?

16 A He let go, he did let go of me.

17 Q Was he wearing glasses?

18 A He was wearing glasses. His glasses -- during the
19 time of me trying to get him off of me, the glasses must
20 have fallen, so he's looking for his glasses.

21 Q And what did you do next?

22 A I went and I stood by the door and I said, Dino, just
23 give me the keys, just give me the keys. He knows our
24 daughter's medical condition. He absolutely is aware of
25 it.

DIONE DISTASIO -- DIRECT EXAMINATION BY MR. HOGGE

1 Q Were you expecting him to do anything like that?

2 A Oh, no, no, no.

3 Q And where were your employees during all this?

4 A They're right there, right at the office, like a few
5 feet away. I never would have expected that.

6 Q Okay.

7 MR. MOORE: Your Honor, I have a matter of law if I
8 could take it up outside the presence of the jury.

9 THE COURT: Okay.

10 Madame Bailiff, if you would take our jury to the
11 jury room, please.

12 THE BAILIFF: Yes, sir.

13 (WHEREUPON, the jury left open court at 12:33 p.m.)

14 THE COURT: Yes, sir.

15 MR. MOORE: Your Honor, two things. First, I would
16 note it again, not that it makes much of a difference, but
17 I would renew my motion -- I'd make a motion for a
18 mistrial and essentially renew my motion to have this
19 matter tried again at a later date. There's two witnesses
20 now who have testified my client wasn't on the phone when
21 the physical altercation took place. And I think that we
22 have the ability to conclusively disprove those assertions
23 if we were able to get the 911 videos from Mecklenburg or
24 the other county, Gastonia. You know, if it were a
25 mere -- you know, I think we were all under the assumption

DIONE DISTASIO -- DIRECT EXAMINATION BY MR. HOGGE

1 that the State would essentially confirm that we made a
2 telephone call, said we were getting jumped on and it was
3 done, at least, around the time the physical altercation
4 took place. That apparently is not the case. That would
5 be my first motion.

6 The second, State's Exhibit No. 2, I do not have an
7 objection to. If they want to introduce that, that's
8 fine. There are three additional photographs, State's 3,
9 4, and 5 they've marked for identification purposes. I
10 will show Your Honor --

11 THE COURT: Let me see the photographs.

12 MR. MOORE: Yes, sir. These are the three
13 photographs.

14 THE COURT: Okay.

15 MR. MOORE: These are the photographs that I received
16 in the discovery. Now, there's one photograph, if Your
17 Honor would allow me to come up here with you, State's
18 Exhibit No. 5, I was given that photograph I believe
19 yesterday. And obviously, in those, she's wearing
20 something completely different from when she -- I have no
21 idea when any of these photographs were taken, but I can
22 say this, I was given that photograph yesterday.
23 Obviously, that one is a whole lot worse than the other
24 ones. But I have absolutely no idea when it was taken. I
25 was given it yesterday. I basically object to that one

DIONE DISTASIO -- DIRECT EXAMINATION BY MR. HOGGE

1 simply because it wasn't given --

2 THE COURT: What is your objection to 3 and 4?

3 MR. MOORE: 3 and 4 is this, Judge, and I -- you
4 know, I've got horrible eyes, but I will say this, this is
5 the photograph I was given. Now, you look at these
6 photographs and they look what appear to be identical
7 photographs, but for whatever reason, maybe it's the
8 glossiness to it, I don't know, but the photographs look
9 worse in the photographs they're trying to introduce than
10 what I actually have in evidence. There's almost like a
11 line through her arm in the photographs she's trying to
12 introduce. And this one is the same thing. It's the same
13 area, but it's almost darker than what I received. I
14 mean, they're just different.

15 THE COURT: Mr. Hogge?

16 MR. HOGGE: Yes, Your Honor.

17 THE COURT: Tell me, it looks to me like you have --
18 you've just blown up?

19 MR. HOGGE: That's correct.

20 THE COURT: And 3, it appears to the Court, that the
21 blow-up attempt to the photograph took it out of focus.

22 MR. HOGGE: Well, Your Honor, the third photograph
23 where the bruising is more pronounced, that photograph was
24 taken the day after to show the development of the bruise.
25 I did provide that to Mr. Moore. I first e-mailed it to

DIONE DISTASIO -- DIRECT EXAMINATION BY MR. HOGGE

1 him June 17th of 2015, along with the 911 call of Heather
2 Cain. I've got that on my e-mail. I can make a Court's
3 Exhibit of when I e-mailed that. I can open up the
4 attachment where you see that photograph with the bruise.
5 I've also provided digital copies of those first two. I
6 e-mailed Mr. Moore and I told him that there are
7 photographs on the disk that we went out and were mailed
8 to his office that includes those photographs. I didn't
9 alter them in any way, Judge. I just double clicked them
10 and said control P and printed them out for the trial
11 today.

12 THE COURT: Well, let me ask you, the page that has
13 two photographs, is that State's Exhibit 2, because this
14 is not marked?

15 MR. HOGGE: That's not mine. That is the Defense's,
16 Your Honor.

17 MR. MOORE: That's fine. If he wants to introduce
18 that which he has given me, I have -- if he will just
19 introduce my piece of paper that he gave me instead of
20 those two glossy prints, I'm fine with it. I'll stipulate
21 they come in.

22 MR. HOGGE: Judge, I prefer to show mine that I
23 printed.

24 MR. MOORE: And obviously, that's what he wants to do
25 because they look worse because they --

DIONE DISTASIO -- DIRECT EXAMINATION BY MR. HOGGE

1 THE COURT: But Mr. Hogge, you're sayings 3 and 4
2 were taken a day later?

3 MR. HOGGE: One photograph was taken a day later.
4 You can see that she's wearing different clothing.

5 THE COURT: I can't -- again, Exhibit 3, I can't tell
6 much about it because the picture's distorted. It's not
7 in focus. Tell me about No. 5, was that provided?

8 MR. HOGGE: Exhibit No. 5, that was, that was
9 provided back in July.

10 MR. MOORE: If he provided it to me in July -- I
11 don't recall seeing that photograph, but if he says he
12 provided it in July, fine. You know, it is what it is.

13 THE COURT: I understand -- let's mark -- what is --
14 you have no objection to State's 2. What is State's 2?

15 MR. MOORE: State's 2 is this. That actually came to
16 me for sure and I -- you know, I'm fine with that because
17 there's no difference, but if you compare these two,
18 there's a difference. But if he'll mark that one and
19 introduce that one, that's fine.

20 THE COURT: This is what we'll do. And Mr. Moore,
21 you obviously will have the opportunity to present any
22 evidence that you -- any relevant evidence that you would
23 like to in your case. I'm going to overrule your
24 objection as to State's 2, 4 and 5. I will sustain your
25 objection as the State's Exhibit 3 because the quality of

DIONE DISTASIO -- DIRECT EXAMINATION BY MR. HOGGE

1 that photograph, I think there's a danger of confusion for
2 the jury and I just don't -- the Court doesn't believe
3 that photograph is of sufficient quality to where it would
4 be helpful to the trier of facts. So I'll sustain your
5 objection as to No. 3.

6 MR. HOGGE: If I could look at the exhibits numbers.

7 THE COURT: And if you could get Mr. Moore to give
8 you your photograph back.

9 MR. HOGGE: This is going be a Court's Exhibit.

10 THE COURT: No. 3 is excluded.

11 (WHEREUPON, Court's Exhibit No. 2A was marked for
12 identification.)

13 THE COURT: Bring the jury back in.

14 And, of course, I continue to deny your motion.

15 MR. MOORE: Yes, sir.

16 (WHEREUPON, the jury entered the courtroom at 12:42
17 p.m.)

18 BY MR. HOGGE:

19 Q Ms. Distasio, I hand you what's been previously
20 marked for identification purpose only as State's Exhibit
21 No. 4, State's Exhibit No. 2, and State's Exhibit No. 5.
22 Take some time to look at those photographs. Do you
23 recognize those photographs?

24 A Yes, it's me.

25 Q What are those picture of again?

DIONE DISTASIO -- DIRECT EXAMINATION BY MR. HOGGE

1 A Of my arm and my chest.

2 Q And can you tell us when those photographs were
3 taken?

4 A The first two were taken the day it happened and
5 the -- No. 5 was taken the next morning.

6 Q Do those photographs fairly and accurately depict
7 your injuries from --

8 A It was actually worse.

9 Q But they substantially fairly and accurately depict
10 your injuries?

11 A Yes.

12 MR. HOGGE: Your Honor, at this time, the State would
13 move to introduce into evidence what would be State's
14 Exhibits 2, 3 and 4 now.

15 THE COURT: Isn't it 2, 4, and 5?

16 MR. HOGGE: So they would be for identifications
17 purposes State's Exhibit 4, State's Exhibit 2 and State's
18 Exhibit 5.

19 MR. MOORE: May we approach?

20 THE COURT: Yes.

21 (WHEREUPON, a bench conference was held in the
22 presence of the jury but not within the hearing of the
23 jury.)

24 MR. HOGGE: Your Honor, again, we would seek to
25 introduce these three photographs into evidence.

DIONE DISTASIO -- DIRECT EXAMINATION BY MR. HOGGE

1 THE COURT: That will be admitted and Mr. Moore's
2 objection is noted for the record.

3 MR. MOORE: Thank you.

4 MR. HOGGE: Permission to publish to the jury?

5 THE COURT: Yes, sir.

6 (WHEREUPON, State's Exhibit Nos. 2, 4, and 5 were
7 admitted into evidence.)

8 BY MR. HOGGE:

9 Q Which photograph was taken the day after?

10 A The one where it's more purple.

11 Q Okay.

12 A That one, yeah.

13 Q Ms. Distasio, after he walked out the door, what
14 happened next? Let me back up. You stand in the way of
15 the door, what occurred there?

16 A He literally grabbed me by both arms, which I did not
17 expect at all, and threw me into the wall where the mirror
18 is.

19 Q Okay.

20 A And that point, it was over. You know, it -- I
21 didn't expect that.

22 Q How long after that did the police show up?

23 A Within minutes, like a few minutes.

24 Q When was the last time you heard from him?

25 A Yesterday.

DIONE DISTASIO -- DIRECT EXAMINATION BY MR. HOGGE

1 Q And what did he tell you yesterday?

2 MR. MOORE: Objection, Your Honor.

3 MR. HOGGE: May we approach?

4 MR. MOORE: It's irrelevant.

5 THE COURT: I don't need -- I sustain the objection.

6 BY MR. HOGGE:

7 Q Ms. Distasio, these bruises, how did these bruises
8 come about? Which incident in this case?

9 A It was right there at the doorway because I could
10 feel the pressure on both my arms because he grabbed both
11 my arms with a lot of strength and I could feel it. And
12 then when he threw me, I kept saying, Oh, my arm hurts.
13 That's when I know that happened. That would be the only
14 time he grabbed my arm.

15 Q Okay.

16 MR. HOGGE: Beg the Court's indulgence.

17 BY MR. HOGGE:

18 Q Did you at any time pull Dean's shirt off?

19 A No, no.

20 Q Did you at any time jump on his back?

21 A No, no.

22 Q Again, how tall are you?

23 A Five feet.

24 Q How tall is he?

25 A Six feet.

DIONE DISTASIO -- DIRECT EXAMINATION BY MR. HOGGE

1 Q If you don't mind me asking --

2 A How much do I weigh? 230 pounds.

3 Q Okay. Were you jumping on his back?

4 A No. No.

5 MR. HOGGE: That's all --

6 THE WITNESS: That's not possible for me to do that.

7 MR. HOGGE: Answer any questions Mr. Moore has for
8 you.

9 CROSS-EXAMINATION

10 BY MR. MOORE:

11 Q Who took all those photographs?

12 A The police took some of the photographs and my son
13 took photographs.

14 Q Which photographs -- I noticed you in two
15 photographs, I believe, maybe three, you were wearing what
16 looked to be a black shirt and then there's another shirt
17 that you were wearing in the photograph I believe the day
18 after with a black and white striped shirt, correct?

19 A Correct.

20 Q The police would have been the ones to take the first
21 set of photographs, correct?

22 A I believe the police -- I'm not a hundred percent
23 sure. I know that top I wouldn't have worn by itself.
24 There definitely was another top on top of it.

25 MR. MOORE: Your Honor, may I retrieve the

DIONE DISTASIO -- CROSS-EXAMINATION BY MR. MOORE

1 photographs from the jury? I don't want to interrupt
2 anybody, but may I retrieve those photographs from the
3 jury for two seconds? I'll give them right back.

4 THE COURT: Yes, sir.

5 Bailiff, will you hand that to Mr. Moore?

6 BY MR. MOORE:

7 Q We're not sure of when, but we are sure of the fact
8 the police took one set and then your son took another?

9 A He took a picture the next day.

10 Q Okay. Well, you've already testified that State's
11 Exhibits No. 2 and 4 were taken on the day of, right?

12 A Yeah, but I don't remember if it was the victim's
13 advocate, I don't remember if she came out that day or
14 not.

15 Q That's fine. Victim's advocate, she certainly works
16 for the sheriff's department, right?

17 A Correct.

18 Q Okay. So police, victim's advocate, we know that
19 somebody with law enforcement took these two photographs,
20 State's 2 and 4, took those the day of, right?

21 A Yes, sir.

22 Q Now, the second photograph, you claim -- State's 5,
23 you claim was taken the next day?

24 A The very next day.

25 Q But that wasn't taken by law enforcement, was it?

DIONE DISTASIO -- CROSS-EXAMINATION BY MR. MOORE

1 A No. The victim's advocate, I called her to let her
2 know that my arm was very dark, it was very, very bruised.

3 Q I see.

4 A And I asked her if she wanted me to come in so that
5 she could take photos. She said, Do you have access to a
6 camera? And she said that I could take the photos.

7 Q Gotcha. So law enforcement took the first
8 photographs?

9 A Uh-huh.

10 Q You took the second set, right?

11 A Correct, under her guidance.

12 Q There's no date on that photograph, is there?

13 A I didn't see a date.

14 Q I didn't either, that's why I asked. There's no date
15 on it, is there?

16 A No, I don't think so.

17 Q Now, let me ask you this, did you ride in an
18 ambulance that particular day to the hospital?

19 A No, sir.

20 Q Did you have to have any stitches to close any
21 wounds?

22 A No, sir.

23 Q Did you have any broken bones?

24 A No, sir.

25 Q Did you seek any sort of medical treatment at all?

DIONE DISTASIO -- CROSS-EXAMINATION BY MR. MOORE

1 A No, sir.

2 Q There are no doctor bills, there are no doctor
3 records? You sought no professional medical help
4 whatsoever as a result of this incident, correct?

5 A Correct.

6 MR. MOORE: Your Honor, if I may mark this for
7 identification, please?

8 (WHEREUPON, Defendant's Exhibit No. 2 was marked for
9 identification.)

10 BY MR. MOORE:

11 Q Let me show you Defense Exhibit No. 2 that's been
12 marked for identification purposes. You gave a statement
13 to the police, too, didn't you?

14 A I did.

15 Q Is that it?

16 A It is.

17 MR. MOORE: We'd offer Defense Exhibit No. 2 into
18 evidence.

19 MR. HOGGE: No objection.

20 THE COURT: Defense Exhibit No. 2 will be admitted
21 without objection.

22 (WHEREUPON, Defendant's Exhibit No. 2 was admitted
23 into evidence.)

24 BY MR. MOORE:

25 Q Now, ma'am, you testified on direct examination, I

DIONE DISTASIO -- CROSS-EXAMINATION BY MR. MOORE

1 wrote it down, he -- Dean grabbed your cheeks and put them
2 together and pushed you away, right?

3 A He pushed me into a chair.

4 Q He grabbed your cheeks?

5 A Yes.

6 Q He pushed them together?

7 A He did.

8 Q And he pushed you into a chair, right?

9 A Correct.

10 Q Now, the police asked you to write down accurately
11 what happened, right?

12 A Yes.

13 Q You did not put that in your written statement, did
14 you?

15 A Looking at it, no.

16 Q Now, certainly, it would be bad if Dean grabbed your
17 cheeks and pushed you anywhere, right?

18 A Of course.

19 Q And that's actually according to you factually what
20 happened?

21 A It is.

22 Q Why is it then when asked to give an accurate factual
23 recount of this event did you leave that factual event
24 out?

25 A That was totally an accident. I -- my adrenaline was

DIONE DISTASIO -- CROSS-EXAMINATION BY MR. MOORE

1 going through the roof. I'm trying to write. They said,
2 Calm down, everything else. I'm trying to write
3 coherently a story of what just happened and it was
4 insane.

5 Q So you were pumped up, your adrenaline was going?

6 A Uh-huh.

7 Q You were excited?

8 A I wasn't excited, I was -- yeah, I was upset.

9 Q Your heart was beating, right?

10 A Absolutely.

11 Q You were wide awake, right?

12 A Correct.

13 Q And so when the cops said here, take this piece of
14 paper and any additional pieces of paper you want and
15 write down factually what happened, you wrote a grand
16 total of eight pages -- or eight lines?

17 A I did.

18 Q Now, the events that happened certainly would have
19 been fresh in your mind immediately after the event,
20 right?

21 A Right.

22 Q Matter of fact, the events would be fresher in your
23 mind the day of than they even are right now, right?

24 A It's more fresh in your mind.

25 Q And when it was the freshest in your mind, you just

DIONE DISTASIO -- CROSS-EXAMINATION BY MR. MOORE

1 accidentally --

2 A No, I didn't.

3 Q Ma'am, didn't you just say that you accidentally --
4 it was an accident that you left this out?

5 A No, it's literally -- and I don't know if you've ever
6 been in that moment when something crazy has just happened
7 to you, your mind is all over the place. You're
8 literally -- for me to sit down and write everything down,
9 I would have needed some time to calm down. The police
10 were there within moments, to be able to give details of
11 what started it, what's this, then this happened, then
12 this happened. It's a terrifying situation and I don't
13 know if you've ever been in one, but it's really bad.

14 Q Ma'am, I just want to go back to what you testified.
15 You told me that the reason you didn't put it in there is
16 because it was an accident. I just want to make sure --

17 A It was an omission.

18 Q An omission, all right. Well, was it an accident or
19 an omission?

20 A It was -- I accidentally didn't write everything down
21 in there. My -- I literally -- when they asked me to
22 write down what just happened, I'm literally shaking as
23 I'm writing this stuff down.

24 Q Let me ask you this. It certainly is important to
25 give accurate factual details to the police, isn't it?

DIONE DISTASIO -- CROSS-EXAMINATION BY MR. MOORE

1 A It is. It is.

2 Q Okay. Well, if you knew that you were so jacked up,
3 that your mind was running and you might write down
4 something that wasn't true or leave something important
5 out, why didn't you ask for a little bit more time to get
6 your thoughts together?

7 A I didn't know that was an option.

8 Q All right.

9 A I spoke to the police officers.

10 Q Have you ever written an amended statement?

11 A What's that?

12 Q Have you ever changed it?

13 A Like that statement?

14 Q Yeah.

15 A No, I've never changed that statement.

16 Q Okay. So you never went back to the police or the
17 solicitor's office and said, you know what, I'd like to
18 add in the fact that he grabbed my cheeks and pushed me
19 into a chair?

20 A Honestly, I didn't remember I didn't put it in there.
21 I'm sorry.

22 Q It's okay. You don't have to apologize.

23 A No, I -- but I --

24 Q Now, you've testified that your car keys were very
25 important to you, correct?

DIONE DISTASIO -- CROSS-EXAMINATION BY MR. MOORE

1 A They are.

2 Q The car keys were so important to you that you would
3 engage in a physical struggle with your husband to get
4 them back, is that what you're telling us?

5 A If it means the difference of my daughter with a
6 disease that has a 40 percent mortality rate getting to a
7 doctor, I'd run out in front of a bus.

8 Q I can understand that and I'm sure we all would for
9 our children.

10 A And I would do anything.

11 Q Anything. Okay. I just want to make sure. So as we
12 sit here today, the reason you wanted to get your car keys
13 back was because of your child, but you're telling us that
14 you would do anything for your child and doing things for
15 your child would include making sure you have those car
16 keys, right?

17 A Anything for my -- yes, but I mean, of course, I
18 would make sure that I was -- had transportation if I need
19 to leave in the middle of the night, which I've had to do
20 so many times, 2:00 a.m., 3:00 a.m., I've got to get her
21 to the hospital.

22 Q That's right. So you were so concerned about having
23 those keys for your child that you would be willing to do
24 anything in order to make sure you kept them, right?

25 A I wasn't going to -- I never physically touched him.

DIONE DISTASIO -- CROSS-EXAMINATION BY MR. MOORE

1 I wouldn't pull out a gun and shoot him or something like
2 that.

3 Q Well, ma'am, what you just testified to was a lie,
4 wasn't it, if you told me you'd do anything, but then you
5 said you wouldn't shoot him?

6 A Well, no, I wouldn't. Anything within reason.

7 Q Oh, okay.

8 A So anything within reason. I wouldn't --

9 Q So initially, you testified you'd do anything, you
10 wouldn't shoot him, and now, it's I would do anything
11 within reason, right?

12 A Correct.

13 Q Now, anything within reason, that would certainly
14 include becoming physical with your husband, right?

15 A No.

16 Q You did become physical?

17 A No, I didn't. I never hit him. I never hit him.

18 Q Ma'am, I didn't ask you if you hit him. I asked if
19 you became physical. Grabbing one's shirt would require a
20 physical act, correct?

21 A Correct.

22 Q So you did become physical with him?

23 A I touched -- I grabbed his shirt, yes.

24 Q All right. So doing anything within reason would
25 then include doing something of a physical nature,

DIONE DISTASIO -- CROSS-EXAMINATION BY MR. MOORE

1 correct?

2 A Not harming him.

3 Q I see. Ma'am, you testified that he picked you up by
4 the throat?

5 A Uh-huh.

6 Q He picked you off the ground WWE style, right?

7 A What do you mean by WWE style?

8 Q Wrestling style. Your feet were actually off the
9 ground --

10 A Right, by an inch or two, yes.

11 Q So he had his hands around your neck and you were an
12 inch or two off the ground?

13 A Correct.

14 Q Okay. And while he's picking you up -- did you have
15 any marks on your neck?

16 A What do you mean? I had marks on my neck afterward.

17 Q But not in the photographs. Where --

18 A I did have scratches on my neck.

19 Q I didn't ask you if you had scratches.

20 A Or marks on my neck where the skin was broke.

21 Q State's Exhibit No. 2, okay, I see this little nick
22 here. Is that what you're talking about?

23 A Yeah, and there were -- actually, the skin was broke
24 a little bit up further. That's the only part that bled,
25 up there. Because the next day, it burned. You could

DIONE DISTASIO -- CROSS-EXAMINATION BY MR. MOORE

1 feel where the skin was broken.

2 Q Well, ma'am, you went to so much trouble to call the
3 victim's advocate to take picture of State's Exhibit No.
4 5, how come you didn't take any picture of your neck?

5 A Because I didn't have any bruising on my neck.

6 Q Ma'am, you weigh how much?

7 A 230 pounds.

8 Q Dean picked you up --

9 A And he --

10 Q Did you weigh 230 pounds in November?

11 A Yes, I did.

12 Q So Dean picked you up by your neck two inches off the
13 ground and threw you in the wall --

14 A No, I was already in the wall. I was already up
15 against the wall.

16 Q So he picked -- he used the wall --

17 A Yes, he used the back of the wall as leverage, so I
18 don't know how much actually he picked up because I was
19 already back up against the wall.

20 Q Who would have -- who else would have helped him pick
21 you up?

22 A No, I'm saying I don't know how much of my weight was
23 leaning against the wall.

24 Q Well, he had to get you up to put you against the
25 wall, right?

DIONE DISTASIO -- CROSS-EXAMINATION BY MR. MOORE

1 A Right, but I'm saying when you say WWE, I'm
2 thinking when you said that like a wrestler that's doing a
3 dead lift or lifting me off the ground, no.

4 Q I see. But we know for a fact that he had both hands
5 around your neck --

6 A Uh-huh.

7 Q -- and picked you up and shoved you --

8 A No.

9 Q So he didn't shove you anymore, you were already
10 against the wall?

11 A Yes, because he came back and turned around and put
12 me up against the wall.

13 Q But you didn't take any photographs of your neck?

14 A I didn't have any bruising on my neck.

15 Q Okay. Wouldn't you expect -- if you saw bruising on
16 your arms, wouldn't you certainly expect to see some
17 bruising around your neck if he picked you up?

18 A Oh, no.

19 Q No?

20 A No, no.

21 Q Okay. What sort of medical training do you have, if
22 any?

23 A I don't have any medical training.

24 Q But you're certain that you wouldn't see bruising?

25 A Because I can tell you this, the pain that I felt

DIONE DISTASIO -- CROSS-EXAMINATION BY MR. MOORE

1 when he grabbed my arms was so significant I knew that it
2 was going to leave a terrible mark. The pain was not like
3 that with my neck. And like I said, I know I was leaning
4 up against the wall. But the pain, he grabbed me so hard
5 like he was going through me.

6 Q Okay. Well, if he -- he grabbed you so hard on the
7 arms, to actually grab a hold of you and pick you up by
8 the neck, he certainly would have to squeeze pretty hard
9 there, too, right?

10 A He didn't squeeze as hard, not nearly as hard.

11 Q How in the world did he lift you?

12 A I don't know, but he did.

13 Q Okay. Well, you did knock his glasses off?

14 A Yes, when he had me up in the air, I was doing like
15 this to get him to release me?

16 Q You would agree with me that both of y'all were
17 engaged in a scuffle, wouldn't you say? If we were to
18 lump this into just a -- if we were to title it and lump
19 it into a broad category, it would be fair to say that you
20 and Dean were involved in a scuffle, physical altercation,
21 correct?

22 A No.

23 Q Okay. Why is that not true?

24 A I think -- I guess for me, I think of a scuffle more
25 of two people just fighting like over -- I mean, like

DIONE DISTASIO -- CROSS-EXAMINATION BY MR. MOORE

1 fighting fighting. That's when I guess I would think
2 that.

3 Q When he grabbed your arms, you say, and you knocked
4 his glasses off, right?

5 A Uh-huh.

6 Q You pulled his shirt, right?

7 A No, I grabbed his shirt.

8 Q You just grabbed his shirt. So the pulling of it was
9 the result of Dean walking away?

10 A With my keys, trying to keep my keys.

11 Q I understand.

12 A Yeah.

13 Q Well, we've already established that grabbing his
14 shirt was that of a physical nature, right?

15 A Yeah, you said that.

16 Q And we've already established, I suppose, that
17 knocking somebody's glasses off would be physical, right?

18 A Yeah, as well as choking someone.

19 Q Sure. Fair enough. Choking somebody would be
20 physical, wouldn't it?

21 A Yes.

22 Q So if according to you, Dean choked you and picked
23 you up by your throat and grabbed your arms, that would be
24 physical. You knocking his glasses off as well as
25 grabbing his shirt, right?

DIONE DISTASIO -- CROSS-EXAMINATION BY MR. MOORE

1 A I never touched his body. I guess maybe I looked at
2 it different because I never touched his flesh.

3 Q I gotcha. So you never touched his flesh, you just
4 touched -- you touched his glasses, though, right?

5 A Yeah, I did, which is -- yeah, I touched his glasses.

6 Q His glasses were touching his flesh, right?

7 A Yeah, I touched his glasses. I didn't touch him.

8 Q And you grabbed his shirt, right?

9 A I grabbed his shirt.

10 Q Okay. Well, ma'am, your definition of a physical
11 scuffle is you view it more as two people fighting. I
12 mean, you knocked his glasses off and grabbed his shirt
13 and tried to prevent him from leaving with your keys,
14 that's physical, isn't it? You're fighting with him,
15 aren't you?

16 A I guess for all intents and purposes.

17 Q Yeah, so you're fighting with him, too, right, just
18 like you just said?

19 A Right, for someone who just stole my keys.

20 Q Right. You were mad at him, weren't you?

21 A Well, of course, I was upset. Why would you take the
22 only transportation knowing the gravity of the situation.

23 Q You were upset and you were mad at him?

24 A I was upset.

25 Q And you would have done anything within reason to get

DIONE DISTASIO -- CROSS-EXAMINATION BY MR. MOORE

1 those car keys, right?

2 A To hold on to those car keys because that was my only
3 means of transportation.

4 Q So this big six-foot man who has just pushed your
5 cheeks together and talked to you in an angry way and
6 cussing at you and saying all these bad things, your idea
7 of resolving this dispute is to go stand in front of the
8 door while at some point grabbing his shirt --

9 A No, I did not grab his shirt at the door. I don't
10 remember grabbing his shirt at the door.

11 Q I see, so you stood in front of the door first?

12 A And I said, Give me the keys.

13 Q So you physically blocked his path from leaving?

14 A He -- he could have given -- why would you go in my
15 purse and steal my keys?

16 Q I didn't ask you about your keys. I understand about
17 your keys. I asked you about the door. You blocked the
18 door physically, didn't you?

19 A Yes, I physically blocked the door.

20 Q He couldn't go through you, could he?

21 A No.

22 Q But then when he did try to leave, you grabbed his
23 shirt?

24 A No, I didn't.

25 Q Oh, well, when did you grab his shirt?

DIONE DISTASIO -- CROSS-EXAMINATION BY MR. MOORE

1 A When he was in the dispatch office?

2 Q I see. So that was before?

3 A That was in the dispatch office. I was trying to --
4 when I saw my purse was strewn all over the floor --

5 Q So your testimony is you never grabbed his shirt in
6 an effort to prevent him from leaving the place?

7 A No. I tried to get -- to see what he had in his hand
8 because I knew he had stolen something.

9 Q So what you're telling me is your employee, who just
10 got up and testified and said that you were trying to
11 prevent him from leaving by grabbing his shirt, she's
12 wrong?

13 A No, I did grab his shirt.

14 Q Well, yeah, but she said you grabbed his shirt to
15 prevent him from leaving?

16 A I guess someone could look at it as I was grabbing
17 his shirt. I never gave her an explanation as to say I'm
18 grabbing his shirt right now so I can see what's in his
19 hand.

20 Q So your testimony is you don't know why you were
21 grabbing his shirt?

22 A No, I know exactly why. I grabbed his shirt to see
23 what he had in his hand because he took something out of
24 my purse.

25 Q Very well. Then is that your answer?

DIONE DISTASIO -- CROSS-EXAMINATION BY MR. MOORE

1 A Correct.

2 Q Okay. So you grabbed his shirt to see what he had in
3 his hand to, I guess, prevent him from taking something?

4 A Uh-huh.

5 Q Heather testified you grabbed his shirt to prevent
6 him from leaving. What I want to know is which version of
7 those facts is true?

8 A Both of them are. She looked at it as me preventing
9 him from leaving, but that wasn't the reason.

10 Q I see.

11 MR. MOORE: Your Honor, that's all I have.

12 THE COURT: Anything further from State?

13 MR. HOGGE: Nothing further from the State.

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

15 We have reached a natural breaking point. We're
16 going to break for lunch at this point.

17 Ladies and gentlemen of the jury, I'll send you to
18 lunch. We will reconvene at 2:30. Again, do not discuss
19 the case with third parties, do not conduct any
20 independent research on the facts or law, and do not
21 deliberate amongst yourselves while you're outside the
22 courtroom and until I tell you to deliberate at the end.
23 So everyone have a good lunch and we will reconvene at
24 230.

25 (WHEREUPON, the jury exited the courtroom at 1:08

1 p.m.)

2 THE COURT: All right. Now, Mr. Moore, your client
3 is under a personal recognizance bond; is that correct?

4 MR. MOORE: He is, Your Honor.

5 THE COURT: What's the State's position during lunch?

6 MR. HOGGE: I've got no problem with him staying out
7 on bond.

8 THE COURT: The State does not object, so
9 Mr. Distasio, your personal recognizance bond shall
10 continue while we break for lunch. Now, if you fail to
11 appear, the trial will proceed in your absence and you'll
12 be subject to the same proceeding that you would have been
13 subject to if you were here, do you understand that?

14 THE DEFENDANT: Yes, Your Honor, I'll be here.

15 THE COURT: If you fail to appear, a bench warrant
16 will be issued for failing to appear, so make sure you
17 come back. Okay?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. We'll be in recess until
20 2:30.

21 (WHEREUPON, a recess was taken from 1:10 p.m. to 2:33
22 p.m.)

23 MR. HOGGE: Judge, the State is ready to proceed.

24 THE COURT: Anything before we bring the jury back?

25 MR. MOORE: No, sir.

GINA HUDSON - DIRECT EXAMINATION BY MR. HOGGE

1 THE COURT: Madame Bailiff, if you could get our jury
2 for us, please.

3 THE BAILIFF: Yes, sir, Your Honor.

4 (WHEREUPON, the jury entered the courtroom at 2:33
5 p.m.)

6 THE COURT: Ladies and gentlemen, I hope everyone had
7 a good lunch. We're ready to resume the trial.

8 MR. HOGGE: Thank you, Your Honor. The State calls
9 Gina Hudson to stand.

10 GINA HUDSON, after having first being sworn,
11 testified under oath as follows:

12 DIRECT EXAMINATION

13 BY MR. HOGGE:

14 Q Good afternoon, Ms. Hudson. Could you give us your
15 name for the record?

16 A Gina Hudson.

17 Q And where do you work?

18 A I work at McGee Enterprises.

19 Q Can you tell us where that is?

20 A It's at 4341 Charlotte Highway in Lake Wylie.

21 Q Is that within York County?

22 A Yes, it is.

23 Q Where is your office in relation to Double DD
24 Trucking?

25 A It's right next door.

GINA HUDSON - DIRECT EXAMINATION BY MR. HOGGE

1 Q Do y'all share a wall?

2 A We do. It's an office-like condo complex, so walls
3 are shared.

4 Q Do you know Dean Distasio and Dione Distasio?

5 A I do.

6 Q How well do you know them?

7 A Just with them being next door and speaking to them
8 in passing and, you know, we have pets that we bring to
9 work sometimes, so we take them over there to visit. You
10 know, just pretty much in passing.

11 Q Okay. Do you recall anything out of the ordinary
12 from November 5th of 2014?

13 A There was an altercation that day.

14 Q Can you tell us what all you heard and saw that day?

15 A I heard a lot of commotion next door. With us having
16 a shared wall, it's -- you know, you pick up on those
17 noises, if somebody slams the door or something like that.
18 I heard yelling. It started in the back of the office and
19 just progressed closer to the front door, slamming. It
20 sounded like stuff was being slammed up against the wall
21 and yelling.

22 Q Could you kind of describe that slamming noise you
23 spoke about? How loud was the slamming noise?

24 A It was loud. It was loud enough for me to hear it
25 and stop myself from working and wonder what was going on.

JENNY FORSYTHE - DIRECT EXAMINATION BY MR. HOGGE

1 Q Okay.

2 MR. HOGGE: That's all the questions I have for you.

3 Please answer any question Mr. Moore has for you.

4 MR. MOORE: I don't have any questions, Judge. Thank
5 you.

6 THE COURT: Thank you, ma'am. You may step down.

7 MR. HOGGE: We ask that she be excused for the rest
8 of the trial.

9 THE COURT: Any objection?

10 MR. MOORE: (Defense attorney shakes his head.)

11 THE COURT: Ma'am, you're excused.

12 MR. HOGGE: The State would call Jenny Forsythe to
13 the stand.

14 JENNY FORSYTHE, after having first being duly sworn,
15 testified under oath as follows:

16 DIRECT EXAMINATION

17 BY MR. HOGGE:

18 Q Good afternoon, Ms. Forsythe. Can you give us your
19 name for the record?

20 A Jennifer Forsythe.

21 Q And where do you work?

22 A York County Sheriff's Office.

23 Q And what do you do for the Sheriff's Office?

24 A I'm a patrol deputy responsible for, typically,
25 answering calls in the district two area, which is our

JENNY FORSYTHE - DIRECT EXAMINATION BY MR. HOGGE

1 Lake Wylie/Clover area.

2 Q Did you receive a call to go out to Double DD
3 Trucking in Lake Wylie on November 5th, 2014?

4 A Yes, sir.

5 Q Who all was dispatched out there?

6 A Myself and Sergeant Doody were dispatched to that
7 address.

8 Q Do you recall who got to the address first?

9 A Sergeant Doody arrived maybe a minute or two ahead of
10 me.

11 Q Okay. Can you tell us about what you observed
12 whenever you arrived?

13 A When I arrived on scene, just like the previous
14 witness had mentioned, it's kind of a condo of office
15 buildings, and Sergeant Doody's patrol car was parked
16 outside and I believe I parked next to his. And I
17 identified what the correct door was that I needed to go
18 into and went inside.

19 And there -- I mean, Sergeant Doody -- you know, when
20 there's just one officer trying to handle multiple people,
21 it can kind of be a little bit of a circus, so my presence
22 was kind of to separate the parties involved in this
23 incident so we could kind of get to the bottom of the
24 story and what was going on.

25 Q Did you speak to both parties in this case?

JENNY FORSYTHE - DIRECT EXAMINATION BY MR. HOGGE

1 A I did.

2 Q Could you tell us about their demeanor there at the
3 scene?

4 A Well, when I first arrived, there was definitely --
5 both parties, I think, were in kind of an agitated state.
6 You know, I think when you're involved in a dispute with
7 your spouse, you know, sometimes things can get loud and
8 things can get a little tense, so there was a lot of loud
9 voices. I mean, I wouldn't describe it as yelling or
10 screaming or anything, but there was definitely some
11 agitated conversations back and forth.

12 Q Would it be fair to say tensions were high?

13 A Yes.

14 Q Did you take photographs at the scene?

15 A I did, at the conclusion of our investigation, yes.

16 Q I'm going to hand you State's Exhibit No. 2, State's
17 Exhibit No. 4. Are these the photographs that you took?

18 A Yes.

19 Q You arrive on scene, you take photographs. What else
20 do you do as part of your investigation?

21 A Well, I typically -- I mean, in any investigation,
22 you know, when there's another officer involved, we try to
23 talk to both parties. We confer among ourselves as
24 deputies. And I think that our primary goal in any
25 domestic situation is to determine who the primary

JENNY FORSYTHE - DIRECT EXAMINATION BY MR. HOGGE

1 aggressor is. I know a lot of times there's a
2 misconception of people think whoever called 911 or called
3 the law first wins or whoever has more visible signs of
4 injury is obviously the victim, but that's not always the
5 case. So we look at a lot of different factors when
6 trying to determine who is the primary aggressor and
7 that's what we did in this situation.

8 Q Okay. Who else did you speak with there besides
9 Ms. Distasio and Mr. Distasio?

10 A I briefly spoke with the complainant that was
11 identified through our dispatch as the complainant of who
12 called in this dispute.

13 Q Okay.

14 A Heather.

15 Q Okay. Did you take down written statements from
16 anyone in this case?

17 A I did. After Sergeant Doody had left with
18 Mr. Distasio, I had asked Heather and Dione if they would
19 be willing to write out written statements and they both
20 said they would. And so I stayed while they did that and,
21 you know, signed the statements just as per our protocol
22 and took those with me when I left.

23 Q So backing up, so you say that Sergeant Doody took
24 him to the jail?

25 A Yes.

JENNY FORSYTHE - DIRECT EXAMINATION BY MR. HOGGE

1 Q And so I assume he was determined to be the primary
2 aggressor; is that correct?

3 A Yes.

4 Q And you stayed behind and took statements?

5 A Took statements and --

6 Q Photographs?

7 A -- photographs, yes.

8 Q I'm going to show you what's already in evidence as
9 Defense Exhibits 1 and 2. Take a look at those. Do you
10 recall those as being the statements that you took down?

11 A Yes, sir. And that's my handwriting noting the date
12 and time that I took it. And it's just standard practice
13 that we pencil or pen through the bottom of the statement
14 so nothing can be added to it afterwards. But yes, that
15 is the statements I collected that day.

16 Q Can you tell us how long it took to take these
17 statements?

18 A I mean, not long at all. They both were willing and
19 able to write them down and while I was waiting there, so
20 I can't remember the exact time, but I don't think it took
21 very long.

22 Q After that, what did you do next?

23 A After I took the statements and the photographs, I
24 left the business and then went and obtained the warrant,
25 the charging document on Mr. Distasio.

JENNY FORSYTHE - DIRECT EXAMINATION BY MR. HOGGE

1 Q Okay. Did this all occur in York County within your
2 jurisdiction?

3 A Yes.

4 MR. HOGGE: I have no further question for you at
5 this time. Please answer any questions Mr. Moore has for
6 you.

7 THE COURT: Mr. Moore, your witness.

8 CROSS-EXAMINATION

9 BY MR. MOORE:

10 Q Ma'am, let's just go ahead and get the obvious stuff
11 out of the way, I suppose. The incident, neither you nor
12 your partner, who arrived on the scene first, saw any of
13 the physical altercation, correct?

14 A Correct.

15 Q Everything that you and your partner did was the
16 result of investigating something that had happened before
17 you got there, right?

18 A That's usually how every call goes, yes, sir.

19 Q Sure. Well, now, there's some calls -- there's some
20 incidents where you actually witness a crime taking place,
21 right?

22 A True.

23 Q Criminal domestic violence, I suppose, is a little
24 bit different because you're right, you get the call, you
25 show up, you have to do the investigating, right?

JENNY FORSYTHE - CROSS-EXAMINATION BY MR. MOORE

1 A Yes.

2 Q Okay. Now, since we know you didn't see anything, we
3 know that you had to make decisions based upon what people
4 were telling you and what you saw and were able to gather,
5 correct?

6 A Yes.

7 Q Now, we know that Heather Cain called the police,
8 correct?

9 A Correct.

10 Q We also know that Dean Distasio called the police,
11 correct?

12 A I don't know.

13 Q So as we sit here today, you're uncertain as to
14 whether Dean called the police?

15 A That is correct.

16 Q Would your partner know?

17 A I'm going to guess no. And if you will allow me to
18 explain. When we're dispatched to a call, we have
19 computers in our car. The pertinent information,
20 including who the caller was, is displayed in the call.
21 So if there was another caller that called into
22 management, can I say that I would 100 percent count on
23 dispatch to let me know that someone else called in, no.
24 But as far as my knowledge to this day and on that day, I
25 only knew of one person that called.

JENNY FORSYTHE - CROSS-EXAMINATION BY MR. MOORE

1 Q That's fair. Now, obviously, it's not -- you're not
2 going to make any final determination on who calls the
3 police first, right?

4 A Correct.

5 Q But the fact that an individual would, in fact, call
6 the police, that would be a factor you would want to
7 consider in whether or not to make a charge, correct?

8 A No.

9 Q So you don't care who it is that calls the police?

10 A No.

11 Q It bears no bearing on you whatsoever?

12 A No.

13 Q So if Heather Cain calls the police and you determine
14 that Dean called the police, that's not even a factor that
15 you would want to consider?

16 A No.

17 Q Okay. Fair enough. Tell me this, there is
18 absolutely no doubt there were physical manifestations of
19 injury on Dean, correct?

20 A I -- the only -- I believe in talking to Dean, he did
21 mention that his, you know, shirt was pulled. I did not
22 see any actual physical injuries on his person anywhere.
23 His collar was pulled and the buttons, you know, kind of
24 pulled apart and stuff like that, but as far any physical
25 marks, I don't remember seeing any physical marks on him.

JENNY FORSYTHE - CROSS-EXAMINATION BY MR. MOORE

1 MR. MOORE: Your Honor, may I mark this piece of
2 paper for identification please?

3 MR. HOGGE: Judge, may I see it?

4 MR. MOORE: I'm sorry.

5 Judge, I actually have a matter of law, if I may, out
6 of the presence of the jury. I do apologize.

7 THE COURT: Madame Bailiff, take the jury to the jury
8 room.

9 (WHEREUPON, the jury exited the courtroom at 2:48
10 p.m.)

11 MR. MOORE: Judge, I do apologize. I thought this
12 was the one that didn't have it in there. There's two
13 case summaries that were provided to me in discovery.
14 This one has the testifying officer's name on it as well
15 as the other officer. I am going to attempt to place this
16 document into evidence, but there is a portion of this
17 report that basically says Sergeant Doody did observe a
18 scab on Dean's hand that started bleeding again, which was
19 from another prior domestic incident involving the
20 Distasios that Doody had responded to previously.

21 Quite frankly, it -- you know, I don't -- what I'd
22 like to do is offer those with that sentence redacted. It
23 almost benefits me more to have it in there, but I have
24 argued that prior incidents should not be admissible here
25 day and I would simply offer the document into evidence

JENNY FORSYTHE - CROSS-EXAMINATION BY MR. MOORE

1 with that redaction.

2 THE COURT: Keeping in line with the previous ruling
3 by the Court, you and Mr. Hogge, look at the exhibit and
4 redact the portions that need to be redacted.

5 MR. HOGGE: Judge, I'm willing to do that. I would
6 objection to its introduction in evidence based on the
7 fact that it's hearsay. I would be fine with her reading
8 out certain portions and cross-examining her as to it. I
9 just don't want the jury back there with it.

10 THE COURT: Whose report is this?

11 MR. MOORE: That's a good question. It has both the
12 officers' names on it and it's entitled case summary, I
13 don't know. And that's what I was going to ask her about.
14 But, quite frankly, I don't need to introduce it in
15 evidence if I got to ask questions --

16 THE COURT: You can ask her if she can identify the
17 document, but, of course, redact the appropriate portions
18 before we get into that. If she can't identify the
19 document, then --

20 MR. MOORE: I think we got it straight. I apologize.

21 THE COURT: That's fine. We got the appropriate
22 sections redacted?

23 MR. MOORE: Well, what I'm going to do, Judge, is --
24 what Mr. Hogge and I agreed, I'm going to mark it for
25 identification purposes. I'm not going to introduce it.

JENNY FORSYTHE - CROSS-EXAMINATION BY MR. MOORE

1 I'm just going to ask her if she knows what it is and I'm
2 going to ask her some questions about it without
3 introducing it. But I do need to mark it still.

4 THE COURT: Anything further before we bring the jury
5 in?

6 MR. HOGGE: No, Your Honor.

7 MR. MOORE: No, Your Honor.

8 (WHEREUPON, Defendant's Exhibit No. 3 was marked for
9 identification.)

10 (WHEREUPON, the jury entered the courtroom at 2:52
11 p.m.)

12 BY MR. MOORE:

13 Q Let me show you Defendant's Exhibit No. 3 for
14 identification purposes. Do you recognize -- all I'm
15 asking is do you recognize that document?

16 A Yes, sir.

17 Q Now, in law enforcement, a lot of times, the case
18 after you bring the charge will get some age on them and
19 it's hard to remember every little detail about every case
20 and that's why y'all create police reports and summaries
21 of the events to help jog your memory, right?

22 A Yes.

23 Q Now, this summary basically says Sergeant Doody did
24 observe a scab on Dean's hand that had started bleeding.
25 That's what it says in the report?

JENNY FORSYTHE - CROSS-EXAMINATION BY MR. MOORE

1 A Right.

2 Q Okay. Now, a scab on his hand that was bleeding,
3 that would be a physical manifestation of an injury,
4 correct?

5 A Right.

6 Q And I don't -- do you have any idea of who would have
7 actually written this report? It's got your name and
8 Doody's name on it. Who actually wrote it?

9 A I don't remember if Sergeant Doody or I wrote it.

10 Q That's okay. Both of you are law enforcement, y'all
11 are supposed to tell the truth. And you would expect him
12 to put accurate information in a report and he would
13 expect you to put accurate information in a report?

14 A Yeah.

15 Q So if it's in there that Dean had a scab that was
16 bleeding, that would be accurate, wouldn't it?

17 A That's correct. But you asked me what I saw. That
18 wasn't mentioned to me nor did I see it. Doody was there
19 before I was.

20 Q That's fair and I'm not trying to trick you. I just
21 want to make sure that we understand that the report
22 documents a physical injury from Dean, right?

23 A Yes.

24 Q Okay. And you were telling us before the jury went
25 out about the fact that my client's shirt was stretched,

JENNY FORSYTHE - CROSS-EXAMINATION BY MR. MOORE

1 correct?

2 A Yes, sir.

3 Q There's mention in that summary about the shirt being
4 stretched, flipped up around the collar, and I believe
5 even a button falling off; is that right?

6 A I remember the shirt being -- I mean, the collar
7 being stretched. I don't remember if there was a button
8 missing.

9 Q Okay. If it's in the report, it would be accurate,
10 wouldn't it?

11 A Yes.

12 Q Sergeant Doody also noticed a button fallen off his
13 shirt, which was near the neck area. If it says that,
14 that's right, isn't it?

15 A Yes, sir.

16 Q Okay. So we've got a stretched shirt, we've got a
17 button coming off, we've got a scab on his arm that was
18 bleeding. Do you know anything about Dean's glasses at
19 all?

20 A I don't remember.

21 Q Now, if his -- we've had some testimony today from
22 the victim herself that basically said that she knocked
23 his glasses off. Knocking somebody glasses off would be a
24 sign of a physical struggle; would it not?

25 A Yes.

JENNY FORSYTHE - CROSS-EXAMINATION BY MR. MOORE

1 Q All right. And the scab as well and even the
2 stretched shirt, correct?

3 A Yes.

4 Q Now, when you got to the scene, where was Dean?

5 A He was -- if I remember correctly, he was in his back
6 office.

7 Q Okay. By the time you got there, Officer Doody had
8 already gotten there, right?

9 A Yes, sir.

10 Q Where do you remember Officer Doody first meeting
11 Dean?

12 A I don't know.

13 Q Do y'all have in-car cameras that would -- did Doody
14 have an in-car camera?

15 A Yes, sir.

16 Q Did you?

17 A Yes, sir.

18 Q Do you know where Officer Doody's in-car camera is --
19 or the video from that is?

20 A As far as I know, it's in the -- every time we make
21 an arrest on a case, we submit it digitally to our L-3
22 system.

23 Q Okay.

24 A I mean, to clarify, we don't wear body cameras yet,
25 so the in-car camera picked up audio only. And I can

JENNY FORSYTHE - CROSS-EXAMINATION BY MR. MOORE

1 testify to the fact that the way Doody and -- Sergeant
2 Doody, excuse me, and my car were facing, we were facing
3 this way and the office building would be to the left.
4 And I don't recall anything that would have -- other than
5 when we brought Mr. Distasio out, anything that would have
6 actually been visually seen on our camera. Everything
7 would have just been audio.

8 Q Well, you're guessing a little bit. Now, the camera,
9 though, you're saying wouldn't pick up anything but audio,
10 that's no necessarily true, is it? That's what the whole
11 purpose of a camera is, it would actually show --

12 A Right, I mean, the camera is running the whole time,
13 but it's not like we pull up on every scene and, you know,
14 turn the camera towards the door or something like that.
15 I mean, it's usually always facing forward.

16 Q I get it. It's not perfect. But, basically, we know
17 Doody had a camera. We know he got there first. We know
18 he had to pull into the parking lot. And we know if Dean
19 was standing outside waiting on the police on his
20 telephone, that would have, at least, been captured on
21 Doody's in-car camera, right?

22 A If that was the case, then, yes, that would have been
23 captured on his camera.

24 Q But you don't know where that video is and you can
25 only speculate that y'all turned that over to the

JENNY FORSYTHE - CROSS-EXAMINATION BY MR. MOORE

1 solicitor's office, correct?

2 A I know that we turned it over to the solicitor's
3 office.

4 Q Very well. I agree with you. I think you might
5 have. Let me ask you this. You took photographs on --
6 before I get to that, the witnesses who you had write
7 these written statements, did you tell them, ma'am, we
8 need to -- we need you to write an accurate statement?
9 Did you expect them to write an accurate statement?

10 A Yes.

11 Q Did you give them plenty of time to fill it out?

12 A Yes.

13 Q Did you rush them in any way?

14 A No.

15 Q Were they under the influence of drugs or alcohol?

16 A No.

17 Q Let me ask you this, the photographs that you took --
18 you took photographs on that particular day, the date of
19 the accident, right?

20 A Yes.

21 Q You have not taken any other photographs of anybody
22 connected with this case since the date of the incident,
23 correct?

24 A Correct.

25 Q Why did you not take pictures of Dean?

JENNY FORSYTHE - CROSS-EXAMINATION BY MR. MOORE

1 A Because we determined that he was the primary
2 aggressor and that's just not something that we normally
3 do. If it was a case where we made a dual arrest, which
4 is very rare in domestic violence cases, but does happen,
5 then we would have taken picture of both parties.

6 Q Well, you and your partner made a determination on a
7 case without actually seeing the events. We've covered
8 that, right?

9 A Yes, sir.

10 Q You had the best way to make a case, to make sure
11 it's done fairly and to make sure it's done properly. In
12 investigating a case, you want to make sure that you cover
13 everything and gather as much evidence as you possibly
14 can, right?

15 A Correct.

16 Q That way, when it goes to trial, the jury will have
17 the best way possible to make a decision on the ultimate
18 issue, right?

19 A Yes.

20 Q If the jury had photographs of Dean's injuries, they
21 could see how bad they were or how insignificant they
22 were, correct?

23 A Correct.

24 Q But they don't have that, right?

25 A Correct.

JENNY FORSYTHE - CROSS-EXAMINATION BY MR. MOORE

1 Q And the reason they don't have that is because the
2 sheriff's department chose not to take those photographs,
3 right?

4 A Correct.

5 Q Okay. Dean's shirt, did y'all put that in evidence
6 or did y'all just kind of let him wear that on to jail?

7 A No, we let him wear it. We weren't going to make him
8 go shirtless.

9 Q And you don't know -- did y'all eventually find his
10 glasses?

11 A I don't remember.

12 Q You don't know anything about his glasses?

13 A (Witness shakes head.)

14 Q Okay. Let me ask you this, the victim, did you call
15 the ambulance?

16 A No, she did not require that level of medical
17 attention.

18 Q Okay. Did she go to the doctor at all that you're
19 aware of?

20 A I'm not aware of if she went to the doctor or not.

21 Q Did y'all have any kind of first-aid kit in your car?

22 A Yes.

23 Q Did you apply any first aid to the victim?

24 A No.

25 Q Okay. Officer, thank you very much for answering my

JENNY FORSYTHE - REDIRECT EXAMINATION BY MR. HOGGE

1 questions.

2 MR. MOORE: Judge, I don't have anything further.

3 THE COURT: Any redirect?

4 MR. HOGGE: Yes, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. HOGGE:

7 Q Deputy Forsythe, Mr. Moore alluded to a video
8 recorded by your dash camera?

9 A Uh-huh.

10 Q Have you reviewed that before trial today?

11 A Yes.

12 Q Did you watch both your video and Sergeant Doody's
13 video?

14 A No, I just watched mine.

15 Q Okay. In watching that video, can you tell us at
16 what point in the situation did you arrive on scene? In
17 other words, were you able to record the actual incident
18 with your footage?

19 A No.

20 Q How quickly did you arrive on the scene after the 911
21 call?

22 A Less than 10 minutes would be my best guess after
23 almost a year later.

24 Q Okay. And what would -- do you know how soon
25 Sergeant Doody got there before you?

JENNY FORSYTHE - REDIRECT EXAMINATION BY MR. HOGGE

1 A A minute or two.

2 Q Okay. Mr. Moore referenced what's important for
3 determining who the primary aggressor is. Can you tell us
4 a little more about what all you took into consideration
5 when you made that determination?

6 A I took into consideration several factors. Of
7 course, I want to make it perfectly clear that we don't
8 always side with the women. Okay. It's not what we do at
9 all. There are plenty of women I've arrested for domestic
10 violence, okay. However, you do look at the size and
11 stature comparing male to the female, so that was a
12 consideration in our investigation that day. We also took
13 into consideration both parties' statement about what
14 happened and including the witness. I believe that there
15 was some visible damage to Dione's office area that I
16 believe was the starting point for all of the kind of, you
17 know, struggle and stuff that day. So, I mean, all of
18 those factors went into our decision-making process.

19 Q And how many witnesses due to this incident did you
20 speak with total, including Dean and Dione?

21 A The -- Heather, the one that called the sheriff's
22 office, I briefly -- there was another female there that I
23 was under the impression that was Mr. Distasio's assistant
24 or secretary. I don't know if that's the case or not. I
25 briefly addressed her. I believe that I asked her was she

JENNY FORSYTHE - REDIRECT EXAMINATION BY MR. HOGGE

1 the one that called and she said no and then went about
2 her business, so I really didn't even readdress anything
3 with her. It was the other Heather, the one that had
4 called the Sheriff's Office and the one that I had asked
5 if she would be willing to write a statement.

6 Q And Heather Cain, did she agree with Dean's version
7 of events or Dione's version of events?

8 A Dione's.

9 Q Was that a point of consideration?

10 A Yes.

11 Q So you saw Dean's shirt?

12 A Yes.

13 Q And Sergeant Doody saw the injury to his hand?

14 A Right.

15 Q And who did you determine was the primary aggressor
16 with all this taken under consideration?

17 A Dean.

18 MR. HOGGE: The State has no further questions.

19 MR. MOORE: Nothing.

20 THE COURT: Thank you, ma'am. You may step down.

21 MR. HOGGE: We ask she be excused for the rest of the
22 trial.

23 THE COURT: Any objection?

24 MR. MOORE: No, sir.

25 THE COURT: This witness is excused.

HEATHER TEVELLA - DIRECT EXAMINATION BY MR. HOGGE

1 MR. HOGGE: Judge, the State calls Heather Tevella to
2 the stand.

3 HEATHER TEVELLA, after having being sworn, testified
4 under oath as follows:

5 DIRECT EXAMINATION

6 BY MR. HOGGE:

7 Q Ma'am, could you give us your name for the record?

8 A Heather Marie Tevella.

9 Q And where do you work?

10 A Double DD Trucking.

11 Q How long have you worked there?

12 A October 5th will be a year?

13 Q And where do you live?

14 A Currently, Indian Trail, North Carolina.

15 Q What all do you do for Double DD Trucking?

16 A Mainly dispatch.

17 Q Could you kind of give us an idea of the layout of
18 your office and where your particular office is within the
19 larger office?

20 A I'm in the way back with the big open area with the
21 dispatchers, three desks, computer there and then there's
22 hallway that goes to Heather's, D's office and then the
23 front open area.

24 Q What all is in the dispatch office you work in?

25 A Copy/fax machine, the three desks and computers,

HEATHER TEVELLA - DIRECT EXAMINATION BY MR. HOGGE

1 white board.

2 Q And you know -- we know that you know Dione; is that
3 correct?

4 A Say that again.

5 Q Who is your boss?

6 A Dione Distasio.

7 Q Do you know Dean Distasio?

8 A Yes.

9 Q Is he regularly in Double DD Trucking from a
10 day-to-day basis?

11 A No.

12 Q Can you point us out for us?

13 MR. HOGGE: Your Honor, for the record, the witness
14 pointed out the Defendant.

15 BY MR. HOGGE:

16 Q Tell us what happened on November 5th. And if you
17 could tell us where you are and what your perspective is
18 in all of this.

19 A So describe the events from --

20 Q Sure.

21 A Yeah, I was working at my desk and working on the
22 computer. And me, Heather Cain and Dione were at the
23 office. And Dino came in and -- I hadn't seen him in a
24 couple of weeks and he came in and went to another desk in
25 there.

HEATHER TEVELLA - DIRECT EXAMINATION BY MR. HOGGE

1 Q You say another desk in there. Where are we talking
2 about?

3 A In the dispatch office.

4 Q And that's your office all the way at the end of the
5 hallway?

6 A Uh-huh, yeah.

7 Q Okay. Sorry.

8 A I think there was an interaction. I wasn't really
9 paying attention, I was too busy working, but discussion
10 briefly between Dino and Dione to start. But he came in
11 and went to the desk. And he came over and gave me a
12 piece of paper and said, Hey, fill this out. I wasn't
13 familiar with the paper, I didn't know what it was, said
14 something with a different company name. And I knew
15 briefly that he had his own company that was just dormant,
16 like nothing was going on with it. And so I just was
17 really busy and I put it aside. And so then I went back
18 to work. The phone was ringing and what have you. And
19 then there was some conversation and discussion with Dione
20 and Dino.

21 Q Where is Dione during this time?

22 A Oh, she was in the dispatch office right behind me at
23 the computer right behind me.

24 Q So there's some discussion going on and what did you
25 hear next?

HEATHER TEVELLA - DIRECT EXAMINATION BY MR. HOGGE

1 A Yeah, they started arguing and I -- because I asked
2 Dione, I said, Hey, there's a load that just came in. And
3 I wasn't -- I didn't know what it was and it was made out
4 to the company, the other company that Dino owned. I was
5 aware of that. I don't work for that company. I work for
6 Dione, so I asked her, you know, What is this? And so
7 then an argument started between them.

8 And I can't recall the details of it, but -- and so
9 Dino I heard saying stuff like, Well, if you weren't such
10 a -- Dione, if you weren't such a dumbass, you know, our
11 company would be bigger than UPS. I started to get
12 afraid. I was kind of like in shock. I'm kind of shaking
13 right now thinking about it. But, you know, because he
14 was yelling and calling her names, cursing and I just
15 wasn't sure what was going to happen next.

16 And so then I think something with the keys -- they
17 were behind me and I was facing my desk this way, so I
18 heard like noise, like something fell. And so I turned
19 around and saw Dione's purse, some things scattered. And
20 then all of a sudden, both of them were like right there,
21 right here and --

22 Wait, I'm sorry, let me back up. Before that, I saw
23 the purse and then I looked at the copy machine and Dino
24 was trying -- one of them was trying to print something
25 and they both ended up there. And I looked over and Dino

HEATHER TEVELLA - DIRECT EXAMINATION BY MR. HOGGE

1 was in Dione's face and his teeth were clenched and hands
2 were clenched and he was -- it was like -- it sounded
3 like, you know, talking through his teeth and, you know,
4 raising his voice and just cursing. I could hardly even
5 make it out. And then that's when all of a sudden, Dione
6 was pushed into my chair and literally like pushed into
7 me. From there, it was literally like a wrestling match,
8 something about give me my keys. And I turned around,
9 just watching it. They were literally like wrestling,
10 like Dino had her basically against the wall the entire
11 hallway, just, you know -- and Dione was trying to get
12 away.

13 Q What was Dione doing to Dean during this time?

14 A Just trying to protect herself and trying to get the
15 keys. You know, she was like, You can't take my keys. I
16 need my keys, what have you.

17 Q Did you see her grabbing his shirt or grabbing the
18 keys? What all did you see her doing in terms of grabbing
19 at her keys?

20 A Yeah, I just -- it was like tugging his shirt right
21 then and there after they were pushed into my chair -- she
22 was pushed into my chair. It was just like this, like she
23 had seen his keys and, you know, wasn't going to have a
24 car and what have you and she took them --

25 Q So when you say there was a wrestling match going on,

HEATHER TEVELLA - DIRECT EXAMINATION BY MR. HOGGE

1 describe for us everything that you saw Dione doing in
2 terms of that.

3 A She was just trying to grab the keys out of the hand,
4 that's it. That was her only focus and that's what I kept
5 hearing. And he just kept screaming and swearing and she
6 was just like, Give me the keys. And it was -- happened
7 so fast and it was just so scary, but I basically saw her
8 against the wall the entire time, like them making it up
9 through hallway to the front when he -- I saw him, you
10 know, slam her against the wall with his hands. And at
11 one point, he was grabbing her arm and just trying to keep
12 her there. And she was just trying to grab the keys, he
13 was trying to grab the key, so that's why they were
14 wrestling, they both wanted the keys.

15 Q Did you ever see Dione on Dean's back?

16 A No.

17 Q Did she ever pull his shirt off?

18 A No.

19 Q Did you see inside the actual office Dean on a cell
20 phone?

21 A No.

22 Q About how long after all that did the police show up?

23 A Well, as they were going down the hallway, I grabbed
24 my phone and was trying to -- I was, you know, looking to
25 see what Heather was doing and just kind of gauging, like

HEATHER TEVELLA - DIRECT EXAMINATION BY MR. HOGGE

1 is this going to get more out of hand, is someone else --
2 is she going -- you know, what have you.

3 So I grabbed the phone and I start walking towards
4 her office and she was already calling. And I was
5 literally dialing 911 right then and there. And I believe
6 dispatch even answered and said, Oh, we already have this
7 under control. Heather Cain is on the other line. And I
8 hung up, so she was on the phone. And they literally were
9 there within five minutes.

10 Q And I'm sorry, could you repeat the five minutes,
11 what happen after five minutes?

12 A After she -- from the time Heather had called, the
13 police arrived within like five minutes.

14 Q Okay. How long were they there at the scene?

15 A The police officers? Hour and a half hour, hour, I
16 don't recall.

17 Q Okay.

18 A Seemed like a long time, but it was all very
19 disturbing and shocking for this to happen at work. It's
20 hard to remember.

21 Q Okay. What all was going through your mind when you
22 saw this going on? Was this just oh, gosh or describe
23 your emotions at this time.

24 A I was terrified. In fact, I mean, I was on the phone
25 trying to dial the police, too. And actually, when Dino

HEATHER TEVELLA - DIRECT EXAMINATION BY MR. HOGGE

1 ended up walking outside and he knew the police were
2 there, I called my husband and I was like, I need you to
3 come -- because he worked there, too, at the time. I was
4 like, Can you please come up here? Like there's all kind
5 of, you know, physical stuff going on. And it had
6 happened before, so I just was very scared. And I didn't
7 know what was going to happen next, if I got hurt, Dione
8 was going to get hurt, you know, what was going to happen.

9 Q Okay.

10 MR. HOGGE: Beg the Court's indulgence.

11 Heather, I have no further questions for you at this
12 time. If you will answer any questions that Mr. Moore has
13 for you.

14 THE COURT: Mr. Moore.

15 MR. MOORE: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. MOORE:

18 Q Ma'am, I noticed that you did not give a statement to
19 law enforcement, right?

20 A Right.

21 Q Did you talk to the police when they got there?

22 A Briefly. A lot was going on and I was the only one
23 there able to manage the business part of it and answer
24 calls and respond to things, so briefly I kind of talked
25 to them, but not too much.

HEATHER TEVELLA - CROSS-EXAMINATION BY MR. MOORE

1 Q So this traumatic event that happened to which you
2 were so scared that you called your husband and the police
3 were there, two of them, and about to arrest Dean and you
4 decided instead of talking to the police and relaying what
5 your story was that you were going to continue operating
6 the business?

7 A Heather Cain, basically, was the one that was going
8 to be reporting what happened and saw the same things I
9 did, so I wasn't asked to give one and I didn't think
10 about it. I was thinking about the business right now.
11 There's a hundred phone calls coming in, e-mails coming
12 in, what have you.

13 Q But you're a key witness. You saw more than Heather
14 Cain, didn't you?

15 A At the time, I wasn't really thinking about that. I
16 just did what the officers told me to do and that wasn't,
17 you know, writing anything down. I wrote it down on my
18 own afterward and offered D so that Dino wouldn't come
19 back and threaten and what have you. So I wrote it down
20 on my own and then offered if she ever needed it that she
21 could use it.

22 Q I didn't ask you anything about any of that. I asked
23 you quite simply, you saw more than Heather Cain, right?

24 A Okay.

25 Q Did you?

HEATHER TEVELLA - CROSS-EXAMINATION BY MR. MOORE

1 A Yes, I did.

2 Q All right. So the police got a statement from one
3 witness who didn't hardly see anything, but they had
4 another witness who saw everything and they didn't even
5 get a full written statement from you?

6 A Yeah, that's what -- wasn't my job.

7 Q And you're telling me there exists a written
8 statement somewhere --

9 A Uh-huh.

10 Q -- that you wrote down? Where is it?

11 A I gave it to a divorce attorney so that he wouldn't
12 be allowed to come back to the employer -- or to the
13 office.

14 Q I see. So when did you write it?

15 A The next day.

16 Q Okay. Now, I noticed that you said in direct
17 examination that Dione was trying to protect herself and
18 trying to get the keys; is that what you said?

19 A Yes.

20 Q How is it if somebody tries to protect -- you would
21 agree with me that trying to get keys from somebody who
22 already has them is going to require a physical act,
23 right?

24 A I'm not sure what you're asking.

25 Q To take keys from somebody would require a physical

HEATHER TEVELLA - CROSS-EXAMINATION BY MR. MOORE

1 movement, correct?

2 A Sure.

3 Q And especially if the person who has the keys doesn't
4 want to give you the keys, right?

5 A Yeah.

6 Q So if you were trying to protect yourself from
7 somebody who you're afraid of and who was causing you all
8 this problem, it wouldn't be a good idea to try to rip
9 keys out of their hand, would it?

10 A You're trying to protect two values, one, the safety
11 of your child and one, the safety of yourself. So as
12 she's trying to push him off, she's trying to grab the
13 keys. So it's two very important values.

14 Q There's been a lot of mention about the child. How
15 many employees were in this building? You said your
16 husband works there, you work there, Heather Cain was
17 there and Dione was there, right?

18 A My husband was not there. I called him to come early
19 to work.

20 Q I understand, but he basically worked there, right?

21 A Yeah.

22 Q He's an employee of Dione?

23 A Uh-huh, he was.

24 Q How did you get to work that day?

25 A With my car.

HEATHER TEVELLA - CROSS-EXAMINATION BY MR. MOORE

1 Q How did Heather Cain get to work?

2 A With her car.

3 Q You were an employee of Dione, right?

4 A Yes.

5 Q If there was an absolute emergency -- you're a friend

6 of hers, aren't you?

7 A Professionally.

8 Q Would you consider her to be somewhat more than just

9 a professional friend?

10 A I try not to cross those lines at work, but yes.

11 Q Have you ever engaged in a social setting with her?

12 Have you ever gone out to eat with her?

13 A For lunch for work, yeah.

14 Q Okay. Have you ever done anything socially with her?

15 A Our kids have had play dates?

16 Q Okay. So you're telling -- that would be more than

17 just a professional relationship --

18 A Sure.

19 Q -- wouldn't it? Right?

20 A Uh-huh.

21 Q Okay. Then what you just told me a second ago about

22 not having more than a professional relationship, that

23 wouldn't be true then, would it?

24 A It's professional if my children are having good

25 relationships. I'm not sure what you're asking.

HEATHER TEVELLA - CROSS-EXAMINATION BY MR. MOORE

1 Q Well, ma'am, you told me a second ago that you have
2 nothing more than a professional relationship with the
3 woman?

4 A That's not my words, but yes, I know what you're
5 referring to.

6 Q What were your words?

7 A I don't know. I'm under a lot of stress right now
8 thinking about this just, you know, with your questions,
9 so can you repeat again what?

10 Q Yes.

11 A Uh-huh.

12 Q You said a second ago that you only had a
13 professional relationship with Dione.

14 A I prefer to have a professional relationship. That's
15 what I mean.

16 Q Now, we know then -- when you say you prefer to have
17 a professional relationship -- my question is very
18 specific, okay, and it's very simple. You told me a
19 second ago that you only have a professional relationship
20 with her?

21 A I prefer to have a professional relationship, yes.

22 Q That's not what I asked you. The question is, just a
23 second ago, you told me that you only had a professional
24 relationship with her, that's what you said?

25 A I'm not sure what you're asking.

HEATHER TEVELLA - CROSS-EXAMINATION BY MR. MOORE

1 Q My question is, is that what you said?

2 A I prefer to have a professional relationship.

3 Q That's not my question.

4 A Yes, I have a professional relationship.

5 Q That's what you told me?

6 A Uh-huh.

7 Q Now, just a second ago, I started getting into
8 whether you go to lunch and whether you socialize and
9 things of that sort and you told me that yes, in fact, you
10 do. And you told me yes, you have more than a
11 professional relationship, you have social relationship
12 with her, right?

13 A Yes, it's common in the work field.

14 Q All right. So when I asked you do you have more than
15 a professional relationship with her and you said no, and
16 then just a second ago, you said yes, I do have more than
17 a professional relationship, those two cannot be true?

18 A It depends on how you define professional
19 relationship.

20 Q I see. Now, ma'am, regardless of all of that, we
21 know that you do have a social relationship with her,
22 don't you?

23 A Yeah, going to lunch.

24 Q Yeah.

25 A And having one play date with my son.

HEATHER TEVELLA - CROSS-EXAMINATION BY MR. MOORE

1 Q It was just one?

2 A In fact, she wasn't even there. I took her daughter.

3 Q It was just one?

4 A Yeah.

5 Q Okay. If the woman called you, Dione called you and
6 said hey, I've got an emergency and I need to get my kid
7 to the doctor --

8 A Uh-huh.

9 Q -- would you go get her?

10 A Sure. If there's an emergency, I'd do that for
11 anyone around me I knew very well.

12 Q Do you think Heather Cain would?

13 A Yeah.

14 Q Okay. So the keys that she was fighting so
15 desperately to get and saying that she absolutely had to
16 have them just in case there was an emergency and her kid
17 needed to go to the doctor, that's not necessarily -- she
18 didn't actually have to have the car, did she, because you
19 would have helped her get to the doctor if, in fact, there
20 was an emergency, right?

21 A You can't depend on other people in a emergency. You
22 depend on your own transportation. It was threatening to
23 take her keys and throw them in the car. And so anyone
24 would want to have their own car and not have to rely on
25 someone else who might have to leave.

HEATHER TEVELLA - CROSS-EXAMINATION BY MR. MOORE

1 Q Well, Dione had, at least, you and Heather Cain to
2 rely upon, right?

3 A That's not always reliable. If she has to go on
4 lunch, if she has to leave for the workday.

5 Q Are you reliable?

6 A If my shift ends at four or I'm in the middle of an
7 emergency at work and I can't do that. It just depends.

8 Q So if you had an emergency, you wouldn't be able to
9 help Dione at the same time she had her emergency, right?

10 A If I was able to, I would, but I'm saying you cannot
11 just depend on other people. I would always want my car
12 with me.

13 Q Of course, we would all want our car, but there are
14 more civilized ways to accomplish getting car keys back
15 than trying to grab them out of somebody's hand, right?

16 A I would do the same thing. I would be trying to get
17 my keys because somebody is stealing them from me and
18 threatening me and pushing me against the wall. Yeah, I
19 have a problem with that.

20 Q I didn't ask what you would do. I asked you if there
21 are more civilized ways to get keys from somebody who will
22 not give them to you?

23 A Not when someone's agitated and in a state that Dino
24 was in. There's no reasoning with that.

25 Q Okay. So on the planet Earth, there is no more

HEATHER TEVELLA - CROSS-EXAMINATION BY MR. MOORE

1 civilized way to get something that somebody has and they
2 won't give to it you than actually charging them and
3 trying to get the keys from them physically?

4 A In an emergency situation when someone's going to
5 lock your keys in a car, no, I don't see another way.

6 Q All right. So we know that she physically tried to
7 remove the keys from Dean's hand, while at the same time
8 protecting herself?

9 A Yes, she was trying to push him off of her.

10 Q So how did that work? Like, did she --

11 A Like this.

12 Q I mean, did she have one hand pushing him off and
13 trying to grab the keys with the other?

14 A Like this. They were both wrestling like that.

15 Q Do you think that while she was trying to wrestle
16 those keys out of her hand -- or out of his hand that she
17 had concern for her physical well being?

18 A Yes, he's two times bigger than her.

19 Q Now, you described it as wrestling match, right?

20 A Right.

21 Q This wasn't somebody beating the heck out of
22 somebody. They were both participating in a physical
23 altercation, weren't they?

24 A She was protecting herself. He was aggressive.

25 Q I see. So she was -- all right. Okay.

HEATHER TEVELLA - CROSS-EXAMINATION BY MR. MOORE

1 A A wrestling match means two people fighting. She
2 wasn't fighting, she was protecting herself.

3 Q So you defined a wrestling match as two people
4 fighting, yet you described it earlier on direct
5 examination as a wrestling match?

6 A A wrestling match by my definition is two people
7 fighting. She's protecting, he's the aggressor. It
8 wouldn't be equal.

9 Q Okay. All right. You just defined for us now on
10 cross-examination a wrestling match is two people
11 fighting?

12 A Uh-huh.

13 Q Right?

14 A Yeah.

15 Q On direct examination, you described this event as a
16 wrestling match?

17 A You're right.

18 Q So if your definition of a wrestling match is two
19 people fighting and you just called it a wrestling match,
20 that would mean that they were both involved in fighting?

21 A Well, how I define it and you define it is different.
22 So when I initially said wrestling match and then you
23 start saying that she was fighting against him, that
24 doesn't equal my definition.

25 Q Ma'am, I'm not testifying and I didn't define

HEATHER TEVELLA - CROSS-EXAMINATION BY MR. MOORE

1 anything. I'm using your definition.

2 A Uh-huh.

3 Q You defined wrestling match as two people fighting?

4 A Right.

5 Q And you described this as a wrestling match?

6 A Okay.

7 Q So they would have both been fighting, right?

8 A Two people fighting physically, verbally, there's
9 different definitions.

10 Q Well, what were they doing?

11 A What you're assuming is both being physical. She was
12 not being physical. She was trying to protect her keys
13 and her life.

14 Q So she was trying to protect -- she was trying to
15 protect her keys and her life at the same time?

16 A I don't think it's funny. I mean, yeah.

17 Q I'm just curious. So she was trying to protect her
18 keys, okay. And she grabbed --

19 A Which is her lifeline, yes.

20 Q Did you see her jump in front of a door and prevent
21 Dean from leaving?

22 A No, she didn't jump in front of the door. She walked
23 over there and wanted her keys, her lifeline to her child.

24 Q So in Dione's statement -- let's see. If that's
25 Exhibit -- yeah. Dione's statement, Defense Exhibit No.

HEATHER TEVELLA - CROSS-EXAMINATION BY MR. MOORE

1 2, I went to the front door and tried to block it. You
2 didn't -- did -- is she telling a lie or did you just not
3 see her block the door?

4 A She was standing in front of the door.

5 Q Okay. So she's telling the truth?

6 A Depends on your definition. She's standing in front
7 of the door. It's different than blocking.

8 Q Standing in front of --

9 A He could have easily moved. There's two doors in the
10 office to go out.

11 Q If she's standing in front of the door, is she
12 blocking it?

13 A He could have -- he actually did put his hands on her
14 arms and try to get out.

15 Q That's not what I asked you, ma'am. She's standing
16 in front of the door. I'm --

17 A Yeah, she's standing in front of the door.

18 Q Okay.

19 A She wasn't -- yeah.

20 Q We've talked a lot about definitions, okay?

21 A Uh-huh.

22 Q If she's standing in front of the door?

23 A Uh-huh.

24 Q Wouldn't you agree with me that she is, in fact,
25 blocking the door?

HEATHER TEVELLA - CROSS-EXAMINATION BY MR. MOORE

1 A Standing still is different than blocking physically
2 and preventing someone from leaving.

3 Q You understand the laws of physics and realize it's
4 impossible to walk through somebody, right?

5 A He could have walked right around her or out the
6 other door that was available.

7 Q If he walked around her in such close proximity as a
8 doorway and she was determined to protect her keys --

9 A Uh-huh.

10 Q -- that would have just caused more physical
11 problems, wouldn't it, especially if this was the
12 wrestling match you described, wouldn't it?

13 A Anything would have caused more problems in that
14 moment, sure. All she wanted was her keys, simple fact.

15 Q All she wanted was her keys. He didn't want to give
16 the keys. They're married, going through a bad divorce
17 and everybody was probably a little bit out of line,
18 weren't they?

19 A Emotions were high, yeah.

20 Q Okay.

21 MR. MOORE: Your Honor, that's all I have.

22 THE COURT: Any redirect?

23 MR. HOGGE: Yes, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. HOGGE:

HEATHER TEVELLA - REDIRECT EXAMINATION BY MR. HOGGE

1 Q We talked a lot about definitions. I'm not going to
2 ask you about any definitions. Did you see this man push
3 Dione Distasio?

4 A Yes.

5 Q Did you see him slam her against the wall?

6 A Yes.

7 Q Did you see him choke her?

8 A Yes.

9 Q Did you see him push her out the way of the door?

10 A Yes, put his hands on her arms, yes.

11 Q Would there have been a more civilized way to get out
12 the door than to do what he did?

13 A Yes.

14 Q Could he have in that situation given her the keys?

15 A Yes, or gone out the other door.

16 Q All right. The other door, where is the other door?

17 A In the hallway. It goes --

18 Q He could have gotten out a different way?

19 A Yes.

20 MR. HOGGE: I have no further questions.

21 THE COURT: Anything further of this witness?

22 MR. MOORE: Nothing, Your Honor.

23 THE COURT: Thank you, ma'am. You may step down.

24 THE WITNESS: Thank you.

25 MR. HOGGE: Your Honor, the State rests.

1 THE COURT: Bailiff, would you take our jury to the
2 jury room, please?

3 (WHEREUPON, the jury exited the courtroom at 3:31
4 p.m.)

5 THE COURT: Okay.

6 MR. MOORE: Your Honor, I do have a motion. I'd move
7 for a directed verdict of not guilty, Judge. You know,
8 these are the most dangerous cases. These scare me to
9 death. You know, I will say that I do not believe in my
10 wildest dreams that the State has even remotely provided
11 enough evidence to this Court to allow it to go to a jury
12 on the basis of criminal domestic violence.

13 First, I suppose we would renew all of our prior
14 motions. Again, it is troubling to me that we've had
15 three fact witnesses and a law enforcement officer testify
16 my client did not make a 911 call. We know, in fact, that
17 he did. It's been confirmed. The only question is when
18 did he make it. Everybody testified that they didn't see
19 him on the phone, but, you know, I'm 99 percent sure that
20 the audio that they've given me, there's more to it, it's
21 just housed somewhere in North Carolina right now.

22 But getting back to the directed verdict motion,
23 Judge, you know, if you look at (a)(2), you know -- and
24 again, it goes back to the indictment. There are no facts
25 in the indictment to let me know exactly what they're

1 alleging, but (a)(2), I think is out. Offer or attempt to
2 cause physical harm or injury to a person or household
3 member with the present ability under the circumstances
4 create fear of imminent peril. I just don't think that
5 you have that. The only thing that I could possibly
6 prevail on, I suppose, would be cause physical harm or
7 injury to a person's own household member. I just don't
8 think there's enough evidence here.

9 The stories are bizarre at best. I think at best you
10 have a mutual combat situation. Bad divorce, argument
11 over keys, and, clearly, my client trying to get out of
12 the house. You have the victim that -- there's evidence
13 even by the victim's own words that she grabbed his shirt.
14 There's evidence that she blocked a door and restricted
15 his movement. You know, she is the -- she is the primary
16 aggressor here. She's, at least, the first aggressor
17 according to us.

18 The story about the choking, you know, I don't --
19 there are no photographs of any sort of neck injury
20 whatsoever. And the testimony has been that he grabbed
21 her around her neck and picked up 230 pounds. I don't
22 think Dean could do that with a can of spinach. I mean,
23 it's just -- it's bizarre. I don't think that's what
24 happened. It's just not credible.

25 The other witness, Heather Cain, she's left out part

1 of -- portions from her written statement and has had to
2 admit some things that if you watch her body language, she
3 just didn't want to admit. You know, the fact that Dean
4 was trying to leave and he was being restrained.

5 Judge, I -- I don't know. I just -- I don't see it.
6 Again, these cases scare me to death. If it goes to a
7 jury, I just think it would be improper and I just don't
8 think there's enough evidence there. But that's all I
9 have and I appreciate your time.

10 THE COURT: Mr. Moore, I have listened carefully to
11 the evidence presented by the State and your arguments go
12 towards the weight of the evidence rather than the
13 existence of the evidence. And there is evidence in the
14 record to support the State's charge. There is evidence
15 in the record to suggest that the victim is a household
16 member and that physical harm was inflicted. Again, your
17 arguments go toward the credibility and weight of the
18 evidence and that is a factual question, which makes that
19 a jury question. So I'm going to deny your motion for a
20 directed verdict.

21 MR. MOORE: Thank you, Judge.

22 THE COURT: Mr. Distasio, would you please stand,
23 sir?

24 DEAN DISTASIO, after having first being duly sworn,
25 testified under oath as follows:

1 THE COURT: Mr. Distasio, at this time, I'm going to
2 explain some of your rights. If you do not understand
3 anything that I say, please let me know and I will explain
4 it again in more detail. If you answer the question, I'm
5 going to assume you understood the question. Do you
6 understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: We have reached the stage in the trial
9 where you may present your defense. You have the right to
10 claim protections given to you by the Fifth Amendment to
11 the Constitution of the United States. This amendment
12 states in part: No person shall be compelled in any
13 criminal case to be a witness against himself. This means
14 that you cannot be required to testify in this case. On
15 the other hand, you have the right to testify on your own
16 behalf should you choose to do so. However, no one can
17 make you testify. This is a personal right and no one can
18 waive that right except you.

19 If you decide to testify, you will be subject to the
20 same rules that govern other witnesses and you may be
21 examined and cross-examined on any relevant issue in this
22 case. In addition, if you have any convictions involving
23 dishonesty or false statements or crimes punishable by
24 imprisonment for more than one year and this Court
25 determines that the probative value of admitting this

1 evidence outweighs its prejudicial effect to you, the
2 solicitor will be able to introduce your record to attack
3 your credibility. If you decide to testify, this decision
4 on your part must be freely, voluntarily, and
5 intelligently made with the knowledge of protections given
6 to you by the 5th Amendment and consequences of your
7 decision to testify.

8 If you decide not to testify, I will instruct the
9 jurors that they cannot give the fact that you did not
10 testify any consideration whatsoever and there is to be
11 absolutely no prejudice to you because you did not
12 testify. It is left entirely up to you whether or not to
13 testify. You may talk to your attorney, your family,
14 friends or anyone else, but the final decision will be
15 left entirely up to you. Do you understand what I have
16 explained to you?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you have any question about what I've
19 explained to you?

20 THE DEFENDANT: No, sir.

21 THE COURT: Okay. We will take a break here so
22 Mr. Moore may discuss with his client and we'll be in
23 recess for about 10 minutes.

24 (WHEREUPON, a recess was taken from 3:38 p.m. to 3:50
25 p.m.)

1 MR. MOORE: Your Honor, I would like to make an
2 opening statement.

3 THE COURT: Let me ask your client first.

4 Mr. Distasio, please stand. Have you discussed with
5 your lawyer whether not you wish to testify?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you have any questions of your lawyer
8 at this point?

9 THE DEFENDANT: No, sir.

10 THE COURT: Do you wish to testify?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay. Thank you.

13 MR. HOGGE: Judge, just as to his opening statement
14 he deferred, I would just ask that it is an opening
15 statement, that he not argue as you would not be able to
16 argue at the beginning of a case. I would ask that he
17 confine himself to presenting his case and to not get into
18 any argument as you would not be allowed to do in an
19 normal argument statement.

20 THE COURT: He understands it's a normal opening
21 statement which should not be of inordinate length.
22 Nothing unusual.

23 Bailiff, bring us our jury, please.

24 (WHEREUPON, the jury entered the courtroom at 3:53
25 p.m.)

1 THE COURT: Mr. Moore.

2 OPENING STATEMENT

3 BY MR. MOORE:

4 Ladies and gentlemen, first of all, you probably
5 don't remember me. My name is Jake Moore. I represent,
6 obviously, Dean Distasio. I practice law in West
7 Columbia, South Carolina. And it is a pleasure to be in
8 front of you today.

9 Not many people do it this way anymore. In a
10 criminal case, the Defendant is allowed to waive their
11 opening statement and wait until about halfway through the
12 trial before they put up their case to make an opening
13 statement. Usually everybody just -- the prosecutor gets
14 up and makes their opening and defense gets up and makes
15 their opening. But what I chose to do today is to waive
16 that, let's figure out where we are and then have the
17 ability to talk to you a little bit. That's what I'm
18 doing now. So it may seem a little strange, but I didn't
19 get a chance to do this earlier in the day and I want to
20 take the time to do it.

21 Dean and I sincerely appreciate your time. You have
22 absolutely no idea how many people duck jury service, try
23 to get out of it, wiggle out of it, and it's just a sad
24 thing. The very fact that you have decided to show up and
25 do your civic duty, which is, next to military service,

1 the next most important we have as citizens, says a lot
2 about you and a group as a whole.

3 But ladies and gentlemen, today you've heard a lot
4 about a criminal domestic violence case. I want you to
5 know that, first of all, Dean doesn't have to testify
6 today. He is. He's about to. You will hear his story.
7 But he doesn't have to testify. If we wanted to, we could
8 just sit down, make closing arguments and you could decide
9 the evidence based upon what you have right now. But we
10 are going to, in an abundance of caution, put Dean on the
11 witness stand and let you hear it straight from his mouth
12 exactly what his version of this story is.

13 Now, I say all the time that our system of government
14 and our court system is the best system in the entire
15 world and I mean that. It's the best system on the
16 planet. But one of the things that I would change about
17 the system is instead of the prosecutor and I getting up
18 here and butting heads for an entire day and putting the
19 evidence into the record that we think you might want to
20 see, wouldn't it be great if we just take the time out now
21 and let you talk, let you tell us what you might want to
22 see, what is on your mind? That way we could tailor
23 things to what you want and what's important to you and we
24 wouldn't have to sit here and guess about it and have to
25 maybe kick a dead horse, but I'm about to kick it if you

1 halfway believe that Dean Distasio is not guilty of this
2 charge, which we submit he is.

3 Today, the State has to prove to you beyond a
4 reasonable doubt of their versions of the facts and if
5 their versions of the facts comport with what the law is
6 and that Dean has, in fact, committed a crime. That's
7 what they have to do.

8 But the standard -- and the judge will tell you at
9 the end of this thing what the standard of proof is. The
10 standard is beyond a reasonable doubt. Beyond a
11 reasonable doubt is the highest standard that we have in
12 any court system in this state or the entire country. You
13 have -- you might have a civil case where some folks were
14 fighting over a boundary line of some property. The jury
15 may have to come in and weigh the evidence and decide that
16 case based upon a preponderance of the evidence. Who's
17 maybe 51 percent right and 49 percent wrong. They make a
18 decision that way. Or you may have a family court case
19 where somebody is trying to terminate a parent's parental
20 rights and the standard of proof in that case might be
21 clear and convincing evidence. It's something higher than
22 a preponderance, clear and convincing. You've got to have
23 clear and convincing evidence that's the right thing to
24 do.

25 But in this court, it's even higher than that. You

1 have to be convinced of their version of this story beyond
2 a reasonable doubt, which means if you have a doubt in
3 your mind right now or at the end of this trial about what
4 you think the version of these facts are, you must come
5 back with a not guilty verdict. If you doubt their story
6 in any way, shape, or form -- it could be anything, if you
7 have one doubt for which there is a reason, a good reason,
8 you must come back with a not guilty verdict.

9 Now, usually if I make my opening statement, I'm
10 commenting on what I think is going to come into evidence.
11 Now, you've seen what the State is attempting to prove.
12 And what you basically have, folks, is a nasty, nasty
13 divorce. These people hate each other. They don't get
14 along. They're fighting over car keys and defending car
15 keys. It's sad, but that's what you have. You have
16 squabbling over adults acting like children, but that's
17 what you have. You may not like it. You may not like my
18 client. You may not like Dione. I don't know. It
19 doesn't matter. The ultimate question for you today is
20 has there been a crime committed? And we would submit to
21 you there has not been.

22 There are lots of folks that we will talk about
23 later. What I'm going to do without further ado is I'm
24 going to put Dean on the witness stand. He's going to
25 say -- I mean, just imagine, he's not going to crawl up on

1 the witness stand and say yeah, I did it. I beat the heck
2 out of her. I choked her and put my hands around her and
3 lifted her two inches off the ground and, you know, threw
4 her against the wall. Obviously, he's going to have a
5 completely different version of this story, but I have to
6 put him up so you can hear it.

7 He's going to testify he went in, there was an
8 argument over the car keys, argument over whose car it
9 was, who had the rights to the car. There was certainly
10 an argument. The door was blocked, just like Dione said.
11 Take her word for it. He will testify his shirt was
12 ripped, basically, torn. Testify a button came off,
13 testify that he was cut. He will testify he called the
14 police. And I challenge you to challenge the prosecutor
15 to, in fact, say in his closing statement that my client
16 didn't call the police. He called the police.

17 The officer will tell you that's not important. It
18 has no bearing on her investigation as to whether somebody
19 would call the police and actually invite law enforcement
20 to come and assist. Sounds like he's got a whole lot to
21 hide when he's calling the police.

22 But anyway, let's get him on the witness stand and we
23 will talk later. Again, I thank you for your time. And I
24 hate to take so much of it, but this is a very important
25 day for both Dean and myself. This is a serious case, a

DEAN DISTASIO - DIRECT EXAMINATION BY MR. MOORE

1 very serious case that could change his life. You are --
2 your job is very important today. But we appreciate your
3 paying so close attention to it and we will talk later.
4 Thank you.

5 THE COURT: All right. Mr. Moore, call your witness.

6 MR. MOORE: I call Dean Distasio.

7 THE CLERK: Please raise your right hand and place
8 your left hand on the Bible.

9 DEAN DISTASIO, after having first being sworn,
10 testified under oath as follows:

11 DIRECT EXAMINATION

12 BY MR. MOORE:

13 Q Sir, what is your name?

14 A Dean Guisseppi Distasio.

15 Q Dean, are you married?

16 A Yes.

17 Q Who are you married to?

18 A Dione Anita Distasio.

19 Q Now, you have been in this courtroom and heard the
20 testimony today, correct?

21 A Yes, sir.

22 Q And the testimony is concerning the events that
23 happened, I believe, on November 5th, 2015, correct?

24 A Yes, sir.

25 Q Dean, tell this jury why you were where you were and

DEAN DISTASIO - DIRECT EXAMINATION BY MR. MOORE

1 what happened.

2 A I actually left there at 9:00. I work there every
3 day from 5:00 to 9:00 in the morning, 5:00 in the morning
4 till 9:00 in the morning. And then I -- before Dione came
5 over because we live in separate homes in the same
6 development and said that her car was not running. I told
7 her I would take a look at it when I got done working. So
8 I decided to take that car to the office at 5:00 a.m. On
9 my way back, I stopped and got it scanned. And when I got
10 home, she happened to have took my truck. And I own
11 Double DD Trucking and Double D Express, which Double D
12 Express was going back into service that day.

13 By the time I returned to the home, the new driver
14 and the truck were already at my house. And the stuff
15 that I needed was in my office in Lugoff, South Carolina.
16 So I went up to the office to ask Dione to give me the pin
17 number for the MC, which the DOT gives you when you get an
18 MC number. It's the only pin. If you lose it, you've got
19 to file for a new one; it takes time. And I knew she had
20 it, so we got in a little squabble and argument. And she
21 was sitting at my computer, so I asked her to get up so I
22 could do it myself, which she obliged me to do so.

23 As I was trying to get that piece of paper, the phone
24 rang and Heather, I don't know how to pronounce her last
25 name, Tevella, Tevello, answered the phone and was asking

DEAN DISTASIO - DIRECT EXAMINATION BY MR. MOORE

1 about a load going from Columbia, South Carolina to
2 Illinois. And I said that's for Double D Express and
3 Dione got very upset. I asked her three or four more
4 times if she could help me find the pin number. I knew I
5 had it in Columbia, but I didn't want to run there yet. I
6 had to get a fuel card, but I was trying to get everything
7 in motion so when I got there all we had to do was get a
8 fuel card and get him on the road.

9 As I was going through my computer, I noticed that
10 the rate confirmation came across, so I printed it off and
11 I got up to print it. I asked Dione one more time if she
12 would get me the paper. She said no. I grabbed the keys
13 to my truck and I was starting to walk towards the door,
14 which she ensued to block and said you're not taking the
15 truck, which I'm the only owner on the truck. I just
16 bought it three weeks in advance. It still had the paper
17 plate on it. Her car was left there.

18 As she's screaming up the hall to tell Heather Cain
19 to call the police, when Dione kind of moved her head one
20 way, I tried to jump over her leg and run for the front
21 door. There's only one way out of the office. There's
22 one door in the whole building out. And as I got about
23 halfway by her, she grabbed the back of my shirt and I
24 consisted to try to pull away from her and I ended up back
25 in the office. I called 911 to let them know what was

DEAN DISTASIO - DIRECT EXAMINATION BY MR. MOORE

1 going on.

2 At that time, Dione turned again, I tried to go for
3 the door and she grabbed the back of my neck and I kind of
4 drug her to the front door as I was on the phone with 911.
5 I told the 911 dispatcher, She's choking me, she's choking
6 me. He said, No, she's not -- or she said, No, I'm not,
7 I'm just holding him here. As she said that, she put both
8 feet on the exit door and yanked on my shirt and pulled me
9 backwards and that's when we hit the wall. When we hit
10 the wall, she let go of me and I ran for the front door.
11 And I was still on the phone with 911 till they got there.
12 I was standing outside waiting for them.

13 Q Did you ever grab her?

14 A Never touched her.

15 Q Did you hit her?

16 A Never touched her.

17 Q Did you kick her?

18 A Never touched her.

19 Q Now, when you got back outside, did you have the
20 keys?

21 A Yep.

22 Q Did you have the ability to leave the premises?

23 A Yep.

24 Q Did you?

25 A No.

DEAN DISTASIO - DIRECT EXAMINATION BY MR. MOORE

1 Q Why not?

2 A Because I didn't do nothing wrong.

3 Q Had you called the police?

4 A Yes, sir.

5 Q Did the police come?

6 A Yes, sir.

7 Q Did you meet the police officer in the parking lot?

8 A Yes, sir.

9 Q Did you tell the police officer what happened?

10 A Yes, sir.

11 (WHEREUPON, Defendant's Exhibit No. 4 was marked for
12 identification.)

13 BY MR. MOORE:

14 Q Dean, let me just show you what's been marked Defense
15 Exhibit No. 4. Now, this is the recording of your 911
16 call, correct?

17 A Yes, sir.

18 Q Now, we understand you called 911 from a cell phone,
19 correct?

20 A Yes, sir.

21 Q And we've learned recently that part of your call was
22 not recorded because the dispatch would have been
23 transferred to a dispatcher in one of two counties in
24 North Carolina, correct?

25 A Yes, sir.

DEAN DISTASIO - DIRECT EXAMINATION BY MR. MOORE

1 Q And what happens is they transfer the call to South
2 Carolina once they realize what's going on and where you
3 are, correct?

4 A Yes, sir.

5 Q The phone call you made that is on this CD is a fair
6 and accurate representation of, at least, part of the
7 telephone call that you made?

8 A Yes, sir.

9 MR. MOORE: Your Honor, I would offer Defense Exhibit
10 No. 4 into evidence, please.

11 MR. HOGGE: No objection.

12 THE COURT: Defense Exhibit No. 4 will be admitted
13 without objection.

14 (WHEREUPON, Defendant's Exhibit No. 4 was admitted
15 into evidence.)

16 MR. MOORE: Your Honor, if we could get just a little
17 bit of help publishing this to the jury, we would
18 appreciate it.

19 (WHEREUPON, the audiotape was played in open court.)

20 BY MR. MOORE:

21 Q All right. Dean, that's your voice with the 911
22 dispatcher, correct?

23 A Yes, sir.

24 Q And it's your testimony today that you were on the
25 phone with 911 even before this picks up, correct?

DEAN DISTASIO - DIRECT EXAMINATION BY MR. MOORE

1 A The whole time.

2 Q Okay. Now, why in the world would you call 911?

3 A Because I just wanted to get out of there with no
4 problems?

5 Q Now, the police who actually -- you talked with the
6 dispatcher, the jury can listen to the tape if they want
7 to, but, essentially, you told the police who got there
8 the very same thing you told the dispatcher, correct?

9 A Yes, sir.

10 Q Now, did anybody from the York County Sheriff's
11 Department or any other law enforcement agency ever ask
12 you for a written statement?

13 A No, sir.

14 Q Did anybody from the York County Sheriff's Department
15 ever take pictures of your shirt?

16 A No, sir.

17 Q Were you, in fact, bleeding?

18 A Yes, sir.

19 Q Did they take pictures of the bleeding?

20 A No, sir.

21 Q Did you grab your wife by the throat and pick her up?

22 A No, sir.

23 Q Were you trying to leave?

24 A Yes, sir.

25 Q Were you afraid? Did you hear me, Dean?

DEAN DISTASIO - DIRECT EXAMINATION BY MR. MOORE

1 A Yeah, I did. I really don't know how -- "afraid" is
2 a big word. I was just wanting to get out of there. I
3 just don't want the whole mess.

4 MR. MOORE: Your Honor, that's all I have.

5 THE COURT: Mr. Hogge, your witness.

6 MR. HOGGE: Yes, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. HOGGE:

9 Q You said you work there from 5:00 to 9:00 everyday?

10 A 5:00 to 9:00, sir.

11 Q 5:00 to 9:00, you work there every day?

12 A Monday through Friday.

13 Q Monday through Friday. You've been working there for
14 how long?

15 A I'm the owner, so if I don't go in, it's because I
16 didn't feel like it.

17 Q But you do work there from 5:00 to 9:00 every day?

18 A Yes.

19 Q Can you tell us how to pronounce Heather's last name?

20 A I don't know how to pronounce her last name. Cain or
21 the other one? I hired them both.

22 Q The other one.

23 A I hired them both. No, I don't.

24 Q Can you pronounce her name?

25 A No, I cannot.

DEAN DISTASIO -- CROSS-EXAMINATION BY MR. HOGGE

1 Q Where's your computer?

2 A In the office as you walk through, that room to the
3 far right.

4 Q Isn't that Heather's office?

5 A No.

6 Q You can't pronounce her last name?

7 A No.

8 Q You work there every day?

9 A Every day.

10 Q She stole your truck? Did Dione steal your truck?

11 Did I understand that correctly?

12 A I went to get my truck. I only had her car because
13 it wasn't running right and she asked me if I would find
14 out what was wrong when I got -- because I get out at 9:00
15 in the morning.

16 Q You say that she -- these car keys go to what
17 vehicle?

18 A To my Porsche, my Porsche Cayenne.

19 Q So you were trying to get your Porsche Cayenne keys
20 back from Dione?

21 A Yeah, because I had to go to Columbia.

22 Q So you weren't trying to get keys to a truck?

23 A That truck. It's a truck.

24 Q A Porsche truck?

25 A Yeah.

DEAN DISTASIO -- CROSS-EXAMINATION BY MR. HOGGE

1 Q Porsche Cayenne is a truck?

2 A Yes, sir.

3 Q It's not an SUV?

4 A It is an SUV, I'm sorry.

5 Q So she stole your Porsche Cayenne and you were just
6 going back to get your car back?

7 A No, sir. I took her car to get it scanned to tell
8 her what was wrong.

9 Q And what car is that?

10 A Her Mercedes R350.

11 Q Okay. So you took her Mercedes. When was that?

12 A That morning.

13 Q That morning?

14 A Yes, sir.

15 Q What time did this incident occur?

16 A I told you, when I left for the office at 5:00 a.m.

17 Q So 5:00 a.m., you take her Mercedes?

18 A Yeah, so I could stop by Auto Zone on my way back.

19 Q Okay.

20 A It was right down the road on my way home.

21 Q Okay. And what did you do with her Mercedes?

22 A I took it up to Advance and I got it scanned and
23 that's when they told me that the intake manifold was bad.
24 One of the codes came up and it said the intake manifold
25 was bad on it.

DEAN DISTASIO -- CROSS-EXAMINATION BY MR. HOGGE

1 Q These keys you're trying to get back are the keys to
2 your Porsche that she had?

3 A I didn't try to get them back. They were sitting on
4 my desk.

5 Q But we all heard you had to go through great effort
6 to get these keys?

7 A No, I was at my desk working on the computer, trying
8 to get stuff. I grabbed the keys and got up to leave.

9 Q November 5th around 12:00 noon?

10 A I think it was earlier than that. I think it was
11 more like 11:15 or so.

12 Q 11:15, you're just at work like any other day.
13 You're on your computer and you grab your Porsche keys to
14 go home?

15 A I own Double D Express and I went in to -- when you
16 get an MC number, they give you a pin number that lets you
17 access the FMCSA, which runs trucking. And we had the
18 company up and running at once. And me and Dione had a
19 copy of all that stuff, plus my office in Lugoff.

20 Q Okay.

21 A So I went up there to get a copy of that because I
22 had a driver for that company.

23 Q And I heard you about all that. You said you were at
24 your desk working like any other day and you grabbed your
25 keys to head out the door around 11:15?

DEAN DISTASIO -- CROSS-EXAMINATION BY MR. HOGGE

1 A I had already left. I only came up there to get that
2 piece of paper.

3 Q So you didn't come to get the car keys?

4 A I came to get the paper and the car to go into
5 Columbia.

6 Q Okay. So you went there trying to get car keys?

7 A To drop her car off and pick my truck back up and go
8 to Columbia.

9 Q To drop -- to get the Porsche?

10 A To drop her Mercedes back off. The Porsche, she has
11 nothing to do with it. It's in my name. I just bought
12 it, had a paper tag on it and all. And we're in
13 separation. We don't even live in the same house, sir. I
14 was doing her a favor by trying to find the problem with
15 her car.

16 Q Doing her a favor?

17 A Yes, sir.

18 Q When was the last time that you were there at the
19 office?

20 A I left about 9:00 that morning.

21 Q Were you there November 4th?

22 A Huh?

23 Q Were you there November 4th?

24 A Depends on --

25 Q The day before?

DEAN DISTASIO -- CROSS-EXAMINATION BY MR. HOGGE

1 A I don't remember. I might have been, probably.

2 Q But you work there everyday 5:00 to 9:00?

3 A If it was a weekday, most of the time, I'm there from
4 5:00 in the morning till 9:00 in morning. I might come in
5 a little late. Sometimes, I might not stay all that. It
6 depends, it depends on how it's going.

7 Q Okay. I believe you testified that you saw Heather
8 go to call the police and then you tried to jump over
9 Dione's leg?

10 A No. Dione yelled down the hall --

11 Q You didn't testify to that earlier?

12 A No.

13 Q Did you not testify that you saw someone calling the
14 police?

15 A No.

16 Q Okay.

17 A I did not.

18 Q And did you testify that you went to jump over her
19 leg?

20 A Yes, I did.

21 Q And did you see anyone calling 911?

22 A No.

23 Q Never saw it?

24 A Dione was yelling at Heather to call 911 as she was
25 trying to keep me in the office.

DEAN DISTASIO -- CROSS-EXAMINATION BY MR. HOGGE

1 Q Was that before or after you attempted to call 911?

2 A That was while I was calling 911.

3 Q So while you were calling 911, they were calling 911?

4 A Uh-huh.

5 Q Okay. And what all did you tell 911 again?

6 A I was on the phone most of time with them trying to
7 get to the door as I was dragging her because she had the
8 back of my shirt.

9 Q So you're dragging her?

10 A Uh-huh.

11 Q So she's on the ground?

12 A No, she's got a hold of my shirt pulling backwards
13 and I'm try to run towards the --

14 Q Her legs are just dragging across the floor?

15 A She's trying to pull the opposite way.

16 Q But were you dragging her?

17 A I can't see -- I don't think -- I mean, I'm going
18 forward, but not overly fast. She's trying to pull me one
19 way, I'm trying to pull the other.

20 Q But you testified you drug her to the door? Is that
21 wrong or right?

22 A She was holding onto my shirt. I won't say drug; I
23 just know she was holding onto my shirt the whole time I
24 was trying to --

25 Q So you're saying you were dragging her?

DEAN DISTASIO -- CROSS-EXAMINATION BY MR. HOGGE

1 A No, she was choking me.

2 Q She was choking you?

3 A Yeah.

4 Q When was she choking you?

5 A With my shirt.

6 Q She was choking you with your shirt?

7 A Yeah. She had me by the back and that's exactly what

8 I told the 911 caller, she's choking me. And she said --

9 I can picture it just as plain as yesterday. She said,

10 I'm not choking him, I'm just holding him as she put her

11 foot on the door and yanked as hard as she could backwards

12 and that's when we fell into the wall. And that's when I

13 got away from her. When we hit the wall, I caught my

14 balance.

15 Q You said you had both feet on the exit door while you

16 were still on the phone?

17 A She had her feet on the door.

18 Q Your feet or her feet?

19 A No, my feet were on the floor. She put her feet --

20 Q Both of her feet?

21 A Yeah, she just put her feet up on the door and pulled

22 my shirt back and we fell backwards into the wall.

23 Q So she's behind you with your -- holding your shirt?

24 A She's got the collar of my shirt and she put her foot

25 on the door and yanked me backwards.

DEAN DISTASIO -- CROSS-EXAMINATION BY MR. HOGGE

1 Q So she's on your back pulling your shirt and her feet
2 are on the exit door?

3 A One or two feet, I'm not sure, I wasn't paying that
4 close attention, but she yanked me backwards and I --
5 Dione is strong.

6 Q How much do you weigh?

7 A About 200.

8 Q And you're how tall?

9 A Six.

10 Q Okay. Did you slam her against the wall?

11 A No.

12 Q Did you call 911 inside of the business?

13 A Yes.

14 Q Did you call 911 after you got out?

15 A I was still on the phone with them.

16 Q You showed up and you tried to take her car keys?

17 A No. I showed up to get papers for Double D Express
18 and the load that was about to run and to get my truck so
19 I could go to Columbia.

20 Q Okay. How many entrances and exits are there to
21 Double DD Trucking?

22 A One.

23 Q There's only one?

24 A One.

25 Q There's no other door you could have gotten out of?

DEAN DISTASIO -- CROSS-EXAMINATION BY MR. HOGGE

1 A No.

2 Q When was the last time you went to Double DD
3 Trucking?

4 A I'm there almost every day during the week. Couple
5 times usually on the weekends, I'll pop my head in there.

6 Q Were you -- have you been in there the last few weeks
7 working?

8 A From here -- I mean, before I came here?

9 Q Not right now today, but in the last week or so, have
10 you been by, working every day?

11 MR. MOORE: Objection, Your Honor.

12 THE COURT: Sustained.

13 BY MR. HOGGE:

14 Q You still work there 5:00 to 9:00?

15 MR. MOORE: Objection, Your Honor.

16 THE COURT: Counsel approach.

17 (WHEREUPON, a bench conference was held in the
18 presence of the jury but not within the hearing of the
19 jury.)

20 BY MR. HOGGE:

21 Q Up to this point, November 5th, you'd been working
22 there from 5:00 to 9:00. Who all works at Double DD
23 Trucking?

24 A Me; my wife; Anthony Wilhelm; Heather Cain; Heather
25 Tevella; and Ian; my son, Johnny, and my son, Michael, and

DEAN DISTASIO -- CROSS-EXAMINATION BY MR. HOGGE

1 one of their friends, but I don't remember his name --
2 Chris.

3 Q And you work around them --

4 A I only work from 5:00 to 9:00. I'm there by myself
5 in the morning.

6 Q And did you threaten to fire Heather Cain when she
7 was talking to the police?

8 A No.

9 MR. HOGGE: Beg the Court's indulgence. Nothing
10 further from the State.

11 MR. MOORE: Nothing further from this witness. That
12 would be our case, Judge.

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

14 Ladies and gentlemen of the jury, we have reached the
15 end of the testimony in the case. We're are going to take
16 just a few minutes for a break so I can go over a couple
17 of legal matters with the attorneys. And we'll get you
18 back in here in about 10 minutes.

19 Mr. Bailiff, if you will.

20 (WHEREUPON, the jury exited the courtroom at 4:25
21 p.m.)

22 THE COURT: Okay. Are there specific -- I think I'll
23 use this opportunity for a charge conference -- specific
24 charges that either side request? I have a general charge
25 on jury responsibilities. I have a general charge on

1 direct and circumstantial evidence, a general charge on
2 reasonable doubt, a general charge on credibility of
3 witnesses, a general charge on presumption of innocence,
4 on criminal contempt. I have a general charge that --
5 charge, arrest, indictment, not evidence. Then we'll
6 charge the statutory language of criminal domestic
7 violence with the definitions. Then I have a conclusion
8 charge I give instructing them about the deliberations and
9 verdict form. Are there any other specific charges that
10 either party would request?

11 MR. HOGGE: The State would, Your Honor. I have this
12 instruction that comes from the Supreme Court's website as
13 to size and age and contentious language. For size and
14 age, it's one sentence, relative sizes, ages and weights
15 of the defendant and victim may be considered in deciding
16 the apparent and actual need in self-defense and the
17 amount of force needed. And then also, contentious
18 language, self-defense is not available to a person using
19 language which is so contentious that a reasonable person
20 would expect it to bring. And I just bring that up if
21 there is a self-defense charge.

22 THE COURT: Are you seeking a self-defense charge?

23 MR. MOORE: No, sir.

24 THE COURT: Mr. Hogge, if the Defense is not seeking
25 a self-defense charge, these are included in the standard

1 self-defense charge.

2 MR. HOGGE: Yes, Your Honor, I'd be fine with that.

3 THE COURT: Since the Defense is not requesting
4 self-defense, I will not charge that.

5 Anything further?

6 MR. MOORE: No, sir, Your Honor. Oh, we would renew
7 all of our motions.

8 THE COURT: So noted.

9 MR. MOORE: Thank you, sir.

10 THE COURT: So noted for the record. They're still
11 denied, but they're noted for the record.

12 You will open and you put up testimony, so you
13 will -- Mr. Moore will close and Mr. Hogge, you have the
14 opportunity to reply. Okay?

15 MR. HOGGE: Your Honor, just to be clear, when we
16 said I would open, are you requiring me to open on the
17 law?

18 THE COURT: Open on the law and then they would close
19 in full in reply. You have the burden of proof; you get
20 to talk twice.

21 MR. HOGGE: Yes, Your Honor.

22 (WHEREUPON, the jury entered the courtroom at 4:29
23 p.m.)

24 THE COURT: Ladies and gentlemen, we are now ready
25 for closing arguments.

1 MR. HOGGE: May it please the Court.

2 CLOSING ARGUMENT

3 BY MR. HOGGE:

4 Good evening. I want to echo Mr. Moore when he
5 thanked you for your jury service. It's very important.
6 We couldn't do this without you. We could not reach
7 justice at the end of this trial without all of you. I've
8 been asked to open on the law in the case. It's an
9 unusual situation where I can tell you about the law, but
10 I can't yet argue my case to you. I can't really argue my
11 case, how these elements apply to my case, so I'm just
12 going to instruct you on the law. If there's anything
13 that I say that is different from what the judge tells you
14 in this case, then listen to the judge. He's going to
15 instruct you on the law. This is kind of a preview of
16 what to be looking for during our closing arguments.

17 But the Defendant in this case is charged with
18 criminal domestic violence. In order to be guilty of
19 criminal domestic violence, one has to cause physical harm
20 to a household member. And the word "household member"
21 has several different definitions. One definition of
22 household member is someone that you live with. Another
23 is someone that you used to live with. Another is that
24 you share a child in common. And another is that you are
25 married.

1 In this situation, all of those requirements are met.
2 Obviously, Ms. Distasio qualifies as a household member
3 under the statute. Or I have there cause physical harm to
4 a household member or offer or attempt to cause physical
5 harm or injury to a person's own household member with
6 apparent present ability under circumstances reasonably
7 creating fear of imminent peril. You have probably heard
8 assault and battery before. This is essentially -- it is
9 essentially the assault portion. Battery is when you
10 actually cause physical harm to someone. Assault is the
11 fear of, you see it coming at you. So if I lined up and I
12 go to punch you, but I miss, I committed the offense of
13 assault. If I connect and I hit you, that is called the
14 battery. In the criminal domestic violence context, we
15 have this, which is essentially assault, and here, which
16 is essentially battery.

17 In this case, it's the State's contention that there
18 was a physical harm. We are not contending that this was
19 an issue of an assault. The State's presentation is that
20 a physical harm occurred, so you do not need to rely
21 really on this law in the paragraph. That is criminal
22 domestic violence. Essentially, you beat your wife is
23 essentially what it is. I went to law school three years
24 and that's what they taught me, criminal domestic
25 violence, you beat your wife. That's the law in this

1 case. He's going to go into more depth with you about the
2 things you can consider in this case about credibility,
3 but that is the law as it applies to criminal domestic
4 violence.

5 THE COURT: Mr. Moore.

6 CLOSING ARGUMENT

7 BY MR. MOORE:

8 It's so late in the game, some of y'all have shuffled
9 around, some of you haven't, but again, you know, here I
10 am again.

11 Mr. Hogge is right about the law. The second part of
12 that, really, you don't need to concern yourselves with.
13 The first part is unlawfully cause physical harm or injury
14 to a person's own household member. That's basically what
15 you've got to do today. You've got to determine what in
16 the world to do with this case.

17 And again, I cannot stress to you enough the burden
18 of proof. That is key. That is first and foremost in any
19 case, but especially a criminal case. This table right
20 here has the burden. It's called a burden because it is.
21 They're the ones who have to present the case. They're
22 the ones who have to convince you beyond a reasonable
23 doubt as to what happened. The question that you have to
24 ask yourselves when you go back to the jury room, ask each
25 other, is anybody sitting in this box here 100 percent

1 certain that they know what actually happened on that
2 particular morning in November? Are you certain? Do you
3 have any doubt in your mind as to what happened?

4 You have a law enforcement officer who seems like a
5 very nice lady. And she comes in and she basically tells
6 you the obvious, which I think is key. The person who is
7 supposed to be completely unbiased and objective, the
8 person wearing the uniform comes to court and tells you
9 from that witness stand that I did not see anything,
10 doesn't try to make any bones about it. Yes, ladies and
11 gentlemen, I did not see anything. I'm here to basically
12 keep everybody safe and make a criminal charge if need be,
13 but I did not see anything. I'm not even sure I know what
14 happened. All I can do is gather evidence so that 12, 13
15 total strangers can basically make a decision months down
16 the road.

17 And what does she give you? What does she do? Well,
18 she does the best she can you under the circumstances.
19 She didn't see it, so she doesn't know what happened. So
20 she starts asking questions of witnesses. One side says
21 he picks me up by the neck and chokes me, slams me, throws
22 me all around, but I did try to get his keys and they're
23 my keys. And I did block the door and I did pull his
24 shirt, but he's in the wrong and he threw me around.

25 Then you have Dean out there, who they talked to, who

1 says the complete opposite. I took my keys and I wanted
2 out of there. She's going nuts. I want to get out of
3 here. I called the police and I'm gone. She grabbed my
4 shirt. Two different stories.

5 And what do they give you? Well, they make a
6 decision as to who they believe the primary aggressor is
7 as if that has anything really to do with the elements of
8 the law. But what they do is they get statements. They
9 start building a case. I'm not saying this officer is a
10 bad person. Like I said, seemed like a very nice person.
11 But they start building a case and they start taking
12 statements from witnesses. Didn't get one from Dean.
13 They start taking pictures and they take pictures of this
14 lady's arm and her neck. I mean, you know, these
15 pictures, they take them on the day of. But did they take
16 any pictures of Dean? No, they didn't. Yet, in the
17 report, they document that there was a physical injury.
18 They document that his glasses were knocked off. They
19 document that a scuffle did, in fact, happen.

20 Now, one of the things that you have to do as jurors
21 is weigh in the stuff that is in front of you. But the
22 other thing you can do as a juror is consider the stuff
23 that is not in front of you, that maybe you would have
24 liked to have seen. Would it make a difference to you if
25 you saw a cut on Dean's arm? Well, he couldn't give you a

1 picture because he was in handcuffs. But would it make a
2 difference to you if you saw that? Would it make a
3 difference to you if you saw his shirt? Would it make a
4 difference to you if you saw his glasses? I don't know.
5 But they didn't put that in evidence. They didn't do it.

6 One of the other things that you can basically
7 consider is not only what is said from the witness stand,
8 but how they say it, how they say it. And one of the most
9 interesting witnesses was, I believe, their very first,
10 Heather Cain. She gets on the witness stand and, you
11 know, her body language to me was the most striking thing
12 about her, not what she said, but how she said it. It was
13 almost as if you start asking the questions and you break
14 it down into very, very simple terms. You know, what
15 happened? Did she do this? Did she not do this? It was
16 almost as if she was hesitant to give the answer. You
17 know where her loyalty lies, but she got up and had to
18 tell the truth. And she didn't want to answer those
19 questions and didn't want to say that her boss jumped in
20 front of the door and had him by the shirt and that Dean
21 was trying to leave. She didn't want to say those things.
22 She was very hesitant to answer those questions, but she
23 did. To her credit, she certainly did.

24 The other Heather, who, mind you, did not give a
25 statement to the police officers, interestingly enough,

1 considering I think from the evidence, of course, I don't
2 know. Of course, you don't know. But who knows what she
3 saw. But did she give a statement? Did the cops
4 basically make her confine herself to what happened when
5 it would have been freshest in her mind, or is the State
6 just going to call her months later and have her come in
7 and testify on something that happened months ago and give
8 you a story? Heather -- the other Heather is so all over
9 the board, I can't even tell you where to begin. I have
10 no idea sometimes what she's even talking about.

11 But look at Dione's testimony. I mean, even Dione,
12 she tells you that she would do anything to get those
13 keys. Then she comes off a little bit and says anything
14 within reason to get those keys. Folks, rest assured, I
15 mean, isn't it written all over the wall? These people
16 absolutely, positively despise each other. They hate each
17 other. Divorce is nasty and it's ugly. And it's just --
18 sometimes it just -- you know, I practiced a little family
19 court law and, you know, all of my mentors basically say
20 hey, you represent a family court client, you're going to
21 see good people at their worst.

22 And I think that's what you have here. But you have
23 a situation where something like car keys becomes a battle
24 to the death. And it's sad, but no criminal offense has
25 happened here. You have a lady who acted completely out

1 of line. And I'm not saying Dean is perfect, believe me.
2 You may not like him and he is not perfect. And
3 certainly, there may have been other ways for him to
4 behave himself, but that's neither here nor there. The
5 question is did he commit a crime? This woman jumped on
6 him, pulled his shirt and he's trying to leave.

7 Now, I only played a little bit of the 911 tape.
8 Dean says on the 911 tape everything that he says from the
9 witness stand. There's no need for me to keep you here
10 all afternoon listening to a 911 tape. But it's in
11 evidence. If you want to listen to it and you want to
12 listen to every minute of it, listen to it.

13 The reason I put it in was to show you what I've been
14 screaming pretty much all day, is that Dean called the
15 police, too. And somehow, somehow that is not a relevant
16 factor to the police officer, which I just don't
17 understand and, hopefully, you can't understand it either.
18 You got two people out there. A tussle happens. Neither
19 one of them wants to get in trouble, but they want to just
20 do battle with each other, so they both call the police.
21 Dean called the police. He didn't get in his car and run
22 to Columbia. He didn't hide. He didn't do anything but
23 stay where he was and call the police and welcome them to
24 come and investigate. And for that, here we are. But, at
25 least, I think that's telling. I think that's telling for

1 Dean. You know, what was he trying to do? Was he trying
2 to hide? Has he ever been trying to hide from you? Have
3 we tried to hide anything from you? No.

4 There's one other piece of evidence that we know
5 exists, which is the in-car camera from the police
6 officer. You only heard from one police officer. Where
7 is the other one? I'm not saying that that would make any
8 kind of huge difference in this case, but isn't it telling
9 that the other police officer who's involved in this case
10 and actually showed up first is not here today to tell you
11 what they saw? They're the first on the scene. They're
12 the first to even recognize that there's a problem. That
13 officer is not here. Officer Doody is not here. He never
14 testified and his in-car camera is not in evidence.
15 Perhaps, if it was, you might have seen Dean hanging out
16 in the parking lot, but, of course, we've already kind of
17 sort of established that. You would have to completely
18 just think Dean is a raging liar. But again, you know,
19 it's just -- it's a sad case.

20 Mr. Hogge, who's a very good friend of mine, a good
21 man, basically, says in law school he was taught CDV is
22 you beat your wife. Is that what you believe happened
23 here? Now, that's not the law, but that's what he said.
24 And the question is: Do you believe that? Do you
25 honestly believe that that's what happened? Or do you

1 believe that some adults acted like children on a day and
2 were probably a little bit out of line, both of them, but
3 that, perhaps, nobody committed a crime? But thank
4 goodness, the police were there to separate them.

5 But I will say this. And I say thank goodness the
6 police were there to separate them. I think it is
7 absolutely telling and important that you give great
8 weight to the fact that they, in fact, were separated when
9 the police got there. Dean's testimony has been that he
10 was trying to get away. There is testimony from Dione
11 that she tried to prevent him from getting away. There's
12 testimony that she pulled his shirt. What do you believe?
13 When you add all that up, it looks like, certainly, the
14 man is trying to leave and he ended up in the parking lot.
15 All he was trying to do is to avoid a very bad situation.

16 I'm going to stop myself now. I don't know if you
17 can appreciate how hard it is for me to do that in this
18 situation. Not because I'm just long-winded just for the
19 sake of it, but this is my client and he has been mine for
20 a very long time, since November. And here in a minute, I
21 have to turn him over to 12 total strangers and his fate
22 will be decided by you. It's a very difficult thing for
23 me to do. All I ask is that when you go back in that jury
24 room, you just ask yourself: Do I know for sure what
25 happened, or is there, at least, some sort of minimal

1 doubt in my mind as to what happened? I promise you,
2 folks, the law is that if you have even the slightest
3 little doubt about what happened and what the facts are,
4 you must find the Defendant not guilty. And I would very
5 much ask that you do that because it truly is the right
6 thing to do in this situation. Thank you so much.

7 THE COURT: Mr. Hogge.

8 MR. HOGGE: May it please the Court.

9 CLOSING ARGUMENT

10 BY MR. HOGGE:

11 I want to talk a little more about what I learned in
12 law school as Mr. Moore brings up. When I was in law
13 school, which wasn't too terribly long ago as you might be
14 able to tell, I had a law professor and I went out to
15 lunch with him and he gave me some advice. And he said,
16 Matthew, when you're trying a case and the law's on your
17 side, then argue the law. When the facts are on your
18 side, then argue the facts. And if you've got neither on
19 your side, then just do your best to confuse the hell out
20 of the jury. And that has been the Defense's strategy in
21 this case today. The law is clear. As I told you
22 earlier, criminal domestic violence, caused physical harm
23 to a household member.

24 You can see the picture. It's hard to see right now.
25 You can see this evidence that's lined up with her

1 testimony. You can see this picture taken the day of.
2 You've got a picture -- they look better than what we're
3 seeing right now -- and the picture that's taken the next
4 day. He caused physical injury to his wife. Instead,
5 what the Defense states is that this is just a nasty
6 divorce. No crime happened here. This isn't a crime. No
7 problem with slinging your wife against the wall and
8 choking her because it's a squabble. It's a nasty
9 divorce. Nothing to see here. That's not the case.

10 And so what the Defense did during cross-examination
11 of these witnesses, you saw him. You saw Heather get up
12 there and cry when she had to relive all of this. You'll
13 be able to use your own common sense and gauge who's
14 telling the truth in this case. We spent a lot of time
15 over little tiny details that he tries to trip them up on.
16 The Defense is trying to sling everything they can against
17 the wall to see what might stick.

18 We talked with Heather Cain. There was a long
19 discussion over who owns this business. Well, you
20 testified that he doesn't own it at all but this piece of
21 paper, and we had to listen to that for a while. We had
22 to listen to the cross-examination of, You never saw him
23 take it out of the purse, so was this the truth? You mean
24 to tell us that you never saw this? Is this a lie? What
25 she says in her statement, He took the keys out of Ms. D's

1 purse. She didn't say I saw him take the keys out the
2 purse. She's not lying. She heard that later on from
3 somebody and she put it in her statement because she heard
4 them arguing about the keys.

5 From Dione, we heard a lot about the ambulance. No
6 ambulance came out to see you. There was a lot of talk
7 about within reason you would do anything, trying to trip
8 her up. You would do anything within reason to safeguard
9 your child? And then it was difficult to listen to the
10 cross-examination of Heather Tevella. We talked about
11 wrestling for a long time. We talked about professional
12 relationships and went back and forth. The Defense is
13 trying to build a smokescreen.

14 I can give you obvious truths that this happened and
15 this is a crime. It is against the law to cause physical
16 harm to your wife. Just because your wife is arguing with
17 you does not give you the right to grab her by the face,
18 which was the first incident that happened here. And just
19 because your wife is arguing with you, that doesn't give
20 you the right to shove her into Heather Tevella. Just
21 because you're arguing, there's still a crime here. There
22 would have been a crime right there, shoving your wife
23 around.

24 And she did not want him to take her keys. She's
25 feisty, but does holding on somebody's shirt, holding on

1 someone's hand, does that give you the right to slam a
2 woman against the wall? To lay your hand on a woman, a
3 woman who's a foot shorter than you and a woman who is
4 your wife? Does the law give you that ability? Does the
5 law say that's fine, no crime here, you can do that?
6 She's holding onto your shirt, you can slam her against
7 the wall. No crime. That's not the case.

8 The 911 call, we talked a lot about -- let me go back
9 to holding on. She's testified that she held onto his
10 shirt, held onto his hand. There was an injury to his
11 hand. That just tells you this -- if she were really
12 injuring him, why is there an injury to his hand? If
13 you're trying to fight somebody, trying to injure someone,
14 that's an injury that's going to occur when you're
15 inflicting injury on someone else. If I'm fighting with
16 you, I'm not going to just (indicated). She was trying to
17 hold his keys and as he was slinging her against the wall,
18 she was trying to get him off of her.

19 The 911 call. You can hear criminal domestic
20 violence occur in this phone call. You will hear it.

21 (WHEREUPON, 911 audiotape was played in open court.)

22 MR. HOGGE: You hear her say -- or you hear Dean say,
23 Let go of me, rah, and you hear a thud. You might not be
24 able to hear on these speakers, you can get a laptop and
25 listen to it back there. But you hear Heather say he's in

1 there fighting, Let go of me, rah, and then Heather says
2 he just slammed her against the wall. And that is on
3 audio recording.

4 (WHEREUPON, 911 audiotape was played in open court.)

5 MR. HOGGE: Is she making this up? Did she just out
6 of the blue decide to make up that story that he slammed
7 her against the wall? Is this a big conspiracy by
8 everyone who works at Double DD Trucking?

9 We heard a lot about the law enforcement officer,
10 about the law enforcement officer didn't take photographs.
11 And I will admit to you that law enforcement could have
12 done more. As a prosecutor, I love for -- I always want
13 law enforcement to do more because I want as much evidence
14 as I can have. And they could have done more in this
15 case. But when you go out, you interview all these
16 witnesses and they all say the same thing, it was Dean, it
17 wasn't Dione.

18 I want to play you some of Dean's 911 call that we
19 listened to. Dean, by his own testimony, said he's
20 calling right at the same time that Heather is calling.
21 And while she's on, he heard someone was calling 911 and
22 he's in there on the phone. You heard his tone there, Let
23 go of me, yelling, raising his voice. But then he sees
24 them calling 911 and he's got to go on damage control. He
25 needs to call 911 as well. And then he changes his tone

1 like that.

2 (WHEREUPON, 911 audiotape was played in open court.)

3 MR. HOGGE: She broke my glasses, pulled my shirt off
4 me. Further on in that 911 call, we didn't -- the Defense
5 didn't play all of it, but in that 911 call, he goes on to
6 say:

7 (WHEREUPON, 911 audiotape continued to be played in
8 open court.)

9 MR. HOGGE: She threatened to break them, dude.
10 Earlier, she broke my glasses, pulled my shirt off. Now,
11 she's in there with my glasses. She threatened to break
12 them, dude. He's on damage control. He's got to get on
13 911. He sees other people on 911. Because he knows what
14 he just did, he slammed his wife against the wall.

15 We talk about a reasonable doubt. Mr. Moore wasn't
16 exactly correct when he talked to you about reasonable
17 doubt. He said that if you have any doubt as to what
18 happened, then you are to find him not guilty. That's not
19 technically true. If you have any doubt as to whether
20 criminal domestic violence occurred, you are to find him
21 not guilty. And he correctly stated that is the highest
22 burden in the legal system. Right here, we have beyond a
23 reasonable doubt. When we're in civil court, as he
24 stated, the standard is preponderance of the evidence.
25 It's like the scales of justice. If one scale tips a

1 little more than the other, then that's enough. Because
2 we're talking about criminal offenses here, the stakes are
3 higher, I have to prove to you more than that. But is not
4 beyond all possible doubt, scientific certainty,
5 mathematical certainty, absolute certainty. I don't have
6 to prove to you beyond any and all conceivable certainty.
7 We don't have certainty about anything about that in our
8 life. This isn't a math problem. We called you in here
9 to rely on your common sense to tell us what happened
10 here. That's why we don't spit these facts into a
11 computer and have it print out what happened. We rely on
12 your common sense, your own life, what you've seen. And
13 your common sense tells you that this is a crime. You
14 can't slam your wife against the wall. I don't care if
15 she's holding onto the back of your shirt.

16 I'm going to ask you to find the Defendant guilty
17 because he caused physical harm to his wife. A crime did
18 happen here and it does not matter that they're going
19 through a nasty divorce. Just because they're going
20 through a nasty divorce does not give him the right to do
21 what he did. I'm sure she argued and held onto his shirt,
22 but that didn't give him the right, that did not negate
23 the crime that he inflicted upon her that day.

24 Thank you for being here. I'm sure you're tired of
25 listening to me, but your job is important. It's

1 important that justice is done here today for Heather
2 Tevella, for Heather Cain, for Dione Distasio. And I ask
3 you find Dean Distasio guilty. Thank you.

4 JURY CHARGE

5 Ladies and gentlemen, we have come to the point in
6 the trial where I instruct you on the law. These
7 instructions will be somewhat lengthy. They will be in
8 three parts. First, the instructions on general rules
9 that define and control the jury's duties. Second, the
10 instructions that state the rules of law you must apply,
11 what the State must prove in its case. Third, some rules
12 for your deliberations.

13 The general rules begin with your duty as jurors. It
14 is your duty to find the facts from all of the evidence in
15 the case. To those facts, you must apply the law as I
16 give it to you. You shall not be concerned with what the
17 law should be, but what it is, and you must not be
18 influenced by any personal likes or dislikes, opinions,
19 prejudices, or undue sympathy. This means that you must
20 decide the case solely on the evidence before you in
21 accordance with the law, the very thing you promised to do
22 in an oath at the beginning of the trial.

23 It is your responsibility and yours alone to
24 determine the facts of this case. I would therefore
25 charge you that if during the course of this trial or

1 during this charge you have been given or left with the
2 impression or feeling that I have a personal feeling about
3 the facts of this case or that I favor one side or the
4 other, I would specifically instruct you to disregard that
5 impression. Under our Constitution, I am not allowed to
6 have an opinion as to the facts of the case. You should
7 not be influenced by any objections or the Court's ruling
8 on them. You and you alone are the judges of the facts.
9 You determine the facts by evaluating or weighing the
10 evidence that you have heard during the trial.

11 What is evidence? Evidence is the sworn testimony
12 from witnesses and any exhibits that have been entered
13 into evidence. The statements by the attorneys are not
14 evidence. What they said in open statements, closing
15 arguments and at other times is intended to help you
16 interpret the evidence, but it is not evidence.

17 There are two types of evidence which are generally
18 presented during a trial, direct evidence and
19 circumstantial evidence. Direct evidence directly proves
20 the existence of a fact and does not require deduction.
21 Circumstantial evidence is proof of a chain of facts and
22 circumstances indicating the existence of a fact. Crimes
23 may be proven by circumstantial evidence. The law makes
24 no distinction between the weight or value to be given to
25 either direct or circumstantial evidence. However, to the

1 extent the State relies on circumstantial evidence, all
2 the circumstances must be consistent with each other and
3 when taken together point conclusively to the guilt of the
4 accused beyond a reasonable doubt. If the circumstances
5 merely portray the Defendant's behavior as suspicious, the
6 proof has failed. The State has the burden of proving the
7 Defendant guilty beyond a reasonable doubt. The burden
8 will rest with the State regardless of whether the State
9 relies on direct evidence, circumstantial evidence, or
10 some combination of the two.

11 What is a reasonable doubt in the law? A reasonable
12 doubt is the kind of doubt that would cause a reasonable
13 person to hesitate to act. Some of you may have served as
14 jurors in civil cases where you were told that it is only
15 necessary to prove that a fact is more likely true than
16 not true, such as by the greater weight or a preponderance
17 of the evidence. In criminal cases, the State's proof
18 must be more powerful than that. It must be beyond a
19 reasonable doubt. Proof beyond a reasonable doubt is
20 proof that leaves you firmly convinced of the Defendant's
21 guilt.

22 There are very few things in this world that we know
23 with absolute certainty. And in criminal cases, the law
24 does not require proof that overcomes every possible
25 doubt. If, based on your consideration of the evidence,

1 you are firmly convinced that the Defendant is guilty of
2 the crime charged, then you must find the Defendant
3 guilty. On the other hand, if you think there is a real
4 possibility that the Defendant is not guilty, then you
5 must give the Defendant the benefit of the doubt and find
6 him not guilty.

7 A reasonable doubt may arise from the evidence or
8 from a lack of evidence. The Defendant is entitled to
9 every reasonable doubt that may arise in the case. If,
10 upon any issue of fact essential to a conviction and a
11 verdict of guilty of an offense, if you have any
12 reasonable doubt as to how that issue should be resolved,
13 it is your duty to resolve that issue in favor of the
14 Defendant. Suspicion, however strong, is not enough to
15 sustain a conviction. The evidence presented by the State
16 must be substantial evidence that tends to prove the guilt
17 of the Defendant beyond a reasonable doubt.

18 As judges of the facts, you are the sole judges of
19 the credibility, that is the believability of the
20 witnesses who have testified in this case. In determining
21 their credibility, you may take into consideration many
22 things, such as the appearance and manner of a witness on
23 the stand, sometimes referred to as the demeanor of the
24 witness. Was the witness able to see, hear or know the
25 things about which the witness testified? How well was

1 the witness able to recall and describe those things? Did
2 the witness have a cause or reason to be biased or
3 prejudiced in favor of the testimony he or she gave? How
4 reasonable was the witness's testimony considered in light
5 of the evidence of the case? Was the witness's testimony
6 contradicted by what the witness had said or done at
7 another time or by the testimony of other witnesses or
8 other evidence? These are just some of the factors you
9 may consider in deciding whether to believe testimony.

10 As jurors, you have a right to believe all of the
11 testimony of a witness or none of the testimony of a
12 witness. You have a right to believe a portion of the
13 testimony of a witness and discard the rest. You may
14 believe the testimony of one witness over the many or the
15 many over the one. Most certainly, you do not determine
16 the matter of credibility or believability by counting up
17 the number of witnesses who may have testified on behalf
18 of the parties in this case. Your sole objective is to
19 find the truth. It does not matter whether the truth
20 comes from a witness for the State or a witness for the
21 Defendant.

22 The Defendant has pled not guilty to this charge and
23 that plea puts the burden on the State to prove the
24 Defendant guilty. A person charged with committing a
25 criminal offense is never required to prove himself

1 innocent. I charge you that it is an important rule of
2 the law that a defendant in a criminal trial no matter
3 what the seriousness of the charge may be will always be
4 presumed to be innocent of the crime for which the charge
5 was issued unless guilt has been proven by evidence
6 satisfying you of that guilt beyond a reasonable doubt.

7 The presumption of innocence does not end when you
8 begin your deliberations, but it accompanies the Defendant
9 throughout the trial until you reach a verdict of guilt
10 based on evidence satisfying you of that guilt beyond a
11 reasonable doubt. The presumption of innocence is like a
12 robe of righteousness placed about the shoulders of the
13 Defendant, which remains with the Defendant until it has
14 been stripped from the Defendant by evidence satisfying
15 you of the Defendant's guilt beyond a reasonable doubt.
16 Presumption of innocence is not merely a legal theory, it
17 is not just a legal phrase. It is a substantial right to
18 which every defendant is entitled and unless you, the
19 jury, are satisfied from the evidence of the Defendant's
20 guilt beyond a reasonable doubt.

21 In order to establish criminal liability, criminal
22 intent is required. For example, the mental state
23 required to be proven by the State for a particular crime
24 might be purpose, intent, knowledge, recklessness, or
25 criminal negligence. Criminal intent must be proven by

1 the State beyond a reasonable doubt. Criminal intent is
2 always a matter that must be determined by the jury from
3 the circumstances surrounding the situation.

4 There is no way to prove intent to a mathematical
5 certainty. There is no way medical science can dissect a
6 person's brain and determine what the person had in mind,
7 so the law says that criminal intent may be inferred from
8 the circumstances shown to have existed. This is how you
9 make a determination of whether or not an element
10 requiring intent was present. It is not necessary to
11 establish intent by direct and positive evidence, but
12 intent may be established by inference in the same way as
13 any other fact by taking into consideration the acts of
14 the parties and all of the facts and circumstances of the
15 case.

16 Criminal intent is a mental state, a conscious
17 wrongdoing. It is up to you to determine what the
18 Defendant intended to do based on the circumstances shown
19 to have existed. Criminal intent can arise from action or
20 from a failure to act. It may arise from negligence,
21 recklessness or an indifference to duty or to consequences
22 that is considered by the law to be equivalent of criminal
23 intent.

24 The indictment charges the Defendant with criminal
25 domestic violence. I remind you that the fact that the

1 Defendant was arrested, charged, and indicted in this case
2 is not evidence in this case and cannot be considered by
3 you as evidence of guilt in this case, nor does it create
4 any presumption or inference of guilt. The document is
5 simply the formal written instrument which contains the
6 charge made against the Defendant. It is the formal
7 document by which the case is brought into the Court.

8 The Defendant is charged with criminal domestic
9 violence. The State must prove beyond a reasonable doubt
10 that the Defendant caused physical harm or injury to a
11 member of the Defendant's own household or that the
12 Defendant offered or attempted to cause physical harm or
13 injury to a member of the Defendant's own household with
14 the apparent present ability to cause harm or injury under
15 circumstances reasonably creating a fear of imminent
16 danger -- or imminent danger. A household member is a
17 spouse, a former spouse, a person with whom the Defendant
18 has a child in common, and a male or female who are
19 cohabiting or have formally cohabited.

20 Ladies and gentlemen, we're almost to the point where
21 I send you to the jury room and you can begin your
22 deliberations. This has been a long instruction on the
23 law, but I want to leave you with some final thoughts.
24 You were chosen as jurors because both sides believed that
25 you could be fair and impartial in deciding this case. I

1 instruct you to make use of your life experiences, your
2 good common sense and your sense of logic and reason in
3 evaluating the evidence in this case. You're not
4 partisans or advocates for either side. You have no
5 friends to reward nor any enemies to punish. You are the
6 judges of the facts. Your sole interest is to find the
7 truth from the evidence presented in this case. Be
8 courteous with one another, listen to the views of your
9 fellow jurors, take the amount of time necessary for you
10 to thoroughly evaluate the evidence. This case is
11 important to both sides and this is their only day in
12 court.

13 So Mr. Foreman, I'm going to go over the verdict form
14 with you. The verdict form states indictment
15 number 2015-GS-46-01730, we, the jury, unanimously find on
16 indictment number, and it gives the number again, that the
17 Defendant, Dean Guisseppi Distasio, is, and it gives you
18 two options. The first option is guilty of criminal
19 domestic violence or not guilty. Place no significance on
20 the order in which the choices appear on the verdict form.
21 One simply had to go on the page before the other. Your
22 verdict must be unanimous. I am going to send you to the
23 jury room now. Do not begin your deliberations until I
24 send the verdict form back with the exhibits.

25 So Mr. Bailiff, if you would take our jury to the

1 jury room.

2 Mr. Foreman, when you reach a verdict, you'll need to
3 sign above line.

4 THE FOREMAN: Sure. Yes, sir.

5 (WHEREUPON, the jury exited the courtroom at 5:09
6 p.m.)

7 THE COURT: Any exceptions to the jury charge from
8 the State?

9 MR. HOGGE: None from the State.

10 THE COURT: Any exceptions from the Defense?

11 MR. MOORE: No, sir, Your Honor. Thank you.

12 THE COURT: Okay. Let's get our verdict form and
13 make sure we have all our exhibits. If the attorneys
14 would come forward and count the exhibits and make sure
15 they're all there. We have all our exhibits and our
16 verdict form?

17 MR. HOGGE: Yes, Your Honor.

18 THE COURT: Mr. Bailiff, if you would take the
19 exhibits and the verdict form, whichever one wants to do
20 it.

21 Madame Bailiff, if you will take it to the jury room
22 and instruct them they may begin their deliberations and
23 send the alternate back out.

24 THE BAILIFF: Yes, sir, Your Honor.

25 (WHEREUPON, the jury begins deliberations at 5:11

1 p.m.)

2 THE COURT: Mr. Alternate, you have served your time
3 as a juror. Unfortunately, you can't take part in the
4 deliberations since you were an alternate. If you wish to
5 go home, you would be released now. If you wish to stay
6 and just see how it turns out, you're welcome to have a
7 seat in the gallery and stay, that's entirely up to you.
8 But the Court thanks you for your service.

9 ALTERNATE JUROR: Thank you, sir.

10 THE COURT: We'll now go into recess.

11 (WHEREUPON, a recess was taken at 5:12 p.m. awaiting
12 a verdict.)

13 THE COURT: Gentleman, we have a question from the
14 jury that states, Can we have a playing device to listen
15 to the Exhibits 1 and 4?

16 So do we have a computer?

17 MR. HOGGE: Yes, Your Honor. We have a jury laptop
18 that I can run and get right now. We can just hand it
19 back to them.

20 THE COURT: Let Mr. Moore see it before you take it
21 back there. My only concern in these situations where a
22 computer is sent back to the jury, I had a solicitor's
23 office from another county send one back that had all
24 kinds of files and things from other cases on it. Is this
25 a clean computer?

1 MR. HOGGE: It's a clean laptop, yes, Your Honor.

2 I'll show it --

3 THE COURT: Show it to Mr. Moore before you...

4 Let the record reflect that a computer has been sent
5 back to the jury for viewing the exhibits and that has
6 been inspected by both sides. We'll now go back off the
7 record. Thank you.

8 (WHEREUPON, a recess was taken at 5:37 p.m. awaiting
9 a verdict.)

10 THE COURT: We have another question, a two-part
11 question, Can we please see the police report? And second
12 question is, The laptop will not play the CDs. Is there
13 another laptop we can use?

14 My standard answer to a question of the nature of
15 number 1 is that the jury must base their decision on what
16 is currently -- the evidence currently in the record and
17 the Court can't comment on the facts of the case. That's
18 my standard response when I get those questions. And the
19 only thing I know is if the computer won't play the CD --

20 MR. HOGGE: We have a second laptop, Judge, we could
21 try that.

22 THE COURT: I --

23 MR. HOGGE: Or we can just bring them in.

24 THE COURT: I think the thing to do is just bring
25 them out here and let them hear it in the courtroom. We

1 know it works here in the courtroom and it will save us
2 some time if the second one doesn't work.

3 All right. Let's bring our jury in. And make sure
4 that exhibit is brought back out here.

5 THE BAILIFF: Yes, sir, Your Honor.

6 (WHEREUPON, the jury entered the courtroom at 5:54
7 p.m.)

8 THE COURT: Okay. Mr. Foreman, I am in receipt of
9 your questions. As to the first question about additional
10 evidence, the Court cannot comment on the facts of the
11 case. You will have to base your decision on the evidence
12 currently in the record.

13 As to the second question about the inability of the
14 machine sent to the jury room to play the CDs, I just had
15 you brought back out here so you can hear them in the
16 courtroom. We have another machine that we're not certain
17 that it will work on that, so rather than take that risk
18 and wasting more time, we're just going to do it out here.

19 THE FOREMAN: Thank you.

20 MR. HOGGE: For the record, I'm going to play
21 Exhibit -- Defense Exhibit 4 and State's Exhibit 1.

22 THE COURT: Do them in the order -- they asked for 1
23 and 4. Play 1 first and then 4.

24 MR. HOGGE: Yes, Your Honor.

25 (WHEREUPON, State's Exhibit No. 1 was played for the

1 jury in open court.)

2 MR. HOGGE: Beg the Court's indulgence, the computer
3 is taking a while to spit that CD out.

4 Your Honor, for the record, that was State's
5 Exhibit 1. I'll now play Defense Exhibit 4.

6 Judge, can we briefly take a recess so I can get in
7 touch with the IT people? I apologize.

8 THE COURT: Mr. Bailiff, would you take the juror to
9 the jury room?

10 Ladies and gentlemen, I appreciate your patience.
11 We'll get this rectified as quickly as possible.

12 (WHEREUPON, the jury exited the courtroom at 6:06
13 p.m.)

14 (WHEREUPON, an off-the-record discussion ensued.)

15 THE COURT: All right. Let's get them back and let's
16 try this again. They have another question.

17 (WHEREUPON, the jury entered the courtroom at 6:12
18 p.m.)

19 THE COURT: Ladies and gentlemen of the jury, we
20 think we have found a solution to our technical problem.
21 My law clerk is going to play it on her computer with a
22 microphone. If anyone can't hear it, raise your hand and
23 let me know, but I think everyone should be able to hear
24 it with the microphone.

25 (WHEREUPON, Defendant's Exhibit No. 4 was played for

1 the jury in open court.)

2 THE COURT: Okay. All right. All right,
3 Mr. Foreman, I'll going to ask you to take the jury back
4 to the jury room and resume your deliberations. And I
5 will also mention I had an inquiry from another juror
6 about notifying your family about being late. That was
7 given to the clerk's office. If any other jurors need
8 information be given to their family about the late hour,
9 the clerk can do that.

10 THE FOREMAN: Thank you, Your Honor.

11 (WHEREUPON, the jury exited the courtroom at 6:16
12 p.m.)

13 THE COURT: We'll be back in recess.

14 (WHEREUPON, a recess was taken at 6:16 p.m. awaiting
15 a verdict).

16 THE COURT: All right. Mr. Bailiff, would you get
17 our jury for us, please.

18 (WHEREUPON, the jury entered the courtroom at 6:21
19 p.m.)

20 VERDICT

21 THE COURT: Mr. Foreman, has the jury reached a
22 verdict?

23 THE FOREMAN: We have, Your Honor.

24 THE COURT: Would you hand the verdict to the
25 bailiff?

1 Okay. Madame Clerk, would you publish the verdict?

2 THE CLERK: State of South Carolina v. Dean Guisseppi
3 Distasio under indictment 2015-GS-46-01730 for criminal
4 domestic violence, we, the jury, unanimously find the
5 Defendant is guilty of criminal domestic violence, signed
6 by the Foreperson, dated today's date.

7 If this is your verdict, so say you all by raising
8 your right hand.

9 Let the record show all jurors affirmed this verdict.

10 THE COURT: Anything from the State before I release
11 them?

12 MR. HOGGE: Nothing from the State?

13 THE COURT: Anything from the Defense before I
14 release them?

15 MR. MOORE: Not at this time, Your Honor.

16 THE COURT: Ladies and gentlemen, I thank you for
17 your service. Jury duty is an important civic duty. We
18 couldn't function as a system without our citizens being
19 willing to serve as jurors. You are now dismissed.

20 Mr. Foreman, I need to see you to conform the
21 indictment.

22 But the rest of you are dismissed.

23 And they're free for the week?

24 THE CLERK: They're free for the week.

25 THE COURT: This concludes your jury service for the

1 week. I've been informed this is the last jury trial. We
2 have nonjury matters the rest of the week, so this will
3 satisfy your jury service. Thank you again for your
4 service.

5 The clerk informs me your checks and job excuses will
6 go out in the mail tomorrow. If someone doesn't receive
7 theirs, they can contact the clerk's office.

8 Thank you, Mr. Foreman.

9 (WHEREUPON, the jury was released at 6:23 p.m.)

10 SENTENCE

11 THE COURT: Mr. Distasio, would you please come
12 forward?

13 MR. MOORE: Judge, I would renew my motions. I just
14 read the rules on post-trial motions. I believe I have 10
15 days following post-trial motions, but I would ask just
16 out of an abundance of caution to basically have that time
17 period to do that, but I would again renew my motion.

18 It seems that the jury placed some -- we obviously
19 don't know what was the deciding factor, but they, at
20 least, asked to hear the audio again, which leads me to
21 just question, you know, why. And I wish -- truly wish
22 that I was able to show them the audio of my client
23 standing in the business having the dispute with his wife.
24 And again, only until yesterday did I learn there was even
25 a 911 audio of my client calling, so I would renew those

1 motions.

2 But other than that, Judge, it's just a bad
3 situation. This stings real bad. Dean and his wife have
4 just been in a nightmare domestic situation for a very
5 long time now. It's just constantly one thing after the
6 other. Nobody is an angel in this situation no matter
7 what the verdict is, but we are here and my client would
8 ask -- he's asked me to ask you if there's any
9 possibility -- he does run the business, if there's any
10 possible way if prison is what happens, which I think you
11 have to do, we'd ask permission to possibly turn ourselves
12 in at a later date. But I've told my client that's
13 probably not going to happen. But that's all I have.

14 THE COURT: Do I have a sentencing sheet?

15 THE CLERK: I haven't gotten one.

16 THE COURT: Mr. Hogge, what is the prior record?

17 MR. HOGGE: Yes, Your Honor. Your Honor, the
18 Defendant's prior record, March 14th of 1989, he was
19 convicted of larceny over a hundred dollars; March 1990,
20 delivering/manufacturing cocaine is how it's listed; 1991,
21 larceny; 2000, delivering/manufacturing marijuana.
22 Everything that I've been mentioning so far is out of
23 Minnesota. In 2002, a DUI third; in 2003, criminal
24 domestic violence out of Minnesota; 2014, possession of
25 marijuana; in 2004, driving under suspension; in 2009, he

1 committed, in 2010, he pled guilty to criminal domestic
2 violence first offense out of Kershaw County. And then
3 November of 2012, committed another criminal domestic
4 violence. He pled guilty to that on April 2nd of 2013.

5 THE COURT: Was that here in York County?

6 MR. HOGGE: That was here in York County, yes, sir,
7 Your Honor. So this is his fourth actual CDV.

8 THE COURT: Were the 2010, 2013, was this the same
9 victim?

10 MR. MOORE: Yes, sir.

11 THE COURT: How old are you, Mr. Distasio?

12 THE DEFENDANT: Forty-five.

13 THE COURT: How far did you go in school?

14 THE DEFENDANT: I graduated. I've been self-employed
15 since I was 13, Your Honor.

16 THE COURT: You have a high school diploma?

17 THE DEFENDANT: Yes, sir. And Your Honor, may I
18 speak at all?

19 THE COURT: Yes, sir. I'll going to give you an
20 opportunity to tell me...

21 THE DEFENDANT: I have 15 employees right now and I
22 really did not expect to go to jail. If I could get a
23 couple of days so I can get my business in order. I have
24 another business Double D Express with nine trucks of its
25 own, three employees in the office and nobody really knows

1 what to do. I need to give people access to banks so
2 everybody gets paid and all that stuff. If I could get a
3 couple days to do that and turn myself in, that would be
4 wonderful.

5 THE COURT: Each party, Mr. Hogge and Mr. Moore, you
6 each agree that this carries a maximum sentence of five
7 years?

8 MR. HOGGE: Yes, Your Honor, carries a minimum of one
9 year.

10 THE COURT: Minimum of one, maximum of five?

11 MR. MOORE: I believe this is under the old law if
12 that's the old law.

13 THE COURT: All right. The law changed in June,
14 didn't it, June 30th of this year?

15 MR. MOORE: Yes, sir.

16 THE COURT: All right. I stated before, domestic
17 actions can be rough. They can involve a lot of
18 contentious behavior. I'm very concerned that the same
19 victim is all of these. I heard the evidence in the case.
20 I am -- I will note that the level of violence in this
21 case involved -- there are some mitigating factors.

22 Certainly, Mr. Moore, as you were able to bring out
23 in the case, there was some violence on the part of the
24 other side, but the jury has convicted your client as
25 being the primary aggressor in the situation. And the law

1 really doesn't give me any leeway. There's a mandatory
2 minimum sentence, so there's nothing further.

3 The Defendant will be confined to the Department of
4 Corrections for a term of five years, that will be
5 suspended on the service of one year followed by probation
6 for five years. Conditions of probation will be that he
7 complete the batterer's treatment program.

8 MR. MOORE: Yes, sir.

9 THE COURT: Good luck to you, sir.

10 MR. MOORE: Thank you, Judge.

11 (Court's Exhibits 3-6 were marked.)

12 (Whereupon, the proceedings were concluded.)
13
14
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YORK COUNTY SHERIFF'S OFFICE

Incident Report No: 2014-36023

Voluntary Statement

Name: Heather Cain

DOB: _____

189

Phone # _____

Address: _____

Phone # _____

City: _____

State: _____

Zip: _____

VOLUNTARY STATEMENT

I, Heather, know and understand my rights. Having decided to answer questions at this time, I now make the following statement.

- 1) I dialed 911 as soon as I heard Diana get
 2) loaded. He took the keys out of Mrs. D's purse
 3) she tried to get them he slung her around then
 4) up against the wall. He was doing this while
 5) I was on the phone with 911. As it was
 6) he was yelling and slinging her around I was
 7) telling the dispatcher what was going on.

8) _____
 9) _____
 10) _____
 11) _____
 12) _____
 13) _____
 14) _____
 15) _____
 16) _____

11/5/14
SCF
12:10pm

The statement above, consisting of 1 page(s), is made of my own free will. No one has threatened me in any way or promised me special treatment to cause me to make this statement. I am signing my name in the space below to show that it is my statement and it is the truth.

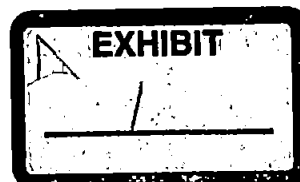
Signed: _____

Date: 11/5/14Time: 12:02

Witness: (Print) _____

Page 1 of 1

Witness: (Sign) _____



Voluntary Statement

Name: Dione DistasioDOB: 9:12Address: 9State: Zip:

VOLUNTARY STATEMENT

I, Dione Distasio, know and understand my rights. Having decided to answer questions at this time, I now make the following statement.

- 1) I was at work at my desk and my husband
2) took my purse and my keys at that point I
3) tried to grab the keys and he pushed me off
4) I went to the front door and tried to block it
5) that's when he pushed me into the wall and I
6) ~~we~~ had one of my employees called 911. Also there
7) were scratches on my neck from him trying to
8) get me away from the door

9)

10)

11)

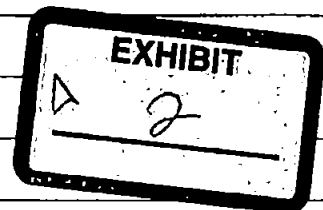
12)

13)

14)

15)

16)



The statement above, consisting of 1 page(s), is made of my own free will. No one has threatened me in any way or promised me special treatment to cause me to make this statement. I am signing my name in the space below to show that it is my statement and it is the truth.

Signed: Dione DistasioDate: 11/5/14Time: 12:01 p.m.Witness: (Print) J. FoxworthPage 1 of 1Witness: (Sign) [Signature]

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

Direct Indictment
DOCKET NO. 2015-GS-46-01730

WITNESSES

The State of South Carolina

County of York

Witnessing Officer: T. Hager

YCSO

ARREST WARRANT NUMBER

Direct

COURT OF GENERAL SESSIONS

JUNE 18, TERM 2015

ACTION OF GRAND JURY

TRUE BILL

Shirley Sanders
Foreperson of Grand Jury
Date: 6/18/15

VERDICT

Guilty

Barry Knuth
Foreperson of Grand Jury
Date: 06/30/15

THE STATE

VS.

DEAN GUISEPPI DISTASIO

INDICTMENT FOR

CRIMINAL DOMESTIC VIOLENCE 3RD

SC Code: § 16-25-0020(A)
CDR Code: 3055

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.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

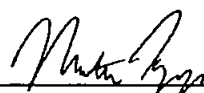
INDICTMENT

At a Court of General Sessions, convened on June 18, 2015, the Grand Jurors of York County present upon their oath:

CRIMINAL DOMESTIC VIOLENCE 3RD

The defendant, Dean Guisseppi Distasio, did on or about November 5, 2014, in York County, cause physical harm to or offer or attempt to cause physical harm to Dione Anita Distasio, a household member, with apparent present ability under circumstances reasonably creating fear of imminent peril, such defendant having been convicted of criminal domestic violence on two or more prior occasions within the prior ten years, all in violation of Section 16-25-0020(A), *Code of Laws of South Carolina* (1976, as amended).

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



T. MATTHEW HOGGE
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

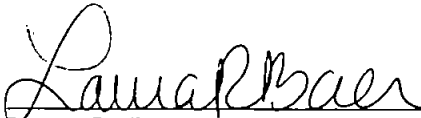
Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised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

Respectfully Submitted,

RECEIVED

FEB 13 2017

SC Court of Appeals



Laura R. Baer
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 13th day of February, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable Daniel D. Hall, Circuit Court Judge

RECEIVED

FEB 13 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DEAN DISTASIO,

APPELLANT

APPELLATE CASE NO. 2015-002130

CERTIFICATE OF SERVICE

I certify that a copy of the Record on Appeal in the above-referenced case has been served upon David Spencer, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 13th day of February, 2017.


George Vlasis
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 13th day of February, 2017.

 (L.S.)
Notary Public for South Carolina
My Commission Expires July 3, 2023.