

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Honorable Kristi Lea Harrington, Circuit Court Judge

RECEIVED
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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

KEVIN DANIEL DRIGGERS,

APPELLANT

APPELLATE CASE NO 2017-000565

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA) FAMILY COURT
2 COUNTY OF BERKELEY) CASE NO.
3 2016-GS-08-1474-1476
4 STATE OF SOUTH)
CAROLINA,)
5) Transcript of Record
Plaintiff,)
6)
vs.)
7) Date: February 10, 2017
KEVIN DANIEL DRIGGERS,)
8)
Defendant.
9

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13 B E F O R E:

14 THE HONORABLE KRISTI LEA
HARRINGTON

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19 Denise J. Lauder, RPR

20 Ninth Judicial Circuit

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I N D E X

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WITNESS/EXAMINATION

SHAWNDA WINDER

DIRECT EXAMINATION BY MS. SIGAL

CROSS-EXAMINATION BY MR. CHURCH

EXAMINATION BY THE COURT

CROSS-EXAMINATION BY MR. CHURCH

SHAWNDA WINDER

DIRECT EXAMINATION BY MS. SIGAL

CERTIFICATE OF REPORTER

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E X H I B I T S

Page/Line

PLF. EXH. 1 - 26, Photographs

PLF. EXH. 1, 2, 3, 4, 5, 13, 14, 18, 20,

22, 23 in evidence

37 8
46 12

SHAWNDA WINDER - DIRECT EXAM BY MS. SIGAL

1 (The following proceedings were held
2 February 10, 2017, Berkeley County General Sessions
3 Court, Moncks Corner, South Carolina, in re State
4 v. Driggers, at 11:18 a.m.)

5 THE COURT: Mr. Church, you are ready on
6 Mr. Driggers?

7 MR. CHURCH: We are, Your Honor.

8 THE COURT: Call your first witness.

9 MS. SIGAL: The State calls Shawnda
10 Winder.

11 SHAWNDA WINDER,
12 being first duly sworn, testified as follows:

13 THE CLERK: Have a seat. State your
14 full name for the record and spell your last name.

15 THE WITNESS: My name is Shawnda
16 Winder. Last name is W-I-N-D-E-R.

17 THE COURT: Ms. Sigal.

18 MS. SIGAL: Thank you.

19 DIRECT EXAMINATION

20 BY MS. SIGAL:

21 Q. Officer Winder, where do you work?

22 A. I work for Berkeley County Sheriff's
23 Office.

24 Q. And what is your rank with the
25 sheriff's office?

SHAWNDA WINDER - DIRECT EXAM BY MS. SIGAL

1 A. I'm a corporal.

2 Q. How long have you been with the
3 sheriff's office?

4 A. This November will be four years.

5 Q. What are your responsibilities as a
6 corporal with the sheriff's office?

7 A. I work patrol.

8 Q. Were you working for the sheriff's
9 office on November 4, 2015?

10 A. Yes, ma'am.

11 Q. Do you recall responding to an assault
12 at [REDACTED] Road in St. Stephen?

13 A. Yes, ma'am, I do.

14 Q. Do you recall what time the call went
15 out?

16 A. I believe it was 9:35, roughly.

17 Q. Around that time?

18 A. Yes, ma'am, around that time.

19 Q. And do you recall about how long it
20 took you to arrive there after the call went out?

21 A. I believe it was five minutes.

22 Q. And when you arrived, who was present
23 at the scene?

24 A. Mr. Driggers.

25 Q. And who else?

SHAWNDA WINDER - DIRECT EXAM BY MS. SIGAL

1 A. And the victim as well.

2 Q. And did you make contact with either
3 party when you arrived?

4 A. Yes, ma'am, both.

5 Q. And when you made contact with the
6 defendant, did you advise him why you were there?

7 A. Yes, ma'am, I did.

8 Q. And did you detain him?

9 A. I did detain him and placed him in the
10 back of my vehicle at that time.

11 Q. Did you speak to him?

12 A. I did; I read him Miranda.

13 Q. And was he being placed under arrest at
14 the time you advised him --

15 A. He was not. He was just being detained
16 at that time.

17 Q. But was he in custody at that time?

18 A. Yes, ma'am, he was.

19 Q. Was the defendant under the influence
20 of alcohol or drugs to the extent that you believe
21 that would impair his ability to understand the
22 Miranda warning?

23 A. No, ma'am.

24 Q. Did you think that Mr. Driggers had a
25 mental or physical disability that would have

SHAWNDA WINDER - DIRECT EXAM BY MS. SIGAL

1 impacted his ability to understand the Miranda
2 warning?

3 A. No, ma'am.

4 Q. Did you believe that he understood his
5 rights at that time?

6 A. Yes, ma'am, I did.

7 Q. Did Mr. Driggers ask to speak with a
8 lawyer at that time?

9 A. No, ma'am, he did not.

10 Q. Was anyone else present when you read
11 him his rights?

12 A. No, ma'am.

13 Q. Did he speak with you at that time?

14 A. He just advised me that he understood
15 his rights.

16 Q. After you detained him, what did you do
17 next?

18 A. I got out of my vehicle and went and
19 checked on the victim.

20 Q. And after you checked on the victim,
21 where did you go?

22 A. I went -- I'm sorry, I stayed there
23 with her until EMS arrived. They ended up
24 transporting her to Trident Hospital in North
25 Charleston, and I went behind the EMS.

SHAWNDA WINDER - DIRECT EXAM BY MS. SIGAL

1 Q. After you went to the hospital, what
2 did you do?

3 A. I got statements from the victim at
4 that time and spoke with the doctor who advised her
5 of her condition at that time.

6 Q. And where did you go after that?

7 A. After that, I went to the jail to
8 complete the booking.

9 Q. And where in the jail do you do that?

10 A. Middle booking.

11 Q. And when you went to complete booking,
12 who was present with you?

13 A. Just myself and Mr. Driggers.

14 Q. So who took Mr. Driggers to the jail?

15 A. Sergeant Drew.

16 Q. When you arrived at the detention
17 center and started to complete the booking --

18 THE COURT: I'm sorry, sergeant who?

19 THE WITNESS: Drew.

20 BY MS. SIGAL:

21 Q. When you started to complete the
22 booking, did you speak to the defendant?

23 A. He asked me the condition of the
24 victim, and then I read him his Miranda rights
25 again to make sure that he understood. And he

SHAWNDA WINDER - DIRECT EXAM BY MS. SIGAL

1 advised he understood --

2 Q. I'm just going to stop you right there.
3 When you read him his Miranda rights, did he appear
4 to understand his rights?

5 A. Yes, ma'am, he did. He stated he
6 understood.

7 Q. At that time, did he appear to be under
8 the influence of alcohol or drugs to the extent
9 that you believed it would have impaired his
10 ability to understand?

11 A. No, ma'am.

12 Q. At that time did you believe that he
13 had a mental or physical disability that would have
14 impacted his ability to understand his Miranda
15 warning for the second time?

16 A. No, ma'am.

17 Q. Did you believe he understood those
18 rights the second time?

19 A. Yes, ma'am.

20 Q. And did the defendant ask to speak with
21 a lawyer that second time you --

22 A. No, ma'am, he did not.

23 Q. Was anyone else present when you read
24 him his --

25 A. No, ma'am.

SHAWNDA WINDER - DIRECT EXAM BY MS. SIGAL

1 Q. -- rights the second time?

2 A. No, ma'am.

3 Q. Did he speak with you at that time?

4 A. Yes, ma'am. He asked me the condition
5 of the victim, and I advised him of his Miranda
6 rights. He stated he understood and asked the
7 question again. And I informed him she wasn't
8 doing so good.

9 Q. What was his response to that?

10 A. He shook his head and looked down and
11 said, I guess that's what love will make you do.

12 Q. How long would you say the conversation
13 lasted between you and the defendant?

14 A. Just a few minutes, not long at all.

15 Q. Did he make any other statements to you
16 about the case?

17 A. No, ma'am, that was it because I walked
18 away after that.

19 Q. Did he ask to use the phone during that
20 conversation?

21 A. No, ma'am, he did not.

22 Q. Did he ever ask to use the rest room?

23 A. No, ma'am.

24 Q. Did he ask for food or drink?

25 A. Not to me, no, ma'am.

SHAWNDA WINDER - DIRECT EXAM BY MS. SIGAL

1 Q. Who initiated the conversation?

2 A. He did.

3 Q. Was he speaking to you coherently?

4 A. Yes, ma'am.

5 Q. In regards to both sets of the Miranda
6 warning that you gave this defendant, did he appear
7 to have any trouble understanding those rights?

8 A. No, ma'am. Both times he advised he
9 understood.

10 Q. Were his responses to your questions
11 rational and responsive?

12 A. Yes, ma'am.

13 Q. Did anyone in your presence appear to
14 threaten or coerce Mr. Driggers into speaking to
15 you?

16 A. No, ma'am; it was just he and myself.

17 Q. How did he respond to you when you
18 asked if he wanted to speak with a lawyer?

19 A. He didn't. His comment was, I've been
20 through this before, I don't need an attorney.
21 That's what he said.

22 Q. To the best of your knowledge, was that
23 statement that he gave you freely and voluntarily
24 made?

25 A. Yes, ma'am.

SHAWNDA WINDER - CROSS EXAM BY MR. CHURCH

1 MS. SIGAL: Thank you, Corporal Winder.
2 I have no further questions for you at this time.
3 Please answer any questions that Mr. Church or Ms.
4 Shivers may have.

5 THE COURT: Mr. Church.

6 MR. CHURCH: Thank you, Your Honor.
7 May it please the Court?

8 CROSS-EXAMINATION

9 BY MR. CHURCH:

10 Q. Corporal Winder, did you put this in
11 your report that he made this statement.

12 A. I did. Which statement, I'm sorry,
13 were you referring to, the comment he made at the
14 jail?

15 Q. Yes.

16 A. No, that was not in my report.

17 Q. And you didn't do a supplemental
18 report?

19 A. I did not. I remembered when I thought
20 back on it that he made that comment.

21 Q. The area of the jail where he made the
22 comment, was that covered by video cameras?

23 A. There's cameras in every corner of the
24 jail, yes, sir.

25 Q. Okay. So this should be on video

SHAWNDA WINDER - CROSS EXAM BY MR. CHURCH

1 somewhere?

2 A. It should be, yes, sir.

3 MR. CHURCH: No further questions.

4 THE COURT: Redirect?

5 MS. SIGAL: No redirect, Your Honor.

6 EXAMINATION

7 BY THE COURT:

8 Q. I just have a couple of questions, and
9 maybe I just didn't hear. What time were you
10 called out on the scene?

11 A. The call, I believe it was 9:35.

12 Q. And you said that you got there within
13 about --

14 A. In five minutes, yes, ma'am.

15 Q. And so would you say that you advised
16 him of his rights about 9:40, or what time?

17 A. It was a short time after, because when
18 I arrived on scene he was still chasing her. And
19 when I ordered him to the ground, he got on the
20 ground, I cuffed him, placed him in the back of the
21 vehicle and read him his rights.

22 Q. And I'm assuming this was p.m.?

23 A. It was a.m., very early.

24 Q. I made a bad assumption, didn't I? And
25 so the call went out at approximately 9:30 a.m.,

SHAWNDA WINDER - EXAM BY THE COURT

1 and then you arrived and advised him of his rights
2 within 10 to 15 minutes, correct?

3 A. Yes, ma'am.

4 Q. And then he was transported by Sergeant
5 Drew?

6 A. Yes, ma'am.

7 Q. About what time did you re-read him his
8 Miranda?

9 A. It was hours later because, again,
10 Sergeant Drew came on scene, she got custody of
11 him, I went with EMS with the victim to Trident,
12 North Charleston.

13 Q. And tell me why it is that you re-read
14 the Miranda at that time.

15 A. Only because he kept asking me
16 questions, and I just wanted to make sure he
17 understood that I read him his rights. And he said
18 he understood.

19 Q. When you read the rights, again,
20 perhaps I missed this, do you have a card that you
21 read their rights?

22 A. Some people do have cards. I didn't
23 have a card. I just read it.

24 Q. And so what did you read it from?

25 A. Knowledge. From just knowledge; I

SHAWNDA WINDER - RECROSS EXAM BY MR. CHURCH

1 stated to him from knowledge.

2 Q. And so both times that's how you did
3 it?

4 A. Yes, ma'am.

5 THE COURT: Based upon my questions,
6 Ms. Sigal?

7 MS. SIGAL: No further questions, Your
8 Honor.

9 THE COURT: Mr. Church, based upon my
10 questions, do you have any questions? Do you need
11 a few moments?

12 MR. CHURCH: Just a moment or two.

13 THE COURT: Take your time.

14 RECROSS-EXAMINATION

15 BY MR. CHURCH:

16 Q. The only question, we would ask
17 Corporal Winder if she can right now recite all of
18 the Miranda warnings?

19 A. Your question was for me to recite it?

20 Q. Yes.

21 A. Okay. You have the right to remain
22 silent. Anything you say can and will be used
23 against you in a court of law. You have the right
24 to an attorney. If you wish to obtain an
25 attorney, do -- I'm sorry. Sorry, I stumbled. You

SHAWNDA WINDER - RECROSS EXAM BY MR. CHURCH

1 have the right to an attorney. If you wish to have
2 an attorney you can request one at this time. Do
3 you understand your rights? And he replied that he
4 understood his rights.

5 MR. CHURCH: No further questions, Your
6 Honor.

7 THE COURT: All right. Thank you.
8 You may step down. Please stay with
9 us.

10 Call your next witness.

11 MS. SIGAL: The State has no other
12 witnesses.

13 THE COURT: Mr. Church, do you have
14 any witnesses?

15 MR. CHURCH: One moment, Your Honor.

16 THE COURT: Take your time.

17 MR. CHURCH: No further questions.

18 THE COURT: Happy to hear argument.

19 MS. SIGAL: Thank you, Your Honor.

20 Pursuant to Jackson v. Denno, obviously, a
21 defendant in a criminal case is entitled to the
22 hearing for which we just had regarding the
23 voluntariness of statements made by him.

24 And it's the State's position that
25 while the defendant was in custody, there's no

1 question about that, he made the statement to
2 Corporal Winder voluntarily, knowingly, and
3 intelligently after understanding and acknowledging
4 and waiving Miranda rights, not once, but twice in
5 the presence of Corporal Winder.

6 She just stated under oath the rights
7 that she gave him and stated under oath that he did
8 appear to understand those and waive those. In the
9 second instance, which is the instance in which we
10 wish to introduce the statement, he then repeated
11 the same question after she gave him his rights and
12 made that statement.

13 It's the State's position that he made
14 that statement fully aware that the statement could
15 be used against him, and the State would move to
16 introduce that statement.

17 THE COURT: Since she didn't use a
18 card, how do I know what she advised him?

19 MS. SIGAL: Your Honor, based on the
20 testimony that she advised him of all of his rights
21 and actually just recited those, it's the State's
22 position that her testimony explains that.

23 THE COURT: Okay. Mr. Church.

24 MR. CHURCH: Thank you, Your Honor.
25 May it please the Court.

1 We would ask that the statement be
2 excluded on a couple of grounds; one was, when she
3 just recited the rights, I believe she left out a
4 couple of them.

5 THE COURT: What did she leave out?

6 MR. CHURCH: Your Honor, I don't have
7 them with me, but the part about whether he cannot
8 afford a lawyer, one will be appointed to you. You
9 can stop answering questions at any time, I
10 believe. And I'm not sure whether she said
11 anything you say can and will be used against you.
12 I'm not sure about that one, but I didn't hear
13 anything about if you can't afford a lawyer, one
14 will be appointed for you.

15 THE COURT: Ms. Sigal.

16 MS. SIGAL: Your Honor, Corporal Winder
17 did leave that out when she testified; however, she
18 did testify that she told Mr. Driggers that he
19 could have a lawyer if he wanted one. And she also
20 was reciting something that she said about a year
21 and a half ago, but she stated that is what she
22 always tells anyone that she arrests.

23 It's the State's position that it was
24 clear twice that if Mr. Driggers needed an
25 attorney, he could have one, and --

1 THE COURT: That's not the only thing
2 she has to advise him of under Miranda, correct?

3 MS. SIGAL: Yes, Your Honor. I'm just
4 responding to what Mr. Church just said about that
5 particular part.

6 THE COURT: So there were -- I didn't
7 hear her say that he could stop answering at any
8 time, which is also important.

9 MS. SIGAL: Yes, Your Honor, that is
10 important. And while important, it's the State's
11 position that he was advised and understood that
12 the statements he made could be used against him.

13 THE COURT: Do you need a moment, Ms.
14 Sigal?

15 MS. SIGAL: Yes, Your Honor. Thank
16 you.

17 I have spoken with Corporal Winder and
18 she indicated to me that due to some nerves, she
19 got flustered on the stand.

20 THE COURT: Do you need to recall her?

21 MS. SIGAL: At this time we would
22 request to recall the witness.

23 THE COURT: Mr. Church, any objection
24 to her being recalled?

25 MR. CHURCH: Your Honor, I would object

SHAWNDA WINDER - DIRECT EXAM BY MS. SIGAL

1 because we've talked about the things that she left
2 out.

3 THE COURT: I will allow it. You may
4 take the stand and you may recall her.

5 MS. SIGAL: Thank you, Your Honor. At
6 this time, the State recalls Corporal Winder.

7 THE COURT: Ma'am, I would remind you
8 that you are still under oath.

9 SHAWNDA WINDER,
10 being previously duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. SIGAL:

13 Q. Corporal Winder, I'm referring to the
14 morning of November 4th, 2015, in which you
15 detained the defendant, Kevin Driggers.

16 A. Yes, ma'am.

17 Q. When you first arrived at the scene and
18 you detained Mr. Driggers, you testified earlier
19 that you read him his Miranda rights?

20 A. Yes, ma'am.

21 Q. And I would like for you to go into a
22 little more detail about the rights that you read
23 him, and you can take as much time as you need. If
24 you can just go back through the specific rights
25 that you read him on that date to your memory.

SHAWNDA WINDER - DIRECT EXAM BY MS. SIGAL

1 A. Yes, ma'am. I advised him that he had
2 the right to remain silent and that anything he
3 said could and would be used against him in a court
4 of law. I did advise him that he had the right to
5 an attorney and if he could not afford an attorney,
6 that one would be appointed to him. He advised me
7 that he understood. His statement exactly was,
8 I've been through this before, I understand.

9 Q. Did you notify the defendant that he
10 could cease talking to you at any time?

11 A. I did. I did advise him and he,
12 again -- like I said, he stopped. He wouldn't say
13 anything to me the first time. When I got out of
14 the car and was speaking to the victim, I got back
15 in the vehicle and that's when he started talking.
16 I advised him again that he had the right to remain
17 silent. Did he understand? And he advised me that
18 he understood.

19 Q. In that first instance he did not make
20 any statements to you?

21 A. No, ma'am, he did not.

22 Q. And so there was no need to remind him
23 that he could stop the questioning because there
24 wasn't any questioning; is that right?

25 A. Yes, ma'am.

SHAWNDA WINDER - DIRECT EXAM BY MS. SIGAL

1 Q. And in the first instance, did you ask
2 him any questions?

3 A. I did not. I never asked him questions
4 at all.

5 Q. Now, I want to move to the second
6 instance when you were in the booking area of the
7 jail with the defendant.

8 A. Yes, ma'am.

9 Q. Would you please tell the Court the
10 specific rights that you read -- or orally read to
11 the defendant at that time?

12 A. Again, I advised him that he had the
13 right to remain silent, that anything he said can
14 and would be used against him in a court. I
15 advised him again that he had the right to an
16 attorney. If he could not afford an attorney, that
17 one would be appointed to him.

18 Q. And at the time did you advise him that
19 he could -- I know that you weren't asking him any
20 questions, this may be a strange question, but did
21 you advise him that he could cease questioning at
22 any time?

23 A. Yes, ma'am. I told him that he did not
24 have to answer any questions, he didn't have to
25 make any statements at all. He said, I know, I

SHAWNDA WINDER - DIRECT EXAM BY MS. SIGAL

1 know. I understand, I want to know how she was
2 doing.

3 Q. And just to be clear, you -- did you
4 ask him any questions?

5 A. I didn't ask him anything.

6 Q. During the first instance or the second
7 instance?

8 A. No, I did not.

9 Q. Were any of his statements made to you
10 in response to your questions?

11 A. No. I never asked him that.

12 Q. All right. So were you -- were you
13 interrogating him with questions?

14 A. No, ma'am.

15 Q. Was the statement that he made
16 initiated by you or by the defendant?

17 A. It was by him.

18 Q. And was that statement that was -- the
19 question he asked you, was that made following the
20 two warnings of Miranda?

21 A. Yes, ma'am, it was.

22 MS. SIGAL: Okay. Beg the Court's
23 indulgence?

24 THE COURT: Take your time.

25 BY MS. SIGAL:

SHAWNDA WINDER - DIRECT EXAM BY MS. SIGAL

1 Q. The Miranda warnings that you stated to
2 the defendant, are those -- is that protocol, is
3 that what you usually do when you arrest someone?

4 A. Yes, ma'am.

5 Q. And about how many arrests had you made
6 at that point in your career, roughly?

7 A. I've been in law enforcement now almost
8 seven years. I've made close to 100 arrests --

9 Q. Okay.

10 A. -- in my seven years of law
11 enforcement.

12 Q. And what do you do when you make an
13 arrest? What kind of Miranda warnings do you give?

14 A. That same thing.

15 Q. So roughly 100 times you had given that
16 same Miranda warning?

17 A. Yes, ma'am.

18 Q. And is that the reason you do not read
19 from a Miranda rights card?

20 A. Well, I haven't been issued one, but,
21 yes, ma'am. It's the same way I've been doing it.

22 Q. Was it your understanding that the
23 defendant understood that any statements he made
24 could be used against him?

25 A. Yes, ma'am, I advised him and he

SHAWNDA WINDER - DIRECT EXAM BY MS. SIGAL

1 advised he understood each time.

2 Q. Just to be clear, in regard to the
3 aspect of him obtaining a lawyer, did he appear to
4 want a lawyer in any of those conversations?

5 A. When asked he didn't say he wanted one.

6 Q. Did he understand that one would be
7 provided to him?

8 A. Yes, ma'am. I did advise him that if
9 he could not afford one, one would be appointed to
10 him at no cost.

11 Q. And, again, what was his response to
12 that?

13 A. He understood, yes, ma'am.

14 MS. SIGAL: Thank you. I have no
15 further questions for you at this time.

16 THE COURT: Mr. Church.

17 MR. CHURCH: No questions.

18 THE COURT: You may step down. Thank
19 you.

20 All right. Ms. Sigal, any further
21 arguments?

22 MS. SIGAL: Your Honor, the State would
23 just -- it's our position that not only was this
24 officer not asking any questions to the defendant,
25 this defendant initiated conversation with the

1 officer. He was advised of his Miranda rights
2 twice. We know what those Miranda rights were.
3 Given the officer's testimony and given the fact
4 that she said --

5 THE COURT: Is it your position that
6 Miranda was not required?

7 MS. SIGAL: Your Honor, given the fact
8 -- out of an abundance of caution, given the fact
9 the defendant was trying to speak to the officer,
10 it's the State's position that Miranda was required
11 because he could make statements that would
12 incriminate himself, despite the fact they were not
13 in response --

14 THE COURT: But is Miranda required if
15 the defendant initiates the conversation?

16 MS. SIGAL: Your Honor, it's my
17 understanding that any statements that a defendant
18 makes to law enforcement while they're in custody
19 would be -- Miranda would be necessary. Under
20 Jackson v. Denno, usually the statements are as a
21 result of interrogation, but it's the State's -- I
22 guess, out of an abundance of caution, it's the
23 State's position that the officer made the right
24 decision in Mirandizing him and -- just to make
25 sure that he did not --

1 THE COURT: I think it's always good
2 to go above and beyond, but back to my initial
3 question, is it required for Miranda if the
4 defendant initiates the statement?

5 MS. SIGAL: No, Your Honor. Usually
6 that would be considered an excited utterance under
7 the law, but under this situation, he was
8 Mirandized and the State wanted to be on the -- I
9 guess on the safe side by --

10 THE COURT: So which statement is it
11 that you want to use? The statement made prior to
12 the second Miranda?

13 MS. SIGAL: No. The statement made
14 following where -- when he asked about the victim
15 and the officer said, she's not doing well. And
16 I'm paraphrasing here. And the defendant's
17 response was, well, I guess love will make you do
18 things like that. That's the only statement the
19 State wishes to introduce.

20 THE COURT: What interrogation had
21 occurred, Ms. Sigal?

22 MS. SIGAL: No interrogation had
23 occurred, but it was a statement made to law
24 enforcement while the defendant was in custody and
25 -- whether Miranda was necessary, in my experience,

1 can get a little bit blurry. So it's the State's
2 position that this statement was made while he was
3 in custody. Miranda was appropriate because he was
4 potentially going to make a statement that
5 incriminated himself.

6 And, you know, we would argue in the
7 alternative that was an excited utterance that
8 would come in under the exception to the hearsay
9 rule, but it's also a statement made to law
10 enforcement by the defendant while he was in
11 custody.

12 THE COURT: The officer testified the
13 first time, that's why I allowed you to recall her,
14 she did indicate that she was nervous, but did not
15 indicate that she gave the, you may stop answering
16 at any time prong.

17 I would like to hear you about that
18 one.

19 MS. SIGAL: Well, Your Honor, it's the
20 State's position with that, that she did not
21 testify to that. On the one hand, she did indicate
22 that she was nervous, this is her first time
23 testifying in general sessions court, but --

24 THE COURT: How do I know she wasn't
25 nervous when she was detaining the defendant?

1 MS. SIGAL: Your Honor, that would be
2 speculating and I don't know the answer to that,
3 but I can tell you that she stated that she had
4 made about 100 arrests by that point, and that she
5 always recited the same Miranda warnings every
6 time. I think that goes to her experience and the
7 likelihood that she did give that warning.

8 In addition to that, Your Honor, this
9 officer wasn't questioning the defendant. And so
10 even if that was --

11 THE COURT: So back to my first
12 question, Ms. Sigal, if she wasn't questioning him,
13 is Miranda fully required?

14 MS. SIGAL: Your Honor, Miranda is
15 probably not fully required if she was not
16 questioning him --

17 THE COURT: I don't need probably. I
18 need a yes or no. Do you need to take a moment?
19 Would you like to take a moment to brief the issue?

20 MS. SIGAL: Yes, Your Honor, but I
21 would like to get some clarification as to the
22 question. If Your Honor is asking if Miranda was
23 required or if this entire Jackson v. Denno hearing
24 is required? Because I do think -- I guess it's
25 the State's position that, whether or not Miranda

1 was required, it was given and it was a statement
2 made after Miranda.

3 I don't think that the fact that she
4 went above and beyond should make the statement
5 stay out. I guess I would like some clarification
6 to the Court's question.

7 THE COURT: So you've got a couple of
8 issues. Assuming she went above and beyond, that
9 that was above and beyond, and it wasn't required,
10 there are some statements and warnings that were
11 not given. That's the issue.

12 So you can't rely on the fact that
13 Miranda was given, correct? Because it wasn't
14 given fully, according to one of her statements.

15 MS. SIGAL: Well, I guess, Your Honor,
16 it would be the State's position that --

17 THE COURT: My statement to you was,
18 do you wish some time to brief this argument?

19 MS. SIGAL: Yes, Your Honor.

20 THE COURT: All right.

21 Mr. Church, I'm going to allow her some
22 time. Do you -- I think I understand your
23 position. Do you need any additional time
24 yourself?

25 MR. CHURCH: No. I was going to add in

1 rebuttal to this, but I guess we can pick it up
2 whenever we pick it up.

3 THE COURT: I'll give you until Monday
4 to brief this issue. I've heard the testimony, so
5 I know what subject -- I will allow you to
6 articulate your argument clearly as to whether or
7 not Miranda was required.

8 MS. SIGAL: Thank you, Your Honor.

9 THE COURT: And whether or not the
10 Miranda warning given by the officer -- I did allow
11 you, just so the record would be abundantly
12 clear -- but I'm going to -- I need to also hear,
13 just because she indicated on the -- when you
14 recalled her that she gave a certain type of
15 warning, the first warning I heard was incomplete.

16 MS. SIGAL: Thank you, Your Honor.

17 THE COURT: All right. So we'll be at
18 ease on that. Are there any other motions
19 regarding that -- this case?

20 MR. CHURCH: Yes, Your Honor.

21 THE COURT: Okay.

22 MS. SIGAL: Well, Your Honor, the next
23 motion in the State's trial brief is actually
24 mentioned by the defense as well, so that might be
25 the next one to cover.

1 THE COURT: The prior convictions?

2 MS. SIGAL: Prior convictions, and I do
3 believe one of the defense motions also touched on
4 this. Despite the defendant's lengthy record, it's
5 the State's position that should he take the stand,
6 the only offense that would come in under 609 would
7 be the 2012 assault and battery in the second
8 degree conviction.

9 And should the defendant choose to take
10 the stand, it's the State's position we should be
11 able to impeach him on that charge per Rule 609.

12 THE COURT: And have you seen those
13 convictions, certified copies? You're in agreement
14 that your client has those --

15 MR. CHURCH: I have not seen certified
16 copies, Your Honor.

17 Court's indulgence for just one second
18 so I can double-check this.

19 THE COURT: Take your time.

20 (Brief pause.)

21 THE COURT: Whenever you're ready, Mr.
22 Church.

23 MR. CHURCH: Your Honor, it would be
24 our position that, should he take the stand that
25 they not be able to say what the crime was. I

1 believe it's a misdemeanor under the statute that
2 that would be what they could refer to it as.

3 THE COURT: On the assault and battery
4 second, what does that carry? In 2012, what did
5 that carry?

6 MS. SIGAL: Zero to three years, and it
7 is a misdemeanor charge.

8 THE COURT: And assault and battery
9 third degree?

10 MS. SIGAL: That carries zero to 30
11 days, so I don't believe that would --

12 THE COURT: So the only one is the
13 2012 assault and battery second degree; is that
14 correct?

15 MS. SIGAL: That's correct, Your Honor.

16 THE COURT: Assuming that none of the
17 others would be -- would open the door. And so you
18 are in agreement that it would be -- how would you
19 inquire about that one?

20 MS. SIGAL: The State would ask if the
21 defendant had been convicted of a crime before, and
22 if he agreed, then the State would -- well, it's
23 our position we should be able to say, have you
24 been convicted of assault and battery in the second
25 degree before in 2012, and ask directly about that

1 specific crime under 609.

2 And, Your Honor, for the argument
3 regarding --

4 THE COURT: Ask specifically what
5 about that crime?

6 MS. SIGAL: Just about the fact that he
7 was convicted and what the charge was. We do not
8 seek to get into the facts. We just would seek to
9 get into the year and the actual --

10 THE COURT: How would assault and
11 battery second degree not be more prejudicial than
12 probative on an attempted murder charge --

13 MS. SIGAL: Well, Your Honor --

14 THE COURT: -- which would --
15 necessarily could be a lesser included assault and
16 battery, correct?

17 MS. SIGAL: Yes, Your Honor. And,
18 obviously, it would be prejudicial, but it's the
19 State's position that it would not be more
20 prejudicial than probative because it's not the
21 same charge for which he is on trial for. I
22 understand that it's -- the jury instructions,
23 later down the road, we can get to that, but it's
24 not the same charge for which he's on trial; it's
25 not the same victim and the facts are not the same.

1 Obviously, we are not trying to get
2 into the facts, but --

3 THE COURT: Then what are you
4 attempting to utilize it for? For impeachment,
5 correct?

6 MS. SIGAL: Yes, only for impeachment.

7 THE COURT: So then you would
8 accomplish that by him being convicted of a
9 three-year misdemeanor for which you -- you pled or
10 whatever. Did he plead?

11 MS. SIGAL: I believe he pled.

12 THE COURT: You have a conviction in
13 2012 for a three year misdemeanor, don't you? And
14 that's it.

15 MS. SIGAL: Okay.

16 THE COURT: I do find that the assault
17 and battery second degree is more prejudicial than
18 probative in this particular case, but I will allow
19 you to inquire for impeachment purposes only that
20 he has a conviction over one year.

21 MS. SIGAL: Thank you, Your Honor.

22 MR. CHURCH: Thank you, Your Honor.

23 THE COURT: Do I need to hear you any
24 further on that limitation, Mr. Church? Is that
25 what you believe that --

1 MR. CHURCH: That's correct, Your
2 Honor.

3 THE COURT: Thank you. And then I have
4 a motion to exclude some prior bad acts and some
5 photographs?

6 MR. CHURCH: Yeah, those are separate.

7 THE COURT: Correct. Let me see
8 those. Do you have the photographs with you?

9 MS. SIGAL: I do, Your Honor. I pulled
10 the ones that have blood in them.

11 THE COURT: Can we go ahead for
12 purposes of this hearing -- and then we will just
13 have the same numbers? Do you know what numbers
14 those will be?

15 MS. SIGAL: Your Honor, we can just go
16 1 through --

17 THE COURT: No objection to go ahead
18 and marking the photographs in order starting with
19 1?

20 MS. SIGAL: No objection.

21 THE COURT: Mr. Church, you have no
22 objection? The purpose for asking that is she may
23 have had something else already premarked, so I was
24 just asking what numbers.

25 MS. SIGAL: And, Your Honor, there are

1 26 photographs. So if we could just go 1 through
2 26, and that can be the same --

3 THE COURT: And you may approach my
4 court reporter, and she will assist you in marking
5 1 through 26, and then that way for purposes of
6 this hearing as well, we'll have the same
7 numbers.

8 (PLF. EXH. 1 - 26, Photographs, were
9 marked for identification.)

10 THE COURT: Solicitor, I've heard a
11 little bit about the facts, but if you could tell
12 me in a non-argumentative statement of facts
13 regarding this case.

14 MS. SIGAL: Yes, Your Honor. Your
15 Honor, the defendant and the victim were in a
16 relationship in which they lived together for
17 several months. Prior to the incident, they broke
18 up and the victim was living at a friend's house on
19 [REDACTED] Road where the incident took place.

20 On the morning of the incident, the
21 victim was at home with her 14-year-old son and the
22 five-year-old son of the woman she was living with
23 at the time, her friend's son. The defendant
24 arrived at the property. The victim saw him
25 charging towards the house. At that time she and

1 the kids made sure they were inside, she locked the
2 door and wedged herself between the washing machine
3 and dryer and the door.

4 The defendant pounded on the door, he
5 had an ax handle in his hand and he was threatening
6 to kill her. She told the two kids to run out the
7 front door and to get help and to get out of the
8 house. That's what they did.

9 The defendant pounded on the door for
10 quite some time, he busted out the door frame.
11 When he was unsuccessful in getting into the door,
12 he went around and broke into the window on the
13 side of the house.

14 He broke into the house and the victim
15 departed the house through the front door. He
16 caught up with her by taking an ax handle to the
17 back of her head. She immediately fell to the
18 ground and the defendant stomped on her head. She
19 was in and out of consciousness at that time.

20 The defendant then broke out all of the
21 -- her back window of her car. He broke that out
22 with the ax handle. The victim tried to run away
23 from him several times, and he continued to catch
24 up with her and continued to beat her. He told her
25 over and over again he was going to kill her.

1 Your Honor, the victim called 911
2 before the defendant broke into the house and held
3 the phone with her during the entire assault. So
4 law enforcement was alerted to it and officer --
5 Corporal Winder responded to the scene within about
6 five minutes of the call going on out.

7 When Corporal Winder arrived, the
8 defendant was still chasing the victim. She had to
9 tell him to drop his weapon. When he continued to
10 go after the victim, she had to actually pull her
11 weapon to get him to go to the ground.

12 The kids ran to a neighbor's house and
13 the neighbor called 911 and witnessed some of the
14 assault. Another neighbor heard the assault and
15 called 911 as well. The victim was transported to
16 Trident and she was treated for the injury to her
17 head that required stitches, she had fractures in
18 her back, and she had hemorrhaging in her eye among
19 other injuries.

20 THE COURT: Mr. Church, which pictures
21 are you objecting to?

22 MR. CHURCH: The pictures of the
23 injury. We believe that's going to inflame the
24 passions of the jury. They have a medical person
25 on the witness list from the hospital that we

1 believe would testify.

2 THE COURT: I don't find any of these
3 pictures that -- I'm reviewing them now. I don't
4 find any of these pictures gruesome, but I do find
5 them abundantly cumulative.

6 MR. CHURCH: That's my second motion,
7 Your Honor.

8 THE COURT: I'm sorry, did I jump
9 ahead?

10 MR. CHURCH: That was my fallback
11 position should you not agree with me in excluding
12 all of them that it is cumulative.

13 THE COURT: So what I have done is, I
14 have made six different what I perceive to be
15 views. One is just a picture of -- State's Exhibit
16 No. 1 is a picture of the defendant with a bloody
17 shirt. Do you have an objection to that?

18 MR. CHURCH: No, Your Honor.

19 THE COURT: So -- and so I don't find
20 that there is anything objectionable. State's
21 Exhibit No. 2 is -- I'm assuming this is the
22 victim, Ms. Sigal?

23 MS. SIGAL: Yes, Your Honor. That's
24 her in the hospital.

25 THE COURT: Any objection to that? I

1 think it's the same as the defendant's blood on the
2 shirt.

3 MR. CHURCH: Yes.

4 THE COURT: That would be why.

5 And then State's 14 and 15, I'm not
6 quite sure the reason of the dog pen, Ms. Sigal.

7 MS. SIGAL: Yes, Your Honor. I just
8 passed these up because they had blood on them.
9 Those are actually from the scene where she was
10 laying when the defendant stomped her head into the
11 ground. It's my position that they obviously
12 should come in for many reasons, but that's --

13 THE COURT: They're almost identical.
14 This is an issue of being cumulative.

15 MR. CHURCH: Your Honor, we would
16 consent to the picture with the dog in the
17 background coming in.

18 THE COURT: Out of the two, that will
19 be -- they're almost identical, just a different
20 angle.

21 MS. SIGAL: The State has no position
22 either way as to which one comes in.

23 THE COURT: So any objection to State's
24 14? And then 15 would not be as cumulative. And
25 then 19 and 20, again, it appears to be -- I'm

1 assuming that that is the defendant and they appear
2 to be almost identical.

3 MS. SIGAL: Your Honor, again, State's
4 position is -- well, actually, I would prefer the
5 one on the State's left.

6 THE COURT: First of all, the question
7 is, are they almost identical photographs?

8 MS. SIGAL: They're similar, Your
9 Honor, just two different angles we have provided,
10 but they are taken almost at the exact same time of
11 the same person's back so --

12 THE COURT: So you get to pick one.

13 MS. SIGAL: Permission to approach?

14 THE COURT: Yes. And, Mr. Church, if
15 you want to come too, just we can do those as well.

16 MS. SIGAL: Exhibit 20 is the chosen
17 one and we withdraw number 19.

18 THE COURT: And so 19, again, would be
19 cumulative to 20.

20 All right. And then I have a stack of
21 photographs that I'm assuming that you're using to
22 show the injury to the eye and side of the face.

23 MS. SIGAL: Yes, Your Honor.

24 THE COURT: So all four of these appear
25 similar to me, which would be State's 3, State's 4,

1 18 and 26. If you will tell me, Mr. Church, do you
2 have any objection to these photographs?

3 MS. SIGAL: Your Honor, the State will
4 withdraw 26. It's our position that in Exhibit 3,
5 it shows the injuries to her neck and below her
6 chin, which the other two do not. And Exhibit 4,
7 it's the State's position that it provides -- shows
8 injury to her eye, in addition to around her mouth,
9 which 18, while it shows injury to her eye, it does
10 not give the clearer view of the injury to the
11 mouth. So it's the State's position that these
12 three are different and should be --

13 THE COURT: Mr. Church.

14 MR. CHURCH: We would oppose them and
15 ask for one picture. And, of course, it's the
16 Court's discretion.

17 THE COURT: I'm going to allow State's
18 3, 4 and 18. State's 26 is cumulative as to that
19 view.

20 MS. SIGAL: Thank you, Your Honor.

21 THE COURT: I have two more packets.
22 States 13 and 11, both of those appear to be the
23 back of the head while she was receiving or had
24 received treatment. And so I just need you, Ms.
25 Sigal, if you wish to have those in, to articulate

1 why they should come in.

2 MS. SIGAL: Your Honor, we can withdraw
3 11 and we would seek to introduce 13.

4 THE COURT: Any objection to State's
5 13?

6 MR. CHURCH: No objection.

7 THE COURT: State's Exhibit 13 will be
8 in. And then here is -- and, again, they appear to
9 be the back of the head and just in several
10 slightly variations.

11 MS. SIGAL: We can withdraw 6, and 7 is
12 blurry, and we can withdraw 8 as well. Withdraw
13 number -- we can withdraw number 12.

14 May we use the table?

15 THE COURT: You may.

16 MS. SIGAL: We can withdraw number 10
17 as well. We can withdraw 21. We withdraw 17 and
18 9. We withdraw 25 and 24. We've whittled it down
19 -- Your Honor, State's 23 is a picture of the
20 injury prior to it having been cleaned by medical
21 professionals. We argue that that is different
22 from State's 22 and 16 because those are the ones
23 after it had been cleaned.

24 Between State's 16 and 22, we argue
25 that 22 shows the wound prior to it -- well,

1 actually, Your Honor, we can withdraw 16. We argue
2 that 22 and 23 are different because one, it had
3 been cleaned, shows two different variations of the
4 wound. And number 5 just shows a different angle
5 and it shows a -- where the actual laceration
6 happened. So we would argue that 5, 22 and 23
7 should be admissible.

8 THE COURT: Mr. Church.

9 MR. CHURCH: We would argue that only
10 one should be -- probably one that's already been
11 cleaned because that's what they're trying to show
12 is the wound, and we think one that was not cleaned
13 would be unfairly prejudicial and it would inflame
14 passion.

15 THE COURT: Ms. Sigal, I'm looking. I
16 don't find either those -- any of those three to be
17 very bloody or gruesome. Why do we need to see it
18 unclean?

19 MS. SIGAL: Just to show the amount of
20 blood that was coming out of her head.

21 MR. CHURCH: Your Honor, we would rely
22 on our former argument.

23 MS. SIGAL: And if I may make sort of a
24 formal argument as to that.

25 THE COURT: Hold on one second. I'm

1 going to ask you now that we have got them whittled
2 down, that I'm going to show you what -- Mr. Church
3 needs to look at them in an array so that you see
4 all of the photographs that would be coming in that
5 needs -- if you have additional argument.

6 Ms. Sigal, this would be State's 1, 2,
7 3, 4, 5, 13, 14, 18, 20, 22, and 23 I have ruled,
8 based upon the previous argument, that those would
9 be admitted, but now I want you to look at them --
10 all of them and see if there is additional
11 argument.

12 (PLF. EXH. 1, 2, 3, 4, 5, 13, 14, 18,
13 20, 22, 23 in evidence.)

14 Just spread them out.

15 MR. CHURCH: I would reiterate my
16 former argument on those as being cumulative and,
17 upon further review, we believe the EMT people
18 could testify that they treated her at the scene.

19 THE COURT: The who people?

20 MR. CHURCH: The EMT or EMS technician,
21 the ambulance people.

22 THE COURT: Your objections are noted.
23 For the record those 11 pictures will be admitted
24 noting your objection I believe you've articulated
25 them.

1 So, for the record, 6, 7, 8, 9, 10, 11,
2 12, 15, 16, 17, 19, 21, 24, 25, and 26 will not be
3 admitted. Thank you.

4 MS. SIGAL: Thank you, Your Honor.

5 THE COURT: And I appreciate you doing
6 this before trial. Thank you so much.

7 MS. SIGAL: And I apologize for not
8 having them premarked. We'll do that next time.

9 THE COURT: All right.

10 Mr. Church, you have an additional
11 motion, one more motion; is that correct?

12 MR. CHURCH: Yes, Your Honor, to
13 exclude any prior bad acts.

14 THE COURT: And what would those be,
15 Mr. Church?

16 MR. CHURCH: I'm not sure because I'm
17 not sure what the witnesses would testify to, but I
18 think the trial should be limited to this day.

19 THE COURT: Ms. Sigal.

20 MS. SIGAL: Your Honor, I'm not sure
21 which bad acts Mr. Church is referring to. We do
22 not intend on bringing any prior bad acts unless
23 the defense opens the door to them. This defendant
24 has a prior criminal domestic violence conviction
25 with this victim. We are not trying to get that

1 into evidence; however, if that's the prior bad act
2 he's referring to, obviously, if they open the
3 door, we will bring it to your attention and
4 request that we be allowed to get into that at that
5 time.

6 THE COURT: Mr. Church, does that
7 address your concerns?

8 MR. CHURCH: Not really, Your Honor.
9 That would be part of it, but just from experience
10 in these cases, a lot of times when people take the
11 stand, they bring up everything that's ever
12 happened in their past with somebody that we have
13 not -- you know, we wouldn't have an opportunity to
14 investigate such matters. So barring him opening
15 the door to that one, we would -- we would ask to
16 exclude any prior bad acts.

17 THE COURT: Ms. Sigal does not intend
18 to elicit any prior bad act testimony. So if it
19 does come out -- we all know that sometimes our
20 witnesses, even though they've been instructed --
21 then you have the -- you need to object timely and
22 we will address it as that comes.

23 Does that answer -- does that address
24 your motion? It's hard for me to say -- to rule on
25 a motion when I don't have a specific issue to say,

1 you may not testify about this.

2 MR. CHURCH: I understand, Your Honor.

3 And we're satisfied at this time.

4 THE COURT: So that shows -- now I have
5 everything pretrial addressed?

6 MS. SIGAL: Yes, Your Honor.

7 THE COURT: And so you have until
8 today to get me your supplemental information and
9 brief and argument.

10 Mr. Church, I will allow you until the
11 close of business on Monday if you need to
12 supplement your argument, and you will have my
13 ruling by Wednesday.

14 MR. CHURCH: Does mine need to be
15 written?

16 THE COURT: You can -- yes. Yes.
17 I'll be in Charleston next week. I would have no
18 ability to have another hearing prior to the trial
19 starting.

20 MR. CHURCH: And once again, what time
21 is it due, Your Honor?

22 THE COURT: Close of business.

23 MR. CHURCH: On Monday?

24 THE COURT: On Monday, yes. You have
25 all day Monday, which you're going to have all

1 weekend, plus Monday.

2 MS. SIGAL: Thank you, Your Honor.

3 THE COURT: Thank you. And, Ms. Sigal,
4 if you don't intend to supplement, just let
5 Mr. Church know so he doesn't spend the weekend
6 preparing as well.

7 MS. SIGAL: Thank you.

8 MR. CHURCH: Thank you.

9 THE COURT: Did you have a motion to
10 compel, Mr. Church, for the criminal records?

11 MR. CHURCH: I think we were
12 provided --

13 MS. SIGAL: He did, but we provided
14 those this morning before we got started.

15 THE COURT: So that motion has been --

16 MR. CHURCH: Exactly. Thank you, Your
17 Honor.

18 THE COURT: And, Counsel, how long do
19 you anticipate this trial will take.

20 MS. SIGAL: Approximately, two days.

21 MR. CHURCH: The State is going to
22 drive most of it.

23 THE COURT: We will start on Tuesday,
24 so it's a short week. Okay. Thank you.

25 (These proceedings were concluded at

1 12:14 p.m.)

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1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 4th day of June, 2017 at
13 Charleston, Charleston County, South Carolina.

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Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017

1 STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
 2 COUNTY OF BERKELEY) CASE NO. 2016-GS-08-1474-1476

3

4 STATE OF SOUTH)
 CAROLINA,)
 5) Transcript of Record
 Plaintiff,)

6

7 vs.)
 8 KEVIN DANIEL DRIGGERS,) Date: February 21 - 23,
 2017

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Defendant.

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12 B E F O R E:

13 THE HONORABLE KRISTI LEA
 14 HARRINGTON

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20 Denise J. Lauder, RPR

21 Ninth Judicial Circuit

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1 A P P E A R A N C E S

2

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VOIR DIRE

1 (The following proceedings were held
2 2/21/2017, in Berkeley County General Sessions,
3 Moncks Corner, South Carolina, in re: State of
4 South Carolina v. Kevin D. Driggers, at 12:24 p.m.)

5 THE COURT: Ladies and gentlemen, we're
6 now -- the last time you were in front of me I did
7 the general qualifications just to make sure that
8 you were qualified to serve as jurors. We are now
9 actually picking a case and you will be serving
10 perhaps, if you're selected to serve, on this
11 particular case.

12 Ladies and gentlemen, again, you have
13 been sworn to give me your complete and truthful
14 answers, and I will give you an opportunity to come
15 forward and speak with me in private if you don't
16 wish to answer the question.

17 Ladies and gentlemen, I'm now going to
18 read the Indictment. This is the case of the State
19 of South Carolina V Kevin Daniel Driggers. The
20 State alleges in Indictment 2016-GS-08-1474 -- and,
21 ladies and gentlemen, the Indictment is simply a
22 piece of paper. This is the Indictment,
23 (Indicating) it's a piece of paper that brings us
24 to court here today.

25 Mr. Driggers has pled not guilty to

VOIR DIRE

1 each of the three Indictments he's facing.

2 TheState alleges that Mr. Driggers did in Berkeley
3 County, South Carolina, on or about November 4th,
4 2015, enter the dwelling of Brenda Kay Mills
5 without consent and with the intent to commit a
6 crime therein; that, in addition, the defendant
7 caused physical injury to a person who is not a
8 participant in the crime; and, or the defendant
9 used or threatened the use of a dangerous
10 instrument in violation of Section 16-11-311 of the
11 South Carolina Code of Laws, 1976, as amended. Mr.
12 Driggers has pled not guilty to that Indictment.

13 The State further alleges in
14 2016-GS-08-1475, that in Berkeley County, South
15 Carolina, on or about November 4th, 2015, the
16 defendant, Kevin Daniel Driggers, did with intent
17 to kill and with malice aforethought attempt to
18 kill Brenda Kay Mills. This is in violation of
19 Section 16-3-29, of the South Carolina Code of
20 Laws, 1976, as amended. Mr. Driggers has pled not
21 guilty to that Indictment.

22 The State further alleges in
23 2016-GS-08-1476, that the defendant did in Berkeley
24 County, South Carolina --

25 He's going to have to wait. It's too

VOIR DIRE

1 late. He's going to have to wait. Take him out.

2 Thank you.

3 -- that in Berkeley County, South
4 Carolina, on or about November 4, 2015, the
5 defendant, Kevin Daniel Driggers, unlawfully did
6 seize, confine, inveigle, decoy, kidnap, abduct, or
7 carry away the victim, Brenda Kay Mills, without
8 authority of law, all in violation of Section
9 16-3-910, of the South Carolina Code of Laws, 1976,
10 as amended.

11 Is there any member of the jury panel
12 that knows anything about this case, other than
13 what I have just read to you? If so, please stand.

14 Thank you, there are none.

15 Mr. Church, if you would please stand,
16 introduce Mr. Driggers, introduce yourself and
17 whoever will be assisting you throughout the
18 progress of the trial.

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

21 THE COURT: Yes, sir.

22 MR. CHURCH: My name is John Church and
23 I work with the Berkeley County Public Defender's
24 Office, and I'm representing Kevin Driggers. My
25 co-counsel is Julie Shivers. She's also a member

VOIR DIRE

1 of the Berkeley County Public Defender's Office.

2 And also assisting us will be our investigator,

3 Christy Paige.

4 THE COURT: Thank you. Is there any

5 member of the jury panel related by blood,

6 marriage, close personal friend, ever have any

7 business, personal, or professional dealings, or

8 you know Mr. Driggers in any capacity? If so,

9 please stand.

10 Thank you, there are none.

11 Is there any member of the jury panel

12 related by blood, marriage, close personal friend,

13 ever have any business, personal, or professional

14 dealings, or know Mr. Church or Ms. Shivers or Ms.

15 Paige in any way? If so, please stand.

16 Thank you, there are none.

17 Any member of the jury panel ever been

18 employed by or have any business matters handled by

19 the Public Defender's office in Charleston or

20 Berkeley County? If so, please stand.

21 Yes, sir; your juror number and name?

22 PROSPECTIVE JUROR: I'm juror number

23 52, Damien Ellington.

24 THE COURT: All right. Mr. Ellington,

25 do you know Mr. Church, Ms. Shivers or Mr. Paige?

VOIR DIRE

1 PROSPECTIVE JUROR: No.

2 THE COURT: Who do you know in the
3 Public Defender's office?

4 PROSPECTIVE JUROR: Well, you mentioned
5 Charleston County. I do actually work for King's
6 Technology, and the Charleston County Public
7 Defender's office is one of our clients.

8 THE COURT: All right. Is there
9 anything about that relationship, sir, that would
10 affect your ability to be fair and impartial in
11 this case?

12 PROSPECTIVE JUROR: No.

13 THE COURT: And your juror number, Mr.
14 Ellington?

15 PROSPECTIVE JUROR: 52.

16 THE COURT: Thank you.

17 Is there anyone else?

18 Thank you. There are none.

19 Ms. Sigal, if would please stand,
20 introduce yourself, and any persons who will be
21 assisting you at your table throughout this trial
22 and a little bit about your office.

23 MS. SIGAL: Good afternoon, ladies and
24 gentlemen. My name is Price Sigal, and I'm an
25 Assistant Solicitor for the Ninth Judicial Circuit

VOIR DIRE

1 Solicitor's office working for your elected
2 Solicitor, Scarlett Wilson. Assisting me this week
3 is Assistant Solicitor Wilton McNeely. Also
4 assisting us is Denita Brown and Corporal Shawnda
5 Winder with the Berkeley County Sheriff's Office.

6 THE COURT: Thank you.

7 Is there any member of the jury panel
8 related by blood, marriage, close personal friend,
9 ever have any business, personal, or professional
10 matters handled by either Mrs. -- Mr. McNeely, Ms.
11 Sigal, Ms. Brown? If so, please stand.

12 Thank you there are none.

13 Any member of the jury panel ever been
14 employed by, do business with in any capacity, or
15 had any matters handled by the Ninth Circuit
16 Solicitor's office, and that is also Charleston and
17 Berkeley County? If so, please stand.

18 Thank you, there are none.

19 Ladies and gentlemen, I'm now going to
20 call a list of potential witnesses who may be
21 called to testify in this case. If you know these
22 individuals in any capacity, please stand as I call
23 their names. Brenda Mills, **Noah M.**, Cheryl
24 Scott, Betty Delk, William Driggers, Corporal
25 Winder -- Winder, sorry, with the Berkeley County

VOIR DIRE

1 Sheriff's Office, if you could please stand. Thank
2 you. Sergeant Cassandra Drew with the Berkeley
3 County Sheriff's Office, Private First Class
4 Kirsten Chestnutt with the Berkeley County Sheriff's
5 Office, Augustus Flood with the Berkeley County
6 Sheriff's Office, Teresa Barnett, 911 Records
7 Custodian, Richard Brinson, Trident Medical Center,
8 Barbara Wooten for the Berkeley County EMS, Kenneth
9 Scott, John Thomas with the Berkeley County EMS,
10 and Alyssa Rheingold with MUSC, Medical University
11 of South Carolina. Is there any member of the jury
12 panel related by blood, marriage, or close personal
13 friend to any of those individuals? If so, please
14 stand.

15 Thank you there are none.

16 Any member of the jury panel ever been
17 employed by, or a member of your immediate family
18 employed by, or previously employed with, the
19 Berkeley County Sheriff's Office, the 911 from
20 Berkeley County Communications, Trident Medical
21 Center, Berkeley County EMS, or MUSC? If so,
22 please stand.

23 We will start over here. Yes, ma'am.

24 PROSPECTIVE JUROR: I work down at the
25 university.

VOIR DIRE

1 THE COURT: Your name and juror number?

2 PROSPECTIVE JUROR: 45, Monica Davis.

3 THE COURT: And what do you do at

4 MUSC?

5 PROSPECTIVE JUROR: I'm a registered

6 nurse.

7 THE COURT: Do you know Alyssa

8 Rheingold?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Is there anything about

11 your employment at MUSC that would affect your

12 ability to be fair and impartial in this case?

13 PROSPECTIVE JUROR: No, ma'am.

14 THE COURT: Thank you.

15 Yes, sir.

16 PROSPECTIVE JUROR: My son --

17 THE COURT: I need your juror number

18 and name.

19 PROSPECTIVE JUROR: I'm sorry. 53, Tim

20 Elmer.

21 THE COURT: Yes, sir.

22 PROSPECTIVE JUROR: My son's at

23 Trident.

24 THE COURT: What does he do at

25 Trident?

VOIR DIRE

1 PROSPECTIVE JUROR: He's a respiratory
2 therapist.

3 THE COURT: Do you know Richard
4 Brinson?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Is there anything about
7 there being an employee from Trident Medical Center
8 that would affect your ability to be fair and
9 impartial, Mr. Elmer?

10 PROSPECTIVE JUROR: No, ma'am.

11 THE COURT: Thank you.

12 Yes, sir.

13 PROSPECTIVE JUROR: Me? Scott Warren,
14 juror number 175. My wife was formerly employed by
15 MUSC.

16 THE COURT: And do you know -- pursuant
17 to your's wife employment, do you know Alyssa
18 Rheingold?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Is there anything about Ms.
21 Rheingold testifying that would affect your ability
22 to be fair and impartial in this case?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Juror 175?

25 PROSPECTIVE JUROR: Yes, ma'am.

VOIR DIRE

1 THE COURT: Thank you.

2 Yes, sir.

3 PROSPECTIVE JUROR: Juror 185, William
4 Zirkle. My wife was a former employee of Berkeley
5 County EMS.

6 THE COURT: And what did she do for
7 EMS?

8 PROSPECTIVE JUROR: She was a -- the
9 one below a paramedic.

10 THE COURT: Okay. And do you know
11 Barbara Wooten or John Thomas?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Is there anything about
14 your wife's prior employment that would affect your
15 ability to be fair and impartial in this case?

16 PROSPECTIVE JUROR: No.

17 THE COURT: How long was she with
18 Berkeley County EMS?

19 PROSPECTIVE JUROR: Two to three years.

20 THE COURT: When was the last time she
21 was employed there?

22 PROSPECTIVE JUROR: Around 2006, 2007.

23 THE COURT: Okay. Juror 185?

24 PROSPECTIVE JUROR: Yes, ma'am.

25 THE COURT: Yes, sir.

VOIR DIRE

1 PROSPECTIVE JUROR: Juror number 1,
2 Chris Abbonizio. My wife currently works at MUSC
3 as a nurse manager of the gastroenterology
4 department.

5 THE COURT: Do you know Alyssa
6 Rheingold?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Is there anything about
9 your wife's employment that would affect your
10 ability to be fair and impartial in this case?

11 PROSPECTIVE JUROR: No, ma'am.

12 THE COURT: Thank you, juror number 1.
13 Yes, sir.

14 PROSPECTIVE JUROR: Juror number 6,
15 Edgar Archambeau. I previously volunteered with
16 Pine Ridge Fire Department in Berkeley County and I
17 worked with the dispatch center and EMS.

18 THE COURT: Did you know any of these
19 people that I called their names?

20 PROSPECTIVE JUROR: No, ma'am.

21 THE COURT: When was the last time that
22 you volunteered?

23 PROSPECTIVE JUROR: Late 2012.

24 THE COURT: Okay. Anything about your
25 volunteering where you did that would affect your

VOIR DIRE

1 ability to be fair and impartial in this case?

2 PROSPECTIVE JUROR: No, ma'am.

3 THE COURT: Okay. Thank you, juror
4 number 6.

5 Is there anyone else?

6 Thank you, there are none.

7 Is there any member of the jury panel
8 that has previously been a witness in a civil or
9 criminal matter? If so, please stand.

10 Thank you, there are none.

11 Is there any member of the jury panel
12 that has ever witnessed a crime? If so, please
13 stand.

14 Thank you, there are none.

15 Is there any member of the jury panel
16 that has ever been employed as an attorney or in
17 any capacity within a law firm? If so, please
18 stand. Or, you have an attorney that is a member of
19 your immediate family.

20 Yes, ma'am.

21 PROSPECTIVE JUROR: Number 38, Sandra
22 Cole. My husband is a retired attorney.

23 THE COURT: Here in Berkeley County?

24 PROSPECTIVE JUROR: Berkeley County.

25 THE COURT: And what is your husband's

VOIR DIRE

1 name?

2 PROSPECTIVE JUROR: Charles Cole. And
3 he's retired.

4 THE COURT: Okay. What type of law
5 did he practice?

6 PROSPECTIVE JUROR: Criminal, real
7 estate, everything.

8 THE COURT: How long has it been since
9 he practiced?

10 PROSPECTIVE JUROR: Probably 12 years
11 now.

12 THE COURT: Do you know -- do you
13 happen to know any of the individuals seated before
14 you?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Is there anything about
17 your husband being a retired attorney that would
18 affect your ability to be fair and impartial in
19 this case?

20 PROSPECTIVE JUROR: No.

21 THE COURT: Thank you. And your juror
22 number?

23 PROSPECTIVE JUROR: 38.

24 THE COURT: Thank you, Ms. Cole.

25 Yes, sir.

VOIR DIRE

1 PROSPECTIVE JUROR: Scott Warren, 175.
2 My sister is employed as an attorney with Trask and
3 Howell.

4 THE COURT: And that's here in
5 Charleston?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Is there anything about
8 that that would affect your ability to be fair and
9 impartial in this case?

10 PROSPECTIVE JUROR: No.

11 THE COURT: Okay. Juror 175.
12 Is there anyone else?

13 Yes, sir.

14 PROSPECTIVE JUROR: Juror 71, Steven
15 Goodwin. My wife was an attorney in New York,
16 corporate law.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR: She's not
19 practicing.

20 THE COURT: How long ago was that?

21 PROSPECTIVE JUROR: 2009.

22 THE COURT: Okay. And tell me your
23 jury number one more time.

24 PROSPECTIVE JUROR: 71.

25 THE COURT: 71. Thank you.

VOIR DIRE

1 Is there anyone else?

2 PROSPECTIVE JUROR: Number 14,
3 Stephanie Bingham. My brother was an attorney
4 until about 15 years ago in Florida.

5 THE COURT: Here in Berkeley County?

6 PROSPECTIVE JUROR: No, in Florida.

7 THE COURT: Okay. And what type of law
8 did he practice?

9 PROSPECTIVE JUROR: Corporate.

10 THE COURT: Is there anything about his
11 employment that would affect your ability to be
12 fair and impartial in this case?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Okay. Thank you. And your
15 number?

16 PROSPECTIVE JUROR: 14.

17 THE COURT: 14. Thank you.

18 Is there any member of the jury panel
19 that has ever been a member of law enforcement of
20 any kind, or a member of your immediate family was
21 in law enforcement? If so, please stand.

22 Yes, ma'am.

23 PROSPECTIVE JUROR: My name is Olivia
24 Beyers, number 13, and my father-in-law works at
25 Berkeley County.

VOIR DIRE

1 THE COURT: What does he do?

2 PROSPECTIVE JUROR: He's -- I believe
3 he's a lieutenant.

4 THE COURT: What is his name?

5 PROSPECTIVE JUROR: Steve Meadows.

6 THE COURT: And he's with the Berkeley
7 County Sheriff's Department?

8 PROSPECTIVE JUROR: Yes, ma'am.

9 THE COURT: And I called several
10 members of the Sheriff's Department out. Did you
11 recognize any of those names?

12 PROSPECTIVE JUROR: No, ma'am.

13 THE COURT: And you are married to his
14 son?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: And when is the last time
17 that you have spoken to your father-in-law?

18 PROSPECTIVE JUROR: The night before
19 last.

20 THE COURT: Did you discuss this case
21 at all?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Do you know anything about
24 this case, other than what I have just read to you?

25 PROSPECTIVE JUROR: No.

VOIR DIRE

1 THE COURT: Is there anything about
2 your father-in-law being employed with the Berkeley
3 County Sheriff's Office that would affect your
4 ability to be fair and impartial in this case?

5 PROSPECTIVE JUROR: No.

6 THE COURT: And I will ask -- if you're
7 selected, you will not be able to discuss this case
8 with anyone. That includes your spouse, but it
9 will include your father-in-law. Will you be able
10 to comply with the Court's instruction?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: And your juror number?

13 PROSPECTIVE JUROR: 13.

14 THE COURT: Thank you.

15 Yes, ma'am.

16 PROSPECTIVE JUROR: Shannon Adams,
17 number 3. My uncle just retired, Miami police
18 officer.

19 THE COURT: Anything about that that
20 would affect your ability to be fair and impartial
21 in this case?

22 PROSPECTIVE JUROR: No, ma'am.

23 THE COURT: All right. Juror 3, thank
24 you.

25 PROSPECTIVE JUROR: 126, Jodi Nobles.

VOIR DIRE

1 My brother-in-law is a recently retired military
2 police officer.

3 THE COURT: Anything about that, Ms.
4 Nobles, that would affect your ability to be fair
5 and impartial in this case?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Okay. Thank you.

8 PROSPECTIVE JUROR: 53, Tim Elmer;
9 daughter-in-law, City of North Charleston,
10 son-in-law, Dorchester County.

11 THE COURT: Okay. Anything about that
12 that would affect your ability to be fair and
13 impartial in this case?

14 PROSPECTIVE JUROR: No.

15 THE COURT: And tell me your jury
16 number.

17 PROSPECTIVE JUROR: 53.

18 THE COURT: 53, thank you.

19 PROSPECTIVE JUROR: 71, Steven Goodwin.
20 My first wife was a police officer.

21 THE COURT: Back in New York?

22 PROSPECTIVE JUROR: Back in London, in
23 England.

24 THE COURT: Anything about that that
25 would affect your ability to be fair and impartial

VOIR DIRE

1 in this case?

2 PROSPECTIVE JUROR: No.

3 THE COURT: All right. Thank you, Mr.
4 Goodwin.

5 PROSPECTIVE JUROR: Juror number 1. My
6 father was a -- is a retired police officer from
7 Philadelphia.

8 THE COURT: Anything about that that
9 would affect your ability to be fair and impartial
10 in this case?

11 PROSPECTIVE JUROR: No, ma'am.

12 THE COURT: Thank you, juror number 1.

13 Is there anybody else? Thank you,
14 there are none.

15 Is there any member of the jury panel
16 that has ever been employed by or volunteered for
17 any organizations such as my Sister's House? If
18 so, please stand.

19 Or for any organization anti-crime such
20 as MADD, SADD, or People Against Rape? If so,
21 please stand.

22 Yes, your juror number and name?

23 PROSPECTIVE JUROR: Juror number 80,
24 Maggie Heatley. I volunteered with organizations
25 like We Are Family that works with 180 Place,

VOIR DIRE

1 Southerner's Under Ground, and Girls Around
2 Charleston for the alternative to pipeline.

3 THE COURT: Anything about your
4 involvement with that that would affect your
5 ability to be fair and impartial in this case?

6 PROSPECTIVE JUROR: No, ma'am.

7 THE COURT: And tell me your juror
8 number, again.

9 PROSPECTIVE JUROR: 80.

10 THE COURT: Thank you.

11 Is there anyone else?

12 Thank you, there are none.

13 Ladies and gentlemen, I now have a
14 series of questions to ask you. If you need to
15 answer these questions, please listen very
16 carefully, and I will ask you to come forward at
17 the appropriate time. I've determined I don't want
18 you to answer these out loud for a variety of
19 reasons. So please listen very carefully; I do
20 have a series of questions.

21 Have you, or any member of your family,
22 or a close personal friend, ever been the victim of
23 any violent crime? If that applies to you, I would
24 need you to come forward at the appropriate time.

25 Have you, or any member of your family,

VOIR DIRE

1 or a very close personal friend ever been accused
2 of committing a violent crime?

3 Have you, or a member of your immediate
4 family, or a close personal friend ever been the
5 victim of domestic violence.

6 Have you, or a member of your family
7 been accused of committing domestic violence
8 regardless of any arrest or conviction?

9 Have you, a member of your immediate
10 family, or a close personal friend ever had any
11 criminal charges adjudicated by or currently
12 pending with the Berkeley County Sheriff's Office?

13 Have you, a member of your immediate
14 family, or a close personal friend ever had any
15 criminal charges adjudicated by or currently
16 pending with the Berkeley County Solicitor's
17 office?

18 Have you, or any member of your family,
19 or a close personal friend contributed to or
20 supported the campaign of Solicitor Scarlett Wilson
21 or Sheriff DeWayne Lewis?

22 If you need to answer those questions,
23 or if you feel that for whatever reason you would
24 be unable to listen to the facts from the witness
25 stand, apply the law as I give it to you, and

VOIR DIRE

1 render a verdict based only upon those things free
2 from any outside religious, moral, or personal
3 beliefs, for whatever reason you feel that you
4 cannot be a fair and impartial juror in this case,
5 I need you to move forward to the center and come
6 forward at this time.

7 THE BAILIFF: Juror number 73.

8 THE COURT: Good afternoon.

9 PROSPECTIVE JUROR: My daughter's
10 father -- my daughter's father was arrested and
11 charged with arson and trying to kill me.

12 THE COURT: Okay. Was that here in
13 Berkeley County?

14 PROSPECTIVE JUROR: New Jersey.

15 THE COURT: And what happened as a
16 result of that?

17 PROSPECTIVE JUROR: He was in prison
18 for seven years.

19 THE COURT: And where is he now?

20 PROSPECTIVE JUROR: In New Jersey.

21 THE COURT: So you've heard what the
22 Indictments allege against the defendant. Is there
23 anything about what you have shared with us that
24 that would affect your ability to be fair and
25 impartial in this case?

VOIR DIRE

1 PROSPECTIVE JUROR: To be honest, it
2 probably will.

3 THE COURT: That's what I need you to
4 be, honest. I will protect you from the trial of
5 this case. Please do not answer any other
6 questions, but stay with us so I can give you
7 instructions regarding the remainder of your
8 service.

9 73 is protected from the trial of this
10 case.

11 THE BAILIFF: Juror 13.

12 THE COURT: Yes.

13 PROSPECTIVE JUROR: I'm not sure, but
14 my mom was molested, my sister-in-law, and my mom's
15 best friend, and my uncle is on death row for rape
16 and murder.

17 THE COURT: And so, Ms. Beyer, you've
18 shared quite a bit with us. Is there anything
19 about what you have shared that would affect your
20 ability to be fair and impartial in this case?

21 PROSPECTIVE JUROR: Just from my
22 previous opinions, I think so.

23 THE COURT: Okay. I will excuse you
24 from the trial of this case. Please do not answer
25 any more questions about this case, but I need you

VOIR DIRE

1 to stay with us a few moments.

2 Juror 13 is protected from the trial of
3 this case.

4 THE BAILIFF: Juror 126.

5 THE COURT: Good morning. Good
6 afternoon, Ms. Nobles.

7 PROSPECTIVE JUROR: Hello.

8 THE COURT: How are you?

9 PROSPECTIVE JUROR: I'm fine, thank
10 you. My first cousin was Shannon McConaughey, who
11 was found murdered in McClellanville, South
12 Carolina. It's been several years.

13 THE COURT: Is there anything about
14 what you've shared with us that would affect your
15 ability to be fair and impartial in this case?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Will you be able to listen
18 to the facts from the witness stand, apply the law
19 as I give it, and render a verdict based only upon
20 those things?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: All right. Juror 126 will
23 remain.

24 THE BAILIFF: Juror number 80.

25 PROSPECTIVE JUROR: Not sure if this

VOIR DIRE

1 matters, but last year my family started working
2 closely with Sheriff Lewis and Detective Corte on a
3 family case that involves child services and DNR.

4 THE COURT: Is there anything about
5 that that would affect your ability to be fair and
6 impartial in this case?

7 PROSPECTIVE JUROR: Not in this case,
8 no, but I wanted to bring it up.

9 THE COURT: Okay. And we appreciate
10 that, better to have more information than not
11 enough. Thank you, Ms. Heatley.

12 PROSPECTIVE JUROR: Thank you.

13 THE BAILIFF: Juror 65.

14 THE COURT: Yes, ma'am.

15 PROSPECTIVE JUROR: My sister was a
16 victim of a domestic violence from her husband.
17 And, also, 20 years later, a boyfriend, I was
18 talking to her on the phone and he ended up cutting
19 her with a knife. And I called the police from
20 where I was 200 miles away, and they came and
21 arrested him and she was put in the hospital.

22 THE COURT: So the first thing with
23 your sister, did that happen in Berkeley County?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Or somewhere else?

VOIR DIRE

1 PROSPECTIVE JUROR: In New York.

2 THE COURT: And were charges filed?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: And what was the result?

5 PROSPECTIVE JUROR: He was put in
6 prison.

7 THE COURT: So, Ms. Foster, is there
8 anything about what you shared with us that would
9 affect your ability to be fair and impartial in
10 this case?

11 PROSPECTIVE JUROR: I don't believe so.

12 THE COURT: Okay. And I do that same
13 thing, I guess so, I hope so. Will you be able to
14 listen to the facts from the witness stand, apply
15 the law as I give it to you, and render a verdict
16 based only upon those things?

17 PROSPECTIVE JUROR: Probably, yes.

18 THE COURT: And I do those same
19 things, too. I hope so, I guess so. Both the
20 defendant and the State deserve a juror that can
21 say yes or no. Can you be that fair and impartial
22 juror who puts aside any outside influences,
23 listens to the facts from the witness stand,
24 applies the law as the Court gives it, and render a
25 verdict based on those things?

VOIR DIRE

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Juror 65 will remain.

3 Is there anyone else? Thank you.

4 Counsel, any challenges for cause?

5 MR. MCNEELY: Juror number 89

6 successfully completed PTI, but he still has

7 charges.

8 THE COURT: And so 89?

9 MR. MCNEELY: 89.

10 THE COURT: Okay. So I'm going to

11 have them bring him up.

12 THE COURT: But your question is?

13 MR. MCNEELY: Just advising the Court.

14 MR. CHURCH: We could strike juror
15 number 80 for cause. I couldn't hear everything,
16 but she said she was working with the sheriff's
17 office in reference to a family issue.

18 THE COURT: She said she could be fair
19 and impartial, that she was working on a family
20 issue.

21 MS. SIGAL: Okay.

22 THE COURT: I need to see juror 89.

23 Juror 89, please.

24 Thank you, Mr. Infinger.

25 PROSPECTIVE JUROR: Afternoon.

VOIR DIRE

1 THE COURT: Hi. So it was brought to
2 my attention that you had some charges handled
3 through PTI?

4 PROSPECTIVE JUROR: Right.

5 THE COURT: And so when I asked the
6 question if you had any matters adjudicated by this
7 Solicitor's office, you didn't respond.

8 PROSPECTIVE JUROR: I was told they
9 were dismissed.

10 THE COURT: All right. But they were
11 still handled by the Solicitor's office.

12 PROSPECTIVE JUROR: Sorry.

13 THE COURT: Is there anything about
14 that -- do you know any of the individuals behind
15 you employed by the sheriff's office, Solicitor's
16 office, or the public defender's office?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Is there anything about you
19 having matters adjudicated that would affect your
20 ability to be fair and impartial in this case?

21 PROSPECTIVE JUROR: No, ma'am.

22 THE COURT: And is there anything about
23 me bringing you up all by yourself that is going to
24 affect your ability to be fair and impartial --

25 PROSPECTIVE JUROR: No, not at all.

VOIR DIRE

1 THE COURT: -- in this case? Okay.

2 And you don't know Mr. McNeely or Mr. Church at
3 all?

4 PROSPECTIVE JUROR: Never met them.

5 THE COURT: Okay. Thank you.

6 MS. SIGAL: My victim advocate told me
7 126 is one of the long-distant relatives of the
8 victim, but she didn't mention -- she mentioned it
9 to me, but didn't say anything when you asked.

10 THE COURT: And so are you challenging
11 her for cause?

12 MS. SIGAL: I just wanted to bring it
13 to everyone's attention.

14 MS. SHIVERS: What number?

15 MS. SIGAL: 126.

16 MS. SHIVERS: She didn't stand.

17 MS. SIGAL: I didn't know if we could
18 ask her if she was related to the victim.

19 That's according to my victim's
20 advocate.

21 THE COURT: Ms. Sigal has brought it to
22 the Court's attention. Do I have any motions or
23 matters --

24 MS. SHIVERS: We would challenge her
25 for cause.

JURY SELECTION

1 THE COURT: All right. Your motion is
2 granted. 126 is challenged and stricken for cause.

3 Anything else?

4 MS. SIGAL: No, Your Honor.

5 MS. SHIVERS: No, Your Honor.

6 Strikes are five and ten, I will pick
7 two alternates.

8 MS. SIGAL: Yes, ma'am.

9 THE COURT: All right. Are we ready?
10 Is there anyone else?

11 Thank you, there are none.

12 THE COURT: Madame Clerk, strikes are
13 five and ten, we'll pick two alternates.

14 Please begin the selection process.

15 THE CLERK: State ready to proceed?

16 MS. SIGAL: Yes.

17 THE CLERK: Defendant ready to
18 proceed?

19 MR. CHURCH: Yes.

20 THE CLERK: Ladies and gentlemen, as I
21 call your name, please come forth and bring your
22 personal belongings with you and follow the
23 instructions of the bailiff standing here with the
24 blue jacket on.

25 If I say, seat the juror, please have a

JURY SELECTION

1 seat in the jury box. If I say, excuse the juror,
2 please return to your original seating.

3 Juror number 1, Christopher Abbonizio.

4 What says the State?

5 MS. SIGAL: Please present the juror.

6 THE CLERK: What says the defendant?

7 MR. CHURCH: Please seat the juror.

8 THE CLERK: Seat the juror.

9 Juror 80, Maggie Heatley.

10 What says the State?

11 MS. SIGAL: Please present this juror.

12 THE CLERK: What says the defendant?

13 MR. CHURCH: Please excuse the juror.

14 THE CLERK: Excuse the juror.

15 Juror 185, William Zirkle, Junior.

16 What says the State?

17 MS. SIGAL: Present this juror.

18 THE CLERK: What says the defendant?

19 MR. CHURCH: Seat the juror.

20 THE CLERK: Seat the juror.

21 Juror 71, Steven Goodwin.

22 What says the State?

23 MS. SIGAL: Please present this juror.

24 THE CLERK: What says the defendant?

25 MR. CHURCH: Seat the juror.

JURY SELECTION

1 THE CLERK: Seat the juror.
2 Juror 38, Sandra Cole.
3 What says the State?
4 MS. SIGAL: Please present this juror.
5 THE CLERK: What says the defendant?
6 MR. CHURCH: Please seat the juror.
7 THE CLERK: Seat the juror.
8 Juror 180, Winnoris Williams.
9 What says the State?
10 MS. SIGAL: Please present this juror.
11 THE CLERK: What says the defendant?
12 MR. CHURCH: Seat the juror.
13 THE CLERK: Seat the juror.
14 Juror 108, Evelyn Martinez.
15 What says the State?
16 MS. SIGAL: Please present this juror.
17 THE CLERK: What says the defendant?
18 MR. CHURCH: Seat the juror.
19 THE CLERK: Seat the juror.
20 Juror 186, Patrick Zubriskie.
21 What says the State?
22 MS. SIGAL: Please present this juror.
23 THE CLERK: What says the defendant?
24 MR. CHURCH: Excuse the juror.
25 THE CLERK: Excuse the juror.

JURY SELECTION

1 Juror 102, David Le Fevre.
2 What says the State?
3 MS. SIGAL: Please present this juror.
4 THE CLERK: What says the defendant?
5 MR. CHURCH: Please seat the juror.
6 THE CLERK: Seat the juror.
7 Juror 52, Damien Ellington.
8 What says the State?
9 MS. SIGAL: Please present this juror.
10 THE CLERK: What says the defendant?
11 MR. CHURCH: Please seat the juror.
12 THE CLERK: Seat the juror.
13 Juror 122, Darlene Naval-Kline.
14 What says the State?
15 MS. SIGAL: Please present this juror.
16 THE CLERK: What says the defendant?
17 MR. CHURCH: Seat the juror.
18 THE CLERK: Seat the juror.
19 Juror 121, Donald Murray.
20 What says the State?
21 MS. SIGAL: Please present this juror.
22 THE CLERK: What says the defendant?
23 MR. CHURCH: Please excuse the juror.
24 THE CLERK: Excuse the juror.
25 Juror 175, Scott Warren.

JURY SELECTION

1 What says the State?

2 MS. SIGAL: Please present this juror.

3 THE CLERK: What says the defendant?

4 MR. CHURCH: Please excuse the juror.

5 THE CLERK: Excuse the juror.

6 Juror number 8, Willis Barnett.

7 What says the State?

8 MS. SIGAL: Please present this juror.

9 THE CLERK: What says the defendant?

10 MR. CHURCH: Seat the juror.

11 THE CLERK: Seat the juror.

12 Juror 90, Cornell Johnson.

13 What says the State?

14 MS. SIGAL: Please excuse the juror.

15 THE CLERK: Excuse the juror.

16 Juror 187, Brian Cannonie.

17 What says the State?

18 MS. SIGAL: Please present this juror.

19 THE CLERK: What says the defendant?

20 MR. CHURCH: Seat the juror.

21 THE CLERK: Seat the juror.

22 Juror 166, Mark Thomas.

23 What says the State?

24 MS. SIGAL: Please seat the juror.

25 THE CLERK: What says the defendant?

JURY SELECTION

1 MR. CHURCH: Seat the juror.
2 THE CLERK: Please seat the juror.
3 THE COURT: Picking two alternates.
4 THE CLERK: Juror number three, Shannon
5 Adams.
6 What says the State?
7 MS. SIGAL: Please present this juror.
8 THE CLERK: What says the defendant?
9 MR. CHURCH: Excuse the juror.
10 THE CLERK: Excuse the juror.
11 Juror number 194, Vanessa Ripmaster.
12 What says the State?
13 MS. SIGAL: Please present this juror.
14 THE CLERK: What says the defendant?
15 MR. CHURCH: Please excuse the juror.
16 THE CLERK: Excuse the juror.
17 Juror 24, Michelle Brown.
18 What says the State?
19 MS. SIGAL: Please present this juror.
20 THE CLERK: Any challenge for cause
21 from the defendant?
22 MR. CHURCH: Seat the juror.
23 THE CLERK: Seat the juror.
24 Next alternate. Juror 65, Elizabeth
25 Foster.

JURY SELECTION

1 What says the State?

2 MS. SIGAL: Please present this juror.

3 THE CLERK: What says the defendant?

4 MR. CHURCH: Please excuse the juror.

5 THE CLERK: Excuse the juror.

6 Juror 79, Kevin Hathaway.

7 THE COURT: What says the State?

8 MS. SIGAL: Please present the juror.

9 THE CLERK: What says the defendant?

10 MR. CHURCH: Please seat the juror.

11 THE CLERK: Seat the juror.

12 THE COURT: Any motions or matters
13 pertaining to the jury as selected?

14 MS. SIGAL: No, Your Honor.

15 THE COURT: From the defense?

16 MR. CHURCH: Not from the defense.

17 THE COURT: Ladies and gentlemen, you
18 have been selected as the jury to try this case.
19 Please be escorted into your jury room. We will
20 receive you back in just a few moments. Please
21 stay seated for the jury.

22 (Jury panel out, 1:02 p.m.)

23 THE COURT: Outside of the jury's
24 presence, any motions or matters?

25 MR. CHURCH: I would put on the record

JURY SELECTION

1 my previous motion to quash the burglary --

2 THE COURT: All I'm asking is
3 pertaining to the jury as selected.

4 MR. CHURCH: Nothing for the jury, Your
5 Honor.

6 THE COURT: All right. Thank you.

7 Ladies and gentlemen, we have worked
8 well past where I typically stop for the lunch
9 hour, and so we're going to go ahead and break for
10 the day for you, but I want you to know your
11 service is for the entire week. So you will need
12 to call back after 6:00 p.m. today to receive
13 further instructions for the remainder of the week.

14 Please have a wonderful day and thank
15 you again for your service to Berkeley County. You
16 are excused. Thank you.

17 What motions or matters do you have?

18 MS. SIGAL: Your Honor, the State would
19 be ready to begin after a lunch break.

20 THE COURT: Do you have any other
21 pretrial matters other than the issue with the
22 indictment?

23 MR. CHURCH: I believe that's it, Your
24 Honor.

25 MR. MCNEELY: We do as to the letter,

JURY SELECTION

1 Your Honor.

2 THE COURT: I'm sorry?

3 MR. MCNEELY: There's a pretrial motion
4 from Ms. Sigal as to the letter -- a letter written
5 by the victim to the defendant in jail that they
6 were provided last Friday.

7 THE COURT: Do we need to address that
8 before we begin?

9 MS. SIGAL: Yes, Your Honor.

10 THE COURT: How long do you think it
11 would take?

12 MS. SIGAL: I believe approximately
13 15 minutes.

14 MS. SHIVERS: I can make this really
15 quick. I'm not planning on crossing the victim
16 regarding anything in the letter.

17 THE COURT: We need to clarify what --

18 MS. SIGAL: I do believe that because I
19 understand the defense counsel's investigator
20 questioned the victim about letter and I want to
21 make sure that -- just any reference to the --

22 MS. SHIVERS: No. I don't plan on
23 crossing her about anything that was written in the
24 letter that my investigator talked to her about
25 after the fact. So there's nothing in that letter

JURY SELECTION

1 I would be cross-examining her on.

2 THE COURT: All right. I'm going to
3 have the jury come back at 2:30 then.

4 Bring them back in.

5 Ms. Martinez has been selected as the
6 foreperson.

7 (Jury in, 2:06 p.m.)

8 THE COURT: Ladies and gentlemen, as I
9 indicated to you, you have been selected as the
10 jury to try this case. And we have reached the
11 appropriate time for us to take lunch unless no one
12 is hungry.

13 Ms. Martinez, you are the jury
14 spokesperson, you are the foreperson. So I see
15 that you have members of your jury who are hungry
16 so we're going to break for lunch.

17 We use this clock. (Indicating) Be
18 back and report -- and the bailiffs will indicate
19 to you how to report back at 2:30. We will begin
20 promptly at that time.

21 Please do not begin discussing this
22 case with anyone; that does include your fellow
23 jurors, your friends, or anyone. Do not text about
24 this case. You don't know anything about this case
25 because I have not given you instructions yet to

JURY SELECTION

1 follow. Please, if you see someone at lunch
2 involved in this case, please do not talk to them,
3 and if they don't talk to you, please don't think
4 they're being rude. They're following my
5 instructions.

6 And so you will have those notepads
7 with you. You can leave those right in your chairs
8 and retrieve them back.

9 Ms. Martinez, that is your assigned
10 seat. And to the two alternates, those are your
11 assigned seats, and you can alternate those two
12 seats, but those two are yours. The rest of you
13 may sit wherever. Please come in and take your
14 seats quickly because everyone will remain standing
15 until all 14 of you are seated.

16 Please have a wonderful lunch. If you
17 need any suggestions on where to go, the bailiffs
18 will also let you know that. Please have a
19 wonderful time.

20 And you'll be back at what time, Ms.
21 Martinez?

22 THE FOREPERSON: 2:30.

23 THE COURT: 2:30.

24 (Jury panel out, 1:11 p.m.)

25 (STATE EXH. 1-41 ID.)

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THE COURT: Mr. Church, you need to place something on the record concerning the indictment?

MR. CHURCH: Thank you, Your Honor.

Your Honor, I would move to quash the burglary first indictment. I do not believe it's specific enough. It just says, intent to commit a crime therein. It's not specific as to what they intended in the indictment. They just basically used the language in the statute.

I believe there should have been a, to wit, to put him on notice as to what particular charge or actions he was going to have to defend himself on.

THE COURT: Ms. Sigal?

MS. SIGAL: Your Honor, the State's not aware of any statutory language that requires a, to wit, in a burglary indictment. This is simply a notice document. In addition to that, the defendant was charged with attempted murder and kidnapping within the same incident. He was on notice that he is also charged with intent to kill the victim, which I believe would put him on notice for the crime involved in the burglary.

1 THE COURT: Mr. Church.

2 MR. CHURCH: I would just say that each
3 indictment is specific to that particular crime and
4 should be detailed enough.

5 THE COURT: And that is correct, but
6 based upon what I find was contained in the
7 indictment I'm going to deny your motion to quash
8 that indictment.

9 Any other pretrial motion or matters,
10 Mr. Church?

11 MR. CHURCH: Note from the defense.

12 MR. MCNEELY: Your Honor, I spoke with
13 Mr. Church and Ms. Shivers earlier. They advised
14 they will be stipulating to three 911 calls that
15 are on the disk. There are actually four calls on
16 the disk, as well as a copy of the CAD report. We
17 only intend on admitting three of the tracks, 1
18 through 3, with the appropriate witness.

19 Basically, what it will do is dispense
20 of us calling the 911 dispatch representative.

21 THE COURT: Is that correct?

22 MR. CHURCH: Yes, that's correct.

23 MR. MCNEELY: And that's State's
24 Exhibit 34, the disk.

25 THE COURT: State's 34. All right.

1 And your exhibits have been marked, Mr. McNeely?

2 MR. MCNEELY: They have, Your Honor.

3 THE COURT: Anything before we break
4 for lunch?

5 MR. CHURCH: Nothing from the defense,
6 Your Honor.

7 THE COURT: Your client is in custody.
8 We don't need to address that.

9 MR. CHURCH: That's correct.

10 THE COURT: We will be at ease. Be
11 back in your seats promptly at 2:30 ready to begin.

12 (STATE EXH. 34 in evidence.)

13 (A luncheon recess transpired, 1:14
14 p.m. - 2:30 p.m.)

15 THE COURT: Anything before we bring
16 in the jury? From the State?

17 MR. MCNEELY: One brief matter, Your
18 Honor; it goes to labelling a piece of evidence.
19 State's Exhibit, I think it would be, 38 is the
20 brown bag on the table. It contains -- actually
21 35. It contains an ax handle. As well as two
22 knives and a note. We only intend on admitting the
23 ax handle, so I wanted to address the Court as to
24 how it prefers that we label the item, if the
25 sticker goes directly onto the ax handle or the

1 bag, and we remove the other items from the bag
2 before the jury gets to see it.

3 THE COURT: What's in the bag?

4 MR. MCNEELY: In the bag is the handle,
5 that you can see sticking out, as well as two
6 pocket knives and some notes.

7 THE COURT: Mr. Church?

8 MR. CHURCH: The defense will just go
9 with whatever is easiest.

10 THE COURT: Well, there's how many
11 items in the bag?

12 MR. MCNEELY: There is the handle that
13 you can see, two pocket knives, and some
14 handwritten notes that are packaged together in a
15 manila bag inside the brown bag.

16 THE COURT: Come up here and show me
17 -- undo the bag. Are you going to admit each item?

18 MR. MCNEELY: Just the handle, that's
19 the issue. So these items belong in this, but
20 there's a note in this bag and these were in here
21 as well. Everything was packaged together. The
22 issue that I have is just admitting this --

23 THE COURT: You don't intend to utilize
24 anything from the -- the bag or anything from the
25 bag?

1 MR. MCNEELY: The handle.

2 THE COURT: Just the handle?

3 MR. MCNEELY: Correct.

4 THE COURT: All right. Mr. Church,
5 you don't have any preference?

6 MR. CHURCH: No, Your Honor.

7 THE COURT: All right. So I think the
8 bag -- and what is the bag marked now?

9 MR. MCNEELY: The bag has not been
10 marked. It will be 35.

11 THE COURT: Ms. Denise, do you have a
12 preference? Is it easier for you -- I think it
13 should be 35 is the bag, 35A is the handle.

14 MR. MCNEELY: Okay.

15 THE COURT: Indicates that the handle
16 came from the bag. I don't normally like to use
17 numbers and letters, but I think that makes sense.
18 35 is the bag and 35A is the handle.

19 (STATE EXH. 35, Bag, was marked for
20 identification.)

21 (STATE EXH. 35A, Handle, was marked for
22 identification.)

23 THE COURT: In evidence.

24 (STATE EXH. 35 in evidence.)

25 (STATE EXH. 35A in evidence.)

1 Anything before we bring in the jury?

2 MS. SIGAL: No, Your Honor.

3 MR. CHURCH: I'm sorry, Your Honor?

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

6 MR. CHURCH: Nothing from the defense.

7 THE COURT: All right.

8 (Jury in, 2:51 p.m.)

9 THE COURT: Thank you. Please be
10 seated.

11 Ladies and gentlemen, you must be
12 administered an oath to try this case.

13 Madame Clerk, would you please
14 administer the oath.

15 THE JURY,
16 being first duly sworn, testified as follows:

17 THE CLERK: Thank you be seated.

18 THE COURT: Thank you. Was there any
19 member of the panel who could not take that oath?
20 If so, please stand.

21 Thank you. All 14 jurors have
22 indicated that they⁷ have taken the oath.

23 Ladies and gentlemen, did every member
24 of the panel comply with my instructions over the
25 lunch hour? If you did not comply with my

COURT'S OPENING REMARKS

1 instructions, if you talked about this case or did
2 any independent research or did something that I
3 asked you not to do, please stand.

4 Thank you. All 14 jurors have
5 indicated that they complied with the Court's
6 instruction.

7 As I indicated to you, you have been
8 selected as the jurors to try this case. This is
9 the case of the State v. Kevin Driggers. Ms.
10 Martinez, you have been selected as the jury's
11 foreperson. If at any time any of your other
12 members of the jury need a break or have any
13 concerns or questions, if you will please let your
14 foreperson know.

15 There will always be a bailiff seated
16 right where that bailiff is. It may not always be
17 that particular bailiff, but there will always be
18 someone. If you will alert them, we will handle
19 that matter as quickly as we can.

20 I have provided you notepads. You may
21 take notes throughout the process of this trial. I
22 caution jurors, one juror's notes is no more
23 correct or incorrect than another juror's notes.
24 You are allowed to take notes as you see fit, but
25 you also don't have to take notes.

COURT'S OPENING REMARKS

1 If, during your deliberation, you want
2 some testimony played back for you, we will simply
3 bring you back into the courtroom and play that
4 testimony back for you. Do not feel you have to
5 write down word for word what's happening in front
6 of you. We will take your notepads from you, lock
7 them up over the evening hours, and return them
8 back to you in the morning.

9 Ladies and gentlemen, what I now say is
10 intended to serve merely as an introduction to the
11 trial of this case. These remarks are not a charge
12 on the law. I will instruct you on the law
13 applicable to this case at the end of the trial
14 before you retire to consider your verdict. This
15 is merely an explanation of the procedure we will
16 follow in the trial of this case so that you may
17 better understand what is happening in court here
18 today.

19 The defendant is charged by an
20 Indictment. As I indicated to you during jury
21 selection, that simply is the piece of paper that
22 brings us here today. The defendant is charged
23 with burglary in the first degree, attempted
24 murder, and kidnapping. I will explain the
25 elements of those three indictments to you at a

COURT'S OPENING REMARKS

1 later time.

2 The indictment is simply the charge by
3 which this case is brought into court. It is not
4 in any sense evidence of the allegations it
5 contains. The defendant has pled not guilty to
6 each Indictment.

7 The State has the burden of proving
8 each of the elements of each indictment beyond a
9 reasonable doubt. It is your duty, ladies and
10 gentlemen, to determine whether the State has met
11 that burden.

12 Your purpose as jurors is to find and
13 determine the facts. You are the sole judges of
14 the facts in this case. If at any time I make a
15 comment regarding the facts in this case, you must
16 disregard that comment. You are to determine the
17 facts from the testimony that you hear and any
18 other testimony that is introduced into court. It
19 is up to you to determine the inferences which you
20 feel may be properly drawn from the evidence.

21 It is important that you perform your
22 duty in determining the facts diligently and
23 conscientiously, because ordinarily there is no way
24 to correct an erroneous determination of the facts
25 by the jury. On the other hand, and with equal

COURT'S OPENING REMARKS

1 emphasis, the same law that makes me the judge of
2 the facts -- makes you the judges of the facts,
3 makes me the judge of the law.

4 The law as given by this Court is the
5 only law that you may consider. You must accept it
6 and follow it even though you may disagree with it.
7 I cannot tell you what I think the facts are and
8 you cannot disagree with me about what the law is
9 or what the law should be. Your job is to take the
10 law as I give it to you, apply it to the facts as
11 you find it from the testimony of the witnesses and
12 any other evidence that is introduced, and after
13 doing that you will render your verdict, a true and
14 just verdict under the solemn oath that you just
15 took.

16 Until I tell you that you may begin
17 your deliberations, you must not discuss this case
18 with anyone. That includes your fellow jurors,
19 your friends, your family members or anyone else.

20 During your deliberations, you may
21 discuss this only -- only the case in the jury room
22 and only with your fellow jurors. You must decide
23 this case based solely on the evidence presented
24 here in the courtroom. That means during the trial
25 you must not conduct any independent research about

COURT'S OPENING REMARKS

1 this case, the facts of this case, the evidence
2 presented in this case, or the people and
3 organizations involved in any way in this case.

4 Do not try to find out any information
5 from any source outside of the courtroom. You must
6 not look at any dictionaries or reference
7 materials, search the Internet or anything about
8 anything that is discussed in this case. You may
9 not use any computers, telephones, cell phones or
10 smart phones to determine any of the items that was
11 just discussed.

12 During the trial you may not read,
13 watch, or listen to any news accounts regarding
14 this case. That includes, again, anything in
15 newspapers or on the Internet. If you become aware
16 of another juror's violation, you must inform me
17 immediately. It is important that you keep an open
18 mind and not decide any issue in this case until
19 all the evidence has been presented, the parties
20 have made their closing arguments, and I have
21 instructed you on the law applicable to the case.

22 It is your sole responsibility to
23 determine the guilt or innocence of the defendant,
24 and your verdict must be based solely upon the
25 evidence as it is presented to you in the trial and

COURT'S OPENING REMARKS

1 on the law as I instruct you during and at the
2 close of the trial.

3 In just a moment the Solicitor will
4 make an opening statement in which the Solicitor
5 will explain the issues in the case, or at least
6 what the Solicitor believes them to be. The
7 attorney for the defendant may also make an opening
8 statement, although he is not required to do so at
9 this time.

10 What the attorneys tell you in their
11 opening statements is not evidence in this case.
12 It is only their contention as to what the evidence
13 may show you. The evidence in this case will be
14 presented to you by the testimony of sworn
15 witnesses from the witness stand, as well as any
16 exhibits that may be introduced into evidence.

17 If there are exhibits that are
18 introduced into evidence, those exhibits will go
19 back with you in your jury room when you retire to
20 consider your verdict. So if you don't have an
21 opportunity to view them in their entirety, you
22 will have an opportunity to do so once you retire
23 to consider your verdict.

24 From time to time, you may hear one of
25 the attorneys ask to approach the bench or state an

COURT'S OPENING REMARKS

1 objection. If I have the attorneys approach the
2 bench, or excuse you from the courtroom for a short
3 while, please do not think we're trying to hide
4 anything from you. The reason I have to do this is
5 because sometimes it is necessary for me to make a
6 comment regarding the facts in order to issue a
7 ruling on the law.

8 So I may excuse you for a short while
9 so that in no way anything that I say or do during
10 my ruling, that I have any opinion about the facts
11 in this case. The law does not allow me to have an
12 opinion about the facts in this case.

13 In determining what the facts are in
14 this case, you must decide whether or not the
15 testimony of the witness is believable. It is my
16 responsibility to rule as a matter of law whether
17 certain testimony is admissible. Once the
18 testimony is admitted, whether or not you believe
19 it is for you to determine.

20 In deciding whether to believe a
21 witness, you have the right to consider the
22 interest of a witness, the bias of a witness, the
23 prejudice of a witness, the opportunity for the
24 witness to have seen the matters and things about
25 which the witness may testify, as well as the way

COURT'S OPENING REMARKS

1 the witness acts on the witness stand. You have
2 the right to consider anything in the record that
3 would help you evaluate the testimony of these
4 witnesses.

5 It is your duty to play close
6 attention. Please do not let your thoughts wander.
7 I understand, especially after lunch, it gets warm
8 and you're sitting and you may feel like you want
9 to close your eyes for a short period of time.
10 Please do not do that. It is important that you
11 pay close attention to the witnesses, to the
12 attorneys, and to the Court. Please do not let
13 your thoughts wander.

14 Give strict attention so that at the
15 end of the testimony, after counsel has given you
16 their closing argument, and I have instructed you
17 on the law applicable to this case, you will be in
18 a position to determine what the facts are, apply
19 the law to those facts and render a true and just
20 verdict.

21 Ladies and gentlemen, please give your
22 attention to Mr. McNeely.

23 MR. MCNEELY: Thank you, Your Honor.

24 Afternoon. My name is Wilton McNeely,
25 and along with Price Sigal, we represent the State

OPENING STATEMENT BY MR. MCNEELY

1 of South Carolina in this case on behalf of the
2 Ninth Circuit Solicitor's Office and the Solicitor
3 Scarlett Wilson, who is elected to cover both
4 Charleston and Berkeley Counties.

5 The case that we're here about today is
6 the State v. Kevin Driggers, this gentleman seated
7 right over here in the middle of this table.
8 Mr. Driggers is charged with burglary in the first
9 degree, attempted murder, and kidnapping. At the
10 end, as the Judge said, she will explain the law to
11 you as it is applicable to this case. It will then
12 be your job to apply the facts that you hear from
13 the evidence presented to the law.

14 If anything I say differs from what the
15 Judge instructs you on the law, you defer to her.
16 I'm just going to give you a little roadmap about
17 the law here before we get started so you'll know
18 where we're going during this case, what we're
19 talking about and considering.

20 Burglary in the first degree. A person
21 is guilty of burglary in the first degree if that
22 person enters a dwelling without consent and with
23 intent to commit a crime therein in the dwelling.
24 I'll come back to this briefly.

25 When we say, dwelling, most people know

OPENING STATEMENT BY MR. MCNEELY

1 what it is by natural experience, but a dwelling is
2 any building, or a portion of a building, in which
3 a person ordinarily sleeps. It doesn't have to be
4 a house. It can certainly be a house, trailer
5 home, condo, you name it. Anywhere where somebody
6 lays their head at night and goes to sleep and
7 treats it as their home, that's a dwelling.

8 When we talk about a burglary in the
9 first degree, the basic burglary is that first
10 part. A person is guilty of burglary if that
11 person enters a dwelling without consent and with
12 the intent to commit a crime therein.

13 What makes it a burglary in the first
14 degree is the next part, and that requires that
15 when affecting entry into the home or dwelling, or
16 while in the dwelling, or in immediate flight
17 therefrom -- notice those aren't ands, they're ors.
18 So either, when they're beginning the burglary,
19 when they're inside the dwelling in the middle of
20 the burglary, or when they're fleeing from the
21 burglary.

22 In that case, that person committing
23 the burglary is either causing physical injury to a
24 person who is not a participant in the crime, or
25 uses or threatens the use of a dangerous

OPENING STATEMENT BY MR. MCNEELY

1 instrument, then it's a burglary in the first
2 degree. Again, notice the or.

3 You certainly can have both. You can
4 cause physical injury to a person who is not a
5 participant in the crime, and use or threaten the
6 use of a dangerous instrument, but you don't have
7 to have both. You can just have one or the other.

8 So when we're talking about a burglary
9 in the first degree, we're talking about a person
10 entering a dwelling with the intent to commit a
11 crime therein, and then while entering the
12 dwelling, while in the dwelling, or while fleeing
13 therefrom causes physical injury to the
14 nonparticipant in the crime, or uses or threatens
15 use of a dangerous instrument.

16 Next charge is attempted murder. A
17 person is guilty of attempted murder if that person
18 with intent to kill attempts to kill another person
19 with malice aforethought, either express or
20 implied. The first part of it is pretty
21 self-explanatory. If you attempt to kill somebody,
22 most of us from our common experience knows what
23 that means. The last part, when we talk about
24 malice aforethought, that requires a little more
25 explanation as far as usual language goes.

OPENING STATEMENT BY MR. MCNEELY

1 What malice is, is hatred, ill will or
2 hostility towards another person. It indicates a
3 wicked or depraved spirit intent on doing wrong.
4 It is the intentional doing of a wrongful act.
5 Pointing a gun at somebody and pulling the trigger
6 is the intentional doing of an act with intent to
7 kill another person.

8 If the bullet doesn't hit them or they
9 don't die, that's what we're talking about. That's
10 attempted murder. Anything of that nature.
11 Basically, striking a blow or attempting to strike
12 a blow at someone with the intent at the time of
13 doing it that you are going to kill that person or
14 trying to kill that person.

15 Malice does not require that it exists
16 at any particular time or for any appreciable time
17 before the act is committed. It may be conceived
18 at the very moment the act occurs; in other words,
19 we're not talking about premeditation. You don't
20 have to sit at home and develop a plan and then go
21 execute it. Certainly, you could. Certainly,
22 that's covered by this, but it can arise at the
23 instant before you commit the attempted murder.

24 And as stated before, malice can either
25 be express or implied. Express malice is a

OPENING STATEMENT BY MR. MCNEELY

1 deliberate intention to unlawfully injure or take
2 the life of another. Spoken word: Committing an
3 act of attempting to kill someone while saying, I'm
4 going to kill you. I'm going to shoot you in the
5 face, something along those lines. That's express
6 malice. It's expressed in words.

7 It can also be implied. It doesn't
8 have to be express. As I said before, the example
9 I gave, pointing a gun at somebody, pulling the
10 trigger and firing at them, you can imply malice
11 from that act because the person that does that
12 knows that when they do that, that person could
13 die. That's implied malice.

14 Express can be spoken word; implied is
15 an implication that we can derive from our common
16 experience and knowledge based on the facts.

17 The last charge is kidnapping. Most
18 people when they hear the term, kidnapping, they
19 think of somebody hog-tieing another person,
20 throwing them in a trunk and driving away. And,
21 certainly, that is a kidnapping, but in South
22 Carolina under the law it doesn't require that.

23 A kidnapping is defined as a person who
24 unlawfully seizes, confines, inveigles, decoys,
25 kidnaps, or carries away any other person by any

OPENING STATEMENT BY MR. MCNEELY

1 means whatsoever without authority to do so.

2 Shutting someone in a closet and not
3 letting them out for any amount of time without
4 authority to do so, that's a kidnapping. You don't
5 have to carry somebody away. Carrying away can be
6 a kidnapping, but it doesn't require it. Pinning
7 someone down and not letting them move when they
8 want to move, that's a kidnapping.

9 It doesn't require any length of time
10 under the law. It just requires that you
11 unlawfully seize or confine someone against their
12 will. That's what we're talking about when we're
13 talking about kidnapping.

14 Those are the charges that this
15 defendant is charged with in this case. The facts
16 that you are going to hear in this case -- I'm just
17 going to give you a little brief rundown before the
18 evidence is presented. What this defendant, Kevin
19 Driggers is charged with, on November 4, 2015, he
20 went to the home of the victim, Brenda Mills, his
21 ex-girlfriend. She'd left him two months before.

22 She went to stay with her friend in the
23 St. Stephen area of Berkeley County. For those of
24 you not familiar, it's in the northern part of the
25 county on the way up to Kingstree or Manning, that

OPENING STATEMENT BY MR. MCNEELY

1 area. You go up 52. She was staying with her
2 friend off of [REDACTED] Road in St. Stephen, and she
3 had been there with her children for two months.

4 On November 4, 2015, this defendant
5 decided to go over there uninvited, and he went
6 there with the intent to kill Brenda Mills. At
7 approximately 9:30 in the morning, Ms. Mills
8 happened to go out on the front porch because her
9 friend's little boy was sitting out there and she
10 was going to feed him breakfast. Fortunately, for
11 her, when she went out on the front porch to get
12 that little boy inside to feed him breakfast, she
13 saw this defendant charging across the front yard
14 with an ax handle in his hand.

15 Immediately, when she saw it, she knew
16 she was in danger, that her life was being
17 threatened. So she got the little boy and her
18 other son inside, she shut the door, and she wedged
19 herself between the door and a washing machine to
20 prevent it from being busted in.

21 The defendant had approached the door
22 in a rage and began beating and charging at the
23 door trying to break it in. Ms. Mills had her
24 phone on her and she was able to call 911 at that
25 time and ask for help. She told the boys to get

OPENING STATEMENT BY MR. MCNEELY

1 out. He came to the back door, they fled out the
2 front and tried to run and ask for help.

3 He kept beating the door and while
4 doing so he threatened her over and over, I'm going
5 to kill you. You're going to die he told her while
6 he was there, and she knew it. She couldn't let
7 him in. Eventually, he broke the door in, but with
8 her wedged there he couldn't push it in. So he
9 told her there was more than one way to get in that
10 house. And he went further down the porch, climbed
11 up on the stove, and busted in the bedroom window
12 and came into the house.

13 That's the burglary. He went there, he
14 broke into the house, and he was intending to kill
15 Brenda Mills; that's the burglary in the first
16 degree.

17 Ms. Mills, when she heard that window
18 break, in fear for her life she bolted out the
19 front door where her boys had run. She ran across
20 the yard, but she didn't make it far before she got
21 struck in the back of the head with an ax handle.

22 When she got struck in the back of the
23 head and she couldn't move, she fell to the ground.
24 She was still conscious, but she couldn't move. At
25 that time this defendant stood over her and

OPENING STATEMENT BY MR. MCNEELY

1 repeatedly assaulted her and threatened that he was
2 there to kill her and that she was going to die.

3 This assault took place over several
4 minutes. Luckily, for Ms. Mills, other neighbors
5 called 911. They heard the commotion, they heard
6 the screaming, they heard him threatening her life.
7 During this time he drug her on the ground, he
8 pinned her to the ground, he assaulted her
9 repeatedly; and he told her, that I know how long
10 it takes Berkeley County to get out here to St.
11 Stephen and you are going to be dead long before
12 they get here so don't worry.

13 The assault continued, but, luckily for
14 Ms. Mills, Deputy Shawnda Winder was within five
15 minutes. She had been to St. Stephen Municipal
16 Court that day. She came to the scene, and when
17 she happened on the scene she saw this defendant
18 with the ax handle raised in his hand continuing
19 the assault on Ms. Mills. She put an end to
20 it.

21 That's express malice, I'm here to kill
22 you, you are going to die. He's assaulting her,
23 that's the attempted murder. She tried to flee for
24 her life multiple times and he wouldn't let her.
25 He would stalk her down, stand over her and pin her

OPENING STATEMENT BY MR. CHURCH

1 to the ground and continue the assault. That's
2 what we're talking about when we're talking about
3 kidnapping.

4 Those are the facts you are going to
5 hear in this case. You're going to hear those
6 facts from the witness stand, from the evidence.
7 You will hear Ms. Mills herself, the victim. You
8 will hear from the deputy that responded to the
9 scene. You will hear from the neighbors who called
10 911 to assist this woman who was nearing her end
11 but for their assistance. You will see some
12 physical evidence, you'll hear the 911 tapes and
13 you'll see photos of the scene that day.

14 When all is said and done, we believe
15 you will be firmly convinced this defendant is
16 guilty of burglary in the first degree, attempted
17 murder and kidnapping, and we will ask you for a
18 guilty verdict. Thank you very much.

19 THE COURT: Mr. Church.

20 MR. CHURCH: Thank you, Your Honor.
21 May it please the Court.

22 Members of the jury, if Mr. Driggers
23 really intended to kill Ms. Mills, we wouldn't be
24 here today on an attempted murder case. We would
25 be here on a murder case.

OPENING STATEMENT BY MR. CHURCH

1 The State's evidence in the case is
2 going to be based on exaggeration and faded
3 memories. I'm not saying that people are
4 exaggerating on purpose or they're forgetting
5 things on purpose, but this was over a year ago.
6 We've been talking about it a lot since then,
7 things are beginning to mesh together, so you're
8 going to have to listen to the evidence from the
9 stand and look and see what claims are supported by
10 evidence.

11 Now, I'm not here to defend
12 Mr. Driggers against assaulting Ms. Mills. I'm
13 here defending him against attempted murder,
14 burglary in the first degree, and kidnapping. Now,
15 I'll be the first to admit that Mrs. Mills did not
16 deserve to be assaulted in this case. Just like
17 she didn't deserve to be assaulted, Mr. Driggers
18 does not deserve to be prosecuted for something
19 greater than he actually did.

20 So what is the evidence going to show?
21 The evidence in this case is going to show that
22 Mr. Driggers showed up at the place where Ms. Mills
23 was staying presumably to pick up some dogs on the
24 -- that they had co-owned in their previous
25 relationship. There was some kind of altercation

OPENING STATEMENT BY MR. CHURCH

1 and then it went into a more serious altercation
2 where Ms. Mills was assaulted. She was -- we admit
3 she was taken by ambulance to the emergency room
4 where she received approximately eight stitches and
5 was treated and released after a few hours.

6 Now, this case is going to hinge and
7 revolve around the intent of Mr. Driggers. The
8 State is going to have to show that he intended to
9 kill her, that he intended to kidnap her, that he
10 intended to commit a burglary in the first degree.
11 They are not going to be able to do that in this
12 case.

13 Now, as jurors in this case you're
14 going to have a really hard job. You're going to
15 have to set aside your emotions and rely on your
16 common sense and rationale because you are going to
17 see some graphic pictures of blood, you're going to
18 hear some graphic testimony, probably hear some 911
19 tapes, and it's all going to sound bad.

20 You're going to have to rein in your
21 emotions and focus on the facts and use your common
22 sense and rationality. That's why we picked you as
23 jurors in this case. We believe that you all can
24 do that.

25 So please don't -- just listen to all

BETTY DELK - DIRECT EXAM BY MR. MCNEELY

1 the evidence and I think that you will agree with
2 me that the State cannot prove that he intended to
3 kill her, that he committed a burglary first and
4 that he kidnapped her, and we will ask you to come
5 back with a verdict of not guilty. Thank you.

6 THE COURT: Call your first witness.

7 MR. MCNEELY: Thank you, Your Honor.

8 The State calls Betty Delk.

9 BETTY DELK,

10 being first duly sworn, testified as follows:

11 THE CLERK: Have a seat, and state your
12 full name for the record. Right here, ma'am.

13 THE WITNESS: My name is Betty Delk, D
14 as in David, E-L-K.

15 DIRECT EXAMINATION

16 BY MR. MCNEELY:

17 Q. Good afternoon, Mrs. Delk. Where do
18 you live?

19 A. I live at [REDACTED] Crest Lane in St.
20 Stephen, South Carolina.

21 Q. Is that in Berkeley County?

22 A. It is.

23 Q. What do you do for a living?

24 A. I'm retired.

25 Q. Were you living at that address during

BETTY DELK - DIRECT EXAM BY MR. MCNEELY

1 November of 2015?

2 A. Yes.

3 Q. Did you have neighbors at the time?

4 A. Yes.

5 Q. How far, approximately, were your
6 neighbors' homes from yours?

7 A. 150 maybe yards, not far.

8 Q. Could you see them from your yard?

9 A. Yes.

10 Q. Were your neighbors' homes there and
11 built during November of 2015?

12 A. Yes.

13 Q. I want to show you what was marked as
14 State's Exhibit 41.

15 MR. MCNEELY: Permission to approach,
16 Your Honor?

17 THE COURT: You may.

18 BY MR. MCNEELY:

19 Q. Mrs. Delk, please look at this photo
20 and tell me if you recognize it.

21 A. Yes; it's an aerial view of my
22 neighborhood.

23 Q. Is that a fair and accurate depiction
24 of the area of your home as it appeared on
25 November 4, 2015?

BETTY DELK - DIRECT EXAM BY MR. MCNEELY

1 A. Let me see if I'm upside down or --
2 yes.

3 MR. MCNEELY: At this time, the State
4 would move to admit State's Exhibit 41 into
5 evidence, Your Honor.

6 THE COURT: Any objection?

7 MR. CHURCH: No objection from the
8 defense.

9 THE COURT: State's 41 in evidence
10 without objection.

11 (STATE EXH. 41 in evidence.)

12 BY MR. MCNEELY:

13 Q. This is the same photo that --

14 MR. MCNEELY: May I have permission to
15 approach the witness, Your Honor?

16 THE COURT: You may. You have
17 continuing permission.

18 MR. MCNEELY: Thank you.

19 BY MR. MCNEELY:

20 Q. Mrs. Delk, this is a laser pointer.
21 You just have to press this red button. I'm going
22 to ask you to point some stuff out. Please speak
23 loudly because the microphone is now behind your
24 head.

25 Can you point out your home if it's

BETTY DELK - DIRECT EXAM BY MR. MCNEELY

1 pictured on that photo?

2 A. Yes.

3 Q. Will you please do so with the laser
4 pointer?

5 A. (Indicating) This is where I live.

6 Q. With the red roof?

7 A. Yes.

8 Q. Okay. Please point out the other homes
9 pictured, if you can, and tell the jury who lived
10 there during November 4, 2015.

11 A. You want the name of the residences or
12 actual people living there?

13 Q. The name of the folks that live at the
14 home, yes, ma'am.

15 A. Okay. I live here and that's my garage
16 right there. Over here is a mobile home and over
17 here is a mobile home, another mobile home, another
18 mobile home, and another one here. (Indicating)

19 Q. Do you know who lived in those homes?

20 A. Yes.

21 Q. Please tell the jury.

22 A. Here lives Sarah Riggs, her mother owns
23 the place. My -- let's see, Fonza Wiggins lives
24 here, she owns both of these mobile homes. Cheryl
25 Scott and her husband here, and Bill and his wife,

BETTY DELK - DIRECT EXAM BY MR. MCNEELY

1 Gallic I think their last name is, they live here.

2 (Indicating)

3 Q. Okay. Do you know who lives in the
4 green-roofed home in the middle of the photo?

5 A. I do; Fonza Wiggins.

6 Q. How about the one to the left of that?

7 A. This one here? (Indicating)

8 Q. Yes, ma'am.

9 A. She has both.

10 Q. Okay. She owns both?

11 A. She owns both.

12 Q. Okay. Do you see the road at the
13 bottom of the photo?

14 A. This one here? (Indicating)

15 Q. Yes, ma'am.

16 A. That's Crest Lane.

17 Q. Okay. Do you see the curvy road at the
18 top of the photo?

19 A. Right up here? (Indicating)

20 Q. Yes, ma'am.

21 A. That's [REDACTED] Road, it's behind my
22 property. I can go out on [REDACTED] Road right here or
23 Crest Lane, which is my residence right here.

24 (Indicating)

25 Q. Okay. Thank you, Mrs. Delk. You can

BETTY DELK - DIRECT EXAM BY MR. MCNEELY

1 turn back around now.

2 I want to discuss the day of
3 November 4, 2015, with you. Do you recall where
4 you were and what you were doing at approximately
5 9:30 a.m. that day?

6 A. I was sitting in the room at my back
7 glass patio doors, in that room.

8 Q. So you were at your house?

9 A. Yes, I was home.

10 Q. Did you witness an incident near your
11 home that morning?

12 A. Well, I heard someone screaming, a
13 woman screaming, and it sounded like a man shouting
14 and hollering. And I went to the back patio glass
15 doors on my back area, and I could see that the man
16 had the woman pinned down on the ground, and she
17 was screaming it sounded like, help her.

18 So I called 911 and told them, you
19 know, I didn't know what was going on. And after I
20 called 911, I went out on my porch, which is
21 screened in with two latched screened doors, and I
22 witnessed a man standing over a woman hollering and
23 shouting at her that she wouldn't live to see
24 tomorrow when he got through with her.

25 She was screaming, please, please help

BETTY DELK - DIRECT EXAM BY MR. MCNEELY

1 me, somebody help me. And he was hitting her in
2 the back, neck, all in the back of her head
3 everywhere, that area, (Indicating) with a wooden
4 like -- it was a wooden ax handle.

5 Q. Okay. Let's back up and go through it
6 step by step if you don't mind. When you first
7 heard something from inside your home, could you
8 make out what you were hearing or did you just hear
9 a noise?

10 A. I heard -- I could hear that it was a
11 man shouting and hollering and I could hear the
12 woman and she was screaming, please, help me.

13 Q. What happened after that?

14 A. I -- I was sitting down at the time,
15 and I got up and went to the back sliding door -- I
16 mean, the back patio door and I looked out. And I
17 could see that the man had a woman pinned down on
18 the ground and he wouldn't let her up. And every
19 time she got up to run from him, screaming, help
20 me, he would grab her and pull her back down and
21 jerk her back down on the ground and hit her with
22 the ax handle.

23 Q. When you first saw the man and the
24 woman, how were they positioned?

25 A. He was standing over her and she was on

BETTY DELK - DIRECT EXAM BY MR. MCNEELY

1 the ground.

2 Q. Did he have anything in his hand at
3 that time?

4 A. He had a wooden ax handle.

5 Q. Did you hear the man say anything at
6 that time?

7 A. Yeah. He was hollering and screaming
8 at her, you know, she wouldn't live to see
9 tomorrow.

10 Q. Did you recognize the female on the
11 ground?

12 A. No.

13 Q. Did you recognize the man?

14 A. No.

15 Q. Okay. Can you describe them at all?

16 A. Uh-huh; the man was tall, slim, medium
17 hair like, he had on like casual clothes, nothing
18 fancy. She had on like lounge pants, sweatpants,
19 sweatshirt, brownish reddish hair, kind of -- not
20 tall. He could stand over her.

21 Q. What was their race?

22 A. White.

23 Q. Okay. Both of them?

24 A. Both of them.

25 MR. MCNEELY: Can we put 41 back up

BETTY DELK - DIRECT EXAM BY MR. MCNEELY

1 please, Dee?

2 BY MR. MCNEELY:

3 Q. I want you to look at the photo again,
4 Ms. Delk. You have the laster pointer?

5 A. I've got it right here.

6 Q. Can you point out where those
7 individuals were when you first saw them?

8 A. When I first saw them I was standing
9 right here on my back porch, and within like a few
10 feet of me, right in there, was when I first
11 spotted them. Right there on the corner of my
12 garage, over. (Indicating)

13 Q. Is that a grassy area that you're
14 pointing at?

15 A. Yeah, grassy.

16 Q. Thank you, Mrs. Delk. You can turn
17 back around.

18 After you saw that, what did you do?

19 A. After I looked through the glass doors,
20 I called 911. And then after I called 911, I
21 walked out onto the porch.

22 Q. What did you see at that time?

23 A. And that's when I seen the man standing
24 over the woman, he had her pinned down on the
25 ground. She was screaming for somebody to please

BETTY DELK - DIRECT EXAM BY MR. MCNEELY

1 help her, and he was hitting her with the wooden ax
2 handle and hollering at her that she wouldn't live
3 to see tomorrow when he got through with her.

4 Q. What happened after that?

5 A. He drug her. Every time she tried to
6 get up and run from him, screaming for someone to
7 please help her, he would grab her and jerk her
8 back down on the ground and drag her. And he drug
9 her almost out to [REDACTED] Road behind me over on the
10 other yard where Fonza Wiggins lives.

11 Q. Please describe that for the jury.

12 A. Every time she would get up/to go run
13 from him, he would grab her on her clothes, or
14 whatever he could grab her by, and pull her back
15 down on the ground and pin her back down and hit
16 her.

17 Q. What happened after that?

18 A. He would hit her with the wooden ax
19 handle, and he kept doing that off and on, and he
20 would drag her. He would stop and he would drag
21 her and then he would stop. And that went on with
22 her screaming and him shouting and hollering until
23 they got around to the other side of one of the
24 mobile homes where I couldn't see anymore, but they
25 were over near [REDACTED] Road.

BETTY DELK - DIRECT EXAM BY MR. MCNEELY

1 Q. At some point during the course of
2 this, did the man take a break from assaulting the
3 victim?

4 A. He did.

5 Q. What did he do at that time?

6 A. He relieved himself. He had to go pee,
7 so he left her on the ground because at that point
8 she was too weak to get up and run.

9 Q. After he did that, what did he do?

10 A. He went back and he got her and he hit
11 her. He pulled her by her clothes and kept
12 dragging her and hitting her.

13 Q. What happened after that?

14 A. Well, I prayed a lot because I felt
15 helpless, but, you know, if I had said anything I'm
16 sure he would have come -- I was afraid he would
17 come at me, but when they -- when he got to the
18 point where he pulled her around to [REDACTED] Road, I
19 heard the ambulance -- I heard sirens. And I said,
20 thank God.

21 And the police officers -- then she
22 took over. Then the ambulance of course and all
23 that, and thank goodness it was over.

24 Q. When the officer arrived, what -- where
25 did you see the man at that time?

BETTY DELK - DIRECT EXAM BY MR. MCNEELY

1 A. I couldn't see him at that time. When
2 the police officer arrived, I was still standing on
3 my back porch.

4 Q. Did you ever leave your back porch?

5 A. Not during that time because I was
6 scared to.

7 Q. Okay. And I believe you said an
8 ambulance came?

9 A. An ambulance was pretty much right
10 behind the police officer. I could hear -- I could
11 still hear her screaming and him hollering when the
12 police officer arrived.

13 Q. Okay.

14 A. I mean, I knew that she had arrived
15 because I could hear the siren.

16 Q. Okay. Did you ever hear the officer?

17 A. No. No.

18 Q. At some point an ambulance arrived; is
19 that correct?

20 A. Yes. And that was when I ventured out
21 and they had her in the ambulance and the police
22 officer was there. And after I seen that
23 everything was okay, I went on back to my place. I
24 didn't go over to them.

25 MR. MCNEELY: Can we put up State's

BETTY DELK - DIRECT EXAM BY MR. MCNEELY

1 Exhibit 41 one more time, Dee?

2 BY MR. MCNEELY:

3 Q. When you spoke earlier and said that he
4 drug her to [REDACTED] Road, can you point out to the
5 jury where you're referring to?

6 A. Okay. Starting right here, it was like
7 an off-and-on thing, and then when he got here to
8 this tree right in here, (Indicating) he stopped
9 and took a pee. Okay. Then she was laying on the
10 ground because she was too -- she couldn't even get
11 up and run anymore. She just laid there.

12 He went back and he grabbed her by her
13 clothes and went on and kept dragging her until he
14 drug her all the way over here around this area
15 where I couldn't see then. (Indicating) There's
16 an iron like fence there, so he kept her right in
17 that area. And then the police officer came from
18 this direction and then she took over.

19 Q. Got you. From the time that you first
20 heard the commotion in your yard, until the time
21 that the officer arrived, do you know how long that
22 was?

23 A. I would estimate 20 minutes.

24 Q. Okay.

25 A. Because I was really surprised it

BETTY DELK - DIRECT EXAM BY MR. MCNEELY

1 didn't take longer. It usually does because we're
2 in the northern area of Berkeley County. We're
3 just a little ways from Moncks Corner, about
4 18 miles.

5 Q. Did it feel like it took a while?

6 A. Yeah; it felt like eternity, but -- I'm
7 within like a half mile probably of St. Stephen
8 handling it, but, of course, you know they can't --
9 it has to be Berkeley County because we're in
10 Berkeley County.

11 Q. Correct.

12 A. But St. Stephen's police officers, they
13 do help.

14 Q. Okay. You mentioned earlier that you
15 called 911.

16 A. I did.

17 Q. Where did you call from?

18 A. My home.

19 Q. How were you feeling when you called?

20 A. When I called? After what I seen? I
21 was traumatized. I was terrified, too.

22 Q. Did you report what you saw to the
23 dispatcher?

24 A. No, I didn't. I didn't -- oh, yes.
25 911 dispatcher, yes.

BETTY DELK - DIRECT EXAM BY MR. MCNEELY

1 Q. I want to show you what was marked as
2 State's Exhibit 34. Ms. Delk, do you recognize
3 this item?

4 A. Yes.

5 Q. How do you recognize that item?

6 A. This is when I called 911 and talked
7 with the dispatcher.

8 Q. Did you make any marks on that item?

9 A. I did; I initialed and dated it.

10 Q. What is contained on that disk?

11 A. It's me actually calling and talking to
12 the dispatcher.

13 Q. It's a recording of the call?

14 A. It's a recording of the call, and that
15 was at the point when I had just looked out my back
16 doors and seen the man standing over the woman at
17 that point when I called 911. And I could hear her
18 screaming, please help me. So I called 911.

19 Q. Is it your voice on the disk making the
20 call?

21 A. It's my voice.

22 Q. Does it contain a complete recording of
23 the 911 call that you made on November 4, 2015?

24 A. No. I had more on that call. I mean,
25 I don't know why it's not all on there, but the --

BETTY DELK - DIRECT EXAM BY MR. MCNEELY

1 yes, what needs to be on there is on there.

2 Q. Does it appear to have been changed or
3 altered?

4 A. No.

5 MR. MCNEELY: Your Honor, at this time
6 I would move to admit State's 34 and permission to
7 publish to the jury?

8 THE COURT: Any objection?

9 MS. SHIVERS: Without objection, Your
10 Honor.

11 THE COURT: State's 34 into evidence
12 without objection.

13 (STATE EXH. 34 in evidence.)

14 (Whereupon, 911 call on CD was played
15 in open court.)

16 BY MR. MCNEELY:

17 Q. Mrs. Delk, is that the 911 call that
18 you made on November 4, 2015?

19 A. Yes.

20 Q. Did you ever have an opportunity to
21 speak with law enforcement that day?

22 A. No.

23 Q. I believe you said after the incident
24 you stayed close to your home that day.

25 A. I did. I didn't go anywhere. I stayed

BETTY DELK - CROSS EXAM BY MS. SHIVERS

1 in the house until -- like I said, the police
2 officer, she, you know, arrived and the ambulance
3 -- the victim was in the ambulance, and I kind of
4 walked to the back of my yard to make sure that
5 everything was fine. And I didn't go to anybody, I
6 just went on back to my house and I stayed in my
7 house and on the porch and stuff.

8 MR. MCNEELY: No further questions from
9 the State at this time, Your Honor.

10 THE COURT: Ms. Shivers.

11 MS. SHIVERS: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. SHIVERS:

14 Q. Afternoon, Mrs. Delk.

15 A. Hi.

16 Q. So it's your testimony to the Solicitor
17 that this incident started in your yard?

18 A. It started right on the borderline of
19 the neighbor next door and my yard. We don't have
20 a fence between the two yards.

21 Q. And when you're talking neighbor,
22 you're talking about the neighbor that's 100 to 150
23 yards away?

24 A. Yes; Fonza Wiggins.

25 Q. And the house in the picture to the

BETTY DELK - CROSS EXAM BY MS. SHIVERS

1 right of that is your niece, Sarah Riggs?

2 A. Sarah Riggs lives in the trailer that
3 my sister owns.

4 Q. And that's your niece?

5 A. Yes.

6 Q. And when you were talking to 911, you
7 indicated that you couldn't even tell if it was a
8 woman or a child that was being assaulted?

9 A. She was laying on the ground.

10 Q. You couldn't tell if it was a woman or
11 a child?

12 A. I really didn't think much of it at
13 first until I heard her screaming, please help me.
14 And that's why I went to the glass doors. And
15 standing there, just glancing quickly, it could
16 have been a woman or it could have been a child.

17 Q. And that's what you told 911?

18 A. Like a teenager is what I was thinking.
19 More like a teenager.

20 Q. But you weren't sure?

21 A. At that point, not exactly because I
22 was inside the house looking out and I was nervous
23 and I called 911, but when I went on the porch, I
24 realized it was a woman because she got up to try
25 to run.

BETTY DELK - CROSS EXAM BY MS. SHIVERS

1 Q. You didn't tell that to 911?

2 A. I didn't -- I made the 911 call before
3 I went out on the porch.

4 Q. And you indicated to 911 that this
5 incident was occurring near [REDACTED] Road, which would
6 be the road in the picture to the top of the
7 properties?

8 A. At that point, I wasn't sure which
9 direction they were headed for the police to come
10 to arrive. They were heading towards [REDACTED] Road.

11 Q. And you indicated that it was
12 20 minutes from the time that you called 911 until
13 you saw and heard the sirens arrive?

14 A. I would estimate 20 minutes.

15 Q. And in that time, how many times did
16 you see Brenda get hit?

17 A. Numerous times.

18 Q. More than once?

19 A. More than once.

20 Q. So 150 yards away you were able to tell
21 it was an ax handle that was being used?

22 A. My neighbor lives about 150 yards from
23 me, but from where I was standing on the back
24 porch, it was like 50 foot maybe; because they were
25 in the property line between my property and the

BETTY DELK - CROSS EXAM BY MS. SHIVERS

1 neighbor's property, which would have been
2 estimated 50 foot from where I was standing on the
3 back porch witnessing this. And they headed
4 towards my neighbor which is about 150 foot away.

5 Q. And you didn't indicate to 911 that she
6 was being assaulted with an ax handle?

7 A. I didn't know at that point. When I
8 went out on the porch is when I saw the ax -- the
9 handle and everything and what actually was going
10 on.

11 MS. SHIVERS: Are you able to put up
12 that photograph, please?

13 MR. MCNEELY: The map?

14 MS. SHIVERS: Yes.

15 MR. MCNEELY: Yes.

16 MS. SHIVERS: Thank you.

17 BY MS. SHIVERS:

18 Q. If you could look behind there, you
19 pointed out where your niece lives, Sarah Riggs.
20 Can you point that out again?

21 A. Right here. (Indicating)

22 Q. So you see those little green round
23 things below her property. What are those?

24 A. Green things around --

25 Q. Below the property. Looks like bushes.

BETTY DELK - CROSS EXAM BY MS. SHIVERS

1 A. Right in here?

2 Q. What is that right there?

3 A. These are pine trees.

4 Q. Pine trees, okay. And aren't there dog
5 pens at the back of her property?

6 A. Right in here is dog pens.

7 (Indicating)

8 Q. What about behind there, is there a
9 little shed building?

10 A. There is a little shed right here.

11 (Indicating)

12 Q. And this is your house right there with
13 the red roof?

14 A. My house is right here. (Indicating)

15 Q. And all that green stuff there is pine
16 trees?

17 A. Those are pine trees that I cleared --
18 this is my property. All in here is my property,
19 and all of these pine trees have been cleared where
20 you can see from my -- this road, Crest Lane, to
21 REDACTED Road, you can actually see everything,
22 anybody coming in or out.

23 Q. And you never left your porch
24 throughout the incident?

25 A. Not during the time they were over

BETTY DELK - CROSS EXAM BY MS. SHIVERS

1 here. (Indicating)

2 Q. And you never left when the police got
3 there to make a statement about what you saw?

4 A. I had already called 911 and, later on,
5 I walked back to here and then -- then turned
6 around and walked back around here. And they
7 already had it all under control over here.

8 Q. So you never made a voluntary statement
9 to police about what you saw?

10 A. I called 911. I couldn't do anything
11 else. I helped all I could.

12 Q. And then you didn't talk -- did you
13 talk to Sarah about this after this incident
14 happened?

15 A. I have not talked to Sarah or anyone.

16 Q. You talked to the Solicitor's office
17 about it?

18 A. Well, yeah. Yeah, I was Subpoenaed.

19 Q. And you talked to my investigator about
20 this incident?

21 A. David Young.

22 Q. Christy Paige?

23 A. When did I talk to Christy Paige?

24 Q. February 16, by phone. Do you remember
25 talking to Christy?

BETTY DELK - CROSS EXAM BY MS. SHIVERS

1 A. She wanted to know if I would answer
2 some questions.

3 Q. Right. And then you talked to the
4 Solicitor's office about what happened. That would
5 have been, approximately, around the same time,
6 about two weeks ago?

7 A. I talked to the Solicitor's office, but
8 I didn't talk to Ms. Paige. I talked with her on
9 the phone briefly, but I didn't answer her
10 questions.

11 Q. Certainly, I understand, but she did
12 call you and --

13 A. She did call me.

14 Q. And you talked to the Solicitor's
15 office, approximately, two weeks ago?

16 A. Yes.

17 Q. So you didn't talk to anybody about
18 this case for the last year, plus?

19 A. No. No.

20 Q. Until two weeks ago?

21 A. No. My mother doesn't even know I'm
22 here.

23 MS. SHIVERS: Okay. If I may have a
24 moment, Your Honor?

25 THE COURT: Take your time.

BETTY DELK - CROSS EXAM BY MS. SHIVERS

1 BY MS. SHIVERS:

2 Q. Do you know your niece is friends with
3 the victim in this case, Ms. Brenda Mills?

4 A. I had heard that she was friends with
5 someone that had moved in over there with her, but
6 I did not know who it was.

7 Q. And Sarah had been living at that house
8 for awhile. You said her mom owns it?

9 A. Yeah. She's been living over there for
10 awhile.

11 MS. SHIVERS: Okay. That's all the
12 questions I have, Your Honor.

13 MR. MCNEELY: Thank you, Mrs. Delk.
14 Nothing further from the State.

15 THE COURT: You may step down. Call
16 your next witness.

17 MS. SIGAL: The State calls Cheryl
18 Scott.

19 MS. SHIVERS: Your Honor, we have a
20 matter of law we need to take up.

21 THE COURT: You may approach.
22 You need a break?

23 FOREPERSON: (Nodding head)

24 THE COURT: We'll go ahead and take
25 our comfort break. Please remember all my

1 admonitions. Please be escorted out.

2 (Jury out, 3:44 p.m.)

3 THE COURT: Thank you. Be seated.

4 MS. SHIVERS: Your Honor, the defense
5 would move to bar this witness from testifying for
6 lack of personal knowledge. She made a call to 911
7 and it's clear throughout the entirety of the 911
8 call that she --

9 THE COURT: Hold on one second. When
10 did this come to your attention?

11 MS. SHIVERS: I'm sorry?

12 THE COURT: When did this come to your
13 attention?

14 MS. SHIVERS: What do you mean?

15 THE COURT: We have had numerous
16 pretrial conferences, and so I'm trying to figure
17 out why we didn't address this at a more
18 appropriate time.

19 MS. SHIVERS: I thought this was the
20 appropriate time when she was set to testify. We
21 don't oppose for her 911 call to come in. We just
22 don't believe she will be able to testify to
23 anything outside of that, because everything that
24 she says in the 911 call she received from the
25 little boy who she was talking to through the

1 entirety of the 911 call. So I don't believe that
2 she should be able to testify --

3 THE COURT: That question, Counselor,
4 was -- I'm attempting to run in to inconvenience
5 the jury as little as possible.

6 MS. SHIVERS: Yes, ma'am.

7 THE COURT: And so these issues that
8 you have known about should be addressed prior to
9 breaks like this. So this should have been handled
10 before we broke for lunch.

11 What is your response?

12 MS. SIGAL: Your Honor, this witness is
13 Cheryl Scott, she's another neighbor. She
14 witnessed parts of the assault and she can testify
15 to the victim's son and the other little boy that
16 ran up on her porch and asked her to call 911. She
17 witnessed the defendant saying he was going to kill
18 the victim, as well as numerous blows to the
19 victim.

20 She's an important witness to the
21 State's case and there's more to her testimony than
22 just what is on the 911 call.

23 THE COURT: What is your objection to
24 this witness?

25 MS. SHIVERS: The 911 call lasts from

1 the time that the young boys show up at her house
2 until police arrived on-scene. And she states
3 continually through there that she cannot see
4 anything and that she's -- any question that 911
5 asks her, she turns to the little boy, who is my
6 understanding, on the witness list to testify.

7 I would argue that she doesn't have
8 personal knowledge. She gained all of the
9 information about the incident from **Noah M.**, and
10 she -- he would be the person that should be
11 testifying to those facts.

12 MS. SIGAL: Your Honor, first of all,
13 defense counsel can cross-examine this witness on
14 any of these matters, but she -- she will testify
15 that she witnessed with her own eyes parts of the
16 assault. She heard with her own ears the defendant
17 threatening to kill the victim.

18 I think this is -- there is more to her
19 testimony than I believe what Ms. Shivers thinks
20 that there is.

21 THE COURT: All right. But we're
22 addressing the 911 call at this point.

23 MS. SIGAL: It's my understanding Ms.
24 Shivers was trying to strike us calling the witness
25 and only playing the 911 call.

1 MS. SHIVERS: Exactly.

2 THE COURT: I'm sorry, say that again.

3 MS. SIGAL: It's my understanding that
4 Ms. Shivers has moved to strike the witness's
5 testimony in full and only play her 911 call, but
6 not allow her to testify.

7 THE COURT: That was your --

8 MS. SHIVERS: Yes, ma'am, because in
9 the 911 call she gets all of the information from
10 the other witness who views the incident, and she
11 repeatedly tells 911 that she didn't see or hear
12 that. Any question they asked her, she asked
13 directly to **Noah M.** who is set to testify.

14 And the 911 call lasts from the time
15 that the boys showed up at her house until the
16 police arrive on-scene, because you can hear her
17 telling them that police are on-scene and can the
18 boys go back to the incident location.

19 THE COURT: Whose witness is it, yours?

20 MS. SIGAL: It's my witness, Your
21 Honor. She's going to testify that the boys ran up
22 on her porch, that she ran back from her den to the
23 porch, to the side of the house where she witnessed
24 what was happening, ran back to check on the boys.
25 She is going to testify that the boys were trying

1 to go -- the 14-year-old was trying desperately to
2 get to his mother because he was so afraid.

3 She's going to testify to their
4 demeanor as they were running from the house that
5 just got broken into. She's going to testify as to
6 the strikes she saw the defendant make against the
7 victim, in addition to the statements that she
8 heard him make in regard to killing her on that
9 date.

10 Those are all statements that she heard
11 and saw. I'm sorry, those are all statements that
12 she heard with her own ears and actions of the
13 defendant that she saw.

14 MS. SHIVERS: The problem the defense
15 has with that is that she states none of that
16 information in the 911 call when it was happening
17 in real time and she is only now stating that a
18 year later. She never wrote a written statement,
19 and it's only been in the last two weeks that she
20 has disclosed that she saw the information, which
21 is inconsistent with what the 911 tape shows.

22 THE COURT: Okay. I'm denying your
23 motion at this time to exclude her testimony.

24 MS. SHIVERS: Thank you.

25 THE COURT: And she's ready. Are they

1 ready?

2 Do you-all need a comfort break?

3 MS. SHIVERS: Yes, ma'am.

4 THE DEPUTY: The defendant needs --

5 THE COURT: We're going to go until
6 5:00, so plan accordingly.

7 (A recess transpired.)

8 THE COURT: Anything before we bring
9 in the jury?

10 MS. SIGAL: No, Your Honor.

11 MS. SHIVERS: No, ma'am.

12 THE COURT: All right.

13 (Jury in, 3:53 p.m.)

14 THE COURT: You may be seated. Call
15 your next witness.

16 MS. SIGAL: The State calls Cheryl
17 Scott.

18 THE COURT: Ma'am, please come
19 forward.

20 CHERYL SCOTT,

21 being first duly sworn, testified as follows:

22 THE CLERK: Have a seat, state your
23 full name for the record and spell the last name.

24 THE WITNESS: Cheryl Ann Scott,
25 S-C-O-T-T.

CHERYL SCOTT - DIRECT EXAM BY MS. SIGAL

1 DIRECT EXAMINATION

2 BY MS. SIGAL:

3 Q. Good afternoon, Mrs. Scott. Can you
4 tell us a little bit about your family?

5 A. I've been married to the same man for
6 almost 20 years. We have a -- we have five kids
7 total, the youngest being 13 and the oldest being
8 52.

9 Q. Do you have any grand kids?

10 A. We have seven grand kids, nine great
11 grand kids, and two great-great grand kids.

12 Q. And have you lived in Berkeley County
13 your whole life?

14 A. Except for about four years, yes.

15 Q. Where do you live in Berkeley County?

16 A. [REDACTED] Crest Lane in St. Stephen.

17 Q. Who lives with you at that house?

18 A. My husband and my 13-year-old son.

19 MS. SIGAL: Permission to approach the
20 witness?

21 THE COURT: You may.

22 BY MS. SIGAL:

23 Q. Cheryl, behind you is a map. And with
24 this clicker, you can point -- use this clicker
25 right here, use that.

CHERYL SCOTT - DIRECT EXAM BY MS. SIGAL

1 THE CLERK: And, ma'am, the chair goes
2 the other way.

3 BY MS. SIGAL:

4 Q. Using that clicker, if you can please
5 point out to the jury which house you live in.

6 A. Right there. (Indicating)

7 Q. Okay. So you're indicating in that top
8 left corner is your house?

9 A. Yes.

10 Q. Okay. Thank you.

11 Okay. Mrs. Scott, you can turn back
12 around. Were you living at that residence you just
13 pointed out on November 4, 2015?

14 A. Yes.

15 Q. And what were you doing on the morning
16 of November 4, 2015?

17 A. We had gotten up and my husband was
18 watching the news. I'm pretty sure that was the
19 Wednesday that my son was sick, and I had gone out
20 to my porch to check on my new litter of kittens.
21 So that's what I was doing.

22 Q. And what happened that morning?

23 A. I was on the porch for maybe three to
24 five minutes and these two young boys, I thought
25 they were maybe three and 10, they ran up to my

CHERYL SCOTT - DIRECT EXAM BY MS. SIGAL

1 front porch and said, please help me, he's killing
2 my momma, he's killing my momma. And I said --

3 Q. I'm going to stop you real quick. Can
4 you describe their demeanor a little bit more?

5 A. They were terrified. The one little
6 boy had ran so fast his sock came off his foot.

7 Q. Were they out of breath?

8 A. Yes.

9 Q. And you stated that they said, he's
10 going to kill my momma.

11 MS. SHIVERS: Objection.

12 THE WITNESS: Yes.

13 THE COURT: Hold on one second. Is
14 there an exception?

15 MS. SIGAL: Yes, Your Honor. It falls
16 under the excited utterance to the exception of the
17 hearsay rule, Rule 803.2.

18 THE COURT: Overruled. And she
19 already answered, but you may state it again.

20 BY MS. SIGAL:

21 Q. And you stated that he said, he's going
22 to kill my momma?

23 A. Yes.

24 Q. And what happened after that?

25 A. And I said, who is going to kill your

CHERYL SCOTT - DIRECT EXAM BY MS. SIGAL

1 momma? And I did not catch the name at first, but
2 I grabbed my phone and I called my husband and I
3 said, go out back. And I called 911.

4 Q. When you called 911, did you remain in
5 the house or were you outside?

6 A. I was outside.

7 Q. And which part of --

8 A. I was on my front porch.

9 Q. Were you facing --

10 A. I was facing the cell tower.

11 Q. Okay. When you came out on the porch,
12 did you see anything?

13 A. Not on my porch, no.

14 Q. Did you remain on your porch?

15 A. No.

16 Q. Where did the boys go?

17 A. The boys stayed with me. I had -- they
18 kept going to my backyard to where the incident was
19 happening, and I tried to keep moving the boys back
20 towards my front porch. So I was going back and
21 forth this whole time.

22 MS. SIGAL: If we could publish
23 Exhibit 41 again, please.

24 BY MS. SIGAL:

25 Q. Cheryl, I'm going to have you turn

CHERYL SCOTT - DIRECT EXAM BY MS. SIGAL

1 around and explain a little bit. You're talking
2 about the back porch and going around. If you
3 could kind of indicate with the pointer what you
4 mean by that.

5 A. What I mean by that is my front porch
6 is right here. And what I was doing was leaving
7 this point and going around this way. I was going
8 back and forth. (Indicating)

9 Q. Yes. So you were going from your front
10 porch into your backyard?

11 A. Yes.

12 Q. And if you could indicate, what were
13 you looking at in your backyard?

14 A. The first time I went into the backyard
15 with the two boys, my husband was already out
16 there. The gentleman had a -- the woman on the
17 ground and he was chopping her with what looked
18 like a grubbing hoe or an ax handle. I don't know
19 what it was, but he was chopping her with it.

20 Q. If you can turn around and indicate
21 where the two of them were --

22 A. I don't know if I can tell on the map.

23 Q. -- on the property, or you can explain
24 it if you can't get the pointer to work.

25 A. I'm thinking it's about right here

CHERYL SCOTT - DIRECT EXAM BY MS. SIGAL

1 because all of this was not there. Those trees
2 were gone, they had been taken down, but I'm pretty
3 sure it -- it was right here. (Indicating)

4 Q. Okay. Thank you. Okay. And you said
5 -- you used the phrase, he was chopping her?

6 A. Yeah, he was hitting her.

7 Q. Can you describe that a little bit
8 more?

9 A. Yeah. He had his hands up over her
10 like that. (Indicating)

11 Q. What was he using in his hands?

12 A. It looked like a grubbing hoe or an ax
13 handle. I couldn't tell exactly which it was, but
14 I knew it was wooden.

15 Q. And where was the victim?

16 A. On the ground.

17 Q. And so the defendant was standing over
18 her?

19 A. At one point, yes, like the second or
20 third time that I came back around. Like I said, I
21 went back and forth because I was trying to keep
22 the boys and talking to 911 at the same time.

23 Q. When you were back towards your
24 backyard watching, what was the victim doing?

25 A. She was screaming the first time.

CHERYL SCOTT - DIRECT EXAM BY MS. SIGAL

1 Q. Did she remain on the ground?

2 A. I saw her try to get up once, but she
3 wasn't able.

4 Q. And describe that a little bit more.

5 A. I don't think she was able. She was
6 bloodied from head to toe.

7 Q. Was the defendant making any statements
8 while he was hitting her?

9 A. Yeah. He said, bitch, I told you I was
10 going to get out and I was going to kill you and
11 now I'm going to kill you.

12 Q. What tone of voice was he using when he
13 said that?

14 A. He was angry.

15 Q. Which part of her body was he focusing
16 the assault on?

17 A. I can't tell which was her head and
18 which was her bottom part because there was so much
19 -- there was a lot of blood.

20 Q. Was she fighting back?

21 A. No.

22 Q. Was this a difficult thing to witness?

23 A. Yes, it was.

24 Q. What were the boys doing while you were
25 going back and forth between the backyard and the

CHERYL SCOTT - DIRECT EXAM BY MS. SIGAL

1 front porch?

2 A. They -- the one, her son, was trying to
3 get to his momma and he kept screaming, she's all
4 I've got. She's all I've got. I'm all she has.

5 Q. Did you allow him to go to his mom?

6 A. No, I wouldn't.

7 Q. And why was that?

8 A. Because I was scared he would get the
9 little boys.

10 Q. Was the victim trying to get help?

11 A. Yeah. She was saying, help me.

12 Q. How many times did you go from the
13 front porch to the backyard?

14 A. Honestly, I don't know; maybe four or
15 five times.

16 Q. Do you remember about how long this
17 went on?

18 A. It seemed like forever, but, no, I
19 don't.

20 Q. Could you tell from what direction they
21 were coming?

22 A. When I got to the back, it looked like
23 they were kind of angled, so I don't know because I
24 did not see when they had walked -- you know, when
25 they had come in.

CHERYL SCOTT - DIRECT EXAM BY MS. SIGAL

1 Q. Had you ever seen either one of them
2 before?

3 A. No.

4 Q. Had you seen them -- did you ever see
5 them again?

6 A. No.

7 MS. SIGAL: Beg the Court's indulgence?

8 THE COURT: Take your time.

9 BY MS. SIGAL:

10 Q. Cheryl, what caused this assault --
11 this attack to stop?

12 A. The cop came up.

13 Q. And how did the cop come up, on the
14 road or on foot?

15 A. She came through [REDACTED] and I heard her
16 say, drop it. And then I took the boys and I got
17 them back around, and I told them they could not go
18 up there, it was not safe. And I seen him go to
19 hit her one more time and she said, stop, drop it.

20 Q. Just to clarify, when you testified
21 that you saw him go to hit her one more time, you
22 witnessed the defendant going to hit the victim
23 another time?

24 A. Yeah.

25 Q. In front of the police officer?

CHERYL SCOTT - DIRECT EXAM BY MS. SIGAL

1 A. Yeah. And she told him to drop it.

2 Q. Did the police officer use any certain
3 commands to make him drop the weapon?

4 A. I think -- I'm pretty sure she had her
5 gun pulled. I think she pulled her gun.

6 Q. Once that happened, did the defendant
7 stop his actions?

8 A. I don't know because I went back around
9 with the boys.

10 Q. Cheryl, you mentioned you had called
11 911?

12 A. Yes.

13 MS. SIGAL: Permission to approach the
14 witness?

15 THE COURT: You may.

16 BY MS. SIGAL:

17 Q. I'm showing you what was admitted as
18 State's Exhibit Number 34. Did you listen to a
19 recording on this disk at my request?

20 A. Yes, ma'am.

21 Q. And did you make any markings on it to
22 indicate that you listened to it?

23 A. Yeah. There's my initials.

24 Q. The recording that you listened to, is
25 that your voice?

CHERYL SCOTT - DIRECT EXAM BY MS. SIGAL

1 A. Yes.

2 Q. And is that the call you placed on
3 November 4, 2015?

4 A. Yes.

5 MS. SIGAL: At this time, Your Honor,
6 the State moves to publish track number two on
7 State's Exhibit 34.

8 MS. SHIVERS: Without objection.

9 THE COURT: You may publish.

10 MS. SIGAL: May we approach?

11 THE COURT: You may.

12 (Bench conference.)

13 THE COURT: What seems to be the
14 problem?

15 MS. BROWN: The computer isn't
16 recognizing it.

17 MS. SIGAL: Your Honor, we're looking
18 into getting another computer brought up.

19 THE COURT: Do you want to let this
20 witness step down and we'll recall her?

21 MS. SIGAL: Yes, Your Honor.

22 THE COURT: All right. You may step
23 down. I don't know when we will recall you, but
24 please do not discuss your testimony with anyone.
25 I will need you to wait outside of the courtroom.

KENNETH SCOTT - DIRECT EXAM BY MR. MCNEELY

1 THE WITNESS: Okay.

2 THE COURT: Thank you.

3 Call your next witness.

4 MR. MCNEELY: The State calls Kenneth
5 Scott.

6 KENNETH SCOTT,

7 being first duly sworn, testified as follows:

8 THE CLERK: Have a seat and state your
9 full name for the record and spell the last name,
10 please.

11 THE WITNESS: My name is Keith Kenneth
12 Scott.

13 THE COURT: Spell your last name,
14 please.

15 THE WITNESS: S-C-O-T-T.

16 THE COURT: Mr. McNeely, your witness.

17 MR. MCNEELY: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. MCNEELY:

20 Q. Mr. Scott, where do you live?

21 A. [REDACTED] Crest Lane.

22 Q. Is that in St. Stephen?

23 A. St. Stephen.

24 Q. Is that in Berkeley County?

25 A. Berkeley County.

KENNETH SCOTT - DIRECT EXAM BY MR. MCNEELY

- 1 Q. Is that correct?
- 2 A. Yes.
- 3 Q. Okay. What do you do for a living?
- 4 A. I'm retired.
- 5 Q. What did you do before you retired?
- 6 A. Meat cutter.
- 7 Q. Were you living on Crest Lane in
- 8 November of 2015?
- 9 A. Yeah.
- 10 Q. Are you married?
- 11 A. Yeah.
- 12 Q. What is your wife's name?
- 13 A. Cheryl Scott.
- 14 Q. Was she living with you in November of
- 15 2015?
- 16 A. Yeah.
- 17 Q. Who else lives in your home?
- 18 A. My son.
- 19 Q. Did you have any neighbors?
- 20 A. Yeah.
- 21 Q. About how far were the neighbors' homes
- 22 from yours?
- 23 A. One of them is probably 100 feet and
- 24 one of them is about 200 feet.
- 25 Q. Can you see them from your back yard?

KENNETH SCOTT - DIRECT EXAM BY MR. MCNEELY

1 A. Yeah.

2 Q. Were your neighbors' houses there?
3 Were they built during November 2015?

4 A. No, they were there.

5 Q. I want to discuss the day November 4,
6 2015. Do you recall where you were and what you
7 were doing at approximately 9:30 a.m. that morning?

8 A. Yes, I do.

9 Q. Can you tell the jury what you were
10 doing that morning?

11 A. Me and my wife and my son, we were
12 sitting out watching TV and, all of a sudden, we
13 heard somebody screaming and we jumped up. I
14 jumped up and ran to the door and my wife came to
15 the door, and there was two little boys. One boy
16 had one sock on and no shoes, and the other boy, he
17 was dressed.

18 And he came to the door and asked me to
19 go and help his mom, the man was beating her up,
20 and he said he was going to kill her. And I tried
21 to get him to stay in the house, but he wouldn't
22 stay in the house. He followed me over next
23 towards where he was at.

24 And we got just about there, he had an
25 ax handle, and he drew back like this here

(
KENNETH SCOTT - DIRECT EXAM BY MR. MCNEELY

1 (Indicating) to hit her head. And she was bleeding
2 out the back.

3 And I tried to talk to him a little
4 bit, but he acted kind of wild. I just left him
5 alone.

6 Q. Let's back up a little bit. When the
7 boys were on the porch, how did they appear?

8 A. They looked -- the little boy, the
9 little one, he was still, but the big one, he was
10 carrying on real bad. He said his mom was all he
11 had and he didn't have nobody else and he had to go
12 see about his mom.

13 Q. What did you do at that time?

14 A. I walked across the yard, walked across
15 the woods, and walked over to the shed to just
16 about where he was at.

17 Q. When you said your yard, you mean your
18 front yard or your backyard?

19 A. Back.

20 Q. What did your wife do at that time?

21 A. She came out behind me shortly after.

22 Q. When you walked into your yard, what
23 did you see?

24 A. When I done what?

25 Q. When you walked into the backyard, what

KENNETH SCOTT - DIRECT EXAM BY MR. MCNEELY

1 did you see?

2 A. When I walked back into the backyard, I
3 seen this girl. I don't know if she was sitting on
4 the ground or sitting in a chair, or what, but she
5 was kind of up a little bit. And he was standing
6 up over her head with a -- looked like a grubbing
7 hoe handle or ax handle.

8 And he told her, says, I told you when
9 I got out and come back I was going to kill you.
10 And now I'm going to kill you.

11 And she started crying and hollering.
12 And he already had hit her behind the neck with
13 whatever the object was, and her neck was pouring
14 blood.

15 And I was -- I walked over -- I was
16 going over there and about that time a cop came up,
17 a black lady. And she talked to him, but he
18 carried on so bad it was pathetic, cussing her and
19 whatever, whatever, whatever.

20 And about that time another one came up
21 and they called the ambulance and come and picked
22 her up.

23 Q. When you saw the man, was he standing
24 or was he seated?

25 A. He was standing.

KENNETH SCOTT - DIRECT EXAM BY MR. MCNEELY

1 Q. And you said the woman was seated?

2 A. Yeah.

3 Q. Was he standing over her?

4 A. Yeah.

5 Q. Did he have anything in his hand?

6 A. Yeah. He had a -- from what I could
7 put it with, it looked like a grubbing hoe handle
8 or an ax handle, one of the two.

9 Q. Did you ever see him hit her?

10 A. No.

11 Q. Did you hear him say anything?

12 A. I heard him say he was going to kill
13 her.

14 Q. And then what happened after that?

15 A. EMS come and picked her up and the cops
16 put him in the back of the paddy wagon and hauled
17 him off.

18 Q. When the officer arrived, did the man
19 still have that handle in his hand?

20 A. Yes, he did.

21 Q. Was he still standing over the victim?

22 A. Yeah. He was standing over the victim,
23 but when she came up, he walked around the side
24 where she was at off a piece. And that's when she
25 told him to get in the car and he started cussing

KENNETH SCOTT - CROSS EXAM BY MR. CHURCH

1 and carrying on real bad.

2 Q. Did you see the deputy when she
3 arrived?

4 A. Yeah.

5 Q. Did she have to draw her weapon?

6 A. I don't know. I don't know if she did
7 or not.

8 Q. What did you do after that?

9 A. After that, they -- after they hauled
10 her off, me and my boy went back to my house. The
11 two little boys that came over to my house, I don't
12 know where they went.

13 Q. Did you speak with law enforcement that
14 day?

15 A. No.

16 MR. MCNEELY: No further questions from
17 the State, Your Honor.

18 THE COURT: Mr. Church, your witness.

19 MR. CHURCH: Thank you. May it please
20 the Court.

21 CROSS-EXAMINATION

22 BY MR. CHURCH:

23 Q. Mr. Scott, about how far were they from
24 you when you went down there, the two people you
25 saw?

KENNETH SCOTT - CROSS EXAM BY MR. CHURCH

1 A. How far?

2 Q. From you were they when you saw them?

3 A. Probably as far as from me to that guy
4 over there. (Indicating)

5 Q. And you stated that she was sitting
6 possibly in a chair?

7 A. She was either sitting in a chair or
8 either a cement block or she was sitting up beside
9 two pilars and she was kind of humped over like
10 that. (Indicating) So I don't know if it was
11 exactly a chair or cement block, but --

12 Q. But you were that close and you
13 couldn't tell what it was?

14 A. Not that close, yeah. Really, I didn't
15 pay that much attention where she was sitting at
16 because from the way I was, the blood was coming
17 down her back.

18 Q. Okay. You could see blood coming down
19 the back of the head, but you couldn't tell what
20 she was sitting on?

21 A. I didn't pay that much attention
22 really.

23 Q. And you stated earlier in the direct
24 testimony he had already hit her in the back of the
25 head?

KENNETH SCOTT - CROSS EXAM BY MR. CHURCH

1 A. I guess so because she was bleeding.

2 Q. Now you're guessing so, but earlier you
3 said he had already hit her in the back of the
4 head. But you didn't see that, did you?

5 A. No, I didn't see him hit her.

6 Q. So you really don't know how she got
7 the back of her head cut?

8 A. I don't know how she got that. Only
9 thing, he was standing over her with that object
10 and blood was coming down her neck.

11 Q. Okay. And you said you never saw him
12 actually hit her with --

13 A. No.

14 Q. -- with the instrument?

15 A. No.

16 MR. CHURCH: No further questions.

17 THE COURT: Redirect?

18 MR. MCNEELY: No, Your Honor.

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

21 Call your next witness.

22 MS. SIGAL: Beg the Court's indulgence.

23 State calls Corporal Shawnda Winder.

24 SHAWNDA WINDER,

25 being first duly sworn, testified as follows:

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 THE CLERK: Have a seat, state your
2 name and spell your last name.

3 THE WITNESS: Corporal Shawnda Winder,
4 W-I-N-D-E-R.

5 DIRECT EXAMINATION

6 BY MS. SIGAL:

7 Q. Corporal Winder, what do you do for a
8 living?

9 A. I work for Berkeley County Sheriff's
10 Office.

11 Q. How long have you been with the
12 sheriff's office?

13 A. I've been with the sheriff's office now
14 almost four years this November.

15 Q. What did you do before you were with
16 the sheriff's office?

17 A. I worked for Moncks Corner Police
18 Department three years.

19 Q. What kind of training do you have to
20 undergo to become a police officer?

21 A. I had to go to the criminal justice
22 academy for nine weeks.

23 Q. What's your rank with the sheriff's
24 office right now?

25 A. I'm a corporal.

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 Q. And so what kind of cases do you have?
2 What kind of officer are you?

3 A. I work patrol.

4 Q. And what does that mean to work patrol?

5 A. I patrol the areas, I assist citizens
6 in any way, I take reports, I make arrests when
7 necessary.

8 Q. Do you patrol any specific area of
9 Berkeley County?

10 A. I patrol the north end which could be
11 from Daniel Island to Cross to St. Stephen.

12 Q. Were you working for the sheriff's
13 office on November 4, 2015?

14 A. Yes, ma'am.

15 Q. What area were you patrolling around
16 9:30 that morning?

17 A. I was in the St. Stephen area.

18 Q. How many police officers are usually
19 patrolling the St. Stephen area?

20 A. With the county?

21 Q. With the county.

22 A. We usually have from three to four
23 deputies that work the entire north end so we could
24 be in any area at that time.

25 Q. Just for folks who aren't familiar with

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 the St. Stephen area, what type of area is that?

2 A. It's a rural area.

3 Q. Did you get a call to respond to an
4 assault on that morning?

5 A. The call didn't actually go to me. It
6 went to a different deputy that was actually
7 further away than I was.

8 Q. What time did that call go out?

9 A. Roughly 9:38.

10 Q. 9:38 a.m.?

11 A. A.m., yes, ma'am.

12 Q. And what was the location?

13 A. It was [REDACTED] Road. I'm not sure of the
14 numerics at this time. I just know it was [REDACTED]
15 Road.

16 Q. And is that in Berkeley County?

17 A. Yes, ma'am.

18 Q. Do you remember what time you arrived
19 at the location?

20 A. I believe it was 9:43. It took me five
21 minutes to get there.

22 Q. Five minutes from the time the call
23 went out to your arrival?

24 A. Yes, ma'am.

25 MS. SIGAL: Permission to approach the

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 witness?

2 THE COURT: You may.

3 By MS. SIGAL:

4 Q. Corporal Winder, I'm showing you what
5 was marked and admitted as State's Exhibit 41. Do
6 you recognize that map?

7 A. Yes, ma'am. It appears to be an aerial
8 view of the incident location.

9 MS. SIGAL: Would you please publish
10 State's Exhibit 41?

11 BY MS. SIGAL:

12 Q. While we're working on that, can you
13 describe which road you took to get to the incident
14 location?

15 A. I took [REDACTED] Road.

16 Q. You took [REDACTED] Road?

17 A. Yes.

18 Q. And if you can please hold up
19 Exhibit Number 41 towards the jury and indicate
20 which road you took to arrive at the incident
21 location?

22 A. This is Upton Road at the top of the
23 map.

24 Q. Is that the road you took?

25 A. Yes, ma'am.

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 Q. Now, if you can turned around in your
2 chair and use the pointer for us, and indicate on
3 the pointer (sic) the direction you took to arrive
4 at the location?

5 A. This way on [REDACTED] Road. (Indicating)

6 Q. And where was the incident location
7 that you were headed to?

8 A. The incident location was located on
9 [REDACTED] Road. I made a stop approximately right
10 here. (Indicating)

11 Q. What made you stop there?

12 A. Because I seen a female and a guy
13 running and the female was screaming, and the guy
14 was chasing her with an object in his hand.

15 Q. So I want to break that down. You
16 stated the male was chasing her with an object in
17 his hand?

18 A. Yes, ma'am.

19 Q. And please describe in what manner he
20 was using the object. Was he holding it?

21 A. He had it in his hand and chasing her
22 like that and shaking it. (Indicating)

23 Q. So he was shaking the object --

24 A. While chasing her, yes, ma'am.

25 Q. And what was the object?

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 A. It appeared to be a stick or -- I found
2 out later it was an ax stick.

3 Q. And as he was chasing her, what would
4 you describe his demeanor to be?

5 A. He was aggressive, he was trying to get
6 at her. He was screaming and yelling obscenities
7 at her.

8 Q. What was he screaming? Were you able
9 to hear?

10 A. I could hear. I normally don't speak
11 like this, but he was saying to her, I'm going to
12 fucking kill you, bitch.

13 Q. And could you hear that as you pulled
14 up?

15 A. Yes, ma'am.

16 Q. What was the victim doing?

17 A. She was running and screaming, trying
18 to get away from him. She was yelling, help me,
19 he's going to kill me.

20 Q. Was he running behind her or walking?

21 A. He was running behind her, full run.

22 Q. So both of them were running?

23 A. Yes, ma'am.

24 Q. When you arrived and saw that scene,
25 what did you do?

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 A. I hopped out of my car and pulled my
2 duty weapon and advised him to drop the weapon.

3 Q. Why did you pull your duty weapon?

4 A. Because he had a weapon in his hand and
5 he clearly was trying to kill her with it. And I
6 needed him to drop it immediately.

7 Q. How far away were they from each other?

8 A. A few feet.

9 Q. Were they close enough where he could
10 have reached her with the ax handle?

11 A. He could have, yes, ma'am. It was
12 close enough to where I could hear him.

13 Q. When you told him to drop the weapon,
14 did he drop it?

15 A. Yes, ma'am, he did.

16 Q. What did he do?

17 A. He got on the ground.

18 Q. What did the victim do?

19 A. She got on her knees as well.

20 Q. Describe the demeanor of the victim
21 when she arrived.

22 A. She was terrified, she was shaking, and
23 I could see blood coming from her head.

24 Q. Did she appear to have been injured at
25 that point?

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 A. Yes, ma'am.

2 Q. So what did you do once the defendant
3 got on the ground?

4 A. I approached the defendant and
5 immediately placed him in handcuffs, placed him in
6 the back of my squad car and read him his Miranda
7 Rights.

8 Q. What was his demeanor once you detained
9 him?

10 A. He was calm, very calm.

11 Q. Did he make any statements to you after
12 you Mirandized him?

13 A. The only thing he stated was, he
14 understood, he's been through this before, he
15 understood.

16 Q. Did he have any injuries on his body?

17 A. Not from what I could see, no.

18 Q. But did he have any blood on him?

19 A. He did; his shirt was covered in blood.

20 MS. SIGAL: Permission to approach the
21 witness?

22 THE COURT: You may.

23 BY MS. SIGAL:

24 Q. I'm showing you what was marked as
25 State's Exhibit 1. Do you recognize that picture?

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 A. Yes.

2 Q. What is that a picture of?

3 A. The defendant with a bloody shirt --

4 Q. Is that a -- I'm sorry?

5 A. I was just saying, wearing a bloody
6 shirt.

7 Q. Is that picture a fair and accurate
8 depiction of the way the defendant looked on
9 November 4th, 2015, after you detained him?

10 A. Yes, it is.

11 MS. SIGAL: At this time, State moves
12 to admit State's Exhibit Number 1 into evidence.

13 THE COURT: Any objection?

14 MR. CHURCH: No objection.

15 THE COURT: State's 1 into evidence
16 without objection.

17 (STATE EXH. 1 in evidence.)

18 MS. SIGAL: Permission to publish?

19 THE COURT: You may publish.

20 BY MS. SIGAL:

21 Q. Corporal Winder, if you can just turn
22 around and describe what we're looking at.

23 A. This is the defendant standing next to
24 my squad vehicle with the shirt he was wearing on
25 the day of the incident.

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 Q. What do you notice about his shirt?

2 A. This appeared to be a blood stain.

3 Q. Did it appear to be a fresh blood stain
4 or old?

5 A. Yes, ma'am, it was very fresh.

6 Q. Did it appear to be coming from any
7 injuries that he had?

8 A. No, ma'am.

9 Q. Did you tend to the victim after you
10 detained the defendant?

11 A. Yes. I got out of my squad vehicle and
12 asked her if she was okay. She was visibly shaken
13 and --

14 Q. Sorry, I'm just going to stop you right
15 there. You said she was shaken. What other
16 emotions did she portray?

17 A. She just seemed like she was just --
18 she couldn't focus really. She was screaming, he's
19 going to kill me, he's going to kill me.

20 Q. What injuries did you observe on her at
21 that time?

22 A. I observed an open gash at the back of
23 her head.

24 Q. Did EMS arrive to tend to the victim?

25 A. Yes, ma'am. After I observed her

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 injuries, I notified EMS that it was okay for them
2 to come into the scene.

3 MS. SIGAL: Permission to approach the
4 witness?

5 THE COURT: You may.

6 By MS. SIGAL:

7 Q. I'm showing you what was marked as
8 State's Exhibit 13. Do you recognize that photo?

9 A. Yes, ma'am, I do.

10 Q. What is that a photo of?

11 A. A picture of the victim on her knees on
12 the ground with EMS holding gauze on her wound.

13 Q. Is that picture a fair and accurate
14 depiction of the way the victim looked when you
15 arrived --

16 A. Yes, ma'am.

17 Q. -- and EMS was treating her?

18 A. Yes, ma'am.

19 MS. SIGAL: At this time, we move to
20 admit State's Exhibit 13 into evidence.

21 THE COURT: Any objection?

22 MR. CHURCH: I would like to see the
23 photograph.

24 MS. SIGAL: I'm sorry.

25 MR. CHURCH: No objection.

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 THE COURT: State's Exhibit 13 in
2 evidence without objection.

3 (STATE EXH. 13 in evidence.)

4 MS. SIGAL: Permission to publish?

5 THE COURT: You may publish.

6 By MS. SIGAL:

7 Q. Corporal Winder, if you can turn around
8 and look at the photo we have up here. What are we
9 looking at in this photo?

10 A. It's a picture of the victim on her
11 knees, blood-stained shirt, with the EMS holding
12 gauze to the back of her wound.

13 Q. What was the need for the gauze? Why
14 was that being held against the wound?

15 A. It was bleeding really bad and they
16 needed to try to stop the blood flow.

17 Q. So the wound was actively bleeding when
18 you arrived?

19 A. Yes, ma'am.

20 Q. What about the top of her shirt, is
21 that due to -- is that wetness from sweat or --

22 A. No, that's blood. Yes, ma'am.

23 Q. Thank you.

24 What other injuries did you observe on
25 the victim when you arrived?

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 A. I noticed what appeared to be like
2 blood shot to her eye where it was -- I guess the
3 vessels in her eye had popped and --

4 Q. What did it look like?

5 A. It looked like it was red marks in her
6 eyes.

7 Q. Did she have any injuries on any other
8 parts of her body?

9 A. Few scratches on her neck and her back,
10 but besides that, the wound to the back of her head
11 wound.

12 Q. What did EMS do with her after they
13 treated her at the scene?

14 A. They attached her up and put her in the
15 back of the EMS bus and transported her to Trident.

16 Q. Did you go with them?

17 A. Not at that time, no, ma'am.

18 Q. Did you continue to investigate the
19 scene after they took her to the hospital?

20 A. Yes, ma'am, I did. I walked the scene
21 and took pictures.

22 Q. When you said you walked the scene --

23 MS. SIGAL: Please put up Exhibit 41.

24 Q. (BY MS. SIGAL) If you can use the laser
25 pointer and show us -- when you said you walked the

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 scene, what areas did you investigate?

2 A. Well, I didn't have any information
3 going in, so I just walked the entire scene. I
4 came in here and just started slowing walking
5 through everywhere to see if I could find any blood
6 or anything, you know, relating to the incident.

7 And I came over here, and I noticed
8 there was some blood on the ground and took some
9 pictures, and I walked over here and there was a
10 vehicle with the windows busted out. And then I
11 came on the back porch here and noticed that the
12 door looked like -- it appeared to be kicked in.
13 (Indicating)

14 I noticed there was some broken wood
15 and pieces to the door lying on the ground, I took
16 pictures there. And I noticed a busted window to
17 the right of the door and I took pictures of that.

18 I made entry into the residence through
19 the broken door and noticed that there was glass
20 scattered on the floor and on the bed adjacent to
21 the window, and I took pictures of that as well.

22 Q. Thank you. What was the reason -- what
23 was the reason you didn't have any information
24 about what happened at that point?

25 A. The victim, she was so distraught, she

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 couldn't give me any information. She wasn't
2 saying anything, and I thought it was more of an
3 emergency to get her to the hospital due to her
4 injury being so severe from what I could see.

5 Q. Okay. I'm showing you what was marked
6 as State's Exhibit 14. Do you recognize that
7 photo?

8 A. Yes, ma'am.

9 Q. What is that a photo of?

10 A. It's wood next to a dog pen covered in
11 blood.

12 Q. Is that photo a fair and accurate
13 depiction of the way that area of the residence
14 looked on the date of the incident?

15 A. Yes.

16 MS. SIGAL: At this time, the State
17 moves to admit Number 14 into evidence.

18 THE COURT: Any objection?

19 MR. CHURCH: No objection.

20 THE COURT: State's Exhibit 14 into
21 evidence without objection. You may
22 publish.

23 (STATE EXH. 14 in evidence.)

24 By MS. SIGAL:

25 Q. Can you please describe what we're

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 looking at in this photo?

2 A. This is the dog pen, the wood on the
3 ground and this is blood marks. (Indicating)

4 Q. Was that fresh blood or dried blood?

5 A. It's fresh, yes, ma'am.

6 Q. Speaking of the dog pen that we see
7 there, were the dogs confined to that pen or were
8 they out?

9 A. No, ma'am, they were inside the pen.

10 Q. Did you see any that were roaming the
11 property?

12 A. I didn't notice any dogs when I first
13 arrived.

14 Q. I know we just looked at the map, but
15 where in relation to the incident, the house, where
16 the call originated is this photo?

17 A. This is outside to the right of the
18 house.

19 Q. So is it in the yard of the house --

20 A. Yes, ma'am. It's in the front of the
21 house to the right of it.

22 Q. Okay. Thank you. Okay.

23 Corporal Winder, I'm showing you what's
24 been marked as State's Exhibits 31, 32 and 33. If
25 you can take a look at all three photos and let me

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 know if you recognize those photos.

2 A. Yes.

3 Q. And what are they pictures of?

4 A. Pictures of the busted door.

5 Q. And are those three photos a fair and
6 accurate depiction of the way the door looked
7 November 4, 2015?

8 A. Yes, ma'am.

9 MS. SIGAL: At this time, the State
10 moves to admit Exhibit 31, Exhibit 32, and Exhibit
11 33 in evidence.

12 THE COURT: Any objection?

13 MR. CHURCH: Without objection.

14 THE COURT: Into evidence without
15 objection. You may publish.

16 (STATE EXH. 31 in evidence.)

17 (STATE EXH. 32 in evidence.)

18 (STATE EXH. 33 in evidence.)

19 BY MS. SIGAL:

20 Q. Corporal Winder, what are we looking at
21 in this picture?

22 A. This is the door.

23 Q. When you say, the door, the door to
24 what residence?

25 A. To the incident location, the back

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 door.

2 Q. Is this the house from which the call
3 originated?

4 A. Yes, ma'am, the back door.

5 Q. You call that the incident location?

6 A. Yes, ma'am.

7 Q. And what is significant about this
8 photo and this door?

9 A. This is the door that was busted and
10 you can see dents in it where it appeared that
11 someone was trying to get in.

12 Q. So those marks that appear to be
13 discolored, are those dents or just dirt?

14 A. It's dirt, it's dents. It's damage
15 that was made to the door and it's also dirty.

16 Q. Corporate Winder, what is this a
17 picture of?

18 A. This is the actual frame of the door on
19 the inside that was knocked loose from the actual
20 wall, and this is broken -- the broken frame where
21 the wood is actually missing from the door.

22 Q. Is this the same door as the one we
23 just looked at?

24 A. Yes, ma'am.

25 Q. And the door is open now?

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 A. Yes, ma'am.

2 MS. SIGAL: Thank you. And now publish
3 State's 31.

4 BY MS. SIGAL:

5 Q. Okay. And finally in this picture,
6 what are we looking at?

7 A. This is the bottom of the door. This
8 is the actual metal piece that is actually supposed
9 to be in the door, the door frame.

10 Q. So the piece that's on the ground was
11 -- actually came loose from the door?

12 A. Yes, ma'am, it was knocked loose.

13 Q. In that picture we see another picture
14 of a dog. Were there dogs -- when you were
15 investigating the house, were there dogs around?

16 A. No, ma'am. I don't know where that dog
17 came from. That dog wasn't there when I was
18 actually taking pictures inside the residence or
19 when I first arrived.

20 Q. And so just to be clear, when you
21 arrived and the defendant was attacking the victim,
22 were there any dogs around?

23 A. No, ma'am, there were not.

24 Q. Thank you.

25 MS. SIGAL: Permission to approach the

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 witness, Your Honor?

2 THE COURT: You may.

3 By MS. SIGAL:

4 Q. Now I'm showing you Exhibits 28, 29 and
5 30. If you can take a look at all three of those
6 and let us know if you recognize those photos.

7 A. Yes, ma'am. It's the actual busted
8 window that was to the right of the broken-in door
9 and glass inside the residence in the bedroom to
10 where that broken window was.

11 Q. Are those photos a fair and accurate
12 depiction of the way the window in the bedroom and
13 the outside of the house looked on the day of the
14 incident?

15 A. Yes, ma'am.

16 MS. SIGAL: At this time, the State
17 moves to admit State's 28, 29 and 30.

18 THE COURT: Any objection?

19 MR. CHURCH: No objection.

20 THE COURT: State's 28, 29 and 30 into
21 evidence without objection. You may publish.

22 MS. SIGAL: Thank you, Your
23 Honor.

24 (STATE EXH. 28 in evidence.)

25 (STATE EXH. 29 in evidence.)

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 (STATE EXH. 30 in evidence.)

2 BY MS. SIGAL:

3 Q. Corporal Winder, what is this a picture
4 of?

5 A. It's the window that was to the right
6 of the door and the stove in front of it.

7 Q. So just to be clear, this is on the
8 same side of the house as the door that we just
9 looked at?

10 A. Yes, ma'am, the back side.

11 Q. What is significant about that window?

12 A. It's busted.

13 Q. And what is -- what about the blinds?

14 A. The blinds are torn as well.

15 Q. And if you look close enough, can you
16 make out where the window was actually broken?

17 A. Yes, ma'am, I can see the broken glass
18 there.

19 Q. Okay. Corporal Winder, what is this a
20 photo of?

21 A. The bedroom where the window is.

22 Q. So just to clarify, you just put your
23 pointer to the right of the picture. Is that where
24 the window was?

25 A. Yes, ma'am. The window would be here,

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 this is the floor. (Indicating)

2 Q. What is all over the ground?

3 A. That's broken glass.

4 Q. What about on the bed?

5 A. Broken glass as well from the window.

6 Q. What is this a phot of?

7 A. This is the actual window that was
8 busted in. That's glass and glass all over the
9 floor.

10 Q. So up at the top right where you
11 indicated, what is obstructing the window?

12 A. That's curtains right there, but that's
13 the window.

14 Q. So that would be the window that we
15 just saw that was broken from the outside?

16 A. Yes, ma'am.

17 Q. And what about what's just below that
18 Tupperware container, what was that?

19 A. That's the bed that was underneath the
20 window with all the glass on top of it.

21 Q. What about what's next to that on the
22 ground?

23 A. The frame.

24 Q. Is that a picture frame?

25 A. That's a picture frame that was on the

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 wall that fell off.

2 Q. Did it appear to be broken?

3 A. Yes.

4 Q. What about the thing next to the window
5 frame?

6 A. I think it was some type of ceramic
7 object that was -- I'm not sure where it was at, if
8 it was outside or not, but it's broken.

9 Q. Thank you, Corporal Winder.
10 Did you collect the weapon from the
11 scene?

12 A. I did, yes, ma'am.

13 Q. And where did you collect it?

14 A. I collected it from the defendant
15 outside when I first arrived.

16 Q. From the scene where he was going after
17 the victim with it?

18 A. Yes, ma'am. When I initially arrived,
19 yes, ma'am.

20 THE COURT: Permission to approach the
21 witness, Your Honor?

22 THE COURT: You may.

23 BY MS. SIGAL:

24 Q. I'm showing you what's been marked as
25 State's Exhibit 35, the bag, and 35A.

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 A. Okay.

2 Q. And just in regards to 35A, do you
3 recognize this item?

4 A. Yes, ma'am.

5 Q. What is it?

6 A. Ax handle that the defendant was
7 carrying at the time.

8 Q. Is that the ax handle that you
9 collected from the scene?

10 A. Yes, ma'am.

11 Q. When you collected it, what did you do
12 with it?

13 A. I placed it in the brown paper bag and
14 placed it in the trunk of my vehicle.

15 Q. Was it secured in the trunk of --

16 A. Yes, ma'am.

17 Q. Did anyone else have custody or control
18 over it when it was in your vehicle?

19 A. No, ma'am; I have the only key to it.

20 Q. What did you do with it after you put
21 it in the trunk of your car?

22 A. I took it and placed it into the
23 evidence locker at the sheriff's office.

24 Q. And so did anyone else have any ability
25 to have control over it between the time you

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 collected it and you put it into the --

2 A. No, ma'am, it was only in my custody.

3 MS. SIGAL: At this time, we move to
4 admit State's Exhibit Number 35A into evidence.

5 THE COURT: Any objection?

6 MR. CHURCH: Yes, Your Honor. We would
7 like a chain of custody, and I'm not sure if it's
8 been properly identified as the particular weapon
9 by the victim.

10 MS. SIGAL: Your Honor --

11 THE COURT: Counsel approach.

12 (Bench conference)

13 THE COURT: Sustained.

14 BY MS. SIGAL:

15 Q. Corporal Winder, did you fill out an
16 evidence chain of custody report?

17 A. I did, yes, ma'am.

18 Q. And you submitted that into evidence?

19 A. Yes, ma'am. Every time we have
20 evidence, we do a chain of evidence.

21 Q. Is that a part of State's 35?

22 A. Yes, it is.

23 Q. Would you please take it out of the
24 bag, the chain of custody paper?

25 A. (Complies)

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 Q. Can you please take a look at that and
2 confirm that that, in fact, is the chain of custody
3 report that you filled out for this case?

4 A. Yes, ma'am, it is.

5 Q. And just to be clear, what do you
6 indicate on that chain of custody that you admitted
7 into evidence?

8 A. On this paper, evidence is one ax
9 handle, two pocket knives, and two notes.

10 Q. And in regard to the ax handle, is that
11 the specific ax handle that you collected from the
12 scene when it was in his hands when he was chasing
13 the victim?

14 A. Yes, ma'am.

15 Q. It's the same ax handle you saw him
16 have --

17 A. Yes, ma'am, it is.

18 Q. And that's the same ax handle for which
19 you filled out the chain of custody report?

20 A. Yes, ma'am, it is.

21 Q. Okay. Thank you.

22 After you collected evidence from the
23 scene and took photos from the house, the broken
24 window, the busted door, where did you go next?

25 A. I went to Trident to go check on the

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 victim.

2 Q. Had you obtained a statement from her
3 at that point?

4 A. I did while I was there.

5 Q. You obtained a statement at the
6 hospital?

7 A. At the hospital. Once I got there, I
8 got a statement from her.

9 Q. How was her demeanor when you got to
10 the hospital?

11 A. She was still shaken up.

12 Q. Did you speak with anyone else at the
13 hospital?

14 A. The victim's son.

15 Q. And about how old was he; do you
16 remember?

17 A. I think he was between 10 and 13.

18 Q. What was his demeanor?

19 A. He was scared.

20 Q. Did you take any photos while at the
21 hospital?

22 A. Yes.

23 Q. Who did you take photos of?

24 A. Of the victim.

25 MS. SIGAL: Permission to approach?

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 THE COURT: You may.

2 BY MS. SIGAL:

3 Q. I'm showing you what was marked as
4 State's Exhibits 2, 3, 4, 5, 22, and 23. Please
5 take a look at all five of those photos and
6 indicate if you recognize them.

7 A. Yes, ma'am.

8 Q. And what are they photos of in general?

9 A. The victim's wound, her injuries.

10 Q. Are those photos a fair and accurate
11 depiction of the way the victim looked on
12 November 4, 2015, at Trident Hospital?

13 A. Yes, ma'am.

14 MS. SIGAL: At this time, the State
15 moves to introduce Exhibits 2, 3, 4, 5, 22 and 23
16 into evidence.

17 THE COURT: Any objection?

18 MR. CHURCH: No objection.

19 THE COURT: All right. State's 2, 3,
20 4, 5, 22 and 23 into evidence without objection.
21 You may publish.

22 (STATE EXH. 2 in evidence.)

23 (STATE EXH. 3 in evidence.)

24 (STATE EXH. 4 in evidence.)

25 (STATE EXH. 5 in evidence.)

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 (STATE EXH. 22 in evidence.)

2 (STATE EXH. 23 in evidence.)

3 BY MS. SIGAL:

4 Q. Corporal Winder, what is this a picture
5 of?

6 A. Victim in the hospital bed.

7 Q. Was this after she had been bandaged up
8 and cleaned?

9 A. Yes.

10 MS. SIGAL: Would you publish State's
11 Exhibit 23, please?

12 Q. (BY MS. SIGAL) Corporal Winder, what
13 is this a picture of?

14 A. The back of the victim's head.

15 Q. Was this prior to the medical personnel
16 cleaning the wound?

17 A. Yes, ma'am.

18 Q. What is the dark spots on this picture?

19 A. It's blood, dried blood.

20 Q. And to be clear, who is this a picture
21 of?

22 A. The victim.

23 Q. And is this the back of her head?

24 A. Yes, ma'am.

25 Q. Was the wound actively bleeding at this

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 point?

2 A. No, ma'am.

3 Q. What is this a photo of?

4 A. This is the actual gashes that's in her
5 head.

6 Q. Is this the same wound that we were
7 just looking at?

8 A. Yes, ma'am.

9 Q. Is this following the clean-up that was
10 done by the medical personnel?

11 A. Yes.

12 Q. And this may sound like an obvious
13 question, but what is the red mark on the back of
14 her head?

15 A. Blood.

16 Q. Is that from the injury?

17 A. Yes, ma'am.

18 Q. What is the reddish pink marks on the
19 towel that's wrapped around her neck?

20 MR. CHURCH: Your Honor, I'm going to
21 object.

22 THE COURT: Hold on one second. Just
23 the basis.

24 MR. CHURCH: It's not in her field.
25 This was done by medical personnel.

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 THE COURT: She can testify as to if
2 she knows what it is.

3 Rephrase your question. Thank you.

4 BY MS. SIGAL:

5 Q. Do you know what's on the towel?

6 A. Yes, ma'am; it's blood.

7 Q. What is this a photo of?

8 A. The injury to the back of her head.

9 Q. Is this just another angle of the
10 injury?

11 A. Yes, ma'am.

12 Q. What is significant about this photo,
13 Corporal Winder?

14 A. Her eye where the blood vessels -- it
15 appeared that the blood vessels in her eye had
16 popped.

17 Q. What else do you notice unusual in this
18 picture? Do you notice any injuries?

19 A. Her face. She has bruising on the side
20 of her face and it appears to be swollen.

21 Q. When you were at the hospital, did you
22 observe the injuries?

23 A. Yes, ma'am, I did.

24 Q. And what about around her mouth, were
25 there any injuries there?

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 A. I'm not sure. I don't recall marks
2 around her mouth. I just -- I remember the
3 bruising around her eyes and then right there.

4 Q. Okay. Corporal Winder, what is
5 significant about this photo?

6 A. You can see the -- where it's swollen
7 right there, and her eye, and then the wrap, and
8 then her neck as far as the bruising around her
9 neck.

10 Q. Okay.

11 MR. CHURCH: I'll object to this
12 picture, Your Honor.

13 THE COURT: What number is that?

14 MS. SIGAL: 27.

15 MS. SHIVERS: Can I see it?

16 (Bench conference)

17 BY MS. SIGAL:

18 Q. Corporal Winder, showing you what was
19 marked as State's Exhibit 27. Can you please tell
20 us if you recognize that photo?

21 A. Yes, ma'am.

22 Q. What is that a photo of?

23 A. It's a vehicle that was parked on the
24 back side of the incident location.

25 MR. CHURCH: I'm going to object again,

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 and may we approach? This is more --

2 THE COURT: You may.

3 (Bench conference)

4 THE COURT: You may continue.

5 BY MS. SIGAL:

6 Q. Corporal Winder, what is that a photo
7 of?

8 A. Of the vehicle that was parked on the
9 property that was damaged.

10 Q. And how close was it parked to the
11 property?

12 A. It was right there in the backyard.

13 Q. Was it nearby any other areas that you
14 photographed?

15 A. Yes, ma'am. It was actually directly
16 across from where the door was busted in.

17 Q. And is that a fair and accurate
18 depiction of the way the car looked on the day of
19 the incident?

20 A. Yes, ma'am.

21 MS. SIGAL: At this time, the State
22 moves to admit State's 27 into evidence.

23 MR. CHURCH: Previous objection.

24 THE COURT: State's 27 into evidence.

25 Noting your objection, you may

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 publish.

2 (STATE EXH. 27 in evidence.)

3 BY MS. SIGAL:

4 Q. Corporal Winder, when it comes back up,
5 please let us know the significance of the photo.

6 A. This is the vehicle that was parked on
7 the property across from the busted door at the
8 location, this is the busted window.

9 Q. Thank you. And what is that around the
10 car?

11 A. Broken glass from the back window.

12 Q. Thank you.

13 After you took statements at the
14 hospital and took pictures, what did you do after
15 that?

16 A. I went to the jail, Hill-Finklea
17 Detention Center to complete booking.

18 Q. What does that mean, complete booking?

19 A. To get the defendant booked into jail,
20 get his property and everything placed in the jail.

21 Q. And when you do that, are you in the
22 room with a defendant?

23 A. Yes, ma'am.

24 Q. And was anyone else in there when you
25 were in there?

SHAWNDA WINDER - DIRECT EXAM BY MS SIGAL

1 A. No, ma'am.

2 Q. Did you speak to the defendant during
3 this time?

4 A. I did not speak to him, no, ma'am.

5 Q. Did the defendant speak to you while
6 you were in the process?

7 A. Yes, ma'am. He asked me -- he asked me
8 how the victim was doing.

9 Q. What did you say?

10 A. I read him Miranda again and made sure
11 that he understood before I answered.

12 Q. And then what happened?

13 A. And then I advised him she wasn't doing
14 too well.

15 Q. And what was his response?

16 A. He looked down and shook his head and
17 said, I guess that's what love will make you do.

18 Q. What was his demeanor at the jail when
19 he said that?

20 A. He was still calm.

21 Q. Corporal Winder, is the man that you
22 saw chasing the victim with an ax handle stating
23 that he was going to kill her in the courtroom
24 today?

25 A. Yes, ma'am.

1 Q. Please point him out.

2 A. Right there in the middle.

3 (Indicating)

4 MS. SIGAL: May the record reflect that
5 the witness has identified the defendant?

6 THE COURT: It will.

7 MS. SIGAL: Beg the Court's indulgence?

8 Thank you, Corporal Winder, I have no
9 further questions for you. Please answer any that
10 the defense may have.

11 THE WITNESS: Thank you.

12 THE COURT: Ladies and gentlemen, I
13 usually try to break around 5:00, and so I think
14 it's an appropriate time for us to break today.

15 Please remember all of my admonitions.
16 Do not discuss the case with anyone, that includes
17 your fellow jurors. Now, you are going to go home
18 and somebody is going to ask you what you did
19 today. And you are going to need to respond to
20 that individual that you cannot discuss this case
21 with anyone.

22 That also means that once you get into
23 your car and get your phone, you can't text about
24 this case or blog about this case or make any
25 postings on any social media sites that you may be

1 on. Ladies and gentlemen, simply put, you may not
2 discuss this case with anyone in any fashion until
3 I tell you otherwise.

4 Please remember all of my other
5 admonitions. Do not do any independent
6 investigations. Don't go to the scene where the
7 alleged events are to have taken place and don't do
8 any independent research. Don't read, watch, or
9 listen to any news accounts regarding this case
10 should there be any.

11 Ladies and gentlemen, we will begin at
12 9:45 in the morning. Please be prompt and
13 respectful of each other's time. Our bailiffs will
14 tell you how to report in the morning. Please take
15 your notepads and your pencils with you. We will
16 lock them up over the evening hours and give them
17 back to you in the morning.

18 Thank you. Please rise for the jury.

19 Officer, stay seated.

20 (Jury out, 5:07 p.m.)

21 THE COURT: Thank you. Be seated.

22 Officer, you cannot discuss your testimony with
23 anyone. Do you understand?

24 THE WITNESS: Yes.

25 THE COURT: All right. You know what

1 time to be back in the morning?

2 THE WITNESS: 9:00.

3 THE COURT: I have a docket beginning
4 at 9:00. You are welcome to be here. Don't be any
5 later than 9:30 in the morning. You may step down.

6 THE WITNESS: Thank you.

7 THE COURT: Anything before we break?

8 MS. SIGAL: Not from the State, Your
9 Honor.

10 MR. CHURCH: Not from the defense.

11 THE COURT: And based upon what has
12 transpired, are we still in a position to finish
13 Thursday?

14 MR. MCNEELY: We should be done
15 tomorrow.

16 MR. CHURCH: I would tend to probably
17 think so.

18 THE COURT: Okay. So as of now what
19 I've done, Judge Culbertson is done, so I've gone
20 ahead and told him he can handle dockets on
21 Thursday. So that kind of alleviates the need for
22 us to rush through, so that's where we are.

23 I have my 9:00 a.m. docket in the
24 morning, and then the jury will be back at 9:45. I
25 have matters unrelated to this case at 9:00 a.m.,

1 and then I will be ready to proceed at 9:45 in the
2 morning.

3 If there are any pretrial motions or
4 any trial matters that transpire over the evening
5 hours, please let me know immediately so that I can
6 rearrange my 9:00 a.m. docket so we can be ready to
7 go at 9:45.

8 MR. MCNEELY: We'll need a few minutes
9 with Exhibit 34. We're going to reset up the
10 computer. I wanted to give you a heads-up. So
11 we'll need it for a second before the Court
12 Reporter takes it.

13 THE COURT: But you need it for a
14 second this evening?

15 MR. MCNEELY: Correct.

16 THE COURT: All right. Please be
17 mindful and respectful of her time as well.

18 Court will be at ease until 9:00 a.m.

19 (These proceedings were recessed at
20 5:09 p.m., to be continued at 9:45 the following
21 morning.)
22
23
24
25

1 (The following proceedings were had
2 February 22, 2017, Berkeley County Courthouse,
3 Moncks Corner, South Carolina, in re State v.
4 Driggers, at 9:56 a.m.)

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

7 Mr. Church.

8 MR. CHURCH: Not from the defense.

9 THE COURT: Officer Winder, I remind
10 that you that you are still under oath. Did you
11 comply with my instructions over the evening hours?

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Anything for this witness
14 before we bring in the jury?

15 MS. SIGAL: No, Your Honor.

16 MR. CHURCH: Not until cross.

17 THE COURT: Okay. Thank you.

18 (Jury in, 9:55 a.m.)

19 THE COURT: Thank you. Please be
20 seated. Good morning, ladies and gentlemen. Did
21 each member of the jury comply with my instructions
22 over the evening hours? If you did, please raise
23 your right hand.

24 THE JURY: (Raised hands)

25 THE COURT: Thank you. All 14 jurors

SHAWNDA WINDER - CROSS EXAM BY MR. CHURCH

1 have indicated through raising a hand that they
2 have complied with the Court's instructions.

3 Please give your attention to
4 Mr. Church.

5 MR. CHURCH: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. CHURCH:

8 Q. Corporal Winder, right?

9 A. Yes, sir.

10 Q. And you were the responding officer to
11 this incident on that day; is that correct?

12 A. Yes, sir.

13 Q. Okay. And so you're the main case
14 officer --

15 A. Yes, sir, I am.

16 Q. -- on this case. Okay. When you got
17 there, wasn't Brenda Mills the one holding the ax
18 handle?

19 A. No, she was not.

20 Q. She was not? You took pictures of
21 blood I believe?

22 A. Yes, I did.

23 Q. And that blood was found only at one
24 spot, right?

25 A. There was blood found on the victim and

SHAWNDA WINDER - CROSS EXAM BY MR. CHURCH

1 blood found on the ground.

2 Q. And that was at the residence on a
3 board. I believe you testified to that picture?

4 A. On the property outside, yes, sir.

5 Q. Okay. And you were trained at the law
6 enforcement academy, right?

7 A. Yes.

8 Q. And how long of a program was that?

9 A. Nine weeks.

10 Q. And as part of that training, they
11 trained you to write reports?

12 A. Yes, sir.

13 Q. Okay. And the purpose of a report is
14 to record important details, basically, so you
15 don't have to rely on memory?

16 A. Sometimes. It's just for
17 documentation, yes, sir.

18 Q. And that documentation is to have the
19 important details of the case?

20 A. Yes, sir.

21 Q. And the details listed in the report
22 are the basis for the charges that you make?

23 A. Yes, sir.

24 Q. In your report you didn't put anything
25 in there about him chasing her or threatening to

SHAWNDA WINDER - CROSS EXAM BY MR. CHURCH

1 kill her?

2 A. I don't have the report in front of me
3 to look back on.

4 MR. CHURCH: Okay. Your Honor, may I
5 approach the witness?

6 THE COURT: You may.

7 BY MR. CHURCH:

8 Q. Do you recognize what I'm handing you?

9 A. It appears to be a copy of the report.

10 Q. That's the report that you did?

11 A. It appears to be.

12 Q. And it has your name typed down at the
13 bottom?

14 A. Yes, sir.

15 Q. Okay. And once again, there is nothing
16 in there about him chasing her or threatening to
17 kill her, is there?

18 A. It states that Mr. Driggers was
19 charging at her with an ax handle.

20 Q. Is there anything in there about you
21 drawing your gun?

22 A. No, sir.

23 Q. And when you said something about him
24 holding an ax handle chasing her, that wasn't your
25 words, was it?

SHAWNDA WINDER - CROSS EXAM BY MR. CHURCH

1 A. No, sir.

2 Q. You didn't say that you saw that?

3 A. It's not in the report that -- where I
4 saw it, no, sir.

5 Q. Okay. There is nothing in your report
6 about searching Mr. Driggers for injuries, is
7 there?

8 A. No; I asked him though.

9 Q. There's nothing in your report about
10 the basis for a kidnapping charge, is there?

11 A. I believe there is, one second. It
12 states, when the victim attempted to run,
13 Mr. Driggers grabbed her by her hair and dragged
14 her outside from the residence by her hair.

15 Q. Okay. Does that line -- never mind, I
16 will save that for another witness.

17 There is nothing in the report about
18 the basis for a burglary first, is there?

19 A. Yes, sir, there is.

20 Q. What is that?

21 A. When Mr. Driggers said there was more
22 than one --

23 Q. Hold on. Let me -- that's what
24 somebody else said. You didn't do any
25 investigation and put in the report what you found

SHAWNDA WINDER - CROSS EXAM BY MR. CHURCH

1 to be the basis?

2 A. I did. I notated in the report that it
3 appeared that the entry was made through the broken
4 window and there was damage done to the front door
5 where someone kicked it in.

6 Q. Okay. So it's your contention -- well,
7 let me back up for a second.

8 At the end of your report on the
9 booking sheet when you were doing the charges, you
10 actually wrote down burglary second, didn't you?

11 A. Yes, sir.

12 Q. Okay. And you testified earlier on
13 direct that the window still had the broken glass
14 in it. I believe we showed that.

15 A. I believe you're referring to the
16 bottom of the window. You could still see some of
17 the glass still attached.

18 Q. That's correct. There was broken glass
19 in the window?

20 A. Yes, sir, uh-huh.

21 Q. You didn't note any injuries on
22 Mr. Driggers, did you?

23 A. No, sir.

24 Q. Your report also indicates no visible
25 injuries on Ms. Brenda Mills, doesn't it?

SHAWNDA WINDER - CROSS EXAM BY MR. CHURCH

1 A. No, sir.

2 Q. Isn't there a little box where you
3 check visible injuries on victim? On page 1 of
4 your report where it says, Brenda K. Mills, visible
5 injuries to victim?

6 A. I don't see where you're referring to.

7 MR. CHURCH: Your Honor, may I approach
8 the witness?

9 THE COURT: You may.

10 BY MR. CHURCH:

11 Q. The box right there? (Indicating)

12 A. I'm not sure if that's for the victim
13 or not. This is a redacted page and there is
14 markings that's blurred out of it.

15 Q. Her name is not blurred out and that
16 part's not blurred out.

17 A. Her name is not blurred out, but
18 there's blurred-out portions underneath it. So I'm
19 not sure who it's referring to. And that part
20 doesn't say victim. It just says visible injuries.

21 Q. It says, victim number one, and it has
22 Brenda K. Mills, her name written on there, right?

23 A. It does say that on the side, yes, sir.

24 Q. Is that because the injuries that she
25 had was not consistent with the story that she told

SHAWNDA WINDER - CROSS EXAM BY MR. CHURCH

1 and that's why you put that --

2 A. No, sir. No, sir. I'm not sure why
3 that's -- I'm not sure why it's there. There was
4 clearly visible injuries. Maybe whoever redacted
5 this page redacted that. I'm not sure.

6 Q. But also redacted is her personal
7 information and address, right?

8 A. Well, I see blacked out spots. I'm not
9 sure what they did. This is not the original
10 report, so...

11 Q. So you-all don't turn over the original
12 reports?

13 A. Not when somebody else requests it.
14 It's usually redacted.

15 Q. Your report says that you informed
16 Detective Wilson of this incident?

17 A. Yes, sir, I did.

18 Q. And he's a detective, right?

19 A. He is.

20 Q. He didn't actually do any of the
21 investigation in this case, did he?

22 A. No, sir, he did not.

23 Q. He didn't interview anyone or go to the
24 scene or --

25 A. I'm not sure. He did not respond to

SHAWNDA WINDER - CROSS EXAM BY MR. CHURCH

1 the scene, so I'm not sure what he did outside of
2 that.

3 Q. Isn't he the one who told you what
4 charges to bring?

5 A. No, sir.

6 Q. That's why you notified him?

7 A. No, sir.

8 Q. So you just notified the detective that
9 had nothing to do with the case?

10 A. It's protocol to notify the detective
11 and on-call sergeant.

12 Q. And he didn't provide you with any
13 instructions or insight or advice?

14 A. No, sir.

15 Q. So it went from burglary second at the
16 jail to a burglary first?

17 A. Yes, sir. After further investigation,
18 after I was able to collect my evidence, yes, sir.

19 Q. Did you do another report for that?

20 A. No, sir. We don't do a second report
21 for the same incident.

22 Q. You came towards, I guess, near the end
23 of this incident, right?

24 A. I'm not sure what your question is.

25 Q. It had all -- whatever happened had

SHAWNDA WINDER - CROSS EXAM BY MR. CHURCH

1 been going for a little while before you got there?

2 A. I'm not sure how long it had been going
3 on. I know it was still in progress when I
4 arrived.

5 Q. But it had been happening awhile?

6 A. I'm not sure.

7 Q. You didn't witness anything that
8 happened before that, up to the point where you
9 drove up?

10 A. Yes, sir.

11 Q. You didn't interview any of the other
12 witnesses, did you?

13 A. No, sir. Everybody refused to speak to
14 me at the time.

15 Q. Who refused to speak?

16 A. I'm not sure; I didn't get any names.
17 They refused to speak, so...

18 Q. And you didn't get their names?

19 A. No, sir. They wouldn't talk to me so I
20 was unable to get any names.

21 Q. Okay. Were they friends of Ms Mills?

22 A. I have no idea.

23 Q. What about the 911 people, you didn't
24 go interview them, did you?

25 A. No, sir.

SHAWNDA WINDER - CROSS EXAM BY MR. CHURCH

1 Q. Did you find out how Mr. Driggers got
2 there?

3 A. No, sir.

4 Q. You didn't question the person who
5 owned the home, did you?

6 A. She wasn't there.

7 Q. And you never went back out there to
8 talk to her?

9 A. No, sir.

10 Q. So you didn't find out what kind of
11 relationship it was between Mr. Driggers and the
12 actual homeowner, did you?

13 A. No, sir.

14 Q. So he may have had permission to be
15 there?

16 A. He may have.

17 Q. How many times have you met with the
18 Solicitor's office?

19 A. I'm not sure.

20 Q. Okay. Up to the point you got there,
21 you don't know what Mr. Driggers did before you got
22 there?

23 A. Right. Before I arrived on-scene, no,
24 sir.

25 Q. And you don't know what his intentions

SHAWNDA WINDER - REDIRECT EXAM BY MS. SIGAL

1 were?

2 A. No idea.

3 MR. CHURCH: Beg the Court's
4 indulgence?

5 THE COURT: Take your time.

6 By MR. CHURCH:

7 Q. Corporal Winder, did you walk the area
8 out there?

9 A. I did, yes, sir.

10 Q. And if there was blood anywhere else
11 you would have taken pictures of that, right?

12 A. If I came across it.

13 Q. You didn't come across blood at any
14 other locations?

15 A. No, sir.

16 Q. Because you would have taken pictures.

17 MR. CHURCH: No further questions.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MS. SIGAL:

21 Q. Corporal Winder, you testified earlier
22 that when you arrived at the scene you saw the
23 defendant, chasing the victim with an ax handle?

24 A. Yes, ma'am.

25 Q. You saw that with your own eyes?

SHAWNDA WINDER - REDIRECT EXAM BY MS. SIGAL

1 A. Yes, ma'am.

2 Q. You testified that you heard the
3 defendant state he was going to fucking kill you,
4 bitch?

5 A. Yes, ma'am.

6 Q. You stated that you heard that with
7 your own ears?

8 A. Yes, ma'am.

9 Q. In regard to your report, clearly
10 something was checked on the report. Could that
11 have been an error?

12 A. It could have or it may have also been
13 possibly redacted out.

14 Q. Could it have been an error?

15 A. Yes, ma'am.

16 MS. SIGAL: Permission to approach the
17 witness, Your Honor?

18 THE COURT: You may.

19 BY MS. SIGAL:

20 Q. Corporal Winder, I would like you to
21 look at your report on page 4. And starting there,
22 if you can -- from there to there, tell the jury
23 what you put in your report about the victim's
24 injuries that you observed yourself.

25 A. I observed signs of hemorrhage in the

SHAWNDA WINDER - REDIRECT EXAM BY MS. SIGAL

1 victim's eye as well as what appeared to be a
2 bloody head print on the front of the subject's
3 shirt. I observed deep lacerations on the back of
4 the victim's head and blood on the back of the neck
5 -- back of her neck, excuse me, and shirt, as well
6 as lacerations on the victim's arms. I also
7 observed the victim's face to be severely swollen
8 as well as bruising and swelling of the victim's
9 left temple.

10 Q. Thank you.

11 Corporal Winder, you stated that the
12 other witnesses around did not speak with you. Did
13 they -- what was their demeanor? Did you get to --

14 A. I didn't see -- they wouldn't come out
15 of their house.

16 Q. They wouldn't come out of their house?

17 A. No, ma'am.

18 Q. In your investigation of the burglary
19 charge, did you speak to the victim about the case?

20 A. No, ma'am.

21 Q. You didn't speak with the victim in the
22 case?

23 A. In reference to the burglary charge?

24 Q. Did you speak to the victim about the
25 incident that day?

SHAWNDA WINDER - REDIRECT EXAM BY MS. SIGAL

1 A. I spoke with her at the hospital, yes,
2 ma'am.

3 Q. And did you find out if this defendant
4 had permission to be there?

5 A. Yes, ma'am. She --

6 MR. CHURCH: Objection, Your Honor.

7 THE COURT: Basis?

8 MR. CHURCH: Hearsay.

9 THE COURT: Is there an exception?

10 MS. SIGAL: Your Honor, this is to
11 clarify the question that defense counsel asked her
12 when they were asking about her investigation.

13 THE COURT: So is it hearsay and then
14 is there an exception?

15 MS. SIGAL: Your Honor, this is just an
16 answer that was provided through the course of the
17 law enforcement investigation.

18 THE COURT: I'm going to sustain it as
19 to hearsay. Rephrase your question so it's not
20 hearsay.

21 BY MS. SIGAL:

22 Q. Did you find out whether or not the
23 defendant had permission to enter the house?

24 A. Yes, ma'am.

25 Q. And did you find out if he had

SHAWNDA WINDER - REDIRECT EXAM BY MS. SIGAL

1 permission?

2 A. Yes. He did not have permission --

3 MR. CHURCH: Objection.

4 THE COURT: Hold on one second.

5 Counsel approach.

6 (Bench conference.)

7 THE COURT: Ms. Sigal.

8 MS. SIGAL: Thank you, Your Honor.

9 BY MS. SIGAL:

10 Q. Corporal Winder, through your
11 investigation, did you find out if the defendant
12 had permission to be in the house?

13 A. Yes, ma'am.

14 Q. What was your conclusion?

15 A. I was informed he did not have
16 permission to be there.

17 Q. Through your training and experience,
18 what does a busted door and broken window indicate
19 to you?

20 A. That someone forced their way into the
21 residence.

22 MS. SIGAL: Beg the Court's indulgence?
23 Thank you Corporal Winder.

24 THE COURT: Mr. Church.

25 MR. CHURCH: Just a moment.

SHAWNDA WINDER - RECROSS EXAM BY MR. CHURCH

1 RECROSS-EXAMINATION

2 BY MR. CHURCH:

3 Q. You never talked to the homeowner of
4 this trailer, did you?

5 A. No, sir. I was informed that she did
6 not live there. She wasn't there for months.

7 Q. The homeowner?

8 A. The owner, yes, sir. That she did not
9 live there. She was renting it to someone else.

10 Q. Okay. The person that she was renting
11 to that was living there, you didn't talk to her,
12 did you?

13 A. I spoke to the victim, she was living
14 there, yes, ma'am (sic). She was renting.

15 MR. CHURCH: Okay. No further
16 questions.

17 THE COURT: Okay. You may step down.
18 Thank you.

19 Call your next witness.

20 MR. MCNEELY: The State calls Mack
21 Flood.

22 AUGUSTUS MCDONALD FLOOD,
23 being first duly sworn, testified as follows:

24 THE CLERK: Please have a seat, state
25 your full name, and spell your last.

AUGUSTUS MCDONALD FLOOD - DIRECT EXAM BY MR. MCNEELY

1 THE WITNESS: Augustus McDonald Flood,
2 the Third, F-L-O-O-D.

3 DIRECT EXAMINATION

4 BY MR. MCNEELY:

5 Q. Good morning, Deputy Flood. Where are
6 you currently employed?

7 A. Berkeley County Sheriff's Office.

8 Q. What is your position and how long have
9 you been there?

10 A. Evidence technician, I've been there
11 next month will be six years.

12 Q. Were you employed in that capacity
13 during November of 2015?

14 A. Yes, I was.

15 Q. And you were working as an evidence
16 technician at that time?

17 A. Yes, sir.

18 Q. Please describe your education,
19 training and experience.

20 A. I have a Bachelor's of Science Degree
21 in Biology from Charleston Southern University; I
22 finished South Carolina Criminal Justice Academy; I
23 have trained through South Carolina Law Enforcement
24 Division; I've had extensive certifications in
25 forensics and crime scene investigations from the

AUGUSTUS MCDONALD, FLOOD - DIRECT EXAM BY MR. MCNEELY

1 University of West Virginia; and I've had training
2 through the Berkeley County training office and of
3 course ongoing training at work.

4 Q. As an evidence technician, what are the
5 duties of your position?

6 A. We do crime scene investigation. We go
7 out to crime scenes and collect evidence and gather
8 information at crime scenes. We'll process
9 evidence that may be turned into us from different
10 officers. We'll analyze forensics evidence,
11 collecting DNA samples. Do things like analyze
12 green plant material and determine if it's
13 marijuana and those type of things.

14 Q. Through the course of your employment,
15 you've handled physical evidence related to crimes?

16 A. Yes, we do.

17 Q. How do you come to be in possession of
18 that physical evidence?

19 A. When that evidence comes in, it's
20 usually brought in by an officer and it's taken to
21 the Berkeley County Sheriff's Office and put in
22 lockers over there, along with the chain of custody
23 with a case number that's been received through
24 dispatch.

25 We go by on a daily basis and we'll

AUGUSTUS MCDONALD FLOOD - DIRECT EXAM BY MR. MCNEELY

1 pick up evidence out of those lockers, bring them
2 to our facility, which is located directly across
3 the street, and it's placed in a bin or a location
4 suited for that piece of evidence in a safe and
5 secure location.

6 Q. Is that protocol for evidence custody
7 followed in every case?

8 A. That's correct.

9 Q. How is the evidence labeled?

10 A. It's labeled with a chain of custody.
11 It's initialed, signed -- but it's all on that
12 chain of custody. It's attached to that piece of
13 evidence.

14 Q. If someone takes possession or custody
15 of a piece of evidence, is that documented?

16 A. Yes.

17 Q. How so?

18 A. It's documented through a chain of
19 custody.

20 Q. Is that a standard form?

21 A. That's correct.

22 Q. Why do you do that?

23 A. Well, the chain of custody tells us
24 which officer turned it in and gives us that case
25 number, the location it was found. And it's also

AUGUSTUS MCDONALD FLOOD - DIRECT EXAM BY MR. MCNEELY

1 important to make sure that anyone who's handled
2 that piece of evidence is on that chain of custody
3 to preserve who's touched it and the manner in
4 which that piece of evidence has been moved.

5 Q. So you can keep track of every single
6 person that's handled a piece of evidence?

7 A. That's correct.

8 Q. How is the evidence packaged in the
9 evidence room?

10 A. It's packaged in various ways. It can
11 be in sealed boxes, it can be in sealed envelopes,
12 different types of containers. It depends on the
13 type of evidence that it is.

14 Q. How is the evidence stored in the
15 evidence room?

16 A. It's all stored in safe and secure
17 locations and in different places depending on the
18 type of evidence we're storing.

19 Q. When you say, safe and secure, does
20 that mean behind a lock and key?

21 A. That's correct.

22 Q. Once evidence comes to the evidence
23 room, who has access to it?

24 A. Our employees.

25 Q. All the evidence techs?

AUGUSTUS MCDONALD FLOOD - DIRECT EXAM BY MR. MCNEELY

1 A. Yes, sir.

2 Q. Does anybody with the sheriff's office
3 have access without going through the evidence
4 custodians?

5 A. No, sir.

6 Q. As an evidence custodian, did you
7 receive custody of any evidence in this case?

8 A. Yes, I did.

9 MR. MCNEELY: Permission to approach
10 the witness?

11 THE COURT: You may.

12 BY MR. MCNEELY:

13 Q. Deputy, I'm showing you what's been
14 marked as State's Exhibits 35 and 35A respectively.
15 Can you look at that item?

16 A. Yes, sir.

17 Q. Do you recognize that item?

18 A. Yes, I do.

19 Q. What is the item?

20 A. It's an ax handle.

21 Q. Was it logged into evidence in this
22 case?

23 A. Yes, it was.

24 Q. Who logged it into evidence?

25 A. It was logged in by my office over

AUGUSTUS MCDONALD FLOOD - DIRECT EXAM BY MR. MCNEELY

1 here. I picked it up in the evidence locker from
2 Officer Winder. I transferred it from the evidence
3 locker at the sheriff's office to our facility over
4 here where it was logged into evidence.

5 Q. And is your signature on that document
6 that you're looking at?

7 A. Yes, it is.

8 Q. Is that the chain of custody?

9 A. That's correct.

10 Q. Is Officer Winder's signature on that?

11 A. Yes, it is.

12 Q. On what date did you receive the item?

13 A. I received it on the 5th of
14 November 2015.

15 Q. What day was it logged in?

16 A. That same day, on the 5th.

17 Q. When evidence is put into an evidence
18 locker by a deputy, who has access to the evidence?

19 A. Only us.

20 Q. And when you say, us, you mean the
21 evidence custodians?

22 A. Right.

23 Q. Did you retrieve the item that you --
24 35 from the evidence locker yourself?

25 A. Yes, I did.

AUGUSTUS MCDONALD FLOOD - CROSS EXAM BY MR. CHURCH

1 Q. Has it been in the continuous custody
2 and control of Berkeley County Evidence since that
3 time?

4 A. Yes, it has.

5 MR. MCNEELY: Your Honor, at this time,
6 the State would move to admit 35A into evidence.

7 THE COURT: Any objection?

8 MR. CHURCH: No objection.

9 THE COURT: 35A into evidence without
10 objection.

11 (STATE EXH. 35A in evidence.)

12 MR. MCNEELY: No further questions.

13 CROSS-EXAMINATION

14 BY MR. CHURCH:

15 Q. Morning, Deputy Flood.

16 A. Good morning.

17 Q. On the evidence, is there two knives
18 included in that too?

19 A. Yes, sir. Two knives, an ax handle and
20 two notes.

21 Q. Was it forensically tested?

22 A. No, sir.

23 Q. It wasn't tested for anything?

24 A. Not that I'm aware of, no, sir.

25 Q. Okay. So you don't know if it was

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 tested for blood or DNA?

2 A. No, sir, I don't.

3 Q. And it's all -- all you are concerned
4 with is evidence, forensics, and chain of custody.
5 You don't know anything about what happened on this
6 day out there, you don't know what Mr. Driggers'
7 intentions were?

8 A. No, sir. I only deliver it.

9 MR. CHURCH: No further questions.

10 MR. MCNEELY: Nothing further from the
11 State.

12 THE COURT: You may step down.

13 Call your next witness.

14 MS. SIGAL: State calls Brenda Mills.

15 BRENDA MILLS,

16 being first duly sworn, testified as follows:

17 THE CLERK: Please have a seat, state
18 your full name and spell your last name.

19 THE WITNESS: Brenda Mills, M-I-L-L-S.

20 DIRECT EXAMINATION

21 BY MS. SIGAL:

22 Q. Good morning, Brenda.

23 A. Morning.

24 Q. How are you doing today?

25 A. I'm good. And you?

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 Q. I'm well. Brenda, tell us about where
2 you live right now.

3 A. Currently?

4 Q. Yes.

5 A. I currently live in St. Stephen. Not
6 at the residence where this incident took place.

7 Q. How long have you lived in Berkeley
8 County?

9 A. My whole life, 41 years.

10 Q. Do you have any family that lives in
11 Berkeley County?

12 A. Yes.

13 Q. And tell us a little bit about that.

14 A. My family?

15 Q. Yes.

16 A. My parents live in Macedonia, they've
17 been married 45 years, that's Berkeley County. My
18 sister lives like the outer part of Berkeley
19 County, my brother is in a different part of the
20 state. My aunts, uncles live in Berkeley County.

21 Q. Do you have any kids?

22 A. Yes; I have two.

23 Q. And are they boys or girls?

24 A. Two boys.

25 Q. And what are their ages?

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 A. Christopher is 19 and Noah is 15.

2 Q. What do you do for a living?

3 A. Currently, I'm unemployed.

4 Q. What did you used to do?

5 A. I was a waitress and a cook and a
6 cashier.

7 Q. Brenda, when did you first meet the
8 defendant in this case?

9 A. We met back in high school. I don't
10 remember what year it was.

11 Q. And, roughly, about how long ago was
12 that?

13 A. 25 plus years ago.

14 Q. And what was your relationship like in
15 high school?

16 A. We saw each other a couple of times and
17 then he went his own way, and I didn't see him
18 again until like 2014.

19 Q. And when you saw him in 2014, what was
20 your relationship like?

21 A. It was -- we started talking and we
22 started dating and went from there.

23 Q. Would you describe it as a romantic
24 relationship? Were you in love with each other?

25 A. At one point.

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 Q. Did you live together?

2 A. Yes.

3 Q. How long did you live together?

4 A. Almost the whole time we were together,
5 over a year.

6 Q. And at what location did you live
7 together?

8 A. The majority of the time was on Mr.
9 Driggers' property near Beaver Dam.

10 Q. Did anybody else live with you when you
11 lived together?

12 A. No.

13 Q. And so you mentioned that you dated for
14 about a year?

15 A. Year, year-and-a-half, two years.

16 Q. And when did the two of you break up?

17 A. I left him September 1st of 2015.

18 Q. And did you break up with him?

19 A. Yes.

20 Q. Without going into the specifics of why
21 you broke up, was it a smooth breakup or a messy
22 breakup?

23 A. It was messy.

24 Q. Was the defendant in agreement with the
25 breakup?

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 A. No, not at all.

2 Q. Since you were living with him, what
3 did you do when you left him? Where did you go?

4 A. I went to Sarah Riggs' house in St.
5 Stephen.

6 Q. What was the address?

7 A. [REDACTED] Road, St. Stephen.

8 Q. Was she a friend?

9 A. Yes.

10 Q. And who lived at the house with her?

11 A. Her son and her daughter. And she was
12 pregnant at the time.

13 Q. How old were her son and daughter that
14 lived there?

15 A. I'm not sure how old Hailey was at the
16 time, but Wesley was five. He had just had a
17 birthday.

18 Q. When you moved in with her, did any of
19 your children move in with you?

20 A. Not right away. Noah ended up moving
21 in a few weeks later.

22 Q. So Noah is the 15-year-old?

23 A. Yes.

24 Q. In the fall of 2015, how old would he
25 have been?

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 A. Fourteen.

2 Q. He was 14 when he moved in with
3 you-all?

4 A. Yes.

5 Q. Did Sarah know the defendant?

6 A. Mr. Driggers? Yes.

7 Q. Okay. And did you have contact with
8 Kevin Driggers between the time of the breakup and
9 the time of this incident?

10 A. Once or twice, and then I started
11 avoiding all phone calls.

12 Q. And when you had that contact, was it
13 at the home on [REDACTED] Road or was it at the previous
14 house where you shared?

15 A. The previous, on his property.

16 Q. And why were you there?

17 A. Why was I there?

18 Q. Why did you go back to his property?

19 A. Because he wasn't allowed at Sarah's.
20 When I moved in, she specifically told
21 Mr. Driggers --

22 MS. SHIVERS: Objection, Your Honor.

23 THE COURT: Hold on one second.

24 MS. SHIVERS: Hearsay.

25 THE COURT: Is there an exception?

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 MS. SIGAL: No, Your Honor. That
2 wasn't the answer I was --

3 THE COURT: All right. Sustained;
4 hearsay.

5 You can't testify as to what someone
6 told you.

7 THE WITNESS: I was present when it was
8 said.

9 THE COURT: I understand. Please
10 don't argue with the Court.

11 THE WITNESS: No, I'm sorry.

12 THE COURT: Ms. Sigal, you may
13 continue.

14 THE WITNESS: I apologize.

15 BY MS. SIGAL:

16 Q. And why did you go to his property?
17 Was there a reason?

18 A. Yeah, there was a couple of reasons. I
19 was trying to obtain stuff that I had left at his
20 camper.

21 Q. Were they your items?

22 A. Yes.

23 Q. You were trying to get your property?

24 A. Yes.

25 Q. Was the defendant cordial to you during

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 the time -- between the time that you moved out and
2 moved in with Sarah? Was he nice to you? Was
3 there --

4 A. When I moved out? No. The only time
5 he was cordial is when I was on his property.

6 Q. And you mentioned that he had called
7 you after the breakup?

8 A. Yes.

9 Q. What was the nature of the calls
10 without --

11 A. There were many of them.

12 Q. -- going into the --

13 A. There were many of them. The two
14 incidents where I ended up at his property were
15 good conversations, and the other rest of them were
16 hanging up my phone and turning it off.

17 Q. Did he call more than once?

18 A. Yes.

19 Q. During a period of one day, how many
20 times did he call?

21 A. At least 10, 12, if not more.

22 Q. Did you indicate to him that you wanted
23 to end the relationship?

24 A. Absolutely.

25 Q. Leading up to November 4, 2015, was he

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 trying to call you?

2 A. Yes.

3 Q. Was he trying to contact you in any
4 other way?

5 A. No.

6 Q. Just calls?

7 A. Phone calls on my phone and other
8 phones.

9 Q. Were you home alone very often while
10 living at Sarah's?

11 A. No.

12 Q. And I know you mentioned this before,
13 were you living at Sarah's house at [REDACTED] Road
14 in Berkeley County on November 4th, 2015?

15 A. Yes.

16 Q. Okay. Brenda, turn around -- it may be
17 easier to turn the other way actually, and take
18 that clicker. Can you please show us on this
19 overhead map where Sarah's house was?

20 A. This single wide right here.

21 (Indicating)

22 Q. And just to be clear, is that address
23 [REDACTED] [REDACTED] Road?

24 A. Yes, this is [REDACTED]. Well, this whole
25 property from this line up, that's all Sarah's

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 right there. (Indicating)

2 Q. Okay. And is that in the St. Stephen
3 area of Berkeley County?

4 A. Yes.

5 Q. What is that land out there like? Is
6 there a lot going on?

7 A. I don't understand the question.

8 Q. Is it a lot of land? Is it the
9 country?

10 A. Yes. It's just fields, like this.
11 This is a big yard with a field in it like this,
12 this looks like this over here. (Indicating) It's
13 -- yeah, it's country.

14 Q. Okay. And around Sarah's house, what
15 do we see? There's some green stuff below.

16 A. This right here and this? (Indicating)

17 Q. Yes. What is that?

18 A. This is a big tree, and this picture
19 kind of distorts it because it casts shadows and
20 stuff. This tree is off to the -- like off the
21 house. This one here is in the front yard, off in
22 front of the shed and the dog pen. (Indicting)

23 Q. So there is -- there is a dog pen off
24 to the side where your laser pointer is?

25 A. Yes. Well, it's attached to this shed

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 right here. (Indicating)

2 Q. Can you please just let us know which
3 neighbors belongs to which houses while we're
4 looking at this?

5 A. Betty Delk, this is her property. This
6 is Don, I'm not sure of his last name. And then I
7 don't know -- I just know them.

8 Q. Okay. Thank you.

9 On the morning of November 4, 2015, who
10 was at the house?

11 A. When we woke up, it was my son, Noah,
12 Wesley, myself, and Sarah Riggs. When we woke up.

13 Q. And around 9:30 that morning, who was
14 at the house?

15 A. Myself and the two children.

16 Q. Where was Sarah?

17 A. She had already left to go to a
18 doctor's appointment. She was five months pregnant
19 at the time.

20 Q. Had you invited the defendant to come
21 by that day?

22 A. No.

23 Q. Were you expecting him to come by?

24 A. No.

25 Q. Did he have permission to be in the

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 house on that day?

2 A. No.

3 Q. Around 9:30 a.m. on November 4, 2015,
4 what happened?

5 A. I went outside after Sarah left to go
6 to the doctor. Her son Wesley had woke up and went
7 and sat on the porch. I told my son, Noah, let me
8 go out there and get him because he'll sit out
9 there all day and wait.

10 So I'm walking towards the back door, I
11 saw Wesley sitting on the porch, and I saw
12 Mr. Driggers coming across the yard at a fast
13 speed. I told Wesley to come on in the house --

14 Q. And hold on just a second. You saw him
15 coming at a fast speed?

16 A. Yes.

17 Q. Did he have anything in his hands?

18 A. Yes.

19 Q. What was in his hands?

20 A. It was like a stick. From that far I
21 couldn't tell what it was; it was like a stick.

22 Q. And could you tell what his demeanor
23 was?

24 A. He was looking angry.

25 Q. All right. Continue.

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 A. I told Wesley to come in the house and
2 he came on in. And I said, Kevin, you're not
3 supposed to be here, and I slammed the back door.
4 At that point, he ran up on the porch and started
5 slamming against it.

6 Q. Was that door locked?

7 A. Yes.

8 Q. Did you lock it when you came in?

9 A. As I was shutting it.

10 Q. And describe how he was acting towards
11 the door?

12 A. He was kicking it, slamming his body
13 into it, beating it with this -- what I saw through
14 the window was the ax handle. And to keep him out
15 of the house, I was bracing myself between the
16 washing machine and the back door.

17 Q. When you say you were bracing yourself,
18 how was your body positioned?

19 A. Like this. (Indicating) My feet were
20 like up against the washing machine, I was leaned
21 up against the back door like this, (Indicating)
22 with the upper part of my body.

23 Q. What were you trying to do?

24 A. Trying to keep him out.

25 Q. Did the defendant make any statements

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 while he was beating on the door?

2 A. Yes. He said, call the law if you want
3 to. You know it takes anywhere from a half hour to
4 45 minutes for them to get here. You'll be dead by
5 the time they get here.

6 Q. Did you believe him?

7 A. Yes.

8 Q. Did he succeed in breaking the door?

9 A. He succeeded in breaking it, but he
10 didn't come in it.

11 Q. And what is the reason he wasn't able
12 to come in through the door?

13 A. From me being braced against it.

14 Q. So you were still holding it, even
15 after he broke it?

16 A. Yes. Yes.

17 Q. How were you feeling at that point?

18 A. Very frightened. I was scared for
19 myself and the children.

20 Q. Speaking of the children, what were
21 they doing during this time?

22 A. When he started beating on the door, I
23 told my son Noah to get himself and Wesley out of
24 there and don't come back.

25 Q. Why did you tell him that?

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 A. Because I was scared for them, trying
2 to protect their safety.

3 Q. Did they do what you said?

4 A. Yes.

5 Q. And which door did they run out of?

6 A. They ran out what's actually the front
7 door.

8 Q. But not the same door where the
9 defendant was?

10 A. No.

11 Q. Was the front door on the other side of
12 the house?

13 A. Yes.

14 Q. After they ran out of the door, what
15 happened?

16 A. He continued -- Kevin Driggers
17 continued to bang on the door, beat on it, stomp on
18 it a few more times, and he informed me there was
19 more than one way to get into this house, you
20 fucking bitch.

21 Q. To be clear, did you have a chance to
22 call 911 at this time?

23 A. Yes. I had 911 actually before Noah
24 left. I told him to bring me my phone and I dialed
25 911.

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 Q. Noah brought you the phone before he
2 ran off the porch?

3 A. Yes.

4 Q. And did you remain on the phone with
5 911?

6 A. Yes.

7 Q. You mentioned a minute ago that the
8 defendant said there was more than one way to get
9 in this house, and then you heard -- I'm sorry.
10 Tell us what you heard.

11 A. That's when I heard the glass break
12 and --

13 Q. Did you know which room that came out
14 of?

15 A. It was on Sarah Riggs bedroom actually.
16 It was right there on the porch next to the back
17 door.

18 Q. So it was the window next to the door
19 that he was beating?

20 A. Yes.

21 Q. When you heard the glass break, what
22 did you do?

23 A. I took off through the front door, the
24 door that the children went out of.

25 Q. Why didn't you run away with the

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 children?

2 A. Because I had to protect their safety
3 at any cost.

4 Q. What were you afraid would happen if
5 you ran with the kids?

6 A. I was afraid he would hurt all three of
7 us, that he would have hurt them.

8 Q. So what happened after you took off out
9 the front door?

10 A. I didn't get very far and I felt
11 something on the back of my head. And the next
12 thing I know I was waking up face down, like on the
13 side of my face on the ground.

14 Q. What yard were you in at this point?

15 A. Still in Sarah Riggs' yard.

16 Q. So you were in the same yard of the
17 residence that he had just broken in?

18 A. Yes.

19 Q. Did he make it inside the house?

20 A. Not through the door. He came in
21 through the window.

22 Q. So he came into the house through the
23 window?

24 A. Yes.

25 Q. So did he follow you out through the

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 front door?

2 A. Yes.

3 Q. And you said that you felt something on
4 the back of your head. Did you know what it was at
5 the time?

6 A. When he hit me, he had the ax handle in
7 his hands from when he came in the window.

8 Q. Was he making any statements to you
9 while he was running out of the front door after
10 you?

11 A. When he came out the door, he was
12 saying that he was going to kill me. The whole
13 time he was saying he was going to kill me, I was
14 going to die.

15 Q. When you got hit in the back of the
16 head, what did you do?

17 A. At first I was knocked unconscious, and
18 when I came to I was laying down on the ground.
19 And when I was able to speak, I said, Kevin, I
20 think you've paralyzed me.

21 Q. What was he doing when you came to?

22 A. From the shadows I could see on the
23 ground, I could see a foot coming up and I could
24 see his hand coming down. I wasn't -- he was like
25 on the other side of me so I was facing this way,

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 (Indicating) but I could see the shadows on the
2 ground and I could see stomping and hitting.

3 Q. Stomping and hitting what?

4 A. Me.

5 Q. So you could see him hitting and
6 stomping you?

7 A. Yes. At that point I could not feel
8 nothing.

9 Q. So were you laying on your face? Were
10 you laying on your stomach, back, or side?

11 A. My stomach.

12 Q. And which specific parts of your body
13 did he stomp?

14 A. My arms, my legs, my back.

15 Q. Which parts of your body did he kick?

16 A. All of them, my head, my back, my arms,
17 legs.

18 Q. Were you able to fight back?

19 A. No.

20 Q. What happened next?

21 A. I told him, Kevin, I think you
22 paralyzed me. He rolled me over, pulled the bloody
23 hair out of my face and said, good, I have time to
24 kill you, you will die today, bitch. And he ran
25 across the yard.

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 Q. When he said, you will die today,
2 bitch, how close was he to you?

3 A. I could feel his breath in my face. It
4 was like nose to nose, I could feel him.

5 Q. What emotions did he have on his face?

6 A. Hatred.

7 Q. And then after he stated that, what did
8 he do?

9 A. He ran across the yard and started
10 beating windows out of a car that I had there.

11 Q. The windows of the car, were they
12 broken before that day?

13 A. No.

14 Q. When he ran away, did you try to get
15 up?

16 A. Yes.

17 Q. Did you succeed? Were you able to
18 stand up?

19 A. Yes. I started running again. It was
20 more like a fast walk. At this point, I was
21 feeling nothing but pain in my head and back and
22 the rest of my body.

23 Q. What did the defendant do?

24 A. He was like -- it was like he was
25 taunting me, like walking. Like, kept coming at me

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 like -- it was like a taunt. He kept telling me
2 that he was going to kill me. We started walking
3 across the yard.

4 At this point, we were in Ms. Delk's
5 back yard and he grabbed me around the neck and
6 tried to rip my eye out.

7 Q. And I want you to be sort of more
8 specific when you said he grabbed you around the
9 neck. Which part of his body grabbed you?

10 A. His arm. At that point, he had his arm
11 like this around my neck and had his other hand in
12 my eye. (Indicating)

13 Q. And what specifically did he say to you
14 during this part of the altercation?

15 A. You better take a good long look at
16 this face. It's the last thing that you will ever
17 fucking see.

18 MS. SIGAL: Okay. Permission to
19 approach the witness?

20 THE COURT: You may.

21 BY MS. SIGAL:

22 Q. I'm showing you what's been marked as
23 State's Exhibit 14. I'm sorry, was it admitted as
24 State's Exhibit 14?

25 A. Yes.

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 Q. What is that a picture of?

2 A. This is the board and a -- board that
3 holds the door to the dog pen shut. It was outside
4 the dog pen. And there's blood on the board and
5 the ground.

6 Q. Whose property is that on?

7 A. It's on Sarah Riggs' property.

8 Q. And sort of in what relation to the
9 house and the car is that part?

10 A. This is the shed, where the shed is in
11 the front yard.

12 Q. Okay. If you can turn around and just
13 explain. So you said this is on Sarah Riggs'
14 property?

15 A. Yes.

16 Q. And which -- which part of the assault
17 was this related to?

18 A. I don't understand.

19 Q. At what point were you over by the dog
20 pen?

21 A. This is right out the front door.

22 Q. Was this near the area where you were
23 struck with the ax handle in the back of the head?

24 A. Yes. Yes. That -- this right here, is
25 where I hit. (Indicating)

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 Q. Is that your blood on that?

2 A. Yes.

3 Q. Is that the same area where he stomped
4 and kicked you?

5 A. No.

6 Q. Okay. What area did he stomp and kick
7 you?

8 A. It was a little bit off from there, not
9 that far.

10 Q. Okay. You mentioned that he dragged
11 you over to Betty Delk's yard?

12 A. No, I walked.

13 Q. You walked --

14 A. Well, trying to get away from him.

15 Q. That's where he had you in the
16 headlock?

17 A. Yes.

18 Q. And did he succeed in ripping your eye
19 out?

20 A. No.

21 Q. What happened after that?

22 A. I don't remember how I got away from
23 him, but I started trying to run again and that's
24 when we ended up in Don's yard.

25 Q. What happened when you got to Don's

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 yard?

2 A. I started screaming for Don to help me,
3 help me, Don. And Mr. Driggers said, call all you
4 want, he's not home. And he picked me up and
5 slammed me on the ground with my face across the
6 sidewalk and got on my back with the ax handle
7 around my neck.

8 Q. When you say he slammed you, how did he
9 do that?

10 A. Picked me up and slammed me.

11 Q. And then describe what happened next.

12 A. He got on my back with the ax handle
13 around my neck.

14 Q. How was he on your back?

15 A. Like just -- I mean, I really couldn't
16 tell you. I just know he was on my back. I don't
17 know if he was standing up or if he was kneeling
18 down. I just know he was over my back.

19 Q. And where was the ax handle?

20 A. Around my neck, like pulling up around
21 my neck.

22 Q. So was the ax handle actually pulling
23 you up?

24 A. Yes.

25 Q. Kind of backwards?

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 A. Yes.

2 Q. What were you trying to do at this
3 point?

4 A. Trying to push myself up so I could
5 breathe.

6 Q. Were you having trouble breathing?

7 A. If I stopped pushing, yes.

8 Q. And what was he saying to you during
9 this part of the assault?

10 A. At that point of the assault he said,
11 don't think you're getting up again. I am killing
12 you now.

13 Q. Did you believe him?

14 A. Absolutely. Why wouldn't I?

15 Q. Were you able to move when he was on
16 top of you?

17 A. Barely.

18 Q. Was he restricting your ability to get
19 up?

20 A. Yes.

21 Q. He was confining you to the space?

22 A. Yes.

23 Q. What happened after he took the ax
24 handle against your throat?

25 A. When I -- I was pushing up and I heard

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 the 911 call. Well, the 911 operator, hello. And
2 he stopped what he was doing. Put the ax handle
3 down and picked up my phone.

4 Q. And what did he do when he grabbed the
5 phone?

6 A. Started walking off. I picked it up,
7 he -- got the ax handle, picked it up, got in front
8 of me, walked behind the shed to relieve himself.

9 Q. To relieve himself?

10 A. Yes.

11 Q. So he went to the bathroom in the
12 middle of all this?

13 A. Yes. Right behind the shed.

14 Q. What was his demeanor when he walked
15 away to go to the bathroom?

16 A. He was calm.

17 Q. And what did you do?

18 A. I got up off the ground and started
19 going again when I heard cars on the rock road.

20 Q. You say you grabbed the ax handle?

21 A. At one point, yes.

22 Q. Why did you do that?

23 A. Because I had to get it away from him.

24 Q. And did you hold onto the ax handle?

25 A. I don't remember when I let it go, but

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 I didn't have it.

2 Q. Did you let it go?

3 A. At some point, yes.

4 Q. And at what direction were you trying
5 to go at this point?

6 A. Just trying to find the next house,
7 trying to find somebody to help.

8 Q. And so how long did this sort of
9 assault and then a break in the assault, how long
10 did this go on, do you remember?

11 A. I have no idea.

12 Q. You mentioned earlier it was like he
13 was taunting you. What do you mean by that? Can
14 you explain that in a little more detail?

15 A. Almost like an animal after his prey.
16 Like come after it and disable it, run away, and
17 come back again and disable it again. It was like
18 he kept coming and backing off, coming and backing
19 off.

20 Q. So he let you try to get away a few
21 times but he caught up with you every time?

22 A. Yes.

23 Q. Were there dogs on the property?

24 A. Yes.

25 Q. Where were they during the assault?

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 A. Mine were in the dog pen, there was one
2 tied up and one of the pit bulls went with the
3 children.

4 Q. So the dog ran away with the kids?

5 A. Yes.

6 Q. When the defendant got there?

7 A. Yes.

8 Q. At what point did this assault stop for
9 good?

10 A. After Corporal Winder got there.

11 Q. Tell us what happened when she got
12 there.

13 A. When she pulled up, she got out of the
14 car and told me to come back, come back behind her.
15 I just collapsed where I was. And I could hear
16 saying, stop, stop where you were. I said stop,
17 get on the ground.

18 And then I heard her say, if you don't
19 get on the ground, I will shoot you.

20 Q. Did the defendant comply?

21 A. At that point, when she said I will
22 shoot you.

23 Q. Okay. What were you feeling when the
24 officer finally arrived?

25 A. Relief and thankful.

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 Q. Were you in pain?

2 A. Yes.

3 Q. After the officer caused him to stop,
4 what did she do?

5 A. With Mr. Driggers?

6 Q. Yes.

7 A. I'm not really sure. I was like --
8 they were off the side of me, so I didn't really
9 see what she was doing.

10 Q. Did anyone attend to your injuries at
11 the scene?

12 A. The paramedics and first responders
13 that showed up.

14 Q. Were you taken anywhere?

15 A. Yes. I was taken to big Trident
16 Hospital.

17 Q. Were you treated for your injuries
18 there?

19 A. Yes.

20 MS. SIGAL: Okay. If you could publish
21 State's Exhibit 13.

22 Q. (BY MS. SIGAL) Brenda, if you can turn
23 around and take a look at State's Exhibit 13.

24 A. Yes.

25 Q. What is that a picture of?

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 A. That's the back of my head. I'm
2 kneeling on the ground, and that's one of the
3 paramedics with some gauze on it.

4 Q. And about where on the property were
5 you at this point?

6 A. This is over on Don's property.

7 Q. Was this closer to [REDACTED] Road or Crest
8 Road?

9 A. Well, all of that property is on Upton.
10 Crest is the other side of the -- the other side.

11 Q. Okay. All right. And what's being
12 held at the back of your head?

13 A. That's gauze.

14 Q. Okay. And was your -- was the wound on
15 your head actively bleeding at that time?

16 A. Yes.

17 Q. What is the darkened part on your
18 shirt?

19 A. This right here is all blood.

20 Q. All right. Thank you.

21 MS. SIGAL: Permission to approach the
22 witness, Your Honor?

23 THE COURT; You may.

24 Q. (BY MS. SIGAL) Brenda, I'm showing you
25 what was marked as State's Exhibit 20. Do you

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 recognize this picture?

2 A. Yes. This is a picture of my back with
3 injuries on it.

4 Q. Is this a fair and accurate depiction
5 of the way your back looked on the day of the
6 incident?

7 A. This is what it looked like when I
8 arrived at the hospital.

9 MS. SIGAL: At this time, the State
10 moves to admit Exhibit 20 into evidence.

11 MS. SHIVERS: No objection, Your Honor.

12 THE COURT: State's 20 into evidence
13 without objection. You may publish.

14 (STATE EXH. 20 in evidence.)

15 BY MS. SIGAL:

16 Q. Brenda, if you can turn around and tell
17 us what we're looking at.

18 A. This right here is where -- these are
19 little bruises from the assault, and this right
20 here is where I was hit with the ax handle.

21 (Indicating)

22 Q. So that's a -- was that red mark --

23 A. Right here, that's from the ax handle.

24 Q. Okay. And the ax handle used by who?

25 A. Mr. Driggers.

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 Q. On the date of the incident?

2 A. Yes, on November 4th.

3 Q. Okay. Thank you.

4 Brenda, if you can turn around, and
5 we're looking at State's Exhibit 23 now.

6 A. Yes.

7 Q. What is that a picture of?

8 A. All of that is the back of my head when
9 I got to the hospital before it was cleaned up.

10 Q. The middle of it looks pretty dark.
11 What is that?

12 A. Right here is the actual -- the wound
13 is like in this whole area. This right here is
14 like a blood clot. (Indicating) It was starting
15 to clot up, but it was still bleeding.

16 Q. Okay. And what is that in your hair
17 around --

18 A. All this is dried blood and wet blood.

19 Q. Okay. Brenda, looking at State's
20 Exhibit Number 2 now. Who is that in the picture?

21 A. That is me.

22 Q. And is that a picture of you on
23 November 4, 2015?

24 A. Yes. This was at the hospital after
25 they had stitched and bandaged.

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 Q. That bandage around the head, what is
2 that for?

3 A. To hold the gauze on to cover the
4 stitches.

5 Q. So this was following your stitches?

6 A. Yes.

7 Q. Brenda, if you can turn around again,
8 and just sort of go through the different parts of
9 your face and neck and explain what kind of
10 injuries you had in this picture.

11 A. This was where my face was swollen up
12 and around my eye. Of course, right there, my
13 eyelids themselves are swollen. This was one of
14 the marks where -- I mean, it happened during the
15 assault. This is a combination around my neck of
16 blood and marks from the ax handle. And then this
17 was from hitting the ground and all and -- hitting
18 the ground and trying to get up. (Indicating)

19 Q. Okay. When you say that some of those
20 marks are from the ax handle, did the ax handle get
21 near your neck?

22 A. When I was thrown to the ground and he
23 was holding me down.

24 Q. When he was using the ax handle to lift
25 you up?

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 A. Yes.

2 Q. Okay.

3 A. Around the front here is what that was.

4 This back here was dried blood. (Indicating)

5 Q. Okay. Thank you.

6 Now we're looking at State's Exhibit

7 Number 4.

8 A. Yes.

9 Q. Can you talk a little bit about the
10 injuries that we see in this picture?

11 A. Again, this is from hitting the ground
12 there. My nose and my eye right here is where he
13 had his finger gouged into it.

14 Q. What about above your eyebrow?

15 A. That was a marked caused from the
16 incident.

17 Q. And to sort of your temple and cheek
18 bone?

19 A. Right here, yes. And you can see in
20 the picture it's all swollen around there and my
21 eyelid.

22 Q. Do you remember specifically which
23 blows caused those specific injuries on the side of
24 your face?

25 A. Not here, no.

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 Q. About how many times would you say he
2 hit you in the face?

3 A. All together I'm unsure. When I could
4 physically see it, like I said, I wasn't sure where
5 he was hitting me on the body, but I could tell he
6 was hitting somewhere in my head a few times. I
7 don't know how -- or how many times.

8 Q. We're now looking at State's Exhibit
9 Number 5. Could you please explain to the jury
10 what we're looking at in this picture?

11 A. This right here is a towel that they
12 put on there around my shoulders and around my neck
13 while they cleaned my head up. This is the wound
14 just before they started stitching it.

15 MS. SIGAL: Okay. Permission to
16 approach the witness?

17 THE COURT: You may.

18 BY MS. SIGAL:

19 Q. Now I'm showing you what's been marked
20 as State's Exhibit Number 18. Do you recognize
21 that picture?

22 A. Yes.

23 Q. What is that a picture of?

24 A. This is a picture of my face on the
25 left side and my eye.

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 Q. Is that a fair and accurate depiction
2 of the way you looked at the hospital November 4,
3 2015?

4 A. Yes.

5 MS. SIGAL: At this time, the State
6 moves to admit State's 18 into evidence.

7 MS. SHIVERS: No objection.

8 THE COURT: State's 18 in evidence
9 without objection.

10 (STATE EXH. 18 in evidence.)

11 BY MS. SIGAL:

12 Q. Brenda, can you describe your injuries
13 in this picture please?

14 A. Again, this down here, around here, is
15 where it was swollen, and this -- and my eye was
16 where he had his finger gouged in it, and from the
17 ground on this mark. (Indicating)

18 Q. What about the injury on the left side
19 of your face, the red mark?

20 A. This was from Mr. Driggers at some
21 point during the assault.

22 Q. And what is that on the towel?

23 A. That's blood. A mixture of blood --
24 talking about right here?

25 Q. Yes.

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 A. That's a mixture of blood and saline,
2 water solution, where they were cleaning out the
3 wound.

4 Q. Okay. Brenda, did you have any of
5 these injuries prior to November 4, 2015?

6 A. No.

7 Q. And who is the person that caused these
8 injuries?

9 A. Mr. Kevin Driggers.

10 Q. Just a few more pictures. If you can
11 turn around and look at State's 27. Whose car is
12 this?

13 A. It was mine.

14 Q. Is this what the car looked like prior
15 to the accident?

16 A. Prior to November 4th? No.

17 Q. What's happened to the car?

18 A. While I was laying on the ground
19 outside the dog pen, Kevin Driggers came over and
20 started busting out the windows. This is the back
21 window and the glass from that. Along here is
22 where he busted out the side windows. (Indicating)

23 Q. Now looking at State's 32. What is
24 this a picture of?

25 A. This is the -- this is the door that

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 everybody uses coming in and out of the house -- of
2 Sarah Riggs' house.

3 Q. The discolorations on the door, what
4 are those?

5 A. These down here were footprints where
6 it had been kicked and stomped in. These -- and
7 smashed the handle, were all caused from the ax
8 handle.

9 Q. So the door didn't look like this
10 before the incident?

11 A. No.

12 Q. Brenda, what is in this picture that is
13 significant?

14 A. This is the latch piece that actually
15 goes on the door frame itself. It got busted out
16 when the door frame busted out.

17 Q. Was the door actually broken?

18 A. The door itself -- the frame was busted
19 out.

20 Q. Okay. And so that silver thing in that
21 picture, that's the door hinge that --

22 A. That's the latch that belongs in the
23 door frame.

24 Q. Belongs in the door frame?

25 A. Yes.

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 Q. What is this a picture of?

2 A. This right here is where that little
3 silver piece would be. This is the door frame and
4 the door jamb busted apart.

5 Q. And, again, was this door like this
6 prior to Kevin Driggers coming over that day?

7 A. No.

8 Q. All right. Brenda, what is this a
9 picture of?

10 A. This is the window that -- off to the
11 right of the door, and this goes into Sarah's
12 bedroom.

13 Q. So this window is to the right of the
14 door we were just looking at that was broken by
15 Kevin Driggers?

16 A. Yes.

17 Q. And what is significant about this
18 window here?

19 A. The shade was tore all up and the glass
20 was broken out.

21 Q. What about the blinds?

22 A. Well, that's the shade.

23 Q. And that's what you meant when you said
24 it was torn out?

25 A. Yes.

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 Q. Was it like that prior to the incident?

2 A. No.

3 Q. And whose bedroom does this lead into?

4 A. Sarah Riggs.

5 Q. Okay. All right. Brenda, whose
6 bedroom is this?

7 A. This is the other side of that wall and
8 this is Sarah Riggs' bedroom. This is her bedroom
9 door and that's her floor.

10 Q. The top right sort of the brown piece
11 of fabric, what is that?

12 A. This is a curtain that sits at the
13 window that was busted out, and this right here is
14 the window.

15 Q. So the glass was inside the bedroom?

16 A. After the incident, yes.

17 Q. What's the white stuff on the floor?

18 A. All of this is glass. This over here
19 was actually part of this little ceramic figurine
20 she had holding the door.

21 Q. What is next to the figurine?

22 A. That's a picture frame that hung on the
23 wall.

24 Q. Were those on the floor prior to the
25 incident?

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 A. The ceramic elephant held her bedroom
2 door. The picture frame was up on the wall.

3 Q. Okay. Did the elephant break due to
4 this incident?

5 A. Yes.

6 Q. Did the picture frame fall due to this
7 incident?

8 A. Yes.

9 Q. Brenda, whose bed are we looking at
10 right here?

11 A. Sarah Riggs.

12 Q. And what is the white stuff on the
13 floor?

14 A. All this is glass.

15 Q. Okay. And what is the white stuff on
16 the bed?

17 A. That's more glass.

18 Q. And what is that blanket next to the
19 bed?

20 A. Right here? (Indicating)

21 Q. Yes.

22 A. That was her son Wesley's blanket.

23 Q. Did he ever sleep in there?

24 A. Yes. He was asleep in this bedroom
25 when she left to go to the doctor.

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 Q. Was he asleep in the bed?

2 A. He had just woke up and gone to the
3 porch like five minutes before this happened.

4 Q. Okay. Brenda, who is that a picture
5 of?

6 A. Kevin Driggers.

7 Q. Is that a picture of him on the day of
8 the incident?

9 A. Yes.

10 Q. What's on the upper right part of his
11 shirt?

12 A. Right here? (Indicating)

13 Q. Yes.

14 A. It's blood.

15 Q. Whose blood is that?

16 A. Mine.

17 Q. How do you think your blood got on his
18 shirt?

19 A. That's when -- it got up there when he
20 was trying to rip out my eye. He was choking me up
21 against his chest with his finger in my eye.

22 Q. Was this after he was detained?

23 A. Yes.

24 Q. Brenda, how has this incident affected
25 you physically?

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 A. It's impacted a lot. I still have
2 headaches, I can't stand on my feet for long
3 periods of time, I can't sit for long periods of
4 time, I have nerve damage.

5 Q. And let's back up. What kind of
6 injuries did you sustain on that date that you
7 remember?

8 A. The damage to my head, I had a back
9 fracture in two places and damage to my right knee
10 where I hit the ground, and the hemorrhaging in the
11 eye.

12 Q. What about the wound to the back of
13 your head?

14 A. Yes.

15 Q. Did you require any kind of medical
16 treatment for that?

17 A. Well, it had the stitches.

18 Q. You had to get stitches?

19 A. Yes. I had the stitches at the
20 hospital.

21 Q. Have you been able to work since this
22 incident?

23 A. No.

24 Q. Why is that?

25 A. Because I can't stand or sit for

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 extreme periods of time.

2 Q. How has this affected you emotionally
3 and mentally?

4 A. It's taken -- a big impact. My son had
5 to help me, which puts a burden on me that the
6 14-year-old has to help the mom in and out of the
7 shower and on and off the toilet. I had a fear
8 just going outside. Daytime or nighttime, it
9 didn't matter, I was afraid to go outside.

10 Q. What were you afraid of?

11 A. Anybody, it didn't matter. I didn't
12 want to be left alone. I was afraid of crowds,
13 sudden movements.

14 Q. On the date of the incident, were you
15 able to fight back at all?

16 A. No.

17 Q. You stated that the defendant mentioned
18 that he was going to kill you several different
19 times. How many times did he threaten to kill you
20 on that date?

21 A. At least 15 to 20.

22 Q. What do you believe his intentions were
23 on that day?

24 MS. SHIVERS: Objection, Your Honor.
25 Speculation.

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 THE COURT: Sustained.

2 BY MS. SIGAL:

3 Q. Brenda, I'm showing you what's been
4 marked as State's 34. Do you recognize what this
5 is?

6 A. Yes.

7 Q. And what is that?

8 A. It's the disk with the 911 call on it.

9 Q. And did you listen to it?

10 A. Yes.

11 Q. Did you make any markings to show that
12 you listened to it?

13 A. Yes, my initials and the date.

14 Q. When you made those markings, did you
15 indicate that it was your voice on the 911 call?

16 A. Yes.

17 MS. SIGAL: Permission to publish
18 State's Exhibit 34, track one?

19 THE COURT: You may.

20 THE COURT: What's the exhibit number?

21 MS. SIGAL: 34.

22 (State's Exhibit Number 34 published in
23 open court.)

24 BY MS. SIGAL:

25 Q. Brenda, is that the call you made on

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 November 4, 2015?

2 A. Yes.

3 Q. Were you holding the phone the entire
4 time?

5 A. Yes.

6 Q. Whose voice was in the background at
7 the end of the call?

8 A. Kevin Driggers.

9 Q. At what point during the assault was
10 that?

11 A. It was behind Don's, near the end.

12 Q. What are you shouting out in the end of
13 that call? Who are you calling to?

14 A. I'm calling to Don, screaming for Don
15 to help me.

16 Q. Did you think he was home?

17 A. I thought he was, yes.

18 Q. Without going into what anyone said,
19 were there any rules to what people were allowed or
20 not allowed --

21 MS. SHIVERS: Objection, Your Honor;
22 speculation.

23 THE COURT: If she knows.

24 THE WITNESS: Repeat that please.

25 BY MS. SIGAL:

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 Q. Without going into what anyone said,
2 were there any rules at Sarah's house as to who was
3 allowed there?

4 A. You mean as far as people wise?

5 Q. Uh-huh.

6 A. I was allowed there, I lived there, my
7 son was there. Anybody who tried to cause trouble
8 was not.

9 Q. Was the defendant allowed there?

10 A. No.

11 Q. Brenda, I'm showing you what was marked
12 and admitted as State's Exhibit 35.

13 MS. SIGAL: Permission to approach?

14 THE COURT: You may.

15 BY MS. SIGAL:

16 Q. You don't have to take this out. Do
17 you recognize this item?

18 A. Yes. It's the ax handle he was using
19 during the assault.

20 Q. Sorry, I was making noise when you
21 stated that. Can you repeat what you just said?

22 A. That was the ax handle that Kevin
23 Driggers had in his hands during the assault.

24 Q. Is that the ax handle he used to hit
25 you in the back of the head?

BRENDA MILLS - DIRECT EXAM BY MS. SIGAL

1 A. Yes.

2 Q. Brenda, is the man that attacked you
3 with ax handle in court today?

4 A. Yes, he is.

5 Q. Is the man that told you over and over
6 again that he was going to kill you in court today?

7 A. Yes, he is.

8 Q. Can you please identify that person?

9 A. He's sitting over there at the table in
10 the middle.

11 Q. Okay. Thank you.

12 MS. SIGAL: Beg the Court's indulgence.

13 BY MS. SIGAL:

14 Q. Brenda, you mentioned the dogs in the
15 call. What are you referencing in that 911 call
16 about the dogs?

17 A. As I was going across the yard, he was
18 telling me he's taking the dogs. We acquired two
19 dogs during the time we were together and he was
20 telling me he was taking them.

21 Q. Did you have any problems with that at
22 that point?

23 A. I would have told him anything to get
24 him away from me, anything to walk away and leave
25 me alone.

BRENDA MILLS - CROSS EXAM BY MS. SHIVERS

1 Q. Had you seen this ax handle before
2 November 4, 2015?

3 A. Yes.

4 Q. Where had you seen it before?

5 A. It hung up on the wall in our camper
6 beside the bed.

7 Q. In the area where you slept?

8 A. Yes.

9 MS. SIGAL: Beg the Court's indulgence?

10 THE COURT: Take your time.

11 BY MS. SIGAL:

12 Q. Do you believe the defendant was trying
13 to kill you on November 4, 2015?

14 A. Yes, I do.

15 MS. SIGAL: Thank you, Brenda. I have
16 no further questions for you at this time. Please
17 answer any questions that Ms. Shivers may have for
18 you.

19 CROSS-EXAMINATION

20 BY MS. SHIVERS:

21 Q. Good morning, Brenda. So as you stated
22 previously, you met Kevin in high school?

23 A. Yes.

24 Q. And you were friends in high school?

25 A. Yes.

BRENDA MILLS - CROSS EXAM BY MS. SHIVERS

1 Q. And then you both went your separate
2 ways?

3 A. Yes.

4 Q. And he got married and you had
5 children?

6 A. Yes.

7 Q. And then you reunited in 2014, in
8 Macedonia?

9 A. Yes.

10 Q. While you were working at the
11 Handi-Mart?

12 A. Yes.

13 Q. And you began dating at that time?

14 A. Yes.

15 Q. And you guys lived in his camper
16 together on his property?

17 A. Yes.

18 Q. And you and Kevin were friends with
19 Sarah Riggs?

20 A. We met her at the same time.

21 Q. Because he was friends with a man she
22 was dating named Stacy?

23 A. Yes. He was -- he had known Stacy
24 growing up and Kevin Driggers and I both met Sarah
25 Riggs the same night.

BRENDA MILLS - CROSS EXAM BY MS. SHIVERS

1 Q. And you all were friends?

2 A. Yes.

3 Q. And you would frequently hang out
4 together?

5 A. Prior to November 4th, yes.

6 Q. And you all had a key to her house at
7 [REDACTED]?

8 A. No; I had a key. Mr. Driggers did not
9 know that I had that key.

10 Q. You had the key in the camper --

11 A. No.

12 Q. -- to her property at [REDACTED].

13 A. No, it was not in the camper. It was
14 on my key ring in my wallet. But it was not in the
15 camper itself.

16 Q. And you and Kevin would go there
17 frequently?

18 A. While she was home, yes.

19 Q. Because you were friends --

20 A. Yes.

21 Q. -- and you were allowed to be there?

22 A. When she was home.

23 Q. And when you and Kevin broke up, Sarah
24 let you sleep at her place?

25 A. Yes.

BRENDA MILLS - CROSS EXAM BY MS. SHIVERS

1 Q. And she let you stay there because you
2 were friends?

3 A. And I was safe there, yes.

4 Q. Sarah had lived at that house for
5 years.

6 A. Yes.

7 Q. It's a house her mom owns?

8 A. Yes.

9 Q. And four days after this incident Sarah
10 was arrested at that place for a meth lab in her
11 shed, correct?

12 MS. SIGAL: Objection, Your Honor.

13 THE COURT: What's the basis?

14 MS. SIGAL: Relevance.

15 THE COURT: Please approach.

16 (Bench conference)

17 THE COURT: All right. You need a
18 break? Please remember all my admonitions. You
19 can take your notepads or leave them right where
20 they are. Let my bailiffs know when you're ready
21 to come back in.

22 (Jury out, 11:20 a.m.)

23 THE COURT: Thank you. Be seated.

24 You may step down. Just so the record is
25 abundantly clear, we had a side bar. You just want

BRENDA MILLS - CROSS EXAM BY MS. SHIVERS

1 to articulate what you indicated to the Court so
2 it's clear on the record.

3 MS. SHIVERS: Yes, ma'am. We believe
4 that the question is relevant as to residency. Our
5 client's being charged with burglary in the first
6 degree, and consent to be at the residence and who
7 was able to grant consent would be the person who
8 resides there. So I believe that that question
9 would be relevant.

10 I would have elicited that she wasn't
11 arrested along with her, even though she was
12 present at the scene, because of the fact the
13 police did not believe she lived there at the time.

14 THE COURT: All right. Ms. Sigal,
15 anything else you want to articulate on the record?

16 MS. SIGAL: Your Honor, defense counsel
17 has ample opportunity to ask the victim about her
18 residency. They can cross her on that issue.
19 Another officer for another charge for another day
20 with a charge that's not related at all is not
21 relevant to this case. They can call Sarah Riggs
22 to testify as to whether or not the victim lived
23 there.

24 But to call -- to talk about a meth
25 charge is highly prejudicial, and it's especially

BRENDA MILLS - CROSS EXAM BY MS. SHIVERS

1 not relevant, and they have ample opportunity to
2 ask the victim if she lived there.

3 THE COURT: So it's not -- we don't
4 have to show residence, do we? Just consent.

5 MS. SHIVERS: The problem is, the only
6 information that the State has provided us to
7 consent is that of the victim. If she didn't have
8 -- if she wasn't a resident at that property, she
9 wouldn't be the rightful person to be able to grant
10 consent or not grant consent.

11 She certainly isn't the only one that
12 would have exclusive rights to giving that consent
13 to whether or not he could be at that property.

14 THE COURT: But whether or not an
15 officer on an unrelated matter that occurred in a
16 shed on the property makes a determination that she
17 was or wasn't a residence, does not -- I don't
18 think factors into the element requiring without
19 consent for the purposes of today's trial for the
20 matter that we're hearing today.

21 I think that you would agree that
22 several people can give consent, correct?

23 MS. SHIVERS: Yes.

24 THE COURT: All right. And so the
25 question before you today, the witness before you

BRENDA MILLS - CROSS EXAM BY MS. SHIVERS

1 now, is whether or not she gave consent.

2 MS. SHIVERS: Yes, ma'am.

3 THE COURT: And then it's up to the
4 jury to make the determination, first of all,
5 whether that was a credible statement and whether
6 or not anybody else had the right to give consent.

7 Clearly, the testimony has been
8 elicited on more than one occasion that there were
9 several people that -- that, that wasn't her house,
10 first of all.

11 MS. SHIVERS: Yes, ma'am.

12 THE COURT: So I think for purposes of
13 what we need to do to establish the element for
14 burglary without consent, we do not need to go into
15 another crime that potentially has no relevance to
16 this one, that is and of itself -- I mean, that's a
17 possessory question, not a consent issue as to
18 residence on who owns the property on which a meth
19 lab may have been found, as I understand what you
20 are trying to elicit.

21 All right. So I think you know how to
22 handle it from here?

23 MS. SHIVERS: Yes, ma'am.

24 THE COURT: We'll take a comfort
25 break. Do we have some witnesses after this one?

BRENDA MILLS - CROSS EXAM BY MS. SHIVERS

1 MS. SIGAL: Your Honor, we have Cheryl
2 Scott to recall to the stand after the 911 call was
3 played. We plan to call her after the victim, and
4 then we have two witnesses this afternoon scheduled
5 to be here at 1:15 to finish up.

6 THE COURT: All right. Okay.

7 MS. SIGAL: Hopefully, that gives
8 enough time for lunch.

9 THE COURT: We'll take about seven
10 minutes.

11 (A recess transpired.)

12 THE COURT: Come have a seat on the
13 stand.

14 Anything before we bring in the jury?

15 MS. SIGAL: Your Honor, just one thing
16 briefly. Ms. Shivers mentioned when we were doing
17 a side bar about a jail call where the victim was
18 speaking to someone. The State was never provided
19 any information about a jail call and we would just
20 request that if defense counsel intends to use or
21 discuss such a call, we would like to know what it
22 is that they're talking about.

23 THE COURT: Do you plan to play it?
24 What are you using it for?

25 MS. SHIVERS: The only thing that we

BRENDA MILLS - CROSS EXAM BY MS. SHIVERS

1 would have had to use it for is to refresh her
2 recollection regarding this incident, but since
3 Your Honor ruled that I wasn't allowed to question
4 her further on it, then we would have no reason to
5 bring that in to refresh her memory.

6 THE COURT: Is that what I ruled? I
7 didn't rule on a tape.

8 MS. SHIVERS: No. The information
9 regarding the meth lab, because she was talking
10 about that on the jail call and whether or not the
11 officers thought she lived there. So given that I
12 can't go down that line of questioning, it's a moot
13 point because I won't be able to utilize it.

14 THE COURT: The purpose of the meth lab
15 questioning was concerning consent.

16 MS. SHIVERS: Residency, yes, ma'am.

17 THE COURT: Thank you.

18 MS. SIGAL: Thank you.

19 THE COURT: I think that answers your
20 question.

21 MS. SIGAL: It does.

22 THE COURT: So just for scheduling
23 because I would like to break about 12:15, we have
24 this witness and Mrs. Scott to get -- just briefly
25 for the 911; is that correct?

BRENDA MILLS - CROSS EXAM BY MS. SHIVERS

1 MS. SIGAL: That's correct, Your Honor.

2 THE COURT: And then we'll break for
3 lunch.

4 MS. SIGAL: That's perfect.

5 MS. SHIVERS: So then I would cross her
6 after lunch, Your Honor?

7 THE COURT: No. No. No. We'll finish
8 her. Is she going to be lengthy?

9 MS. SHIVERS: I don't think so.

10 (Jury in, 11:38 A.M.)

11 THE COURT: Thank you. Be seated.

12 Ms. Shivers, your witness.

13 BY MS. SHIVERS:

14 Q. Brenda, earlier you indicated that you
15 reacquainted with Kevin while working at the
16 Handi-Mart?

17 A. Yes.

18 Q. And you began dating?

19 A. Yes.

20 Q. And you stopped working while you guys
21 were dating?

22 A. I got fired.

23 Q. And you didn't work the rest of the
24 time that you were dating?

25 A. No. I went to work with him a few

BRENDA MILLS - CROSS EXAM BY MS. SHIVERS

1 times. I didn't work for a company, no.

2 Q. Let's talk about the day of the
3 incident. When Kevin got there, he wanted his
4 dogs?

5 A. He didn't make mention of that until
6 after he hit me in the head and I got up off the
7 ground.

8 Q. But you were aware that he wanted the
9 dogs?

10 A. No. No. He informed me prior to that
11 in his words, come get this son of a bitch or I
12 will kill the mother fucker.

13 Q. And you heard yourself on the 911 tape
14 that we just listened to?

15 A. Yes. After I got off the ground, then
16 he screamed, give me my fucking dog. I would have
17 said anything to him to get him to leave me alone.

18 Q. And at the beginning of that 911 tape,
19 you heard yourself yell, you can have the dogs, get
20 the dogs and go?

21 A. No, I don't recall that. I just heard
22 the tape, but I don't recall saying that. I mean,
23 if I did, then I did, but my point was I would have
24 said anything for him to leave me alone.

25 Q. Would it help refresh your memory to

BRENDA MILLS - CROSS EXAM BY MS. SHIVERS

1 hear your 911 call again?

2 A. Yes, because I don't recall hearing
3 that. I mean, if I did, then I did. I don't
4 recall saying that.

5 MS. SHIVERS: Your Honor, may we replay
6 track one?

7 THE COURT: Ms. Brown, can you be of
8 assistance?

9 (Call played in open court.)

10 THE WITNESS: That particular -- when I
11 said that, I was already in the yard. That was
12 after I had gotten up off the ground.

13 BY MS. SHIVERS:

14 Q. And so you heard yourself indicate, you
15 can have the dogs?

16 A. Yes. At that point he said, I'm taking
17 these dogs. At that point, we were not in the
18 house. It was not the beginning of the incident.
19 This is after I got up off the ground.

20 Q. And when he came up to the house, you
21 told your son to leave with Sarah's five-year-old?

22 A. Yes.

23 Q. To go get help?

24 A. At that point, Mr. Driggers had
25 bull-charged the porch and was banging on the door.

BRENDA MILLS - CROSS EXAM BY MS. SHIVERS

1 Q. Because he was banging on the door?

2 A. Beating the door down, yes.

3 Q. And your son left?

4 A. Yes.

5 Q. And you ran out of the house?

6 A. Not instantly, no. I had to keep that
7 door shut to get the children out.

8 Q. Certainly. After the children left,
9 you ran out of the other door?

10 A. After the window was busted out, I
11 don't know how long later, then I ran.

12 Q. Into the yard?

13 A. Yes.

14 Q. And that's where Kevin assaulted you?

15 A. Yes.

16 Q. Before you left the house you called
17 911?

18 A. I had 911 on the phone before Noah
19 left. I told him to bring my phone and leave.

20 Q. And that's what we heard on the 911
21 tape?

22 A. That was outside of the house.

23 Q. That's what I'm saying --

24 A. But, yes --

25 Q. -- from the beginning of the 911 tape

BRENDA MILLS - CROSS EXAM BY MS. SHIVERS

1 was before you left the actual house?

2 A. No. That's the part when I was in the
3 yard. The part when I called 911 -- I mean, I'm
4 assuming that's the whole call, yes.

5 Q. And you stayed on the phone with them
6 during the majority of this incident?

7 A. Yes.

8 Q. Other than the break in the middle?

9 A. Right.

10 Q. And they told you that help was on the
11 way?

12 A. Yes.

13 Q. And Kevin knew you called the police?

14 A. Kevin what?

15 Q. Knew that you called the police?

16 A. I'm assuming he did.

17 Q. He poked you in the eye while you were
18 biting his arm?

19 A. He didn't poke me, no. He gouged his
20 finger into my eye digging it out.

21 Q. While you were biting his arm?

22 A. To get away from him.

23 Q. Okay. And Kevin heard -- when he heard
24 the 911 operator, he dropped the ax handle?

25 A. Over at Don's near the end of the

BRENDA MILLS - CROSS EXAM BY MS. SHIVERS

1 incident.

2 Q. And that's when you picked it up?

3 A. And put it back down.

4 Q. You had it when the police arrived?

5 A. No.

6 Q. You flagged down the officer?

7 A. I heard the cars coming up the block
8 and started towards the road, and that's when I saw
9 the car.

10 Q. And you explained to her how you were
11 assaulted?

12 A. At that point, no. I hit the ground
13 and he come out from behind the shed. And it was
14 at the hospital when I explained my story, when I
15 wrote my statement.

16 Q. And EMS arrived?

17 A. Yes.

18 Q. And you were evaluated?

19 A. They put gauze on my head and tried to
20 get the bleeding to stop.

21 Q. And you were taken to Trident?

22 A. Yes.

23 Q. By ambulance?

24 A. Yes.

25 Q. Not by a medivac?

BRENDA MILLS - CROSS EXAM BY MS. SHIVERS

1 A. No.

2 Q. You were not -- they did not need to
3 perform CPR on you?

4 A. No.

5 Q. They did not have to shock you to get
6 your heart to start?

7 A. No.

8 Q. They did not have to provide you
9 oxygen?

10 A. No.

11 Q. And at Trident Hospital you were
12 evaluated?

13 A. Yes.

14 Q. And you received eight stitches to the
15 wound on your head?

16 A. To the back of my head and x-rays for
17 my back.

18 Q. And you were told that you had two
19 cracked vertebrae?

20 A. Two fractured vertebrae.

21 Q. But you were not referred to a
22 specialist?

23 A. No, I was. I could not afford to pay
24 for it so I couldn't go.

25 Q. You were not referred in the ER to see

BRENDA MILLS - CROSS EXAM BY MS. SHIVERS

1 anyone regarding your spine?

2 A. Yes, I was referred to a neurologist.
3 I mean, I have referral papers; you need to contact
4 this neurologist.

5 Q. So they released you to contact outside
6 care?

7 A. Because I did not have insurance.

8 Q. You were not treated by a neurologist
9 on that date in the ER?

10 A. No.

11 Q. And you were released a few hours
12 later?

13 A. Hours later, yes.

14 Q. And you have not sought medical
15 treatment since that time?

16 A. No insurance, no money. I can't go. I
17 can't afford the doctor.

18 Q. So you did not seek any --

19 A. I have gone one time. My sister paid
20 for the visit. That was November of last year and
21 it was because of this.

22 Q. And you met with the Solicitors in this
23 case on several occasions?

24 A. Yes.

25 Q. And you talked about this incident?

BRENDA MILLS - CROSS EXAM BY MS. SHIVERS

1 A. A few, yes.

2 Q. And you talked about this incident with
3 Sarah Riggs?

4 A. I lived with Sarah.

5 Q. And you talked to her about this
6 incidence?

7 A. Since the accident or -- when are you
8 talking about exactly? Like when it happened?

9 Q. You've talked about what happened on
10 this day with Sarah after the date of this
11 incident, until you are here today?

12 A. Yes.

13 Q. On several occasions?

14 A. Yes.

15 Q. And you talked to -- have you talked to
16 any of your other neighbors about this incident?

17 A. No.

18 Q. You didn't talk to Sarah's aunt, Ms.
19 Betty, about what happened?

20 A. No.

21 Q. You indicated that -- when I asked you
22 whether or not you picked up the ax handle, you
23 indicated that you then just immediately dropped
24 it. Do you remember writing your written
25 statement?

BRENDA MILLS - CROSS EXAM BY MS. SHIVERS

1 A. I have it, yes.

2 Q. And do you remember in your written
3 statement where you indicated that you picked up
4 the ax, you saw the cop and you flagged her down?

5 A. Yes. And that's when I dropped it.

6 Q. You didn't say anything in your
7 statement about dropping it prior to seeing Officer
8 Winder?

9 A. No. At the time I wrote the statement,
10 at that point I was in the hospital, I was in pain,
11 trying to get my head stitched up as I was writing
12 it, and you try to hurry up and write it trying to
13 get it all down. So, no, I didn't.

14 Q. And you agree that you had the ax
15 handle when you saw Officer Winder's car and you
16 flagged her down?

17 A. I believe I did. I do not recall
18 completely.

19 MS. SHIVERS: If I may have a moment?

20 THE COURT: Take your time.

21 BY MS. SHIVERS:

22 Q. When the ER treating nurse practitioner
23 was evaluating you and indicated that you had the
24 cracked vertebrae, they also indicated that you had
25 an older cracked vertebrae as well that was

BRENDA MILLS - CROSS EXAM BY MS. SHIVERS

1 already calcified, correct?

2 A. No. He said it's still healing, and it
3 has not healed completely.

4 Q. But it was already in the healing
5 process on that date?

6 A. Yes. That was caused by Mr. Driggers
7 as well.

8 Q. When you say that you went to Trident
9 Hospital, are you talking about the one on --

10 A. The main one.

11 Q. -- Highway 78?

12 A. Yes, the main hospital.

13 Q. So you passed two different hospital
14 locations to get to there?

15 A. They did that because they didn't know
16 if I had a fractured skull from the incident.

17 Q. Which you did not?

18 A. Luckily, no.

19 MS. SHIVERS: That's all the questions
20 I have, Your Honor.

21 MS. SIGAL: No redirect, Your Honor.

22 THE COURT: You may step down. Thank
23 you.

24 Call your next witness.

25 MS. SIGAL: State recalls Cheryl Scott.

CHERYL SCOTT - CONTINUING DIRECT EXAM BY MS. SIGAL

1 made on November 4, 2015?

2 A. Yes, it was.

3 Q. Is it difficult to hear?

4 A. Yes, it is.

5 Q. Was this incident difficult to witness?

6 A. Yes.

7 Q. And why is that?

8 A. Those two little boys, and that one
9 little boy with his momma -- and all he said was,
10 she's all I've got and he's going to kill her. And
11 all I could think is, my God, this 14-year-old is
12 going to watch his momma get killed and I can't do
13 anything about it and how am I going to handle it.
14 And that's hard, and it has haunted me from day
15 one.

16 Q. Cheryl, when you were making the call
17 to 911, were you able to see the assault with your
18 own eyes?

19 A. I saw part of it because I was pacing
20 back and forth. I was trying to get the two boys
21 to stay with me and the little 14-year-old wanted
22 to go with his momma. And he kept running towards
23 that area and we were trying to bring him back.
24 And, finally, my husband kept him right there.

25 Q. And the part that you did see -- take

CHERYL SCOTT - CONTINUING DIRECT EXAM BY MS. SIGAL

1 your time. The part that you did see of the
2 assault, can you describe it for us?

3 A. When I went around one time, I think it
4 was that first time, I'm pretty sure, he -- he was
5 hitting her with that wood thing. And then another
6 time I came around he was kind of hunched over her.
7 (Indicating.)

8 Q. And when he was hunched over her, where
9 was she?

10 A. She was on the ground.

11 Q. Was she able to move or was he
12 restricting her movement?

13 A. She couldn't get up.

14 Q. And you said that when you saw him
15 hitting her with the --

16 A. I call it a grubbing hoe.

17 Q. What part of her body was he hitting
18 her with it?

19 A. I couldn't tell if it was her head or
20 her toes because there was blood everywhere. I
21 couldn't tell.

22 MS. SIGAL: Beg the Court's indulgence?

23 THE COURT: Take your time.

24 MS. SIGAL: Cheryl, thank you. And
25 thank you for coming back today.

CHERYL SCOTT - CROSS EXAM BY MS. SHIVERS

1 THE WITNESS: You're welcome.

2 MS. SIGAL: I don't have anymore
3 questions for you right now. Please answer any
4 that the defense may have for you.

5 CROSS-EXAMINATION

6 BY MS. SHIVERS:

7 Q. Hey, Cheryl. How are you today?

8 A. I could be better, but I'm not going to
9 complain.

10 Q. You live at [REDACTED] Crest Lane?

11 A. Yes.

12 Q. And as you pointed out yesterday on the
13 map, that's the property at the top of the street?

14 A. Yeah. Well, there's more houses up
15 there, but it's on that track, yes, at the top.

16 Q. And from your backyard that's about
17 330 feet to where Don's property would be?

18 A. I don't know how far it is. It's not
19 far because we walk back and forth.

20 Q. And another 100 yards past that would
21 be where Sarah's house is located?

22 A. I don't know how far back Sarah's house
23 is.

24 Q. So in between your property and [REDACTED]
25 [REDACTED] Street there are two trailers in the middle,

CHERYL SCOTT - CROSS EXAM BY MS. SHIVERS

1 correct? About 100 yards in between the two of
2 you?

3 A. Are talking about Miss Fonza and Don's
4 place?

5 Q. Yes.

6 A. All right. Yes, there are two trailers
7 there.

8 Q. And one of them is horizontal to your
9 property?

10 A. I have never really paid attention. I
11 don't know. One is straight like this and the
12 other one, you know, is how you would look at it.
13 They're like this. (Indicating)

14 Q. So one is vertical and the other goes
15 like this, horizontally?

16 A. No. That's the back porch that goes
17 this way. I think they're both like this, and then
18 there's a back porch like that. (Indicating) I
19 don't pay --

20 Q. Would it help for you to see the map of
21 the properties?

22 A. Well, I guess it might. I don't know.

23 Q. So when you say the porch, can you
24 point out on there what you mean by the porch?

25 A. Well, it's a little -- I see what you

CHERYL SCOTT - CROSS EXAM BY MS. SHIVERS

1 mean. There's Don's right there and there's his
2 momma's right there. (Indicating)

3 Q. Okay. And what is that in between the
4 two that is sort of horizontal between the two?

5 A. I think that's a -- I think that's a
6 little shed thing.

7 Q. Okay.

8 A. I'm not sure.

9 Q. Okay.

10 A. But I see the two pillars and then, you
11 know, I know those are the two houses.

12 Q. Okay. So on the day of this
13 incident -- you can turn back around -- the two
14 young boys that you mentioned ran up to your porch
15 asking for help?

16 A. Yes.

17 Q. In the opposite direction from where
18 the incident had happened?

19 A. Yes.

20 Q. So, essentially, they ran up the street
21 to your property?

22 A. I think they came through the yards.

23 Q. Okay. And based on what the boys told
24 you, you called 911?

25 A. Yes.

✓ CHERYL SCOTT - CROSS EXAM BY MS. SHIVERS

1 Q. Because you wanted to help?

2 A. Yes.

3 Q. And you provided 911 all of the
4 information that you possibly could at the time?

5 A. I guess, yeah.

6 Q. So that the police would have accurate
7 information before they arrived on the scene?

8 A. Yes.

9 Q. So you could get help for that boy's
10 momma?

11 A. Yes.

12 Q. And you gave 911 all of the information
13 that Noah told you?

14 A. What Noah told me, yes.

15 Q. And that's what we heard in your 911
16 call?

17 A. Yes.

18 Q. And that included that Kevin did not
19 have a weapon?

20 A. Kevin did not have a gun. I considered
21 that wooden thing that he had is a weapon.

22 Q. What you indicated to the 911 caller
23 when you asked him, does he have a weapon, and his
24 response was, no, not that I know of, and that's
25 what you relayed to 911?

CHERYL SCOTT - CROSS EXAM BY MS. SHIVERS

1 A. Yes. I did relate that to 911.

2 Q. And it was important to you to keep
3 those boys safe?

4 A. Yes, it was.

5 Q. And you tried to keep them on the porch
6 the best you could?

7 A. Yes.

8 Q. The porch that's on the front of your
9 property?

10 A. And on the front steps.

11 Q. Even when Noah wanted to go back to his
12 mom?

13 A. I kept calling him back. We went --
14 when he took off, I took off behind him and called
15 him back.

16 Q. And you did that because you didn't
17 want to see anything happen to either one of those
18 boys?

19 A. No, or her.

20 Q. You wear glasses, don't you?

21 A. I wear reading glasses.

22 Q. Because your eyesight is not really
23 good?

24 A. On reading.

25 Q. Do you remember on February 16th, when

CHERYL SCOTT - CROSS EXAM BY MS. SHIVERS

1 I came to your residence and spoke with you with my
2 investigator and Mr. Church?

3 A. I sure do.

4 Q. And you remember telling us that your
5 eyesight is not any good?

6 A. In reading, yes, I do remember telling
7 you that, ma'am.

8 Q. And you indicated at that time that you
9 had a stroke shortly after this incident occurred?

10 A. I had two strokes.

11 Q. And so you've had strokes since this
12 happened?

13 A. Yes; one right after this happened and
14 then 16 months later.

15 Q. And you also have a brain tumor?

16 A. Yes.

17 MS. SHIVERS: That's all the questions
18 I have. Thank you, Miss Cheryl.

19 MS. SIGAL: No redirect, Your Honor.

20 THE COURT: You may step down.

21 THE WITNESS: Thank you.

22 THE COURT: All right. Ladies and
23 gentlemen, we've reached an appropriate time to
24 take our lunch break. Please remember all my
25 admonitions; don't discuss the case and do not

KEVIN DRIGGERS - EXAM BY THE COURT

1 begin deciding any issues. Please take your
2 notepads with you and we will lock them up over the
3 lunch hour. Please be back in your jury room -- or
4 downstairs at 1:30 and we will begin at 1:45.

5 Please rise for the jury.

6 (Jury out, 12:12 p.m.)

7 THE COURT: Thank you. Please be
8 seated.

9 Anything from the State?

10 MS. SIGAL: No, Your Honor.

11 THE COURT: You have two more
12 witnesses.

13 MS. SIGAL: Two more witnesses and we
14 would be ready -- the next witness will be here at
15 1:15.

16 THE COURT: And so I'm going to advise
17 your client, Mr. Church, at this time of his right
18 to testify.

19 KEVIN DRIGGERS,
20 being first duly sworn, testified as follows:

21 EXAMINATION

22 BY THE COURT:

23 Q. Thank you. Mr. Driggers, we are going
24 to break for lunch and then the State has informed
25 me they have two more witnesses. So we potentially

KEVIN DRIGGERS - EXAM BY THE COURT

1 will reach the stage in the trial where you may
2 present your defense later this afternoon, so I
3 wanted to give you the benefits and the
4 consequences to testify so that you can discuss
5 that with your attorneys over the lunch hour. Do
6 you understand?

7 A. Yes.

8 Q. So we will reach the stage of the trial
9 where you may present your defense. If you need me
10 to explain anything in further detail, let me know.

11 You have the right to claim the
12 protections given to you by the Fifth Amendment of
13 the Constitution of the United States. The
14 Amendment states in part that no person shall be
15 compelled in any criminal case to be a witness
16 against himself. This means that you cannot be
17 required to testify in this case.

18 You have the right to testify on your
19 own behalf. No one can make you testify. This is
20 a personal right and no one can waive this right
21 except for you. If you decide to testify, you will
22 be subject to the same rules that govern other
23 witnesses and you may be examined and cross-examined
24 on any relevant issue in this case.

25 In addition, if you have any

KEVIN DRIGGERS - EXAM BY THE COURT

1 convictions involving dishonesty or false
2 statements or for crimes punishable by imprisonment
3 for more than one year, and I determine that the
4 probative value of the evidence outweighs its
5 prejudicial effect to you, the Solicitor will be
6 able to introduce your record to attack your
7 credibility.

8 THE COURT: Solicitor, are there
9 convictions that you intend to use?

10 MS. SIGAL: There is one prior
11 conviction from 2012, an assault and battery second
12 degree.

13 THE COURT: Okay. And do you agree
14 with that conviction, Mr. Church, whether or not --

15 MR. CHURCH: But not the nature of it.
16 I believe we had a pretrial motion on that, that it
17 would only come in as a three-year misdemeanor.

18 THE COURT: But you agree with that
19 conviction, that, that is a conviction and depending
20 upon your client's decision will decide how we'll
21 handle that, correct?

22 MR. CHURCH: Correct.

23 THE COURT: Thank you.

24 BY THE COURT:

25 Q. If you decide to testify, this decision

KEVIN DRIGGERS - EXAM BY THE COURT

1 on your part must be freely, voluntarily, and
2 intelligently made with the knowledge of the
3 protections given to you by the Fifth Amendment and
4 the consequences of your decision to testify.

5 If you decide not to testify, I will
6 instruct the jurors that they cannot give the fact
7 that you did not testify any consideration
8 whatsoever and there is to be absolutely no
9 prejudice to you because you did not testify.

10 It is left entirely up to you whether
11 or not you testify. You may talk with your
12 attorney either alone or together, your friends,
13 your family members or anyone else, but the final
14 decision is left entirely up to you.

15 Do you understand what I have explained
16 to you?

17 A. Yes.

18 Q. Do you have any questions about what I
19 have explained to you?

20 A. No.

21 Q. Have you discussed with your attorney,
22 either Mr. Church or Ms. Shivers, individually or
23 together, whether or not you should testify?

24 A. Yes, ma'am.

25 Q. And do you wish to talk to your

KEVIN DRIGGERS - EXAM BY THE COURT

1 attorney anymore at this time?

2 A. No, ma'am. No, ma'am.

3 Q. Do you know whether or not you will
4 testify?

5 MR. CHURCH: Your Honor, we will talk
6 about that at lunch.

7 THE DEFENDANT: We will talk about
8 that..

9 THE COURT: Again, he appeared that he
10 was ready to tell me whether or not he was going to
11 testify so I thought that would help for
12 scheduling. You have the right -- I'll give you
13 the lunch hour then --

14 MR. CHURCH: We need to see the other
15 two witnesses and how it goes from here before we
16 can --

17 THE COURT: You may have a seat,
18 Mr. Driggers.

19 Any other witnesses, other than
20 Mr. Driggers?

21 MR. CHURCH: We don't anticipate any.

22 THE COURT: So how long will the two
23 witnesses that you anticipate taking if we start at
24 1:45?

25 MS. SIGAL: Probably an hour total.

1 THE COURT: All right. We're at ease
2 be. Back at 1:30.

3 (A luncheon recess transpired, 12:16
4 p.m.)

5 THE COURT: Anything before we bring
6 in the jury? From the State?

7 MS. SIGAL: No, Your Honor.

8 THE COURT: Anything from the defense?

9 MR. CHURCH: No, Your Honor.

10 (Jury in, 1:43 p.m.)

11 THE COURT: Please be seated.

12 Ms. Teresa, I think we're having an
13 issue.

14 A JUROR: I forgot my pad.

15 THE COURT: Did you comply with my
16 instructions over the lunch hour? If you did not,
17 please stand.

18 Thank you. All 14 jurors have
19 indicated they complied with the Court's
20 instructions.

21 She's getting your notepad for you.

22 Call your next witness.

23 MS. SIGAL: State calls Richard
24 Brinson.

25 RICHARD BRINSON,

RICHARD BRINSON - DIRECT EXAM BY MS. SIGAL

1 being first duly sworn, testified as follows:

2 THE CLERK: Have a seat and state your
3 full name for the record and spell your last name.

4 THE WITNESS: Richard Brinson,
5 B-R-I-N-S-O-N.

6 MR. CHURCH: May we approach?

7 THE COURT: Hold on one second. He
8 asked to approach.

9 (Bench conference)

10 DIRECT EXAMINATION

11 BY MS. SIGAL:

12 Q. Mr. Brinson, what do you do for a
13 living?

14 A. Nurse practitioner in the emergency
15 room through Trident Health, Tidelands Georgetown,
16 and Tidelands Waccamaw.

17 Q. What does it mean to be a nurse
18 practitioner?

19 A. You assess and treat patients in the
20 emergency department, history and physical exams,
21 diagnostic testing, treatment as far as discharge
22 and prescribe medications.

23 Q. So you can go through the full process
24 of treatment, diagnosis, writing prescriptions in
25 the ER?

RICHARD BRINSON - DIRECT EXAM BY MS. SIGAL

1 A. Yes, we practice independently. We
2 have a collaborative physician if we need
3 assistance we contact a physician.

4 Q. What are your current job
5 responsibilities as a nurse practitioner at
6 Trident?

7 A. History and physical exams on patients,
8 perform diagnostics, treating patients in the
9 emergency -- or that need emergency care at the
10 medical facility Trident Emergency Room,
11 Georgetown, et cetera, discharging and treating and
12 prescribing medication.

13 Q. And you stated that sometimes you have
14 a doctor involved. Do you sometimes have a doctor
15 not involved in the treatment of patients?

16 A. Most of the time doctors aren't
17 involved. We call the doctors if we need. The
18 doctor is there if we need assistance with
19 anything. So we treat independently, but if we
20 need the assistance of them, they are on the scene.

21 Q. What was your occupation prior to
22 becoming a nurse practitioner?

23 A. I worked as a registered nurse for
24 Trident Health Systems Emergency Department,
25 Medical University Emergency Department, Roper

RICHARD BRINSON - DIRECT EXAM BY MS. SIGAL

1 Downtown Emergency Department since 2006.

2 Q. So have you been in the field of
3 medical care since 2006?

4 A. Yes.

5 Q. How long have you been in the field of
6 medical care in an emergency room?

7 A. The whole career.

8 Q. Since 2006?

9 A. Yes.

10 Q. What kind of education did you have to
11 go through to become a nurse practitioner?

12 A. I did an undergraduate degree and
13 received a Bachelor of Science Nursing Degree
14 through Charleston Southern University, and then
15 you do two-and-a-half -- three years, graduate
16 degree through the University of Cincinnati, then
17 you have some time that you have to spend as far as
18 clinical practicum where you spend with the doctor
19 one-on-one.

20 That was about 1,000 hours with
21 emergency urgent care and 300 hours with just the
22 one-on-one with the doctor in the emergency
23 department.

24 Q. And do you have to go through any type
25 of certification process?

RICHARD BRINSON - DIRECT EXAM BY MS. SIGAL

1 A. I'm certified through the State for
2 advanced practice nursing, certified through
3 American Academy of Nurse Practitioners, which is a
4 national test that you have to take.

5 Q. Okay. What kind of licenses do you
6 hold?

7 A. Advanced Practice Nurse in the State of
8 South Carolina, American Academy of Nurse
9 Practitioners, then I have a trauma nurse -- core
10 curriculum certification that I'm a nurse.

11 Q. Are you a member of any professional
12 associations and activities?

13 A. South Carolina Medical Association,
14 South Carolina Nurse's Association, American Nurse
15 Association.

16 Q. What kind of teaching experience do you
17 have in the field of nursing?

18 A. Through my years of nursing I was
19 precepted, which I did clinical work with the
20 students through MUSC nursing students, University
21 of South Carolina nursing students through their
22 clinical time, their hands-on -- things that they
23 did hands on.

24 Q. Is that in the emergency room?

25 A. In the emergency room.

RICHARD BRINSON - DIRECT EXAM BY MS. SIGAL

1 Q. What kind of keeping up with education
2 do you do to stay up to date in the field of
3 nursing?

4 A. I do at least one national conference a
5 year which is all across the country, sometimes I
6 do two. Through Trident Health Systems and
7 Georgetown, et cetera, through our employer, we
8 have modules that we do online as well. So usually
9 60 hours or so a year.

10 Q. About how many patients do you
11 typically see in the emergency room per shift.

12 A. 30 to 35.

13 Q. How many shifts would you say you work
14 per month?

15 A. My contract is ten shifts a month.

16 Q. So you roughly treat around 300 to 350
17 patients per month in the ER?

18 A. Yes.

19 MS. SIGAL: Your Honor, at this time,
20 the State would submit Richard Brinson as an expert
21 in the field of emergency medical care.

22 MR. CHURCH: Your Honor, I would oppose
23 that. Not anything against his qualifications --

24 THE COURT: Do you wish to voir dire?

25 MR. CHURCH: No; it's more a matter of

RICHARD BRINSON - VOIR DIRE EXAM BY MR. CHURCH

1 law. He's a fact witness to this case.

2 THE COURT: She's attempting to
3 qualify him as an expert in emergency room
4 medicine?

5 MS. SIGAL: Emergency medical care.

6 THE COURT: So, Mr. Church, you're
7 opposing his qualifications on what basis?

8 MR. CHURCH: Well, voir dire please?

9 THE COURT: You may have additional
10 voir dire. Thank you.

11 VOIR DIRE EXAMINATION

12 BY MR. CHURCH:

13 Q. Mr. Brinson, this has nothing to do
14 with your qualifications; this is more of a legal
15 matter. Have you ever been qualified as an expert
16 before?

17 A. No, sir.

18 Q. Do you hold yourself out to be an
19 expert?

20 A. Yes, sir.

21 Q. Okay. In what?

22 A. In nursing, emergency nursing care,
23 advanced practice nursing.

24 Q. Okay. Just on --

25 THE COURT: In advanced what type of

RICHARD BRINSON - VOIR DIRE EXAM BY MR. CHURCH

1 nursing?

2 THE WITNESS: Advanced practice. It's
3 an APRN, Advanced Practice Registered Nurse. It
4 gives you the qualifications to treat and diagnose.

5 BY MR. CHURCH:

6 Q. So this would be about what treatment
7 you gave and the diagnosis?

8 A. Yes.

9 MR. CHURCH: Okay. Okay. We'll
10 stipulate.

11 THE COURT: So no objection to him
12 being qualified as an expert in emergency medical
13 care?

14 MR. CHURCH: The treatment and -- yes,
15 limited to what he just spoke.

16 THE COURT: Limited to?

17 MR. CHURCH: What he -- Your Honor,
18 this is a legal matter. We're going to oppose him
19 being qualified as an expert.

20 THE COURT: Say that one more time.

21 MR. CHURCH: As a legal matter, we're
22 going to oppose him being qualified as an expert in
23 this case.

24 THE COURT: In any area?

25 MR. CHURCH: Yes. We have no problem

RICHARD BRINSON - VOIR DIRE EXAM BY MR. CHURCH

1 with him being a fact witness as to what he did.

2 THE COURT: So, Mr. Church, you're
3 opposing his qualifications; you do not feel that
4 he's an expert in the field of emergency medical
5 care even if we limited it to treatment and care.

6 MR. CHURCH: One moment, Your
7 Honor.

8 (Off-the-record conference.)

9 MR. CHURCH: As long as it's limited to
10 treatment and care.

11 THE COURT: Any objection to limiting
12 it to treatment and care?

13 MS. SIGAL: Your Honor, no objection,
14 as long as this witness can render an opinion as to
15 the victim's injuries in the case.

16 THE COURT: Again, Counsel, I'm only
17 making -- I'm only asking him to be qualified as an
18 expert. I can only follow the law and that's the
19 only determination. Now, whether or not at a later
20 time, if he is qualified and he gives the reasons
21 for the opinion, then I will allow that testimony
22 if that is appropriate testimony.

23 All I'm doing is making a determination
24 whether Mr. Brinson has the requisite knowledge,
25 skill, and education under which to be qualified as

RICHARD BRINSON

1 an expert.

2 MS. SIGAL: I understand, Your Honor.
3 We have no objection as we've -- submit him as an
4 expert in this field.

5 THE COURT: And you have no objection
6 to limiting it as Mr. Church previously asked?

7 MS. SIGAL: That's correct.

8 THE COURT: Mr. Church?

9 MR. CHURCH: That's correct.

10 THE COURT: Ladies and gentlemen, the
11 issue that has been going on is, normally when a
12 person testifies they cannot give opinion
13 testimony. They must testify as really as to what
14 we call a fact witness. And it's just something
15 they saw or heard or sensed by my smell or
16 something of that nature.

17 There is an exception in our law if
18 someone is qualified because of their education or
19 experience, then they can give their opinions in
20 certain areas if they're qualified to give their
21 opinion in certain areas. This witness at this
22 time will be qualified as an expert in the area of
23 emergency medical care limited to treatment and
24 care in that area to give opinion testimony in that
25 area.

RICHARD BRINSON - DIRECT EXAM BY MS. SIGAL

1 That does not mean that you must accept
2 his opinion. It will simply be evidence for you to
3 use in any way that you see fit, and you may give
4 it the weight and credibility that you believe is
5 appropriate.

6 Ms. Sigal.

7 MS. SIGAL: Thank you, Your Honor.

8 BY MS. SIGAL:

9 Q. Mr. Brinson, what information or
10 documents in regard to this case did you review
11 prior to today?

12 A. Photos and my medical records.

13 Q. And did you compile a medical report in
14 reference to this case after treating the victim?

15 A. I did.

16 Q. And speaking of that, can you please
17 tell us about the treatment of the victim in this
18 case?

19 A. The patient had CT scans of the head
20 and neck --

21 Q. I'm sorry, I asked you a bad question.
22 Just starting from when she was admitted, can you
23 tell us a little bit about the first thing you did?

24 A. Okay. Patient presented by EMS with
25 obvious head injury, bleeding on -- her hair was

RICHARD BRINSON - DIRECT EXAM BY MS. SIGAL

1 kind of full of blood on initial assessment. She
2 came in via EMS stretcher. First thing that you do
3 on a head victim is you -- there's a Glasgow Coma
4 Scale, which is a scale that you can quickly
5 neurologically assess a patient, which she was
6 fine, how well they're talking to you. Their
7 eye-opening ability is their motor response, which
8 was fine.

9 And then I assessed her head wound to
10 see the extent of the bleeding from the head wound
11 and how extensive it was. She had neck pain as
12 well, so a quick cervical exam to make sure there
13 was no obvious spinal cord injuries at that time.
14 That's kind of where we start with.

15 Q. And do you remember her demeanor when
16 she was admitted to the ER?

17 A. Quite anxious and she appeared to be in
18 pain.

19 Q. And do you remember -- I know you just
20 briefly went through it, but each of the injuries
21 that she complained of when she came into the ER?

22 A. Yeah, head injury from trauma from
23 being hit in the head. This is per the EMS report
24 and from what they told me and from what the
25 patient told me. I think she had some contusions

RICHARD BRINSON - DIRECT EXAM BY MS. SIGAL

1 or bruising to the right hand. She had told me she
2 was stepped on or stomped on.

3 Abrasions, there were some kind of
4 scratches to the neck, some pain to the posterior
5 through the back of the neck, pain in the back, as
6 well as some abrasions there also, and
7 subconjunctival hemorrhage which is the bleeding
8 that you can see on the eye itself, the white part
9 of the eye, on the right side I believe.

10 Q. Was she wearing anything to help with
11 her neck pain when she arrived?

12 A. A cervical collar that the EMS puts on.
13 Anytime you have a head injury, you have risk of a
14 neck injury as well, so you have to take
15 precautions -- C-spine precautions to keep the neck
16 from moving.

17 Q. Did she have that collar on when she
18 arrived?

19 A. Yes.

20 Q. And you mentioned the Glasgow Scale and
21 you said that's the first thing you do. What is
22 the next thing you did with this victim to treat
23 her?

24 A. Stopped the bleeding on her head. Her
25 head was still bleeding kind of moderately and so

RICHARD BRINSON - DIRECT EXAM BY MS. SIGAL

1 we put pressure on it. As far as the emergency
2 medical personnel, they probably put gauze there,
3 but just kind of have to pinpoint where the
4 bleeding is coming from and kind of keep the
5 bleeding controlled, and we considered a CAT scan
6 to rule out any traumatic brain injuries pretty
7 much or spinal injuries.

8 Q. Did you examine this specific injury on
9 the back of her head?

10 A. Yes. She had a nonlinear, which is --
11 when I say nonlinear, it wasn't really a straight
12 wound. It was more of like a burst type wound, I
13 guess, for lack of better terms, an enlarged
14 hematoma, which is like a swelling on the scalp
15 itself. The scalp is really kind of thin and so it
16 swells a lot if you take a hit to it.

17 Normally, with head injuries you have a
18 -- it's more of a straight line. This was kind of
19 irregular. So we sent her to get a picture of the
20 head.

21 Q. You mentioned a nonlinear wound and you
22 said usually it's a straight line. What do you
23 mean, usually it's a straight line?

24 A. The scalp is -- you have -- that's
25 pretty much where you have the strongest skin on

RICHARD BRINSON - DIRECT EXAM BY MS. SIGAL

1 your body is your scalp, so there's not a whole lot
2 of give there. Usually, when people fall or you're
3 hit once or so, you usually have a straight wound
4 because that skin is kind of pulled and so it's
5 kind of ripped straightly.

6 Being irregular the way it was, just
7 from years of head injuries that I have seen and
8 dealt with, it could be from repeated hits or
9 repeated blows or a blunt hit object usually can
10 cause that kind of irregular shaped wound.

11 Q. What is the area that -- you mentioned
12 kind of layers of the skin and skull. Can you go
13 through what layers we have on the back of our head
14 starting from the outer skin?

15 A. There's, technically, I guess five
16 layers, but it's very thin. Altogether it's less
17 than a half inch thick. You have the scalp, which
18 is your skin. You have some connective tissues,
19 some fibrous tissue, which is aponeurosis which is
20 a really taut fibrous area on your scalp, and some
21 more tissues and blood -- you have blood vessels
22 and nerves, things like that, and then your skull.

23 Q. And what is inside the skull?

24 A. The brain. Not much else.

25 Q. You mentioned earlier that after you

RICHARD BRINSON - DIRECT EXAM BY MS. SIGAL

1 kind of examined her wound you then sent her for a
2 CT scan?

3 A. Yes.

4 Q. Why is a CT scan necessary?

5 A. Anytime you have a head injury, you
6 have to worry about traumatic -- like I said,
7 traumatic brain injuries, which is bleeding on the
8 brain. You have to worry about contusions of the
9 brain, bruising of the brain itself, concussion,
10 cervical spine injuries.

11 So you technically -- like I said
12 earlier, anytime you have a head injury you have a
13 neck injury until proven otherwise. So the CT scan
14 is to determine that there are no bleeds or
15 anything like that.

16 She also complained of some back pain,
17 which it was kind of diffuse back pain, so we did a
18 scan of her back as well.

19 Q. When you say diffuse back pain, what
20 does that mean?

21 A. Really can't pinpoint the areas where
22 the pain was, so I can't just touch this spot.
23 It's kind of diffuse, kind of all over. So best
24 case scenario, medical decision-wise, is to see her
25 CAT scan there as well.

RICHARD BRINSON - DIRECT EXAM BY MS. SIGAL

1 Q. Okay. The medical report said the
2 victim received sutures to the injury to the back
3 of her head. What does that mean?

4 A. Sutures are stitches pretty much where
5 you -- you normally -- I mean, it's provider
6 preference as to whether we use staples or sutures.
7 I used sutures because of the irregularity of the
8 wound and the swelling. The staples really hold,
9 but your scalp in that area is really taut and
10 tight. The staples actually work really well,
11 called hemostasis, can cause bleeding quickly and
12 it's a lot easier to use and they hold well on the
13 scalp, but it has to be a linear or straight wound.

14 Q. How many sutures were necessary to
15 clean up her wound?

16 A. We put eight in I believe.

17 Q. And what is the reason that you had to
18 close it up to begin with? Why would we do that?

19 A. Hemostasis, cause the bleeding to stop,
20 risk of infection, you have to approximate the
21 wound for wound healing.

22 Q. So was this a wound that was not going
23 to close up on its own?

24 A. No.

25 Q. All right. Mr. Brinson, I will show

RICHARD BRINSON - DIRECT EXAM BY MS. SIGAL

1 you on the overhead behind you State's Exhibit 23.

2 If you can take a look at that. Do you remember

3 what this is a photo of?

4 A. Yes, ma'am. This is the posterior
5 aspect of the patient's head. So the head is very
6 vascular, it's one of the most vascular areas of
7 the body, and any time you have a wound on the head
8 you get lots of bleeding.

9 Q. Thank you. We're going to look at a
10 couple more. We're looking at State's 22 now. Is
11 this after the wound was cleaned?

12 A. Yes, ma'am, it was after some cleaning.
13 I think it took a good bit of cleaning because the
14 hair pretty much serves as a clot, if you will.
15 When all the blood gets there, the hair just kind
16 of patches over it.

17 Q. Was this prior to the stitches or
18 post-stitches?

19 A. I believe this was prior to.

20 Q. Okay. And is that another photo of the
21 injury that you treated on November 4th?

22 A. Yes, ma'am.

23 Q. Okay. And is this before the stitches
24 or after?

25 A. It looks like before. It's just really

RICHARD BRINSON - DIRECT EXAM BY MS. SIGAL

1 -- it looks like before.

2 Q. And after you would have done the
3 stitches, would you have wrapped her head in some
4 kind of protective material?

5 A. Yes.

6 Q. You can turn back around, Mr. Brinson.
7 We touched on this before, but what kind of muscles
8 and tissue are surrounding the wound in that
9 specific part of the head?

10 A. Just connective tissue, lots of vessels
11 like veins and arteries, nerves. That's pretty
12 much all that's there.

13 Q. Do you know how -- as far as
14 measurements go, how far between the skin on the
15 back of the head to the skull, how much that is?

16 A. It's less than a half inch.

17 Q. Okay. With this wound that you treated
18 with this victim, what was your immediate concern
19 when you saw the injury?

20 A. Brain injury, bleeding on the brain,
21 that you have to kind of treat really quickly.
22 Your brain just -- there's nothing in the skull
23 except the brain. Its got a little bit of room to
24 move and if you get a contusion, which is a bruise
25 on the brain, from an injury such as this traumatic

RICHARD BRINSON - DIRECT EXAM BY MS. SIGAL

1 brain injury, it doesn't take a lot of swelling --

2 MR. CHURCH: Your Honor, I'm going to
3 object. We've gone past treatment.

4 THE COURT: Overruled.

5 BY MS. SIGAL:

6 Q. You can continue.

7 A. So if you get any kind of bruise on the
8 brain, you're at risk of the vessels bleeding. As
9 the vessels start bleeding, the brain starts
10 swelling and it doesn't have anywhere to go. So it
11 can be detrimental to the patient.

12 Q. And so is that one of the reasons you
13 sent her to have the CT scan?

14 A. Yes.

15 Q. I'm going to move on to the injury to
16 her eye. Do you remember treating her in any way
17 for the injury to her eye?

18 A. A subconjunctival hemorrhage, there's
19 really no treatment for it. It's just something
20 that has to kind of regress itself; it can take
21 weeks to go. Everybody has probably seen someone
22 with one of these. It's the sclera, the part of
23 the eye that you see. You can have -- you have a
24 lot of vessels, but it's one of the smallest
25 vessels in the body, capillaries.

RICHARD BRINSON - DIRECT EXAM BY MS. SIGAL

1 And you can rupture those, and they can
2 be -- somebody can cough or somebody can strain, it
3 can be trauma, it can be a poke in the eye,
4 strangulation. Different things like that can
5 cause that and those vessels just burst and bleed,
6 and there's nothing that you can do until it kind
7 of subsides.

8 Q. Mr. Brinson, we're going to look at two
9 more photos in regard to the eye. If you can turn
10 around and look at the overhead for us. Obviously,
11 this is the victim. Is this the way her eye looked
12 when you treated her on that day?

13 A. Yes.

14 Q. Which eye had the -- you said -- I can
15 never say this correctly, subconjunctival injury?

16 A. The left.

17 Q. The left eye. And I guess as we're
18 looking at her it's mirrored, so is it the eye that
19 appears on the right picture?

20 A. Yeah, on the right.

21 Q. The one with the red mark?

22 A. The one with the red mark, yes.

23 Q. Okay. And that's what you mean when
24 you talk about this type of hemorrhage and breaking
25 of capillaries and blood vessels?

RICHARD BRINSON - DIRECT EXAM BY MS. SIGAL

1 A. Yes.

2 Q. And this is sort of a different angle
3 to the eye. Is this the same injury that you were
4 talking about?

5 A. Yes.

6 Q. And the gauze around her head, was that
7 something that you did?

8 A. Yes. This is after we repaired the
9 wound.

10 Q. Okay. Thank you.

11 Earlier you were talking about some
12 diffuse pain that she had in her back. Did you
13 determine from any kind of scans any kind of injury
14 to her back?

15 A. She had some lumbar transverse process
16 fractures, which is parts of the vertebrae. If you
17 look at a vertebrate, there are some bones that
18 kind of stick off. And they called acute I think
19 it was L2, which is the lumbar, which is the lower
20 back, lumbar 2 and 3. I think it was the left
21 side, if I'm not mistaken.

22 Usually, transverse process fractures
23 there is not very common. It can be from severe
24 twisting injuries or trauma is what causes those.

25 Q. Was the victim given any kind of

RICHARD BRINSON - CROSS EXAM BY MR. CHURCH

1 anesthesia?

2 A. We used lidocaine with epi on the head.
3 Lidocaine numbs the area and you can suture the
4 wound and the patient doesn't feel the pain. And
5 then we add epinephrine which causes hemostasis,
6 again, to close the vessels off to clot the
7 bleeding.

8 Q. So it numbs the area when you do the
9 stitches?

10 A. Yes.

11 Q. If you did not do the numbing, would it
12 have been painful?

13 A. Yes.

14 Q. Could this injury to the victim's head
15 have been life threatening?

16 A. Yes.

17 MR. CHURCH: Your Honor, I object.
18 This is beyond the treatment again.

19 THE COURT: Overruled.

20 MS. SIGAL: Thank you, Mr. Brinson. I
21 don't have any further questions for you right now.
22 Please answer any that defense counsel may have.

23 CROSS-EXAMINATION

24 BY MR. CHURCH:

25 Q. Good afternoon, Mr. Brinson.

RICHARD BRINSON - CROSS EXAM BY MR. CHURCH

1 A. Hello.

2 Q. Head injuries, even minor ones, bleed a
3 lot, right?

4 A. Yes.

5 Q. And this wound you said required eight
6 stitches?

7 A. Yes, sir.

8 Q. One layer?

9 A. Yes, sir.

10 Q. Simple procedure?

11 A. Yes.

12 Q. Do you remember how large the wound
13 was?

14 A. I think it was about three centimeters.
15 We say a centimeter is about a half inch, inch and
16 a half.

17 Q. Okay. Just a little over an inch
18 maybe?

19 A. Yes, sir.

20 Q. Simple technique. No complications to
21 that?

22 A. No, sir.

23 Q. She suffered no cranial or skull
24 injuries from this wound, did she?

25 A. No, sir.

RICHARD BRINSON - CROSS EXAM BY MR. CHURCH

1 Q. And she reported being stomped on the
2 right hand?

3 A. Yes, sir.

4 Q. And I'm not sure what some of these
5 terms mean, but the neck C-spine equals negative?
6 (Reading from report)

7 A. Yes. It's a certain level of
8 tenderness reported in the neck. That's why we
9 removed the c-collar.

10 Q. So the c-collar was removed?

11 A. Yes.

12 Q. And overall the neck was okay?

13 A. Yes, sir.

14 Q. I believe you previously stated this:
15 The fractures were at L2 and L3. That's the lower
16 part of the back, sir?

17 A. Yes.

18 Q. Transverse process fractures, I think
19 you testified to it, but those are the little like
20 flat parts that come off of the vertebrae?

21 A. When you look at it, yes, sir.

22 Q. So it's not the part of the vertebrae
23 that encloses the spine?

24 A. These are the tips. The vertebrae sits
25 here and these are little horns that come out.

RICHARD BRINSON - CROSS EXAM BY MR. CHURCH

1 (Indicating)

2 Q. And these were nondisplaced fractures?

3 A. I don't believe they were displaced. I
4 would have to look at the CT scan; I don't
5 remember.

6 Q. I believe --

7 A. It's in there, so I'm not -- I don't
8 know. It's right on the report. I, actually, have
9 it with me. I can look at it. I can't remember if
10 it was displaced fractures or not.

11 Q. I guess, basically, what I'm getting
12 at, there's no real treatment for it?

13 A. There's no treatment for it, no, sir.
14 I spoke to the neurosurgeon on call, we always run
15 it by them, and it's pretty much pain control.

16 Q. Right. And so you all didn't refer her
17 to any more extensive neurological --

18 A. I did refer her to neurosurgery, yes,
19 sir, but, I mean --

20 Q. Not in the part of the emergency --

21 A. Not in the emergency, no, sir. We just
22 did a consult -- a phone consult.

23 Q. Right. And -- and she required then no
24 further care?

25 A. Yes, sir. At that time, no, sir.

RICHARD BRINSON - CROSS EXAM BY MR. CHURCH

1 Q. And I think you testified to this, but
2 a lot of times these fractures are from bending
3 side to side or twisting?

4 A. Normally, it's very -- you know, this
5 is not a very common fracture. So it can be that's
6 the normal, that they're either twisting or trauma.

7 Q. Okay. They might go unreported
8 sometimes?

9 A. They could, but I think they actually
10 read that one was subacute, or chronic, which means
11 that it was old, and these were reported acute.

12 Q. Right. One of the ones that had the
13 acute also had the old fracture, was the same one,
14 right?

15 A. Yes, sir. It was on the opposite side.

16 Q. So she had done something in the past
17 to fracture that?

18 A. Yes. There was a possible old fracture
19 and a new fracture, yes, sir.

20 Q. And you don't know anything about what
21 kind of assault she suffered?

22 A. Just what I'm told by EMS and the
23 patient.

24 Q. So you have no personal knowledge, you
25 didn't witness any of it?

RICHARD BRINSON - CROSS EXAM BY MR. CHURCH

1 A. No.

2 Q. And I can't remember, I think it was in
3 military time, she was in the emergency room a
4 total of less than four hours?

5 A. I think it was about three hours.

6 Q. Three hours and maybe some change. So
7 in the grand scheme of things she really wasn't
8 hurt that bad. She was injured with injuries, but
9 didn't require --

10 A. She didn't require admission to the
11 hospital, no.

12 Q. Right. She didn't require you all to
13 do any emergency procedures or --

14 A. Stopping the bleeding is pretty
15 emergent, yes, sir.

16 Q. Right. But, I mean, you can do that
17 with pressing gauze against her, right?

18 A. No. That's actually the sutures that
19 do that. It's still a bleed throughout.

20 Q. So you put the sutures in and that took
21 care of it?

22 A. Uh-huh.

23 THE COURT: Was that a yes?

24 THE WITNESS: Yes.

25 BY MR. CHURCH:

RICHARD BRINSON - CROSS EXAM BY MR. CHURCH

1 Q. There's some patient history
2 information on some of the --

3 MR. CHURCH: Court's indulgence?

4 THE COURT: Take your time.

5 BY MR. CHURCH:

6 Q. And she complained of being stomped on
7 on the hand?

8 A. Yes.

9 Q. Was there any real injuries that
10 made --

11 A. Contusions to the fourth and fifth
12 finger.

13 Q. Bruises. Okay. But no serious -- no
14 broken bones or --

15 A. No.

16 Q. So would it be fair to say that her
17 injuries were minor to moderate, somewhere in that
18 range?

19 A. Yes, sir. We sent her home so, yes.

20 Q. Right. And who did the patient intake,
21 history and stuff on her?

22 A. As far as my medical report, I did.
23 The nurses do their own report and I do my separate
24 report.

25 Q. Okay. On page 4 of 11 under, Other

RICHARD BRINSON - CROSS EXAM BY MR. CHURCH

1 Social History, you put, lives with family?

2 A. Okay.

3 Q. Would that be somebody told you that --

4 A. Yes, sir.

5 Q. -- for you to put it there?

6 A. Yes, sir. Some things transfer over
7 from nursing notes, some things transfer from ours.
8 History and physical is pretty much the provider
9 part and then some of the history and physical --
10 or the history medical-wise, medicines and things
11 like that, can transfer over.

12 MR. CHURCH: Okay. No further
13 questions, Your Honor.

14 MS. SIGAL: No further questions of
15 this witness.

16 THE COURT: You may step down. You're
17 free to go.

18 Call your next witness.

19 MS. SIGAL: The State calls **Noah M.**

20 **Noah M.**

21 being first duly sworn, testified as follows:

22 THE CLERK: Have a seat, state your
23 full name for the record, and spell your last.

24 THE WITNESS: My name is **Noah M.**

25 My last name is spelled M-[REDACTED].

Noah M. - DIRECT EXAM BY MS. SIGAL

1 DIRECT EXAMINATION

2 BY MS. SIGAL:

3 Q. Afternoon, Noah.

4 A. Hey.

5 Q. Noah, how old are you?

6 A. I'm 15, about to turn 16 next week.

7 Q. Your birthday is next week?

8 A. Yes, ma'am.

9 Q. What school do you go?

10 A. I go to Bishop Catholic School.

11 Q. What grade are you in?

12 A. I'm in ninth.

13 Q. Ninth grade?

14 A. Yes, ma'am.

15 Q. Where do you live right now?

16 A. I live in Goose Creek, [REDACTED] Plainfield
17 Avenue.

18 Q. Who are you living with?

19 A. My dad, his girlfriend and her
20 daughter.

21 Q. Let's talk about your family. Do you
22 have any siblings?

23 A. I got -- I have two brothers and two
24 sisters.

25 Q. Okay. And do you have any other family

Noah M. - DIRECT EXAM BY MS. SIGAL

1 that lives in Berkeley County?

2 A. Yes, ma'am. I got -- well, all of my
3 family lives in Berkeley County.

4 Q. Okay. All of your family. And how
5 long have you lived in Berkeley County?

6 A. All of my life.

7 Q. And do you know the victim in this
8 case?

9 A. Yes.

10 Q. And how do you know the victim?

11 A. It's my mom.

12 Q. It's your mom. Do you know the
13 defendant in this case?

14 A. Yes, ma'am.

15 Q. And have you met the defendant before?

16 A. Yes, ma'am.

17 Q. And how did you first meet the
18 defendant?

19 A. Well, my mom told me she had a
20 boyfriend and I asked to meet him. And then one
21 day I just met him.

22 Q. Okay. So you knew him as your mom's
23 boyfriend?

24 A. Yes.

25 Q. Did you ever live with the defendant?

Noah M. - DIRECT EXAM BY MS. SIGAL

1 A. For like a month or two.

2 Q. And let's sort of shift your attention
3 a little bit. Where were you living in November of
4 2015?

5 A. I was living at Sarah's house in St.
6 Stephen.

7 Q. Do you remember what road that was off
8 of?

9 A. No, ma'am.

10 Q. But it was Sarah's house. Was Sarah
11 your mom's friend?

12 A. Yes, ma'am.

13 Q. Do you remember Sarah's last name?

14 A. Hailey.

15 Q. Okay. And who all lived at that house
16 with you?

17 A. Me, my mom, Sarah, and her two kids.

18 Q. How old were Sarah's kids?

19 A. I think one was 11 and the other one
20 was four or five.

21 Q. When did you move into that house; do
22 you remember?

23 A. No, ma'am.

24 Q. Had you -- were you sleeping at that
25 house?

Noah M. - DIRECT EXAM BY MS. SIGAL

1 A. Yes, ma'am.

2 Q. Was your mom sleeping at that house?

3 A. Yes, ma'am.

4 Q. Was that the place that you called home
5 for that period of time?

6 A. Yes, ma'am.

7 Q. Did you have your belongings there?

8 A. Yes, ma'am, some of it.

9 Q. Okay. Did you still visit your dad
10 some?

11 A. Yes, ma'am.

12 Q. Was Kevin Driggers living there?

13 A. No, ma'am.

14 Q. Was he allowed to live there?

15 A. No, ma'am.

16 Q. Do you remember the morning of
17 November 4, 2015?

18 A. Yes, ma'am.

19 Q. Before the incident happened, what were
20 you doing that morning?

21 A. I was watching TV with my mom, and then
22 Wesley woke up and that's whenever he went outside.

23 Q. Wesley went outside?

24 A. Yes, ma'am, because he was looking for
25 his mom and she just left. And then my mom went to

Noah M. - DIRECT EXAM BY MS. SIGAL

1 go tell Wesley to come inside, and that's whenever
2 I heard her say, Wesley, get inside. And I saw
3 Wesley run inside and he came to me and grabbed me
4 on my leg.

5 Q. What did your mom do?

6 A. My mom told me to get Wesley and get
7 out of the house. And I didn't know what was going
8 on, so I went out the front door, which was facing
9 toward Ms. Cheryl's house. And then I started
10 running and then right --

11 Q. I'm going to stop you real quick. So
12 you were in the house and you heard your mom say,
13 Wesley get in the house?

14 A. Yes, ma'am.

15 Q. Did you see why your mom wanted
16 everybody to get in the house?

17 A. No, ma'am.

18 Q. Did you hear any noises at that point?

19 A. I heard footsteps on the porch.

20 Q. Could you see who was on the porch?

21 A. No, ma'am. All I heard was my mom say,
22 Kevin, you're not allowed to be here.

23 Q. You're not allowed to be here?

24 A. Yes, ma'am.

25 Q. Is that what you said?

Noah M. - DIRECT EXAM BY MS. SIGAL

1 A. Yes, ma'am.

2 Q. And did you know who it was on the
3 porch?

4 A. Yes, ma'am.

5 Q. Who did you think it was?

6 A. I knew it was Kevin.

7 Q. But did you -- you didn't see him at
8 that point?

9 A. No, ma'am.

10 Q. And where was your mom standing in
11 relation to the door?

12 A. My mom was standing between the washing
13 machine and the door.

14 Q. What did you do next?

15 A. I grabbed --

16 Q. I'm sorry, what did you do after you
17 realized that someone was at the door?

18 A. Oh, whenever I found out it was Kevin
19 and I saw my mom get scared, I started getting
20 scared. So I got Wesley and she told us to get out
21 of the house.

22 Q. She told you-all to get out of the
23 house?

24 A. Yes, ma'am.

25 Q. So which door did you use to get out of

Noah M. - DIRECT EXAM BY MS. SIGAL

1 the house?

2 A. We called it the front door. It's the
3 front door, but we used the back door. We left out
4 of the front door.

5 Q. You left out on foot?

6 A. Yes, ma'am.

7 Q. And was Wesley with you?

8 A. Yes, ma'am.

9 Q. How old is he again?

10 A. He was four then.

11 Q. So he was four, and how old were you at
12 the time?

13 A. I was 14.

14 Q. And you ran out of the house and what
15 were you going to do?

16 A. I was trying to find somewhere safe for
17 Wesley and me, and I was trying to find someone to
18 call 911 because I didn't have a phone.

19 Q. Why did you want somebody to call 911?

20 A. Because I thought my mom was about to
21 get hurt.

22 Q. What made you think that?

23 A. Kevin abused my mom before.

24 MS. SHIVERS: Objection, Your Honor.

25 THE COURT: Hold on one second.

Noah M. - DIRECT EXAM BY MS. SIGAL

1 Counsel, approach.

2 (Bench conference)

3 THE COURT: Ladies and gentlemen,
4 please strike that last statement from your notes.
5 I have determined it was nonresponsive to the
6 Solicitor's question and cannot be considered by you
7 in any way.

8 Madame Foreperson, if that issue is
9 spoken of in the jury room, you must indicate to
10 the other jurors that that cannot be considered at
11 all.

12 You need to listen to the Solicitor's
13 question and answer only what she asks you. Okay?

14 THE WITNESS: Yes, ma'am.

15 THE COURT: Thank you.

16 BY MS. SIGAL:

17 Q. Noah, tell us what happened when you
18 ran out of the door with Wesley.

19 A. I was -- well, we were running towards
20 Don's house and --

21 Q. Is Don a neighbor?

22 A. Yes, ma'am.

23 Q. Okay.

24 A. And while we were running, I turned
25 around and that's whenever my mom got out of the house

Noah M. - DIRECT EXAM BY MS. SIGAL

1 and I saw her stumbling down the stairs.

2 Q. And so just let me stop you. While you
3 were running, you stopped and turned around; is
4 that what you're saying?

5 A. While I was running, I was looking
6 back.

7 Q. And you saw your mom leave the house?

8 A. Yes, ma'am.

9 Q. And was she by herself?

10 A. No. About two seconds later, that's
11 when I saw Kevin come out the door. So I started
12 running more, and I was facing -- that's when I
13 turned around and started facing towards Don's
14 house. And then once we got to the treeline, I
15 turned around again and that's whenever I saw my
16 mom fall.

17 Q. And why did she fall?

18 A. Because Kevin had an ax handle, and I
19 guess he struck her in the back of the head.

20 Q. Did you see him do that?

21 A. Yes, ma'am.

22 Q. And what happened when she was struck?

23 A. That's when she fell on the ground and
24 started rolling. So that's whenever me and Wesley
25 -- that's why I didn't look back anymore, so I kept

Noah M. - DIRECT EXAM BY MS. SIGAL

1 running.

2 Q. Was that difficult to see?

3 A. Yes, ma'am.

4 Q. Did you hear the defendant make any
5 statements when he made that action?

6 A. Yes, ma'am. Whenever he raised the
7 thing back, he said, I'm going to kill you. And
8 that's when we kept running.

9 Q. And where did you end up running to?

10 A. Miss Cheryl's house.

11 Q. Had you ever met Miss Cheryl before?

12 A. No, ma'am.

13 Q. Was she home?

14 A. Yes, ma'am.

15 Q. And did you talk to her?

16 A. I talked to her and her husband, and
17 that's whenever she called 911.

18 Q. Once you got to Cheryl's house, did you
19 witness any more of the assault?

20 A. No, ma'am. She wouldn't let me go back
21 over there.

22 Q. Were you trying to go back over there?

23 A. Yes, ma'am.

24 Q. Why were you trying to go back over
25 there?

Noah M. - DIRECT EXAM BY MS. SIGAL

1 A. Because I was scared for my mom.

2 Q. What were you scared was going to
3 happen?

4 A. I thought she was going to die.

5 Q. When you turned around and saw the
6 defendant strike your mom, what was his demeanor
7 like?

8 A. He looked like he was on a mission to
9 do so something.

10 Q. Is the man who struck your mom in the
11 head with the ax handle and threatened to kill her,
12 is he in the courtroom today, Noah?

13 A. Yes, ma'am.

14 Q. Can you point out where he's sitting
15 please?

16 A. Right over there. (Indicating)

17 MS. SIGAL: Beg the Court's indulgence.

18 BY MS. SIGAL:

19 Q. Noah, from the time that you moved into
20 the house at Sarah's with your mom, was Kevin
21 Driggers ever at that house?

22 A. No, ma'am.

23 Q. Did he ever spend the night?

24 A. No, ma'am.

25 Q. Did he ever come over?

Noah M. - CROSS EXAM BY MS. SHIVERS

1 A. No, ma'am.

2 Q. Did he have permission to be in the
3 house that day?

4 A. No, ma'am.

5 MS. SIGAL: Thank you, Noah. I have no
6 further questions for you right now. Answer any
7 questions that the defense attorney may have for
8 you.

9 THE WITNESS: Yes./

10 CROSS-EXAMINATION

11 BY MS. SHIVERS:

12 Q. Afternoon, Noah. How are you?

13 A. I'm good. You?

14 Q. This incident was really scarey, wasn't
15 it?

16 A. Yes, ma'am.

17 Q. Seeing Kevin beat up your mom?

18 A. Yes, ma'am.

19 Q. You love your mom?

20 A. Yes, ma'am.

21 Q. You never want to see anything bad
22 happen to her?

23 A. No, ma'am.

24 Q. You would do anything to protect her?

25 A. Yes, ma'am.

Noah M. - CROSS EXAM BY MS. SHIVERS

1 Q. Which is why you ran to Miss Cheryl's
2 house?

3 A. Yes, ma'am.

4 Q. And had her call 911?

5 A. Yes, ma'am.

6 Q. And you were scared when you ran there?

7 A. Yes, ma'am.

8 Q. Because you left your mom behind?

9 A. Yes, ma'am.

10 Q. With Kevin?

11 A. Yes, ma'am, I had to.

12 Q. And you weren't sure what was
13 happening?

14 A. Not until -- not until I turned around
15 when we were running.

16 Q. And you gave Miss Cheryl all the
17 information that you had when you got to her house?

18 A. Yes, ma'am.

19 Q. So she could tell 911?

20 A. Yes, ma'am.

21 Q. And so someone could get there to help
22 your mom?

23 A. Yes, ma'am.

24 Q. And you told her everything that you
25 saw?

Noah M. - CROSS EXAM BY MS. SHIVERS

1 A. Yes, ma'am.

2 Q. And she relayed that information to

3 911?

4 A. Yes, ma'am.

5 Q. And when police got there, you were
6 able to go back and be with your mom?

7 A. Yes, ma'am.

8 Q. And you were relieved she only had to
9 get some stitches on the back of her head?

10 A. Yes, ma'am.

11 Q. Because you didn't know what to expect?

12 A. Yes, ma'am.

13 Q. But you were happy she was okay?

14 A. Yes, ma'am.

15 Q. And this happened over a year ago?

16 A. Yes, ma'am.

17 Q. And you have talked with us -- talked
18 about this several times with your mom?

19 A. Yes, ma'am.

20 Q. And with the Solicitor's office?

21 A. Yes, ma'am.

22 Q. And you will be glad when this is over
23 today?

24 A. Yes, ma'am.

25 MS. SHIVERS: If I may just have one

Noah M. - REDIRECT EXAM BY MS. SIGAL

1 moment?

2 THE COURT: Take your time.

3 MS. SHIVERS: I have no further
4 questions, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. SIGAL:

7 Q. Noah, when you were at Miss Cheryl's
8 house telling her what happened, did you tell her
9 that the defendant had a weapon?

10 A. Yes, ma'am, I did.

11 Q. And did he have a weapon?

12 A. Yes, ma'am.

13 Q. Did you think that Kevin Driggers was
14 going to kill your mom on that day?

15 A. Yes, ma'am.

16 MS. SIGAL: Thank you. I have no
17 further questions.

18 THE COURT: Ms. Shivers.

19 RECROSS-EXAMINATION

20 BY MS. SHIVERS:

21 Q. Noah, you just testified to the
22 prosecutor that you told Miss Cheryl that he had a
23 weapon?

24 A. I did.

25 Q. And would it help you to hear the 911

Noah M. - RECROSS EXAM BY MS. SHIVERS

1 call to hear yourself indicate to Miss Cheryl that
2 he did not have a weapon for you to remember?

3 A. I know for sure I told her he had a
4 weapon.

5 MS. SHIVERS: Your Honor, may we
6 publish phone call number two on the 911 call?

7 THE COURT: You will need to hand it to
8 Mrs. Brown.

9 MS. SHIVERS: Sorry.

10 (911 call number two played in open
11 court.)

12 BY MS. SHIVERS:

13 Q. That was yourself talking to Miss
14 Cheryl?

15 A. Yes, ma'am.

16 Q. And you indicated to her that you
17 weren't aware of any weapons that Kevin had?

18 A. I was confused and scared.

19 MS. SHIVERS: Thank you.

20 THE COURT: You may step down. Thank
21 you.

22 Call your next witness.

23 MS. SIGAL: Your Honor, the State
24 rests.

25 THE COURT: Ladies and gentlemen, that

1 signifies to the Court there is a matter of law
2 that I must take up out of our presence. Do not
3 begin your deliberation or discuss the case amongst
4 yourselves.

5 Please rise for the jury.

6 (Jury out, 2:41 p.m.)

7 THE COURT: Thank you. Be seated.

8 We will take a few moments and make
9 sure you have entered into evidence everything you
10 think you have entered into evidence.

11 MS. SIGAL: Your Honor, at this time,
12 all exhibits that the State wishes to enter have
13 been entered.

14 THE COURT: Thank you.

15 Any motions or matters?

16 MR. CHURCH: Yes, Your Honor. The
17 defense has some motions for directed verdict. I'm
18 going to start with the burglary first. We would
19 ask for a directed verdict on that, Your Honor.
20 The Indictment lists Brenda Mills as her dwelling
21 house. There's been several testimony that she was
22 just staying there. Sarah Hailey, or Riggs, under
23 different names, was the person who was actually
24 living there. She is the one that can give
25 consent. There was no proof that Mrs. Mills was --

1 THE COURT: Is it your position that
2 only the homeowner can give consent?

3 MR. CHURCH: Well, we're also saying
4 that they didn't prove this was her dwelling house,
5 because there's some legal definitions for that.
6 She has to be --

7 THE COURT: What is the legal
8 definition of a dwelling then?

9 MR. CHURCH: Where a tenant,
10 proprietor, watchman, et cetera, et cetera --

11 THE COURT: Why wouldn't she fall
12 under et cetera et cetera, Mr. Church, then?

13 MR. CHURCH: Hold on, Your Honor. Beg
14 the Court's indulgence.

15 Sorry, I dropped my papers the other
16 day when I was leaving and I -- Your Honor, it
17 says, dwelling house, any house, outhouse,
18 apartment, building, shed or box in which there
19 sleeps a proprietor -- there's been no testimony
20 that she was a proprietor -- a tenant, watchman,
21 clerk, laborer or person who lodges there with a
22 view to the protection of the property that shall
23 be deemed dwelling house.

24 The closest that they could come with
25 that would be that she would be a tenant. If you

1 look under the landlord tenant law, it says that
2 they have a lease or an agreement with someone.
3 There was no testimony about any kind of a lease or
4 agreements and they would have needed one of the --
5 either the person who actually owned the house or
6 the person that that person was let living there,
7 which was the testimony I think at some point that,
8 that was -- her daughter was living there.

9 The State did not call Sarah Riggs. It
10 was Sarah Riggs' dwelling, or Sarah Hailey I
11 believe she was referred to at one point. And
12 without her, they haven't proven consent.

13 THE COURT: Okay. And is that your
14 only issue?

15 MR. CHURCH: That's to the burglary
16 first. You know, taken in the light most favorable
17 to the State, they didn't prove all of the elements
18 in the Indictment, and one was that it was Ms.
19 Mills dwelling house as the indictment alleges.

20 Two, kidnapping; we would ask for a
21 directed verdict on that. There was no testimony
22 that there was intentional, or knowing, or unlawful
23 kidnapping. It's not a strict liability crime,
24 there has to be something in addition. There's
25 very few strict liability crimes.

1 Almost everything has mens rea
2 involved.. They haven't shown any mens rea for
3 kidnapping, and we would argue saying that they
4 showed no specific intent to the murder. All they
5 showed was an assault. We would ask for directed
6 verdict on all three.

7 THE COURT: Who is arguing this one?

8 MS. SIGAL: I am, Your Honor. I'll
9 start in the order Mr. Church went in with the
10 burglary in the first degree.

11 It's the State's position that Brenda
12 Mills is a person who lodged at [REDACTED] Road, and
13 by the definition given by Mr. Church --

14 THE COURT: Is Mr. Church the authority
15 now on the definition of burglary? Is that where
16 we're going?

17 MS. SIGAL: No, Your Honor.

18 THE COURT: You want me to use his
19 definition?

20 MS. SIGAL: No, Your Honor. I'm just
21 making my case using the definition that he used to
22 counter.

23 THE COURT: Why don't we use the
24 definition under the State of South Carolina?

25 MS. SIGAL: I have that right here,

1 Your Honor, and I will be using that.

2 THE COURT: All right.

3 MS. SIGAL: A dwelling is basically any
4 structure in which someone sleeps on a regular
5 basis. Brenda and **Noah M.** testified that Brenda
6 lived there, that she slept there every night while
7 they lived there. I believe there is ample
8 evidence that this is Brenda Mills' dwelling for
9 purposes of the burglary in the first degree
10 charge.

11 In reference to the kidnapping
12 charge --

13 THE COURT: So I don't know -- you
14 have got to prove, it's your burden, correct, that
15 you have met the elements?

16 MS. SIGAL: Yes.

17 THE COURT: Even in the light most
18 favorable to you, there has to be some evidence,
19 right? So I think it's always the best if you go
20 through each charge and tell me what testimony has
21 been presented that identifies with each of the
22 elements of each of the charges that you're going
23 forward on.

24 MS. SIGAL: Happy to, Your Honor.

25 THE COURT: Thank you.

1 MS. SIGAL: With burglary in the first
2 degree, first, it requires the entry into a
3 dwelling. The defendant entered into the house
4 when he broke through the bedroom window at [REDACTED]
5 [REDACTED] Road. The dwelling belonged to, in part,
6 Brenda Mills due to the testimony of Brenda Mills
7 and Noah M. . That was their -- that was the
8 victim's dwelling.

9 Your Honor, the defendant entered that
10 dwelling without consent. He did not have a key.
11 The victim locked the door. She held the door
12 while he busted it open, then he proceeded to break
13 in through a window. It was stated during
14 testimony several times by the victim and by Noah
15 M. the defendant did not have permission to be
16 inside that home; therefore, he entered that home
17 without consent.

18 The crime that he intended to commit
19 therein, the next element of burglary in the first
20 degree, was murder. The defendant stated while he
21 was on the porch banging on the door that he was
22 going to kill Brenda Mills. I believe that
23 statement shows the defendant's intent and the
24 crime he wished to commit as he broke into the
25 window moments later.

1 The two aggravating factors that the
2 State has listed in the Indictment are that, first,
3 the defendant caused injury to a nonparticipant in
4 the crime. There are several photos showing the
5 victim's injuries caused at the hands of the
6 defendant.

7 There was testimony by Betty Delk,
8 Cheryl Scott, Kenneth Scott, **Noah M.** , and the
9 victim herself, Brenda Mills, that the defendant
10 struck her in the head with an ax handle, he kicked
11 her, he stomped her, he punched her, he held her
12 down, strangled her with his arm, and he tried to
13 rip her eyeball out. That satisfies the first
14 aggravating factor.

15 There is another one, although we don't
16 need to prove the next one, that he used, or
17 threatened the use, of a dangerous instrument
18 either while entering the home, while in the home,
19 or immediate flight therefrom. This defendant had
20 the ax handle in his hand while he beat on the door
21 stating he was going to kill the victim; he still
22 had the ax handle in his hand when he entered the
23 dwelling, and he had the ax handle in his hand in
24 the front yard when he assaulted Brenda Mills with
25 it by striking her in the back of the head.

1 It's the State's position there is
2 ample evidence for each of these elements, and we
3 respectfully request that Your Honor deny the,
4 motion for directed verdict for the burglary in the
5 first degree.

6 With the next charge that the defendant
7 is facing, kidnapping, there was testimony that the
8 defendant seized, confined and carried away the
9 victim. Betty Delk testified that she looked out
10 her window and the defendant had the victim pinned
11 down, she was unable to move and unable to leave.
12 The victim testified that the defendant sat on the
13 back of her, put an axe handle around her neck and
14 pulled up. She was unable to move and unable to
15 leave.

16 In addition to that, Your Honor, the
17 defendant -- Betty Delk testified that the
18 defendant dragged the victim around the yard.

19 The statute says, to carry away any
20 person by any means whatsoever, and it's the
21 State's position that as the defendant dragged the
22 victim around the yard, he was essentially carrying
23 her away as well. So under three different terms
24 used in the kidnapping statute, the State has
25 overcome its burden with that.

1 As Your Honor is well aware, the
2 kidnapping statute doesn't require all of those to
3 be met, just one.

4 Finally, Your Honor, the defendant was
5 charged with attempted murder. He attempted to
6 kill the victim, Brenda Mills, as he broke into her
7 home and chased her around the property with an ax
8 handle, as he swung it against her head and busted
9 it open, as he stomped her head into the ground and
10 kicked her head and body, as he stuck his arm
11 around her neck cutting off her air supply
12 strangling her, and as he sat on the back of her,
13 put his ax handle around her neck, and pulled up
14 also obstructing her air supply.

15 In addition to that, he was stating
16 over and over again that he was going to kill her
17 today.

18 The next element is intent to kill.
19 Your Honor, that element is proven by the
20 defendant's own statements. He stated in several
21 different ways that he was going to kill the
22 victim. First, he stated, as overheard by Betty
23 Delk, you're not going to live to see tomorrow. He
24 also stated that his face was the last thing she
25 was going to see. He stated several times that she

1 was going to die before Berkeley County made it out
2 there to the house to save her.

3 He said, using different types of
4 profanity, I am going to kill you. The victim
5 testified at one point he said, I am going to kill
6 you now. I believe that those statements clearly
7 showed the defendant had the intent to kill as he
8 was attempting to kill the victim.

9 And, finally, Your Honor, malice, which
10 as you are well aware is defined as hatred,
11 hostility, ill will, a wicked or depraved spirit,
12 the intentional doing of a wrongful act. In this
13 case, we have both express and implied malice.

14 The express malice is clear from the
15 statement I just made of the defendant. He stated
16 over and over again that he was going to kill her.
17 In addition to that, he injured her in ways that
18 showed malice. He took an ax handle to the back of
19 her head and split it open.

20 He actually took the ax handle to her
21 car and ripped out all of the windows. He stomped
22 on her head, he kicked her, he strangled her, and
23 tried to rip her eye out. I believe all of those
24 actions go to implied malice.

25 And, Your Honor, due to those reasons,

1 we respectfully request that you deny defense
2 counsel's request for directed verdict on that
3 charge. Thank you.

4 THE COURT: Mr. Church?

5 MR. CHURCH: Thank you, Your Honor.
6 May it please the Court. Go back to burglary
7 first, I have the landlord tenant thing that
8 defines tenant as being a person entitled under a
9 rental agreement to occupy a dwelling unit to the
10 exclusion of others.

11 They would have to bring Sarah Riggs,
12 or possibly her mother, here to say that because
13 she could have given them consent. Everybody knows
14 who she was. We feel like this is not the dwelling
15 house of Brenda Mills. Only Sarah Riggs can say
16 that she definitively was a tenant, and they didn't
17 bring that person.

18 And, Your Honor, since the other -- all
19 the other statements she was talking about, that
20 goes towards malice, not specifically intent to
21 kill. And there was inconsistencies in the
22 statement. We once again renew our motion for
23 directed verdict, especially on the burglary in the
24 first degree.

25 THE COURT: In ruling on a motion for

1 directed verdict, under Rule 19 in the Rules of
2 Criminal Procedure, I'm concerned only with the
3 existence or nonexistence of the evidence and not
4 to its weight. If there is a failure of competent
5 evidence tending to prove the charges in the
6 indictment, I must grant the motion for a directed
7 verdict. I must view the evidence in the light
8 most favorable to the nonmoving party in this case,
9 and of course it is the State.

10 As to the first degree burglary, the
11 State must prove beyond a reasonable doubt that the
12 defendant entered a dwelling, which is defined as
13 living quarters, a building normally used for
14 sleeping, living or lodging by a person without
15 consent. Two witnesses at a minimum testified that
16 they stated to Kevin he was not allowed to be
17 there.

18 Intent to commit a crime, either a
19 felony or misdemeanor, at the time of the injury,
20 the statement, you are going to die, made by Kevin
21 would intend -- would meet that element for the
22 State. And the State has met three of the six
23 other alternatives that he must -- that when
24 entering, while in the dwelling, or fleeing, the
25 defendant was armed with a deadly weapon, or caused

1 physical injury to anyone not participating in the
2 crime, or used, or threatened to use, a dangerous
3 object. Your motion for directed verdict as to
4 first degree burglary is denied.

5 As to the kidnapping, the State must
6 prove beyond a reasonable doubt that the defendant
7 knowingly and unlawfully seized, confined,
8 inveigled, decoyed, kidnapped, abducted and carried
9 away another person, the State does not have to
10 prove that Mr. Driggers did all of those things.
11 And they must be done without the authority of law.

12 There has been no testimony that
13 Mr. Driggers had the authority of law to pin her
14 down so she was unable to leave. Based upon the
15 testimony as provided in the light most favorable
16 to the State, your motion for direct verdict to
17 kidnapping is denied.

18 As to the -- a charge for attempted
19 murder, based on the testimony, again, that has
20 been presented in the light most favorable to the
21 State, the State move prove that the defendant
22 attempted to kill another person with malice
23 aforethought, either express or implied. Based
24 upon all of the testimony, I'm denying your motion
25 for directed verdict as to attempted murder.

1 I note your exception to my ruling.

2 Mr. Church, any other motions?

3 MR. CHURCH: Your Honor, for the
4 record, I renew all my prior objections and
5 motions, pretrial motions that were denied, just
6 preserved for the record.

7 THE COURT: Has there been any
8 additional testimony presented that I should
9 consider in reconsidering my pretrial motions?

10 MR. CHURCH: Nothing else, Your Honor.

11 THE COURT: All right. And we had
12 some discussion at the side bar when I struck the
13 testimony from Mr. Mills. Do you have anything you
14 wish to put on the record about that?

15 MR. CHURCH: About -- Your Honor, we're
16 not going to do that, but I believe we would make a
17 motion to have Cheryl Scott's testimony stricken
18 because it didn't coincide with what was going on
19 in the 911 tape.

20 THE COURT: Could you articulate that
21 argument for me?

22 MR. CHURCH: We played the 911 tape
23 with her on it and it didn't match up with the
24 testimony that she gave while on the stand. The
25 one that Ms. Shivers had made the motion earlier

1 just to play the 911 tape.

2 THE COURT: Okay. Ms. Sigal?

3 MS. SIGAL: Your Honor, the defense can
4 bring up any kind of discrepancy during their
5 closing. The witness in question, I believe to
6 what Mr. Church is getting at, she stated that she
7 went back and forth from the porch to the back yard
8 to witness the assault and that she did see some of
9 the assault, as well as she received some
10 information from **Noah M.** . I believe she cleared
11 that up in the testimony; however, if there are
12 anymore discrepancies, the defendant counsel has
13 the opportunity to talk about that in closing.

14 I believe she is an essential witness
15 to the State's case and we request that you do not
16 strike her. I don't see any grounds to strike her
17 based on what Mr. Church stated.

18 THE COURT: Mr. Church, anything
19 further?

20 MR. CHURCH: Nothing further.

21 THE COURT: Again, your motion to
22 strike the testimony is denied.

23 Any other motions at this time?

24 MR. CHURCH: We're not talking about
25 charges at this point, Your Honor?

KEVIN DRIGGERS - EXAM BY THE COURT

1 THE COURT: No, I just didn't know --
2 we're at the stage where the State has rested. I
3 just didn't know if you had any other motions you
4 needed to make at that stage.

5 MR. CHURCH: Other than the directed
6 verdict motions.

7 EXAMINATION

8 BY THE COURT:

9 Q. All right. And so, Mr. Driggers,
10 please stand. I remind you that you are still
11 under oath.

12 Have you had an opportunity to discuss
13 with your attorneys whether or not you will
14 testify?

15 A. Yes.

16 Q. And do you need any additional time to
17 meet with them before you make that decision?

18 A. No, ma'am.

19 Q. And what is your decision?

20 A. I will plead the Fifth.

21 THE COURT: All right. Thank you.

22 Do you have any additional witnesses?

23 MR. CHURCH: We do not, Your Honor.

24 THE COURT: All right. So with that,
25 we will be at ease. Do you want to argue and

1 charge today or do you want to wait until tomorrow?

2 MS. SIGAL: Your Honor, the State
3 requests, and I believe it's in agreement with the
4 defense, we argue and charge in the morning.

5 THE COURT: Okay. Let's have a charge
6 conference and put on the -- in chambers and then
7 put on the record what we need to place on the
8 record. Okay?

9 Let's bring them in.

10 (Jury in, 3:25 p.m.)

11 THE COURT: Thank you, be seated.

12 Mr. Church.

13 MR. CHURCH: The defense rests, Your
14 Honor.

15 THE COURT: Ladies and gentlemen, that
16 indicates to the Court that you have heard all of
17 the testimony that you will hear in this case and
18 received into evidence all of the exhibits that
19 will be made part of the record in this case.

20 The next stage of the trial is closing
21 arguments on behalf of Counsel. And as I indicated
22 to you, we typically stop about 5:00. So due to
23 the lateness of the hour, I have determined that we
24 will break for the day and come back at 9:45 in the
25 morning, you will hear closing arguments on behalf

1 of counsel, and I will instruct you on the law
2 applicable to this case. At that time, you will
3 then retire to consider your verdict.

4 Ladies and gentlemen, do not begin your
5 deliberations, do not discuss this case. All of
6 the same admonitions I gave you yesterday apply
7 today. You have not been instructed on the law
8 applicable to this case.

9 Please have a wonderful afternoon. I
10 will see you back at 9:45. Please take your
11 notepads and we will lock them up over the evening
12 hour. Thank you.

13 (Jury out, 3:27 p.m.)

14 THE COURT: Please be seated. All
15 right. Anything -- oh, let's place on the record,
16 Mr. Church, you requested burglary in the third
17 degree; is that correct?

18 MR. CHURCH: We requested all of them,
19 including burglary in the third degree.

20 THE COURT: And tell me -- the State
21 objects to burglary in the third degree?

22 MS. SIGAL: Yes, Your Honor.

23 THE COURT: And for what basis?

24 MS. SIGAL: Your Honor, I believe that
25 the fact it would go to burglary in the third

1 degree would be that it would be found not to be a
2 dwelling, and because the defense -- even if the
3 jury finds it's not the dwelling of Brenda Mills,
4 they would still find it's the dwelling of someone.
5 There's photos of a bed, there's testimony that
6 this was the residence of another person, Sarah
7 Riggs.

8 It's the State's position that there's
9 not evidence that that is not a dwelling and,
10 therefore, burglary in the third degree would not
11 be appropriate.

12 THE COURT: And so I will not be
13 charging burglary in the third degree.

14 You also requested from attempted
15 murder down to assault and battery, third degree;
16 is that correct?

17 MR. CHURCH: That's correct, Your
18 Honor.

19 THE COURT: And the State's position?

20 MS. SIGAL: Your Honor, the State
21 objects to assault and battery in the third degree.
22 It's the State's position that there is evidence
23 that the lowest form of injury would have been
24 assault and battery second degree due to the
25 definition of moderate bodily injury. Due to the

1 victim's injuries, we would request the assault and
2 battery third degree would be taken off of the
3 lesser included list.

4 THE COURT: Okay. Mr. Church?

5 MR. CHURCH: Your Honor, the statute
6 for assault and battery third degree does not list
7 the necessary level of injury. It just says,
8 injury. We believe that's all encompassing.

9 THE COURT: Okay. I will be charging
10 assault and battery in the third degree.

11 Any other lesser included that we need
12 to discuss? Mr. Church?

13 MR. CHURCH: I cannot think of any at
14 this time.

15 THE COURT: From the State?

16 MS. SIGAL: No, Your Honor.

17 THE COURT: All right. And there was
18 some discussion about including a somewhat curative
19 charge about the defendant's prior bad acts not the
20 subject of the trial here today. And, Mr. Church,
21 you indicated that you did not want that charge; is
22 that correct?

23 MR. CHURCH: After conferring with
24 co-counsel, we have agreed not to have that charge.

25 THE COURT: Okay. And so any other

1 charges? Any other concerns?

2 MR. CHURCH: Nothing at this time, Your
3 Honor.

4 THE COURT: Well, now is the time.

5 MR. CHURCH: Then, nothing.

6 THE COURT: All right.

7 MS. SIGAL: Nothing from the State.

8 THE COURT: Okay. So I'm assuming
9 we're going to be in B so I will see you -- please
10 be there at 9:30 in the morning ready to go.

11 Are you using technology?

12 MS. SIGAL: Yes, Your Honor.

13 THE COURT: I suggest that you walk
14 over and let's make sure that that is set up and
15 ready to go. Okay?

16 Any concerns, Ms. Shivers?

17 MS. SHIVERS: No, ma'am.

18 THE COURT: We're down until 9:45.

19 (These proceedings were recessed at
20 3:33 p.m., to be continued at 9:45, February 23,
21 2017.)

22

23

24

25

1 (The following proceedings were held
2 February 23, 2017, Berkeley County Courthouse,
3 Moncks Corner, South Carolina, in re State v.
4 Driggers, at 9:47 a.m.)

5 THE COURT: Mr. Church, what do you
6 need to put on the record?

7 MR. CHURCH: Just the defense would
8 renew all motions and objections.

9 THE COURT: All right. Thank you.
10 Counsel, I have had a side bar with
11 you, we have gone over all three of the verdict
12 forms. Is that correct, Ms. Sigal?

13 MS. SIGAL: Yes, Your Honor.

14 MR. CHURCH: That's correct, Your
15 Honor.

16 THE COURT: Over the evening hour
17 while I was completing the verdict form, I have
18 changed my initial ruling. I will be charging
19 burglary in the third degree. Note your exception,
20 Ms. Sigal, to that inclusion. And the purpose or
21 the reason why I did that was South Carolina Code
22 16-11-310 defines a dwelling as any portion of
23 building that -- as any building or a portion of a
24 building in which a person ordinarily sleeps.

25 16-11-310 further defines a building as

1 any structure, vehicle, watercraft, or aircraft
2 where any person lodges or lives. The definition
3 of burglary in the third degree is burglary is --
4 is the lesser included of burglary in the third
5 degree of a dwelling -- I mean, I'm sorry, of a
6 building, which is any -- which is any structure
7 where any person lodges or lives.

8 So based upon the testimony that was
9 presented, that location, that was a place where
10 the victim lodged or lived. So based upon that, I
11 have included third degree burglary.

12 Additionally, in reviewing how to
13 complete the verdict form of burglary in the second
14 degree, the distinction is important whether or not
15 the jury finds Mr. Driggers guilty. If they were
16 to find him guilty of the lesser included burglary
17 in the second degree, the distinction between
18 burglary of a dwelling or burglary of a building is
19 the difference between the violent and the
20 nonviolent provision. So not only is that
21 classification important to Mr. Driggers, but it
22 also triggers different sentences.

23 So my reading of the statute, second
24 degree burglary of a dwelling is the nonviolent,
25 zero to 10 years, and second degree burglary of a

1 building, which is THE BAILIFF provision of the
2 statute, is the violent and carries 0 to 15.

3 So the way the jury is reflected is
4 they have the option of not guilty burglary in the
5 first degree, burglary in the second degree of a
6 dwelling, burglary in the second degree of a
7 building, or burglary in the third degree.

8 MS. SIGAL: Your Honor, just to make
9 sure, there is a burglary in the first degree
10 guilty option as well?

11 THE COURT: Correct.

12 MS. SIGAL: Okay.

13 THE COURT: I skipped over that one,
14 but then went back to do that, yes.

15 MS. SHIVERS: No exception, Your Honor.

16 THE COURT: All right. Thank you.

17 And nowhere in my charge or on the
18 verdict form does it indicate the sentencing
19 structure violent or nonviolent. It just says
20 burglary second degree of a building -- a dwelling
21 or of a building, burglary first degree and
22 burglary third degree. There's no violent or
23 nonviolent. I thought that was the easiest and the
24 most non-prejudicial way to structure those
25 options.

1 All right. With that, if there is
2 nothing else?

3 MS. SIGAL: Nothing else from the
4 State, Your Honor.

5 MS. SHIVERS: Nothing from the defense,
6 Your Honor.

7 THE COURT: We will now take our
8 comfort break. Be back at 10:00. Thank you.

9 (A recess transpired.)

10 THE COURT: The State, as far as
11 closing, you agree that you go first and the
12 defense goes last?

13 MS. SIGAL: Yes, Your Honor.

14 MS. SHIVERS: Yes, ma'am.

15 THE COURT: Let's bring in the jury.

16 (Jury in, 10:21 a.m.)

17 THE COURT: Thank you. Please be
18 seated.

19 Good morning, ladies and gentlemen.

20 THE JURY: Morning.

21 THE COURT: Did every member of the
22 panel comply with my instructions over the evening
23 hours? If you did, raise your right hand.

24 THE JURY: (Raised hands)

25 THE COURT: Thank you. All 14 jurors

CLOSING ARGUMENT BY MS. SIGAL

1 have indicated that they complied with the Court's
2 instructions by raising their hands.

3 Ladies and gentlemen, as I indicated to
4 you, we have reached the stage of the trial where
5 you will hear closing arguments on behalf of
6 counsel. In this case, the State will go first
7 with her closing arguments and then you will hear,
8 closing argument on behalf of the defendant.

9 After that, I will instruct you on the
10 law applicable to this case, and then you will
11 retire to consider the verdict.

12 Ladies and gentlemen, please give your
13 strict attention to Ms. Sigal.

14 MS. SIGAL: May it please the Court?

15 THE COURT: Yes.

16 MS. SIGAL: Counsel.

17 Please help me, he's trying to kill my
18 momma and she's all I have. These are the words
19 spoken by 14-year-old **Noah M.** on November 4,
20 2015. Surely a day that he's never going to
21 forget. A day that started out normal. He's at
22 the house where he lives with his mom and Sarah and
23 five-year-old Wesley when, all of a sudden, the
24 defendant appears on the porch in a rage. Holding
25 this (Indicating) banging on the door, telling

CLOSING ARGUMENT BY MS. SIGAL

1 Brenda Mills, I'm going to kill you.

2 Noah is faced with an impossible
3 decision. Does he stay with his mom who has no way
4 to defend herself against this man, or does Noah
5 follow her instructions and get out of the house
6 with Wesley to find help and seek safety?

7 Noah follows his mom's instructions and
8 he and Wesley take off out of the front door of the
9 house, shoeless, desperate to find help. Noah
10 testified that he turned around at one point when
11 he was running to check on things, he was worried.

12 And Noah turned around quite possibly
13 at the worst time he could turn around because at
14 that moment the defendant was holding this over his
15 head in the front yard of the house saying, I'm
16 going to kill you, as he struck Brenda Mills in the
17 back of the head. And Noah saw his mom fall flat
18 on the ground. He saw the man kick and stomp his
19 mom like she was an insect to be squashed.

20 Ladies and gentlemen of the jury, this
21 is a day no 14-year-old should ever have to live
22 through, and it was at the hands of this man, Kevin
23 Driggers.

24 Now, I know it's been a long few days
25 and we are so grateful for your attention and your

CLOSING ARGUMENT BY MS. SIGAL

1 patience and we are nearing the end of this trial.
2 And at this point we're going to go through the
3 evidence and then we're going to talk about the
4 law, and then you're going to go into your jury
5 room and deliberate and come back with a verdict.

6 So I want to start out by going through
7 what we know from the evidence, what we know from
8 the witness stand that's been presented to you this
9 week. We know that Brenda and Kevin were in a
10 romantic relationship for a couple of years, they
11 even lived together. Brenda stated they were in
12 love, but Brenda ended the relationship some time
13 around September 2015, and we know that the
14 defendant did not take it very well.

15 Brenda moved in with her friend, Sarah
16 Riggs, and shortly thereafter her son Noah moved in
17 with them as well. Brenda testified that the
18 defendant would call her incessantly, to the point
19 where she would turn her phone off because he
20 wasn't ready for the relationship to be over and
21 she was. She was starting a new life without Kevin
22 Driggers.

23 We know that she moved into [REDACTED]
24 Road and we know from the testimony of both Brenda
25 and Noah that the defendant was not allowed at the

CLOSING ARGUMENT BY MS. SIGAL

1 residence, but on the morning of November 4, 2015,
2 the defendant didn't care that he wasn't allowed at
3 the residence, he was coming up there. And he
4 wasn't just coming up there to talk to Brenda, he
5 was coming up there to kill Brenda because he
6 wasn't taking the breakup very well.

7 We know that Brenda was coming to get
8 Wesley off the porch when the defendant came
9 charging up on the porch in a rage. Luckily, she
10 gets Wesley in the house in time and she locks the
11 door.

12 And that's important, because she had
13 the authority to lock the door because she lived
14 there and the defendant did not have the right to
15 come in, he did not have permission to be there.
16 And she locked the door. The defendant wasn't
17 going to stop because he came over with one goal
18 and he was going to carry it out.

19 We know the defendant banged on the
20 door with this ax handle so many times that not
21 only did he cause dents all over the door -- you
22 will have these photos in the jury room and you can
23 look at the dents yourself -- but we also know that
24 the defendant caused the door to completely come
25 off its hinges. He was going to bust that door

CLOSING ARGUMENT BY MS. SIGAL

1 down and he was going to get in.

2 We know that Brenda told Wesley and
3 Noah, get out of the house, and so she was left
4 alone with no way to defend herself. And so she
5 braces her body against the door and the washing
6 machine using all the strength she had, because she
7 knew what was going to happen if he came through
8 that door.

9 The defendant wasn't to be deterred.
10 He was persistent. He decided if he wasn't coming
11 in through the door, even though he had broken it
12 off of its hinges she was holding on so hard, he
13 was just going to go in through the window. And he
14 said to her, there's more than one way to get into
15 this house.

16 And Brenda heard the busted glass and
17 heard him come into the house, and she knew she
18 needed to get out of the house fast, and she fled
19 through the front door.

20 Ladies and gentlemen, she fled, but not
21 fast enough. The defendant followed her out the
22 door and he struck her in the back of the head with
23 the ax handle, as you heard the testimony. It
24 split her head wide open. We know that then the
25 defendant walked over to the victim. She thought

CLOSING ARGUMENT BY MS. SIGAL

1 she was paralyzed and told him that. He said,
2 good.

3 And he rolled her over and got nose to
4 nose with the victim where she could feel his
5 breath on her. And he said, you are going to die
6 before Berkeley County gets here. It's going to
7 take them an hour and 45 minutes to get here,
8 you're not going to make it that long.

9 And you see, ladies and gentlemen, that
10 was actually somewhat of a reasonable conclusion by
11 the defendant, because we heard testimony that the
12 area in which this happened in St. Stephen is a
13 little bit remote. We heard that from Betty Delk
14 and we heard that from Corporal Winder that it
15 takes law enforcement awhile to get out there
16 sometimes. And Kevin Driggers was counting on that
17 as he was going to slowly beat this victim to
18 death.

19 We know that at one point the victim
20 tried to get away and ended up by the dog pen.
21 That's where the defendant stomped her head into
22 the ground, stomped her head onto a wooden plank.
23 And that's her blood, her wet blood. (Indicating)
24 It was still there when Corporal Winder took the
25 pictures.

CLOSING ARGUMENT BY MS. SIGAL

1 We know at some point the victim was
2 trying to run and she made it into the yard of
3 Betty Delk. Betty testified she heard screaming
4 and went to look and she saw a man beating a woman.
5 She called 911 and then decided to go outside and
6 check out what was happening. And she specifically
7 said, I saw a man who had a woman pinned down on
8 the ground, she couldn't move, she couldn't get up.

9 He was restricting her ability to move.
10 He had her confined in that space and he was
11 beating her with the ax handle, the head, the neck,
12 and the back. Betty said she heard the defendant
13 say, you're not going to live to see tomorrow.

14 The victim testified at some point over
15 in that yard that the defendant grabbed her around
16 the neck, squeezing her neck with his arms
17 obstructing her air supply, and then he took his
18 hand and tried to rip her eyeball out, which is
19 corroborated by the photos that you will see.

20 Richard Brinson testified that it
21 caused a hemorrhage in her eye, broken blood
22 vessels from an outside force. As if that's not
23 enough, we heard Betty Delk testify the defendant
24 was dragging her around the yard. He would drag
25 her and stop, and then he would drag her some more

CLOSING ARGUMENT BY MS. SIGAL

1 and then he would stop. Brenda testified it was
2 like an animal stalking his prey. It was like the
3 defendant was going to let the victim try to get
4 away and just at the moment she had some hope, he
5 was going to knock her back down.

6 Ladies and gentlemen, that is a
7 depraved wicked spirit. This wasn't going to be a
8 fast and easy death; this was going to be a slow
9 one and he knew he had time. We know that the
10 victim was trying to make it to the neighbor's,
11 Don's, house. And you will hear her on the 911
12 call; she's saying, Don, Don. But Don's not home.

13 The defendant catches up with her yet
14 again and he body slams her on the ground, onto the
15 concrete of the driveway. At this point, the
16 victim is face down on the driveway and so the
17 defendant sits on her back; again, confining her to
18 that space, restricting her movement.

19 And he doesn't just sit on her back.
20 He then takes the ax handle and he puts it up to
21 her throat and pulls up and he pulls up and he
22 pulls up. And, again, he's obstructing her airway.
23 She can't move. All she can do is press her hands
24 into the ground. She's desperate to live despite
25 the defendant's attempts.

CLOSING ARGUMENT BY MS. SIGAL

1 And by the grace of God, the 911
2 operator all of a sudden makes a noise and startles
3 the defendant. He drops the ax handle and grabs
4 the phone and turns it off because that's when the
5 911 call ends.

6 The victim is laying there in pain and
7 the defendant decides to go the bathroom. That's
8 how he feels towards Brenda Mills. She means that
9 little to him at this point. He's so close to
10 killing her that he's just going to stop and take a
11 leak before he comes back and finishes the job.

12 We know that Noah and Wesley have run
13 over to Cheryl and Ken Scott's house, and it was
14 their safe haven. Thankfully, they were home and
15 Cheryl was ready to take care of the boys and make
16 sure that they were safe. We know Cheryl testified
17 she was going back and forth between the porch and
18 the back yard, and she saw the defendant -- she
19 described it as chopping her. He was sitting on
20 her and chopping her with the ax handle.

21 She heard him say, I'm going to kill
22 you. Cheryl, when she testified, got a little
23 emotional. And when I asked her why she was
24 emotional, she said, I just knew that he was going
25 to kill her and that this boy was going to watch

CLOSING ARGUMENT BY MS. SIGAL

1 his momma die and I didn't know how I was going to
2 handle that.

3 Ken Scott went outside to look at what
4 was happening too, and he saw the defendant
5 standing over the victim at one point. She was
6 unable to move, unable to get up because he was not
7 letting her. And Kenneth heard him say, I said
8 when I came back I was going to kill you and now
9 I'm going to kill you.

10 Ladies and gentlemen, at some point the
11 defendant got the ax handle back. It was the same
12 moment when the victim heard the best sound I'm
13 sure she'd every heard, the sound of the police car
14 coming down the way and she takes off running; but
15 the defendant, not to be deterred from his goal
16 that day, he still takes the ax handle and he is
17 still chasing her like this. (Indicating)

18 Corporal Winder testified he was
19 shaking it in the air and -- excuse my language,
20 I'm quoting the defendant here, but he was
21 shouting, I'm going to fucking kill you, bitch.

22 Corporal Winder knew the defendant was
23 about to strike the victim again and that's why she
24 pulled her service weapon. And it was only faced
25 at gun point did this defendant stop.

CLOSING ARGUMENT BY MS. SIGAL

1 We know the victim was transported to
2 the hospital, we know she suffered a laceration to
3 the back of her head and had eight stitches.
4 Richard Brinson testified it was a nonlinear wound,
5 which means it's not your typical wound if someone
6 falls and hits their head. It was jagged,
7 indicative of multiple blows to the head.

8 We know that she suffered bruising all
9 over her body, including her back, her fingers, her
10 neck, swelling to the left side of her head. We
11 know she had the hemorrhage in her eye, and we know
12 that she suffered two fractures in her low back
13 from the kicking, stomping and the beating by the
14 ax handle.

15 Now, ladies and gentlemen, you're going
16 to hear the judge explain to you, and probably the
17 defense will bring it up too, reasonable doubt.
18 And reasonable doubt is sort of a legal phrase I'm
19 sure you've heard before and it can be defined in
20 many different ways. The clearest way that I like
21 to think about it is proof beyond a reasonable
22 doubt. Proof that leaves you firmly convinced of
23 the defendant's guilt.

24 The law does not require that we
25 overcome every single possible doubt that you may

CLOSING ARGUMENT BY MS. SIGAL

1 have. That would be impossible. The law requires
2 proof beyond a reasonable doubt and that is proof
3 that leaves you firmly convinced. So keep that in
4 mind as you continue to listen to the argument and
5 as you go into your jury room.

6 Now, in a few minutes, the judge is
7 going to go through the law with you, but as my
8 co-counsel stated at the beginning of the trial,
9 I'm going to briefly take you through it as a road
10 map and talk about how it applies to the facts of
11 this case.

12 And we're starting with burglary in the
13 first degree. Burglary in the first degree is the
14 entry into a dwelling, without consent, with the
15 intent to commit a crime therein. That is burglary
16 on its face. That's the basic burglary. To get to
17 first degree we have to have an aggravating factor,
18 and the judge is going to read a whole list of
19 aggravating factors. I have up here two that apply
20 to this case, but you only need one aggravating
21 factor to get to burglary in the first degree.

22 So we're going to start with entry into
23 a dwelling. A dwelling is a place where someone
24 sleeps. It's simply that. It's where someone
25 sleeps at night. If you decide to lease an

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1 apartment and you move in, the next day after you
2 slept there that night, that's your dwelling. If
3 you move in with your boyfriend or girlfriend and
4 you're sleeping there a week, that's your dwelling.

5 Ladies and gentlemen, not to be
6 confused with a building, you're going to hear a
7 little bit about the difference between a building
8 and a dwelling. This is a pretty good example.
9 If you have, let's say, a beach condo that stays
10 unoccupied for 50 weeks out of the year, those
11 50 weeks it's not a dwelling. It's a building.
12 The two weeks that you stay there, that's a
13 dwelling. So that's the difference.

14 If you sleep there, then that's a
15 dwelling, it's where you live. And we know in this
16 case that the place that Kevin Driggers broke in
17 to, [REDACTED] Road, that was a dwelling. We have
18 pictures of beds in the house. Brenda testified
19 that she slept there, she moved in September 1,
20 2014. Noah testified that both he and Brenda slept
21 there.

22 Wesley had just woken up when the whole
23 thing started. We know that this is a dwelling.
24 The defense might try to come up here and say, no,
25 no, she had just moved in, but there's no time

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1 requirement. It just means that someone sleeps
2 there. In this case, Brenda Mills slept at that
3 house, in addition to Sarah Wesley and Noah. In
4 this case it's a dwelling.

5 Now, we also have the entry into a
6 dwelling part. Entry includes the intrusion of any
7 part of the defendant's body or any instrument
8 under his control. So we have testimony from
9 Brenda that the defendant entered the house through
10 the window. And you will hear in her 911 call that
11 she says, he's coming in through the GD window,
12 he's coming in through the GD window.

13 He came in through the window and he
14 followed her out the front door. And, logically,
15 that makes sense because why would she run outside
16 if he was still outside? He had come into the
17 house. That's what made her leave.

18 For argument's sake, let's say the
19 defendant didn't even come in through the window.
20 It's still entry because of the second part, any
21 instrument under his control. The second that this
22 ax handle broke through that window and made that
23 glass break, the second it broke through, that was
24 an instrument under his control and it is still an
25 entry. So the burglary actually happened the

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1 moment he broke that glass.

2 We know that the window was broken from
3 the outside because the glass landed on the inside.
4 The direction of force was from the outside in. We
5 know the defendant broke the glass on the outside
6 and he came in through here. This was the bed that
7 Wesley had been sleeping in just a few moments
8 before.

9 Now, ladies and gentlemen, the next
10 part of burglary first, burglary in the first
11 degree, is without consent. The defense might get
12 up here and say, oh, he had consent to go into the
13 house, he was friends with Sarah Riggs, he had the
14 to right come in there. Ladies and gentlemen, we
15 have testimony, first of all, from both Noah and
16 Brenda that the defendant was not allowed in the
17 house. We know that not just from the victim, but
18 from her son. We also know from the testimony that
19 as the defendant ran up on the porch the victim
20 shouted, Kevin, go away, you're not supposed to be
21 here.

22 We know the victim locked the door. We
23 know that he didn't take out a key and unlock it
24 because he didn't have consent to be there, but
25 perhaps the best evidence that he didn't have

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1 consent to be there is because he had to break down
2 a door and break a window to get in. Ladies and
3 gentlemen, if you have to break a door and a window
4 to get into a house, you don't have consent to be
5 there. Plain and simple.

6 He had to break the house to get into
7 the house. He did not have the consent to be over
8 there.

9 With the intent to commit a crime
10 therein; ladies and gentlemen, Kevin Driggers went
11 there with the intent to commit the crime of
12 murder. Just because he did not succeed in his
13 intentions that day did not mean that when he broke
14 into that house he wanted to kill Brenda Mills, and
15 the reason we know that for sure is by his own
16 language. As he was pounding on the door, he
17 stated with the weapon in his hands, I'm going to
18 kill you. So we know that that was his intention
19 when he broke into the house because he tells us.
20 He had the intent to commit the crime of murder.
21 That's basic burglary.

22 Now, the two aggravating factors occur
23 either when you're affecting the entry, basically
24 when you're trying to break in, while you're in the
25 house, or while you're fleeing from the house,

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1 while you're running from the house. That's the
2 immediate flight therefrom.

3 The two aggravating factors that I've
4 put on the slide is that he either causes physical
5 injury to a nonparticipant in the crime or that he
6 uses or threatens the use of a dangerous
7 instrument.

8 Now, as I stated earlier, the judge is
9 going to read a list of aggravating factors. We
10 only need one, but in this case we have both of
11 these. The defendant caused physical injury to
12 Brenda Mills in the front yard, and that was while
13 he was running from the house he just broke into.
14 That's that third part, and affect an immediate
15 flight therefrom. He caused that jury while he was
16 running from the scene. That is the aggravating
17 factor.

18 However, there's another one too.
19 Although, we've already proven he caused the injury
20 to Brenda Mills, he used, or threatened the use of
21 a dangerous instrument. While he was banging on
22 the door, he was threatening to use the ax handle.
23 That's when he was affecting the entry, that he
24 broke down that door. He used it when he broke in
25 through the window.

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1 And, again, he didn't just threaten to
2 use it in the front yard, he actually used it in
3 the front yard. So both of those aggravating
4 factors are present in this case. And with both of
5 those aggravating factors, we have a burglary in
6 the first degree.

7 Now, you're going to hear from the
8 judge something about lesser included offenses.
9 Basically, that means you're going to have a
10 verdict form that's going to have the option of
11 finding the defendant guilty or not guilty of
12 burglary in the first degree.

13 There are other options, too. You
14 might think the defendant's guilty of breaking into
15 the house, but you may not think it rises to the
16 level of burglary in the first degree. If that's
17 the case, you're going to have options to find him
18 guilty of other types of burglary. The first one
19 is burglary in the second degree. And, basically,
20 that is going to be a burglary without the
21 aggravating factors.

22 Now, we know this happened in a
23 dwelling and we know this happened with the
24 aggravating factors. It's our position that it's
25 burglary in the first degree. There is no question

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1 it happened in a dwelling. If you find -- the
2 option of burglary in the second degree is if you
3 don't find the aggravating factors. Ladies and
4 gentlemen, they're clear as day. This was the
5 dangerous instrument, and this was physical injury
6 to a nonparticipant in the crime.

7 You're also going to have the option of
8 burglary in the third degree. That's burglary that
9 happens in a building without any aggravating
10 factors. Obviously, this is not a building, like
11 we went through earlier, because people slept
12 there, so it's a dwelling.

13 The next charge the defendant has been
14 charged with is the kidnapping. Now, before I
15 became a lawyer, and I think most people think this
16 too, I always thought kidnapping was what you saw
17 in movies where you tie somebody up and throw them
18 in the trunk of a car and drive them out to the
19 middle of nowhere. And that is a kidnapping, don't
20 get me wrong. That's not the only way you can
21 kidnap someone.

22 Under the law in South Carolina there
23 are several ways that someone can kidnap someone.
24 The law says that kidnapping occurs when someone
25 unlawfully seizes, or confines, or inveigles, or

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1 decoys, or kidnaps, or abducts, or carries away by
2 any means without the authority of law. So if any
3 of these apply, just one, then kidnapping has
4 occurred.

5 Well, we know that Betty Delk looked
6 out her window and saw the defendant with the
7 victim, as she stated, pinned down on the ground,
8 she couldn't move or get up. Ladies and gentlemen,
9 in that moment the victim was seized by the
10 defendant. She was confined at that state and she
11 was not able to move. In that moment she was
12 kidnapped.

13 And not just there, Kenneth Scott
14 testified that when he looked outside he saw the
15 defendant standing over the victim while she was on
16 the ground. She wasn't able to get up because of
17 his actions. The victim testified about when she
18 was laying on the ground with her face down and the
19 defendant sat on her, his weight is on her. She
20 isn't able to move because of his weight, and then
21 he takes the ax handle about her neck. At that
22 point, she can't move anything. She's barely able
23 to use her hands to push up. She is confined, she
24 is seized in that moment.

25 And, finally, ladies and gentlemen,

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1 Betty Delk testified that she saw the defendant
2 dragging the victim, dragging and stopping and
3 dragging, and she stated that he dragged the victim
4 from her yard all the way up to [REDACTED] Road. And
5 you will have this back in the jury room and you
6 can look at it.

7 Ladies and gentlemen, the method in
8 which he was carrying the victim away towards [REDACTED]
9 Road was that he was dragging her. He kidnapped
10 her at that moment, too. So many different
11 instances in which he kidnapped the victim in this
12 case.

13 Now, the next charge is attempted
14 murder. Attempted murder under the law of South
15 Carolina means that someone attempts to kill with
16 the intent to kill with malice aforethought, either
17 express or implied, one or the other. You can have
18 both, as we do in this case, but only one is
19 required.

20 The first part, attempts to kill.
21 Ladies and gentlemen, we know from the facts of
22 this case that the defendant attacked the victim
23 with a weapon and he struck her over and over. He
24 struck her in the back of the head. He stomped her
25 head into the ground and he kicked her. He tried

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1 to rip her eyeball out. And he did all of these
2 things while saying, I'm going to kill you. He
3 attempted to kill her in that moment.

4 Now, ladies and gentlemen, some of you
5 may be thinking, if he wanted to kill her, why
6 didn't he just kill her? He had five minutes. He
7 had from 9:38 a.m., when the call went out, to 9:43
8 before the officer got there. So why didn't he
9 just kill her?

10 That's a valid question, but the answer
11 to that is this: His own statement, it's going to
12 take Berkeley County an hour and 45 minutes to get
13 her and you'll be dead before then. He was not
14 anticipating Corporal Winder being just
15 five minutes away, and we know that's a reasonable
16 thing to think because of the testimony of Betty
17 Delk where she says, I was surprised Berkeley
18 County came out that quickly. Corporal Winder even
19 said that area of Berkeley County, unfortunately,
20 doesn't have much patrol, it's very rural. And the
21 defendant was counting on that.

22 In addition to that, he wasn't over
23 there to make this a quick and easy death as
24 evidenced by his actions. He was going to make
25 this a drawn-out, slow, painful, torturous death.

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1 He would let the victim get up to try to run just
2 to follow behind her and knock her back down. He
3 dragged her, hit her, he beat her, and he
4 constantly talked about how he was going to kill
5 her. He didn't want her to just die, he wanted her
6 to feel the fear first.

7 Ladies and gentlemen, this was the way
8 in which he was going to kill her, it was going to
9 be a slow, painful death. Make no mistake, he was
10 intending to kill her that day. But for Shawnda
11 Winder being five minutes away, this would be a
12 very different trial today. **Noah M.** would have
13 been testifying about the memory of his mother if
14 it wasn't for how close Corporal Winder was that
15 day.

16 The next element is with the intent to
17 kill. And sometimes in criminal cases we don't
18 easily know the intent to kill, but in this case we
19 know exactly what was on his mind because he said
20 it over and over and over again. He stated in so
21 many different ways he was going to kill the
22 victim; you're not going to get to live to see
23 tomorrow, Berkeley County's going to get here and
24 you will already be dead, my face is the last thing
25 that you're ever going to see, I'm going to fucking

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1 kill you, bitch. He said it over and over. We
2 know what he was saying because he wouldn't stop
3 saying it. Ladies and gentlemen, that was his
4 intent. The words were coming out of his mouth,
5 not once or twice, but more times than we can
6 count.

7 The final element is malice
8 aforethought, either express or implied. Malice is
9 hatred, ill will, hostility, it's a wicked or
10 depraved spirit, it's the intentional doing of a
11 wrongful act. Malice is not premeditation. It
12 doesn't mean you think up the plan the night
13 before. Malice can happen like that. (Indicating)
14 It's that hatred, that hostility we see in the
15 defendant's actions.

16 Malice can be in two forms, express or
17 implied. Express is what it sounds like. A
18 statement can be express malice, and we've had many
19 different statements of express malice in this
20 case. You're not going to live to see tomorrow;
21 that's express malice. You will die today, bitch;
22 that statement is express malice.

23 As I said, the name calling is
24 additional malice. You are going to die before
25 Berkeley County gets here. That's express malice.

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1 Take a look at my face, that's the last thing
2 you're going to see. He says that as he's trying
3 to rip her eyeball out. And, finally, I'm going to
4 fucking kill you, bitch. The name-calling, the
5 profanity, that just adds to the hostility of the
6 situation. That is malice.

7 We also have implied malice. We don't
8 to, because we have plenty of express malice, but
9 we do have many instances of implied malice. I
10 apologize, the writing is kind of small.

11 He slammed the ax handle on the back of
12 her head. That's an act of hostility, that's
13 malice. Repeated blows to the head, stomping her
14 already busted head into the ground onto a wooden
15 plank, kicking her in the head and body, trying to
16 rip her eye out, dragging her across the yard and
17 strangling her with his arm, strangling her with
18 the ax handle while she lay face down on the
19 ground, busting the windows out of her car. In
20 that act, that was an act of hostility. That's
21 malice.

22 Allowing her to try to get up and think
23 she could run away, just allowing her to have that
24 hope just to knock it down, that's a wicked,
25 depraved spirit. That's malice.

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1 It's going to the bathroom in between
2 mercilessly beating her. That just shows how
3 little he cared about her well-being. That's
4 implied malice.

5 Ladies and gentlemen, I've added this
6 slide, we just saw it earlier, just to kind of
7 regroup because we just went through a whole lot of
8 stuff. It's attempting to kill another with the
9 intent to kill with malice aforethought, either
10 express or implied. And I want you to notice in
11 this slide, attempted murder doesn't mention
12 injury.

13 There is nothing in the statute that
14 mentions an actual injury that we have to prove,
15 and that's important. The defendant is probably
16 going to get up here and minimize her injuries,
17 that she only had eight stitches, that she was
18 released the same day, that she's doing okay now,
19 but, ladies and gentlemen, her injuries were
20 significant. But it doesn't matter, because to
21 prove attempted murder, we don't have to prove an
22 injury, and I will give you an example.

23 If someone puts a gun to my head and
24 pulls the trigger and the gun jams, and I have zero
25 injuries, that's still attempted murder. So don't

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1 get caught up when you're deliberating on whether
2 or not the injury was bad enough for attempted
3 murder. The law says that attempted murder is
4 attempting to kill another with the intent to kill
5 with malice aforethought. It doesn't talk about
6 aggravation of injuries. So keep that in mind as
7 you deliberate.

8 Now I mentioned lesser included with
9 the burglary charge. We have them with the
10 attempted murder charge again. I know this is a
11 lot of law, so I'm going to try to be as brief as
12 possible, but I want to go through them with you.

13 The first lesser included charge you're
14 going to be given, it's going to be on your verdict
15 form, is assault and battery of a high and
16 aggravated nature. We call it ABHAN. It means
17 injuring another and great bodily injury resulting,
18 or the act is accomplished by means likely to
19 produce death or great bodily injury.

20 Obviously, this statute talks about
21 injury. This is basically the statute if you don't
22 have intent to kill and you don't have malice, but
23 the reason this doesn't fit is because we have
24 malice. We have attempt to kill. We have so many
25 examples. The statements I'm going to kill you,

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1 you're going to die, you're going to die, you're
2 not going to live to see tomorrow, this ax handle
3 to the back of her head, stomping her head into the
4 ground, kicking her in her head, strangling her.

5 Ladies and gentlemen, we do have malice
6 and attempt to kill and that's why I think murder
7 is the right charge.

8 You're going to have a few more lesser
9 included. The next one is assault and battery,
10 first degree. This is injuring someone during the
11 commission of a burglary, or kidnapping, or theft,
12 or robbery. Obviously, the defendant did injure
13 the victim during a kidnapping and burglary, but as
14 I stated before, that's not the appropriate charge
15 because we do have malice, we do have intent to
16 kill. There's a big difference.

17 In this case, if it wasn't for Corporal
18 Winder, we would be looking at a murder charge.
19 That's the difference.

20 The next lesser is assault and battery,
21 second degree. The unlawfully injuring someone
22 with moderate bodily injury resulting or could have
23 resulted, just moderate bodily injury.

24 And the last lesser included is just
25 unlawfully injuring somebody with the ability to do

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1 so. That's like a slap across the face.

2 Ladies and gentlemen, these lessers

3 don't fit because this wasn't a punch in the face.

4 This wasn't a slap across the cheek. It wasn't a

5 tussle and this wasn't a mere injury as assault and

6 battery first, second, or third indicates. This

7 was someone trying to kill another person. This is

8 a whole different ball game. This was an injury

9 that was meant to kill. Attempted murder is the

10 appropriate charge. Kevin Driggers tried to kill

11 Brenda Mills. He did it with the intent to kill

12 Brenda Mills and he did it with both express and

13 implied malice.

14 What this case boils down to at the end

15 of the day, ladies and gentlemen, is control. The

16 defendant was broken because he lost control over

17 his girlfriend, he did not handle it well. He lost

18 control over her so he lost control over himself.

19 When that happened, he, in the ultimate act of

20 control, decides to go over to her house where he

21 was not invited, not allowed, and he was going to

22 take back that control. Not just by assaulting

23 her, but by breaking into her house, and by

24 dragging out this beating to make it as painful as

25 possible to get back at her for his broken heart.

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1 Ladies and gentlemen, Kevin Driggers'
2 control ends today and that's because now each of
3 you have the control to decide the verdict. And
4 when you go back into your jury room, I ask that
5 you take all of these little details, all of these
6 statements made, all of the evidence you heard from
7 the jury -- I'm sorry, from the witness stand and
8 you apply the law as we just did, and I humbly ask
9 that you find him guilty of burglary in the first
10 degree, of attempted murder, and of kidnapping.

11 The defendant stated to Corporal Winder
12 on the date of the incident, I guess this is just
13 what love will make you do. Ladies and gentlemen,
14 this is Kevin Driggers twisted version of love, but
15 we know this isn't love. This is hate. This is
16 malice. This is attempted murder.

17 (911 call played in open court.)

18 THE COURT: Ms. Shivers.

19 MS. SHIVERS: Thank you, Your Honor.

20 May it please the Court?

21 I know this has been very difficult to
22 listen to and as our -- as my co-counsel indicated
23 to you on Monday, Kevin Driggers is not innocent.
24 He assaulted Brenda Mills on November 4th and she
25 didn't deserve anything that happened to her, but

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1 what he didn't do was attempt to kill her.

2 Brenda's testimony indicated to you
3 that she called 911, this tape that you just heard
4 from the Solicitor, inside of the residence when
5 she told her son to leave. You can hear her in the
6 911 call telling them, he broke the glass, and she
7 runs out. And if you listen to her testimony, she
8 runs out of the other door and she is immediately
9 struck by a stick in the back of her head and falls
10 face first. She gets up and is able to leave.

11 She tells you -- the Solicitor asked
12 her directly, did he drag you? No, I got up and I
13 walked away. There is no doubt that she had
14 injuries, you can see them. She had a one-inch
15 laceration -- a little over a one-inch laceration
16 on the back of her head that required eight
17 stitches. She said that he punched her, but what
18 you don't see in all of the testimony is any
19 evidence that she was stomped, dragged, or kicked
20 around. She has nothing -- no footprints, dirt
21 prints, grass marks, nothing on her clothing that
22 would indicate any of that.

23 And you heard the 911 tape. She
24 indicates that she was on the phone with 911 all
25 the way up to the point where she was in front of

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1 Don's property, which is 150 yards away. She never
2 once indicates on that tape that he's dragging her
3 anywhere. She doesn't say he's holding an ax
4 handle and choking me; and she's at Don's property
5 and that's where she said that happened. We just
6 listened to the tape. That just didn't happen.

7 Your most reliable witness as to what
8 happened at Don's property is Mr. Kenneth Scott.
9 And I would implore you to listen to his testimony
10 again and recall what he said. He got there and he
11 did not see him hitting her. He was behind her and
12 he was there present with her near Don's property,
13 but he never once saw him place his hand on her.

14 The victim herself is the second most
15 reliable witness that you guys have. She knows
16 what happened and she told you that she wasn't
17 dragged. She completely contradicts what Ms. Betty
18 Delk said. And I'm not saying that, you know,
19 everything that Ms. Delk said couldn't have
20 possibly been seen, but it's been a year. She
21 talked to nobody until two weeks ago, other than
22 people in the neighborhood.

23 And the problem is, it's horrible what
24 happened. She wanted to do everything she could to
25 help. Same thing with Miss Cheryl. She didn't

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1 come her to purposely tell you a story. She wants
2 to help. She doesn't want to see Kevin get away
3 with what he did to her, but the thing is, what he
4 did was assault. You listen back to all the
5 testimony. The Solicitor herself in every single
6 question to that victim, so when he assaulted you,
7 proceeded with the question, on multiple occasions.

8 The Solicitor herself calls this an
9 assault because that's what it was. It was an
10 assault. He never had any intention to kill her.
11 You see that by the fact in the beginning of the
12 911 call that she's clearly talking about the dogs.
13 He went there to get the dogs. Yeah, they broke
14 up. They were in a relationship for two years,
15 they broke up, she had the dogs at the house. He
16 wanted his dogs back. She knew that. I asked her,
17 she admitted that. And you can hear her saying it
18 at least three times on that 911 call about the
19 dogs; just take the dogs and go.

20 Solicitor wants to make everything out
21 like it shows an intent to kill. His intent was to
22 get his dogs back. He didn't go there with an
23 intent to murder her. If he had gone there with
24 the intent to murder her, she wouldn't be here.

25 What don't you see? You heard two

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1 witnesses, Officer Winder, as well as the evidence
2 technician, tell you that they took two knives into
3 evidence. None of that was used during the
4 commission of this assault. If he wanted to kill
5 her, he had the means to do it. He didn't. That
6 wasn't his intent.

7 His intent was to go over there and get
8 the dogs. She wouldn't let him get the dogs. She
9 got herself in the house, pissed him off and then
10 this altercation occurred. It's not right by any
11 stretch. I'm not excusing what he did to her. He
12 assaulted her and that's what he should be found
13 guilty of. Assault.

14 The doctor -- sorry, the nurse
15 practitioner that came told you about the injuries.
16 He classified them as minor to moderate. That
17 falls into the assault and battery third to assault
18 and battery second. I want you to pay careful
19 attention on the law when the judge instructs you
20 on the law of assault and battery second degree.
21 It's not just a minor injury. It requires moderate
22 bodily injury.

23 Moderate bodily injury is something
24 that requires more than just -- you know, you have
25 to have some kind of anesthesia or something --

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1 which they indicated they did the Lidocaine to
2 stitch up her head -- some kind of broken bone or
3 prolonged unconsciousness. That is what's required
4 for assault and battery in the second degree.

5 And I believe that the injuries that
6 the nurse indicated, the fractures to the back and
7 of the anesthesia required for the head wound,
8 would fall under moderate bodily injury. He agreed
9 with that on the stand, and that's what we believe
10 the evidence has shown you.

11 As to kidnapping, the Solicitor relies
12 on the fact that Betty Delk indicated that she was
13 dragged from all the way from Betty Delk's yard,
14 which she was the only one that says anything about
15 this altercation taking place in her yard, but she
16 indicates that she was dragged all the way from
17 there all the way to [REDACTED] Road, which as all of
18 the witnesses -- and you saw on the picture of the
19 map, these properties are approximately 150 yards
20 from each other.

21 So the Solicitor wants you to believe
22 that she was dragged from this red house property
23 here, all the way to the road over here by Don's
24 property. (Indicating) The victim herself tells
25 you that didn't happen. She told you that she got

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1 up and walked away and walked over there. And you
2 can hear that on the 911 tape. She doesn't once
3 ever say, he's dragging me by my hair, help me.
4 She indicates that he's coming after her. He
5 chased her over there, he was running, she was
6 running to Don's property.

7 And at this point, when they're
8 standing at Don's property, Mr. Ken Scott had left
9 his property over here, and had walked down there.
10 (Indicating) He indicated that he was the distance
11 from the witness stand to where the officer was
12 sitting in the other courtroom. So, approximately,
13 50 feet, if that, away. 25 feet.

14 And he indicated to you that he saw him
15 -- that he never saw him touch him at that point.
16 He said the assault had already occurred prior to
17 that point, and he came to that conclusion because
18 of the fact that she was bleeding from the head and
19 that's what he was able to see.

20 He did not see any of this body
21 slamming, picking up and body slamming her, getting
22 on her back and choking her out with the ax handle.
23 If you look at the pictures of her injuries -- and
24 you will have all of these back there -- there's
25 nothing across the neck that would indicate that.

CLOSING ARGUMENT BY MS. SHIVERS

1 She may have been punched and slapped and hit with
2 the ax handle, but she certainly wasn't choked out.

3 And the nurse practitioner indicated
4 with respect to the broken blood vessels in the eye
5 that that can occur by either choking or other
6 forced object going into the eye. And she only has
7 that on one side. I would submit to you that if
8 she had been choked out, that she would have that
9 on both eyes.

10 And the victim herself tells you that
11 the eye injury she has, she doesn't say that she
12 got that because she was choked. She said she got
13 that because he poked her in the eye. And when I
14 got up there and questioned her about that, it was
15 while she was biting his arm. She admitted that
16 she was biting his arm and he poked her in the eye
17 to get her to stop biting him during part of the
18 altercation.

19 There is no doubt that she was injured,
20 but I don't believe that the evidence matches up
21 when you look at the most credible witnesses to
22 either instance that the Solicitor relies on to
23 substantiate a kidnapping charge; particularly,
24 given the fact -- and I'm not quite sure why she
25 pointed this out, but if he was in the middle of

CLOSING ARGUMENT BY MS. SHIVERS

1 kidnapping her, why would he stop and go to the
2 bathroom? It doesn't make any sense. That -- I'm
3 not sure -- I don't recall Mr. Scott indicating
4 that in his testimony, but it just seems sort of
5 odd and doesn't really fit with someone intending
6 to kidnap her.

7 He had no vehicle to take her anywhere
8 and it just isn't plausible that the two things
9 that she relies on the witnesses contradict each
10 other as to whether or not that happened. And it
11 would be our contention that neither of those
12 things occurred, that he sat on her back and held
13 her down with the ax handle at her throat or that
14 he dragged her across the properties. The victim
15 said that didn't happen.

16 As to burglary in the first degree,
17 there are a couple of critical points about
18 burglary in the first degree. First of all, you
19 have to prove that -- the State has to prove that
20 the entry was made, or at the time of the entry the
21 intent was present. And what the Solicitor has
22 told you is that he went in there with the
23 intention to murder her, and I submit that is
24 completely illogical. We know this because she's
25 talking about the dogs.

CLOSING ARGUMENT BY MS. SHIVERS

1 He went there with the intention to get
2 his dogs. And entering a residence, with or
3 without consent, trying to obtain your property is
4 not the same thing as entering with the intent to
5 commit a murder. That doesn't meet the elements,
6 but notwithstanding that, I don't believe that
7 they've proven he went there without consent. The
8 State knows whose residence that was, and while
9 Brenda was staying there -- and she was staying
10 there with her friend, that had been Sarah's house
11 for years. Sarah's mother owned the house.

12 Who did you not hear from? Why is it
13 that the State knows about Sarah Riggs and why was
14 she not here to tell you whether or not he had
15 consent? I would submit probably because she
16 didn't help their case, and if she would have
17 gotten on the witness stand, they wouldn't have
18 been able to make that argument to you.

19 Additionally, I don't know that the
20 evidence that they provided shows that he actually
21 entered the house. Ever. The time frame on the
22 911 call, when you hear -- from the time that it
23 starts when -- what Brenda told us on the stand is
24 when she was in the house right after or right
25 before her son left, to the time when you hear her

CLOSING ARGUMENT BY MS. SHIVERS

1 saying, he's beating me, he's beating me is very
2 short.

3 She said that she ran out of the front
4 door and he met her right there in the yard and she
5 was running, and the next thing she knew she had
6 gotten hit in the back of the head and fallen face
7 down. So if she's running away, she doesn't see
8 what's behind her and how he came about. And I
9 would submit to you that if you look at the picture
10 of the window -- because she made it clear that he
11 was not able to make it through the door. Look at
12 the picture of the window, and you will have this
13 so you can analyze this, there is glass all the way
14 around the window. It is like clearly broken in
15 the middle and then you can see shards of glass all
16 the way around it. So you will be able to look at
17 that.

18 I submit to you there is no way he
19 would have been able to get himself in through that
20 hole. And you heard from all the officers, he had
21 absolutely no injuries to his person. If he had
22 been able to climb through this hole, which is
23 covered in glass on the bottom and on the side and
24 on the top of jagged edges, then he would have had
25 some sort of injury to his person, or that this

CLOSING ARGUMENT BY MS. SHIVERS

1 glass wouldn't have been able to remain there if he
2 fit his entire body through there.

3 More reasonably is that when he heard
4 her running across the other side of the trailer,
5 is that he just went around the other side and came
6 at her and then whacked her with the ax handle.
7 And that's what we believe the evidence shows.

8 And it's pretty clear that he was
9 pretty upset and -- let's see. He was upset. He
10 busted the trailer window the same way that he
11 busted the car windows. It isn't excusable, but
12 it's not first degree burglary. There is a crime
13 for this. It's not what he's charged with.

14 And notwithstanding that, I don't
15 believe that they have proved that he had intent at
16 the time. Even if you believe that he entered the
17 residence, even if you believe that he entered
18 without consent, they still have to prove that he
19 entered without consent and at the moment he
20 entered that he had the intention to commit the
21 crime of murder, which is what they are alleging.

22 If you find that he did not have the
23 intention to commit murder, we submit that you
24 should find not guilty on burglary in the first
25 degree. I think if you listen very carefully back

CLOSING ARGUMENT BY MS. SHIVERS

1 to all the testimony and look at your notes and
2 remember the witnesses and what they had to say, I
3 think it's going to be clear that the State has
4 absolutely no evidence of an intent to kill. Words
5 are not enough.

6 And if you noticed, she used the same
7 exact basis for her explanation of intent to kill
8 as she did for express malice. If they were the
9 exact same thing the legislature would not have
10 made her prove an additional element. They are not
11 the same element. An intent to kill is a personal
12 intent that he had in his mind at that moment, and
13 despite whatever he is saying, which could very
14 easily amount to malice.

15 It was clear that he was angry, there
16 was hostility. And I'm not arguing that, you know,
17 there's not some angry heart at the time, but, you
18 know, just because you say something does not mean
19 that that's what your intent is. Your intent could
20 be to scare her, to assault her. That's not
21 attempted murder. That's not an intent to kill.
22 It's a very specific intent and you have to have
23 the intent to murder her, to end her life for all
24 eternity, and that they have not proven.

25 Additionally, it's kind of interesting,

CLOSING ARGUMENT BY MS. SHIVERS

1 because you hear this over and over again the fact
2 that he said, I'm going to kill you, I'm going to
3 fucking kill you, bitch, your face -- my face is
4 the last thing you're going to see. And she
5 repeated that over and over again, but how is it
6 that -- we have the 911 call, and you can listen to
7 all of them, there are three of them, 911 calls.

8 And, apparently, every single witness
9 got on that witness stand and told you about these
10 statements that they heard from 150 yards away, but
11 how is it that even on the victim's 911 call, you
12 never hear him say, I'm going to kill you. He's
13 standing over her and he's beating her up and she
14 has the 911 call the whole entire time, and he's
15 saying it loud enough for the neighbors 150 yards
16 away to hear, I'm going to kill you, I'm going to
17 end your life. Why is it that we don't hear it on
18 the 911 call? I submit to you because he never
19 said that.

20 He was angry, he beat her up, he
21 shouldn't have, but he did not intend to kill her,
22 he did not kidnap her, he did not commit a burglary
23 in the first degree. And for those reasons, we
24 respectfully request a verdict of not guilty on
25 burglary in the first, not guilty on kidnapping,

JURY CHARGE

1 and guilty of a lesser included offense of assault
2 and battery in the second or assault and battery in
3 the third. Thank you.

4 THE COURT: Ladies and gentlemen, I am
5 now going to instruct you on the law applicable to
6 this case. Please listen carefully. I typically
7 do not send a copy of these charges back to you.
8 So please listen carefully.

9 Madame Foreperson, as I indicated to
10 you previously, you are responsible for writing the
11 verdict, and I will give you instructions when I go
12 over the verdict form in just a few moments.

13 Thank you, Mr. McNeely.

14 I remind you that during this trial
15 that you and I have certain duties to perform. As
16 the trial judge, it is my responsibility to preside
17 over the trial of this case, and I have the duty to
18 rule on the admissibility of the evidence offered
19 during this trial. You are to consider only
20 competent evidence before you. If there was any
21 testimony ordered stricken from the record, you
22 must disregard that testimony. You are to consider
23 only the testimony that has been presented from the
24 witness stand, as well as the exhibits that have
25 been made a part of the record in this case.

JURY CHARGE

1 I have the additional duty to charge
2 you the law applicable to this case. As the
3 presiding judge, I am the sole judge of the law in
4 this case. It is your duty as jurors to accept it
5 and apply the law exactly as I state it to you now.
6 If you have any idea as to what the law is, or what
7 the law ought to be, and it does not agree with
8 what I'm about to tell you, you must abandon your
9 own ideas because you were sworn to accept the law
10 and apply the law exactly as I state it to you now.

11 In every case tried in this court
12 before a jury, the jury becomes the sole and
13 exclusive judges of the facts. A trial judge may
14 not make any comments regarding the facts in this
15 case. You, the jury, are the sole judges of the
16 facts in this case.

17 You are not to infer from anything that
18 I have said or done throughout the progress of this
19 trial in ruling upon the admissibility of evidence,
20 or otherwise, or anything that I say now during the
21 instruction on the law that I have any opinion
22 about the facts in this case. The law does not
23 allow me to have an opinion about the facts in this
24 case. That is a matter solely for you to
25 determine. It is your duty to determine the

JURY CHARGE

1 effect, value, and weight of the evidence presented
2 during this trial.

3 The indictments in this case, there are
4 three, charge the defendant with burglary in the
5 first degree, attempted murder, and kidnapping. I
6 remind you the fact that the defendant was
7 arrested, charged, and indicted in this case is not
8 evidence in the case and cannot be considered by
9 you as evidence of guilt in this case, nor does it
10 create any presumption or inference of guilt. This
11 document is simply the formal written instrument
12 which contains the charge made against the
13 defendant. It is the formal document by which this
14 case is brought into court.

15 Just as the indictment in this case is
16 not evidence, any terminology or labels used to
17 refer to the individuals involved in this case
18 cannot be considered by you as evidence. For
19 example, the word, defendant, or, victim, are
20 merely formal labels and may not be considered by
21 you as evidence.

22 The indictments in this case allege
23 three different offenses against the defendant.
24 The charges are 2016-GS-1474, burglary, first
25 degree, 2016-GS-08-4175, attempted murder,

JURY CHARGE

1 2016-GS-08-1476, kidnapping. Each indictment
2 alleges a separate and distinct offense. You must
3 decide each indictment separately on the evidence
4 and the law applicable to it uninfluenced by your
5 decision as to the other Indictments. The
6 defendant may be convicted or acquitted on any or
7 all of the offenses charged. Madame Foreperson,
8 you will write a separate verdict of guilty, or not
9 guilty, for each indictment. The defendant has
10 pled not guilty to each indictment. A person
11 charged with committing a criminal offense in South
12 Carolina is never required to prove himself
13 innocent.

14 I charge you, it is an important rule
15 of law that the defendant in a criminal trial, no
16 matter what the seriousness of the charge may be,
17 will always be presumed to be innocent of the
18 crimes for which the Indictments were issued unless
19 guilt has been proven by evidence satisfying you of
20 that guilt beyond a reasonable doubt.

21 This presumption of innocence does not
22 end when you begin your deliberations, but it
23 accompanies the defendant throughout the trial
24 until you reach a verdict of guilt based upon the
25 evidence satisfying you of that guilt beyond a

JURY CHARGE

1 reasonable doubt.

2 The State has the burden of proving the
3 defendant guilty beyond a reasonable doubt. Some
4 of you may have served as jurors before in civil
5 cases where you were told that it was only
6 necessary to prove that a fact is more likely true
7 than not true, such as by a greater weight or
8 preponderance of the evidence. In criminal cases,
9 the State's proof must be more powerful than that.
10 It must be beyond a reasonable doubt.

11 Proof beyond a reasonable doubt is
12 proof that leaves you firmly convinced of the
13 defendant's guilt. There are very few things in
14 this world that we do know with absolute certainty,
15 and in criminal cases the law does not require
16 proof that overcomes every possible doubt.

17 If, based upon your consideration of
18 the evidence, you are firmly convinced that the
19 defendant is guilty of the crime charged, you must
20 find the defendant guilty. If, on the other hand,
21 you think there is a real possibility that the
22 defendant is not guilty, you must give the
23 defendant the benefit of the doubt and find him not
24 guilty.

25 There are two types of evidence

JURY CHARGE

1 generally presented throughout a trial, direct
2 evidence and circumstantial evidence. Direct
3 evidence directly proves the existence of a fact
4 and does not require deduction. Circumstantial
5 evidence is proof of a chain of facts and
6 circumstances indicating the existence of a fact.

7 Crimes may be proven by circumstantial
8 evidence. The law makes no distinction between the
9 weight or value to be given either direct or
10 circumstantial evidence; however, to the extent the
11 State relies on circumstantial evidence, all of the
12 circumstances must be consistent with each other
13 and when taken together point conclusively to the
14 guilt of the accused beyond a reasonable doubt.

15 If these circumstances merely portray
16 the defendant's behavior as suspicious, the proof
17 has failed. The State has the burden of proving
18 the defendant guilty beyond a reasonable doubt.
19 This burden rests with the State regardless of
20 whether the State relies on direct evidence,
21 circumstantial evidence, or a combination of the
22 two.

23 Necessarily, you must determine the
24 credibility of the witnesses who have testified in
25 this case. Credibility simply means believability.

JURY CHARGE

1 It becomes your duty as jurors to analyze and to
2 evaluate the evidence and determine which evidence
3 convinces you.

4 In determining the believability of the
5 witnesses who have testified in this case, you may
6 believe one witness over several witnesses, or
7 several witnesses over one witness. You may
8 believe a part of the testimony of a witness and
9 reject the remaining part of the testimony of that
10 same witness. You may believe the testimony of a
11 witness in its entirety or reject the testimony of
12 a witness in its entirety.

13 You may consider whether the witness
14 has exhibited to you any interest, bias, prejudice
15 or other motive in this case, and you may also
16 consider the appearance and manner of a witness
17 while that witness was testifying.

18 The Rules of Evidence ordinarily do not
19 permit witnesses to testify to opinions or to
20 conclusions. An exception to this rule exists for
21 witnesses we call expert witnesses. A witness who
22 by education and experience has become an expert in
23 some art, science, profession or calling may state
24 an opinion as to a relevant and material matter in
25 which the witness claims to be an expert and may

JURY CHARGE

1 also state the reasons for that opinion.

2 You should consider any expert opinion
3 received in evidence in this case like any other
4 evidence; give it the weight that you think it
5 deserves. If you decide that the opinion of an
6 expert witness is not based on sufficient education
7 and experience, or if you conclude the reasons
8 given in support of the opinion are not sound, or
9 that the opinions are outweighed by other evidence,
10 you may disregard the opinion entirely.

11 An expert witness's testimony is to be
12 given no greater weight than that of other
13 witnesses simply because the witness was qualified
14 as an expert. Further, you are not required to
15 accept an expert's opinion even though it was not
16 contradicted.

17 A statement alleged to have been made
18 by the defendant has been admitted into evidence in
19 this case. While I have determined that the
20 statement is admissible, I instruct you that you
21 make the ultimate decision of whether or not the
22 defendant made the statement. If the defendant did
23 make it, you must determine if the statement was
24 made voluntarily and of his own free will. That
25 means that the statement was not caused by

JURY CHARGE

1 pressure, force, fear, threats, coercion, or
2 intimidation, or by hope or a promise of leniency
3 or reward of any kind.

4 In determining whether the statement
5 was voluntary, you should consider both the
6 characteristics of the defendant and the details of
7 the questioning. Some of the factors that you must
8 consider are the age of the defendant, the
9 defendant's education, or lack of education, mental
10 ability or capacity, IQ, background, environment,
11 the place and length of any questioning, the nature
12 of the questioning, and the advice or lack thereof
13 to the defendant of his Constitutional rights,
14 including, but not limited to the right to remain
15 silent, that any statement could be used against
16 him in a court of law, the right to have a lawyer
17 present, that if he cannot afford a lawyer, a
18 lawyer would be appointed to represent him without
19 any cost, and that he could stop making a statement
20 at any time.

21 You must carefully consider all of the
22 surrounding circumstances before you give any
23 weight to an alleged statement. The State has the
24 burden of proving beyond a reasonable doubt that
25 the alleged statement was voluntary. If you

JURY CHARGE

1 determine it was, you may give the statement any
2 further consideration that you deem proper. You
3 must decide what weight, if any, should be given to
4 the alleged statement. If you determine the
5 alleged statement was not a free and voluntary
6 statement of the defendant, you should not consider
7 the statement at all.

8 In order to establish criminal
9 liability, criminal intent is required. For
10 example, the mental state required to be proven by
11 the State for a particular crime might be purpose,
12 intent, knowledge, recklessness, or criminal
13 negligence. Criminal intent must be proven by the
14 State beyond a reasonable doubt. It is always a
15 matter that must be determined by you, the jury,
16 from the circumstances surrounding the situation.

17 There is no way to prove intent to a
18 mathematical certainty. The law says that criminal
19 intent may be inferred from the circumstances shown
20 to have existed. This is how you make a
21 determination of whether or not the element
22 requiring the intent was present. It is not
23 necessary to establish intent by direct and
24 positive evidence, but intent may be established by
25 inference in the same way as any other facts by

JURY CHARGE

1 taking into consideration the acts of the parties
2 and all the facts and circumstances of this case.

3 Criminal intent is a mental state, it
4 is a conscious wrongdoing. It is up to you to
5 determine what the defendant intended to do based
6 upon the circumstances shown to have existed.
7 Criminal intent can arise from an action or a
8 failure to act. It may arise from negligence,
9 recklessness, or an indifference to duty, or to
10 consequences that is considered by the law to be
11 the equivalent of criminal intent.

12 I'm halfway through, and like a
13 baseball game, we're not quite to the seventh
14 inning, but it's an appropriate time for us to take
15 a stretch break. So please stand, stretch, and get
16 some blood moving and then once everybody is alert
17 and ready to focus, we will start again.

18 If anybody needs a cup of water, I'll
19 be happy to provide that.

20 You need to go to the restroom?

21 A JUROR: I do.

22 THE COURT: Please remember all my
23 admonitions. You may leave your notepads right
24 where they are.

25 Please stand for the jury.

JURY CHARGE

1 Ms. Martinez, they will follow you.

2 (Jury out, 11:34 a.m.)

3 THE COURT: Thank you. Be seated.

4 MS. SHIVERS: Are we able to take a
5 short comfort break?

6 THE COURT: You can. Do not go far.

7 (A recess transpired.)

8 (Jury in, 11:43 a.m.)

9 THE COURT: Thank you. Please be
10 seated.

11 Ladies and gentlemen, during the break
12 I have placed a copy of the verdict form on the
13 screen.

14 Madame Foreperson, again, you are
15 responsible for completing that verdict.

16 Ladies and gentlemen, please give
17 strict attention to me as I read. I know it's very
18 distracting sometimes for it to be up there, but I
19 need to explain to you the elements of each of the
20 charges that are on the verdict form.

21 The defendant is charged with first
22 degree burglary. The State must first prove beyond
23 a reasonable doubt that the defendant entered a
24 dwelling without consent. A dwelling is any
25 building or portion of a building in which a person

JURY CHARGE

1 ordinarily sleeps, but a building is a dwelling
2 even if the residents are temporarily absent from
3 the building.

4 In order to prove that the defendant
5 entered the dwelling, the State does not have to
6 show that the defendant's entire body entered the
7 dwelling. The smallest entry is sufficient. It
8 may be any part of the body such as a hand or a
9 foot, or even on instrument such as a hook or other
10 instrument. In addition, the State does not have
11 to prove that force was used to gain entry.

12 Next, the State must prove beyond a
13 reasonable doubt that the defendant intended to
14 commit a crime, either a felony or a misdemeanor at
15 the time of the entry. The mere entry into a
16 dwelling without consent is not burglary. If the
17 intent to commit a crime is formed after the entry,
18 it is not burglary.

19 On the other hand, if the defendant
20 intended to commit a crime at the time of the
21 entry, it is a burglary even if the intent was
22 abandoned after the entry. It does not matter that
23 the intended crime was not completed. Intent may
24 be shown by acts and conduct of the defendant and
25 other circumstances from which you may naturally

JURY CHARGE

1 and reasonably infer intent.

2 / Finally, the State must prove beyond a
3 reasonable doubt that when entering or while in the
4 dwelling the defendant was armed with a deadly
5 weapon, or when entering or while in the dwelling
6 the defendant used or threatened to use a dangerous
7 object.

8 A deadly weapon is any article,
9 instrument, or substance which is likely to cause
10 death or great bodily harm. Whether an instrument
11 has been used as a deadly weapon depends upon the
12 facts and circumstances of each case.

13 Ordinary objects may become deadly
14 weapons when the facts show that they have been
15 used to inflict serious bodily harm or death. If
16 you find that the State has not proven that the
17 defendant is guilty of burglary in the first
18 degree, you may then determine whether the State
19 has proved that the defendant is guilty of the
20 lesser included offense of burglary in the second
21 degree.

22 As you may notice on the verdict form,
23 it indicates on the indictment for burglary in the
24 first degree, we, the jury, find the defendant,
25 Kevin Driggers, not guilty; or, we, the jury, find

JURY CHARGE

1 the defendant, Kevin Driggers guilty of burglary in
2 the first degree; or, we, the jury, find the
3 defendant, Kevin Driggers, guilty of burglary
4 second degree of a dwelling; or, we the jury, find
5 the defendant, Kevin Driggers, guilty of burglary
6 second degree of a building.

7 I'm now going to explain the
8 classifications of burglary in the second degree.
9 To prove second degree burglary of a dwelling the
10 State must prove beyond a reasonable doubt that the
11 defendant entered a dwelling without consent and
12 with the intent to commit a crime therein without
13 any of the aggravating factors listed that I just
14 enumerated in first degree burglary.

15 Again, section 16-11-31- defines a
16 dwelling as any building or portion of a building
17 in which a person ordinarily sleeps. To prove
18 second degree burglary of a building, the State
19 must prove beyond a reasonable doubt that the
20 defendant entered a building, without consent, and
21 with the intent to commit a crime therein, and when
22 entering or while in the building the defendant was
23 armed with a deadly weapon, or when entering or
24 while in the building the defendant caused physical
25 injury to anyone not participating in the crime, or

JURY CHARGE

1 when entering or while in the building the
2 defendant used or threatened to use a dangerous
3 object.

4 Section 16-11-310 defines a building as
5 any structure, vehicle, watercraft, or aircraft
6 where any person lodges or lives, or where people
7 assemble for the purpose of business, government,
8 education, religion, entertainment, public
9 transportation, or public use, or where goods are
10 stored.

11 If you find that the State has failed
12 to prove beyond a reasonable doubt that the
13 defendant committed second degree burglary of a
14 dwelling or second degree burglary of a building,
15 you may then determine whether the State has proved
16 beyond a reasonable doubt that the defendant
17 committed the lesser included offense of third
18 degree burglary.

19 To prove third degree burglary the
20 State must prove beyond a reasonable doubt that the
21 defendant entered a building, without consent, and
22 with the intent to commit a crime therein. Third
23 degree burglary includes all the elements of second
24 degree burglary of a building except for the
25 circumstances of aggravation that I enumerated

JURY CHARGE

1 previously.

2 The defendant is charged with attempted
3 murder. There is a separate verdict form for the
4 charge of attempted murder.

5 Once again, Madame Foreperson, it is
6 your responsibility to complete the verdict form
7 for attempted murder. I'm now going to discuss the
8 charge of attempted murder.

9 The defendant is charged with attempted
10 murder. In order to prove this crime the State
11 must prove the defendant attempted to kill another
12 person with malice aforethought, either express or
13 implied.

14 Malice is hatred, ill will, or
15 hostility towards another person. It is the
16 intentional doing of a wrongful act without just
17 cause or excuse, and with an intent to inflict an
18 injury, or under circumstances that the law will
19 infer an evil intent. Malice aforethought does not
20 require that malice exists for any particular time
21 before the act was committed, but malice must exist
22 in the mind of the defendant just before and at the
23 time the act is committed; therefore, there must be
24 a combination of the previous evil intent and the
25 act.

JURY CHARGE

1 Malice aforethought may be express or
2 inferred. These terms, express or inferred, do not
3 mean different kinds of malice, but merely the
4 manner in which malice may be shown to exist. This
5 is either by direct evidence or by inference from
6 the facts and circumstances which are proved.

7 Express malice is shown when a person
8 speaks words which express hatred or ill will for
9 another or when the person prepared beforehand to
10 do the act which was later accomplished. For
11 example, laying in wait for a person or any other
12 acts of preparation going to show that the deed was
13 done within the defendant's mind would be express
14 malice.

15 Malice may be inferred from conduct
16 showing a total disregard for human life. Inferred
17 malice may also arise when the deed is done with a
18 deadly weapon. A deadly weapon is any article,
19 instrument, or substance which is likely to cause
20 death or great bodily harm. Whether an instrument
21 has been used as a deadly weapon depends upon the
22 facts and circumstances of each case.

23 Ordinary objects may become deadly
24 weapons when the facts show that they have been
25 used to inflict serious bodily harm or death. If

JURY CHARGE

1 facts are proved beyond a reasonable doubt
2 sufficient to raise an inference of malice to your
3 satisfaction, this inference would simply be an
4 evidentiary fact to be considered by you as the
5 jury along with other evidence in this case, and
6 you may give it the weight that you think it should
7 receive.

8 Intent means intending the results
9 which actually occurs, not accidentally or
10 involuntarily. Intent may be shown by acts and
11 conduct of the defendant and other circumstances
12 from which you may naturally and reasonably infer
13 intent. Evidence of the character of the act, the
14 character of the instrument used, the manner in
15 which it was used, the purpose to be accomplished,
16 and the resulting wound or injuries may be
17 considered in determining the intent with which the
18 act was committed.

19 Intent may also be inferred when it is
20 demonstrated that the defendant voluntarily and
21 willfully committed an act, the natural tendency of
22 which is to destroy another's life. If you find
23 that the State has not proven that the defendant is
24 guilty of attempted murder, you may then determine
25 whether the State has proved that the defendant is

JURY CHARGE

1 guilty of the lesser included offense of assault
2 and battery of a high and aggravated nature.

3 A person commits the offense of assault
4 and battery of a high and aggravated nature if the
5 person unlawfully injures another person and great
6 bodily injury to another person results, or the act
7 is accomplished by means likely to produce death or
8 great bodily injury.

9 Great bodily injury means bodily injury
10 that causes a substantial risk of death or which
11 causes serious permanent disfigurement or
12 protracted loss or impairment of the function of a
13 bodily member or organ.

14 If you find that the State has not
15 proven that the defendant is guilty of assault and
16 batter of a high and aggravated nature, you may
17 then determine whether the State has proved that
18 the defendant is guilty of the lesser included
19 offense of assault and battery in the first degree.
20 A person commits the offense of assault and battery
21 in the first degree if the person unlawfully
22 injures another person and the act either occurred
23 during the commission of a robbery, burglary,
24 kidnapping, or theft.

25 Or a person may also commit the offense

JURY CHARGE

1 of assault and battery in the first degree if the
2 person unlawfully offers or attempts to injure
3 another person with the present ability to do so,
4 and the act either is accomplished by means likely
5 to produce death or great bodily injury or occurred
6 during the commission of a robbery, burglary,
7 kidnapping, or theft.

8 Great bodily injury means bodily injury
9 which causes a substantial risk of death or which
10 causes serious permanent disfigurement or
11 protracted loss or impairment of the function of a
12 bodily member or organ. If you find that the
13 State has not proven that the defendant is guilty
14 of assault and battery in the first degree, you
15 must then determine whether the State has proved
16 that the defendant is guilty of the lesser included
17 offense of assault and battery in the second
18 degree.

19 A person commits the offense of assault
20 and battery in the second degree if the person
21 unlawfully injures another person, or offers or
22 attempts to injure another person with the present
23 ability to do so and either moderate bodily injury
24 to another person results or moderate bodily injury
25 to another person could have resulted.

JURY CHARGE

1 Moderate bodily injury means physical
2 injury that involves prolonged loss of
3 consciousness, or that causes temporary or moderate
4 disfigurement, or temporary loss of the function of
5 a bodily member or organ, or injury that requires
6 medical treatment when the treatment requires the
7 use of regional or general anesthesia, or injury
8 that results in a fracture or dislocation.

9 Moderate bodily injury does not include
10 one time treatment and subsequent observation of
11 scratches, cuts, abrasions, burns, bruises,
12 splinters or any other minor injuries that do not
13 ordinarily require extensive medical care.

14 If you find that the State has not
15 proven the defendant is guilty of an assault and
16 battery in the second degree, you must then
17 determine whether the State has proven the
18 defendant is guilty of the lesser included offense
19 of assault and battery in the third degree. A
20 person commits the offense of assault and battery
21 in the third degree if the person unlawfully
22 injures another person, or offers or attempts to
23 injure another person with the present ability to
24 do so.

25 Ladies and gentlemen, you can see the

JURY CHARGE

1 verdict form for this indictment for attempted
2 murder. On the indictment for attempted murder of
3 Brenda Mills the options are, we, the jury, find
4 the defendant, Kevin Driggers, not guilty; or, we
5 the jury, find the defendant, Kevin Driggers,
6 guilty of attempted murder; or, we, the jury, find
7 the defendant, Kevin Driggers, guilty of assault
8 and battery of a high and aggravated nature; or,
9 we, the jury, find the defendant, Kevin Driggers,
10 guilty of assault and battery first degree; or, we,
11 the jury, find the defendant, Kevin Driggers,
12 guilty of assault and battery second degree; or,
13 we, the jury, find the defendant, Kevin Driggers,
14 guilty of assault and battery in the fourth degree.

15 Ladies and gentlemen -- and Madame
16 Foreperson, you are responsible for completing that
17 verdict form.

18 I'm going to explain to you the charge
19 of kidnapping, and this will also have a separate
20 verdict form for you to complete.

21 The defendant is charged with
22 kidnapping. The State must prove beyond a
23 reasonable doubt that the defendant knowingly and
24 unlawfully seized, confined, inveigled, decoyed,
25 kidnapped, abducted, or carried away another person

JURY CHARGE

1 without authority of law.

2 To do a thing unlawfully is to do it
3 willfully against the law. Knowingly means with
4 knowledge, consciously, not accidentally. Seize
5 means to take hold of suddenly or forcibly.
6 Confine means to limit, restrict, or enclose within
7 bounds, imprison, or shut or keep in. Inveigle
8 means to lure, entice or lead astray by false
9 representations, promises, or other deceitful
10 means. Decoy means to lure by or as if by decoy.
11 A decoy is something to entice a person into a
12 trap. Kidnapping is to remove a person against his
13 or her will by unlawful force or by fraud. Abduct
14 means to carry off secretly or by force for an
15 illegal purpose. Carry away means to remove.

16 The State does not have to prove that
17 the defendant did all of these things. Instead, if
18 you find beyond a reasonable doubt that the
19 defendant did any of these things, you may find the
20 defendant guilty of kidnapping.

21 Something done without authority of law
22 is something which the law does not sanction,
23 permit, or allow, condone or provide justification
24 for. The kidnapping does not have to be for any
25 personal or monetary gain or any illegal purpose,

JURY CHARGE

1 but may be done for any reason whatsoever.

2 Ladies and gentlemen, that is the
3 verdict form for kidnapping. On the indictment for
4 kidnapping of Brenda Mills, we, the jury, find the
5 defendant not guilty, or we, the jury, find the
6 defendant guilty of kidnapping.

7 Ladies and gentlemen, that completes
8 the charge -- the elements portion of this charge.
9 You have -- can see on the previous two verdicts
10 forms and one that is in front of you that there is
11 a signed -- place that your foreperson must sign.

12 Ms. Martinez, you must sign each of the
13 verdict forms once you have reached a unanimous
14 decision as a jury, meaning all 12 of you must
15 agree.

16 Ladies and gentlemen, I instruct you
17 and emphasize the fact that the defendant did not
18 testify is not a factor to be considered by you in
19 any way in your deliberation and in your
20 consideration of the question of guilt or innocence
21 of the defendant. It must not be considered by you
22 whatsoever. A defendant has the constitutional
23 right to remain silent and the assertion of his
24 right must not be considered by you in your
25 deliberations.

JURY CHARGE

1 I repeat, under your oath you are to
2 draw no conclusion whatsoever from the fact that
3 the defendant in this case did not testify. The
4 fact that he did not testify cannot even be
5 discussed in the jury room. The burden of proof as
6 I have discussed and stated to you is on the State.
7 The defendant is not required to prove his
8 innocence. The burden of proof remains on the
9 State to prove guilt beyond a reasonable doubt on
10 each element of each indictment.

11 Ladies and gentlemen, you will be given
12 the three verdict forms and, again, Madame
13 Foreperson, it is your responsibility to compete
14 each verdict form according to the law that I have
15 just read to you. Once you have completed each
16 verdict form, you must sign the verdict form and
17 date it. After you have completed all three
18 verdict forms, you will knock on the jury door
19 indicating that you have completed your
20 deliberations and then the bailiffs will receive
21 you back into the courtroom.

22 Ladies and gentlemen, please understand
23 there is absolutely no significance to the way that
24 I went over the charges with you. It's simply that
25 something had to go first. There is no

JURY CHARGE

1 significance on the order of the charges on the
2 verdict form. It is simply I had to put something
3 first as well.

4 Ladies and gentlemen, this is the last
5 time that I will say this to you; do not begin your
6 deliberations. Do not begin discussing this case
7 amongst yourselves. We will be gathering the
8 verdict forms, as well as all the evidence to go
9 back with you, and once we have done that, the
10 bailiff will indicate to you that you may begin
11 your deliberation.

12 Your lunch will be here momentarily,
13 hopefully, to coincide with all of that as well.
14 To my two alternates, you have completed your
15 service to this case at this time.

16 To the first 12, is there any member of
17 the panel who feels for whatever reason you
18 wouldn't be able to continue with deliberations and
19 complete your service to this case? Now is the
20 time to tell me.

21 Thank you. All 12 members have
22 indicated that they are able to complete their
23 deliberation.

24 Please rise for the jury. To my two
25 alternates, we will keep you separate. Please take

JURY CHARGE

1 all of your belongings with you.

2 (Jury out; 12:03 p.m.)

3 THE COURT: Thank you. Be seated.

4 Ms. Sigal, I cannot see you. Any
5 objection?

6 MS. SIGAL: Yes, Your Honor. I believe
7 Mr. McNeely is going to iterate --

8 THE COURT: Yes.

9 MR. MCNEELY: As to the instruction on
10 burglary first degree, I'm not sure if a page was
11 skipped or not, but the only aggravating factor
12 listed by the Court was possession of a deadly
13 weapon while affecting entry or while in the home.

14 It did not include either the ones pled
15 in the indictment, which were while effecting entry
16 while in the home or an immediate flight therefrom,
17 physical injury was caused to a nonparticipant in
18 the crime, or that he was armed with a dangerous
19 instrument. That was not read to the jury.

20 I think it skipped -- I don't know if a
21 page skipped or what. It went straight from the
22 deadly weapon aggravating factor burg first to the
23 burg second.

24 THE COURT: It is on my sheet so either
25 -- either you didn't hear it or I didn't read it.

JURY CHARGE

1 I don't know.

2 MS. SIGAL: Your Honor, I noticed it as
3 well. We looked at each other and kind of waited
4 for it and neither one of us heard it. So that
5 would be our objection to the --

6 THE COURT: All right. Anything else?

7 MS. SHIVERS: Yes, Your Honor.

8 THE COURT: Let me hear from the
9 State.

10 MS. SHIVERS: Sorry.

11 MR. MCNEELY: I believe that's it from
12 the State.

13 MS. SHIVERS: Your Honor, as to
14 attempted murder, my understanding from what I
15 heard that you instructed attempt to kill with
16 malice aforethought, and we did not hear anything
17 with a specific intent to kill, which is an
18 additional element. I don't believe the State
19 heard it either.

20 MS. SIGAL: That's correct.

21 THE COURT: And so --

22 MS. SHIVERS: We would ask for them to
23 be charged on the additional element of an intent
24 to kill.

25 THE COURT: So I asked the State, does

JURY CHARGE

1 the State have anything else?

2 MS. SIGAL: Your Honor, I don't
3 remember hearing that, but I didn't specifically
4 note that at the time. When Ms. Shivers just
5 brought it up -- I don't remember hearing that as
6 well.

7 THE COURT: All right. Let me go to
8 that charge. What do you think needs to be read?

9 MS. SHIVERS: I believe the elements
10 are attempt to kill with an intent to kill with
11 malice aforethought, and I believe the intent to
12 kill element was missing.

13 THE COURT: I'm going to take a
14 comfort break and review that, meet with my Court
15 Reporter just to make sure that it was or was not
16 on there and where -- and we'll just bring the jury
17 back in and I would recharge them as to those two.

18 MS. SHIVERS: Thank you, Your Honor.

19 THE COURT: Short recess. You may
20 take your comfort break if you need to.

21 (A recess transpired.)

22 THE COURT: Thank you, be seated. So
23 I have consulted with my court reporter, but I'm
24 always, out of an abundance of caution -- you know
25 I like for my record to be abundantly clear, so I'm

JURY CHARGE

1 going to recharge first degree burglary and
2 attempted murder. I'm just going to bring them
3 back in and say there were so many I just want to
4 make sure, I may have missed a word or two.

5 You don't want me to recharge the
6 entire burglary or attempted murder, do you?

7 MR. MCNEELY: No, Your Honor.

8 THE COURT: Meaning all the lesser
9 includeds.

10 MS. SHIVERS: No. Just the attempted
11 murder.

12 THE COURT: Okay. So the defendant is
13 charged with a first degree burglary. The State
14 must prove beyond a reasonable doubt that the
15 defendant entered a dwelling without consent. A
16 dwelling is -- in order to prove that the defendant
17 entered the dwelling.

18 Next, the State must prove beyond a
19 reasonable doubt that he intended to commit a
20 crime. Finally, the State move prove beyond a
21 reasonable doubt that when entering, or while in
22 the dwelling, the defendant was armed with a deadly
23 weapon; or, when entering, or while in the
24 dwelling, the defendant used or threatened to use a
25 dangerous object; or, when entering, while in the

JURY CHARGE

1 dwelling the defendant caused physical injury to
2 someone not participating in the crime; or, when
3 entering, while in the dwelling, or when fleeing,
4 the defendant used, or threatened to use, a
5 dangerous object; or, when entering, while in the
6 dwelling, or when fleeing, the defendant displayed
7 what appeared to be a knife, pistol, revolver,
8 shotgun, machine gun or other firearm.

9 MR. MCNEELY: Correct.

10 THE COURT: Do you want me to include
11 -- I didn't read it all, the fourth one, because he
12 did not --

13 MR. MCNEELY: I'm fine with it being
14 left out. It's really the physical injury and
15 dangerous instrument are the two that we pled.

16 MS. SHIVERS: We would ask Your Honor
17 to include all of the statutory language.

18 THE COURT: Well, I can -- then, if
19 I'm going to do it that way, then I'm going to
20 include that the defendant has a prior record or
21 two or more convictions of burglary.

22 MS. SHIVERS: Right. But they
23 didn't -- okay.

24 THE COURT: What I'm saying is, I'm
25 only -- by -- I only charge what the testimony has

JURY CHARGE

1 been presented. So those are broken down -- those
2 are just some aggravating circumstances --

3 MS. SHIVERS: Okay. That's fine.

4 THE COURT: -- that they have -- the
5 State has to prove. I didn't see anything -- it's
6 always been a dangerous object.

7 MS. SHIVERS: Yes, ma'am, that's fine.

8 THE COURT: So I didn't want to
9 include discussion of a knife, pistol, revolver, or
10 the other prior convictions. I think it would
11 confuse the jury, especially at this point.

12 MS. SHIVERS: Yes, ma'am.

13 THE COURT: All right. So I'm not
14 going to -- and in the statute it's 4 and 5 that
15 I'm not going to do. So when entering, or while in
16 the dwelling, the defendant was armed with a deadly
17 weapon; or, when entering, or while in the
18 dwelling, the defendant used, or threatened to use
19 a dangerous object; or, when entering or while in
20 the dwelling, or when fleeing, the defendant caused
21 physical injury to someone not participating in the
22 crime; or, when entering, while in the dwelling or
23 fleeing, the defendant used, or threatened to use,
24 a dangerous object.

25 MR. MCNEELY: The first of the

JURY CHARGE

1 dangerous object did not include the fleeing
2 language, so we would ask --

3 THE COURT: That's why one got crossed
4 out. Thank you.

5 Any objection to that?

6 MS. SHIVERS: No, Your Honor.

7 THE COURT: Then as to the attempted
8 murder, the defendant is charged with attempted
9 murder. In order to prove this crime, the State
10 must prove the defendant, with intent to kill,
11 attempted to kill another person with malice
12 aforethought, either express or implied.

13 The language, with intent to kill,
14 right, is the only inclusion that I'm -- that I'll
15 read the entirety of the -- I'll read the entirety
16 of it, of malice for attempted murder, but those
17 would be the only words that I change. Correct?

18 MS. SHIVERS: Yes, ma'am.

19 MS. SIGAL: Yes, Your Honor.

20 THE COURT: And one more time, while
21 we're waiting, if you would look at the verdict
22 forms, and go ahead and box up the evidence and --

23 Counsel, with the addition of, with the
24 intent to kill, the Court will also be reading
25 specific intent to commit murder is an element of

JURY CHARGE

1 attempted murder under State versus King.

2 So by bringing them back in and
3 including with intent to kill, I will also read
4 that language.

5 MS. SIGAL: No objection.

6 MS. SHIVERS: Thank you, Your Honor.

7 THE COURT: All right. Anything else
8 before I bring them in?

9 MS. SIGAL: Not from the State.

10 MS. SHIVERS: Nothing from the defense,
11 Your Honor.

12 THE COURT: I'm only reading first
13 degree burglary, the entirety, and then the
14 entirety of attempted murder.

15 MS. SHIVERS: Yes, ma'am.

16 MS. SIGAL: Yes, Your Honor.

17 THE COURT: Let's bring them in.

18 (Jury in, 12:35 p.m.)

19 THE COURT: Thank you. Please be
20 seated.

21 Ladies and gentlemen, I must recharge
22 you on two of the charges that I have previously
23 charged you. Where are your notepads?

24 FOREPERSON: He said we didn't need
25 them.

JURY CHARGE

1 THE COURT: I need their notepads.

2 (Brief pause)

3 Does everybody have your notebook?

4 THE JURY: Yes.

5 THE COURT: Ladies and gentlemen,
6 everybody have their notebook?

7 THE JURY: (Indicating)

8 THE COURT: Thank you so much.

9 Ladies and gentlemen, as you can see
10 from the verdict forms that we went over, there
11 were varying degrees of each of these charges, so I
12 just wanted to make sure that we went over -- and
13 please do not think there is any significance to
14 the fact that I brought you back and I'm only going
15 to talk about two charges. Please do not think
16 anything about that.

17 Madame Foreperson, this is simply an
18 opportunity for me to clarify what I believe may
19 have been confusing when I first gave you the
20 charge.

21 The defendant is charged with first
22 degree burglary. The State must first prove beyond
23 a reasonable doubt that the defendant entered a
24 dwelling without consent. A dwelling is any
25 building, or portion of a building, in which a

JURY CHARGE

1 person ordinarily sleeps, but a building is a
2 dwelling even if the residents are temporarily
3 absent from the building.

4 In order to prove that the defendant
5 entered the dwelling, the State does not have to
6 show that the defendant's entire body entered the
7 dwelling. The smallest entry is sufficient. It
8 may be any part of the body, such as a hand or foot
9 or even an instrument, such as a hook or other
10 instrument. In addition, the State does not have
11 to prove that force was used to gain entry.

12 Next, the State must prove beyond a
13 reasonable doubt that the defendant intended to
14 commit a crime, either a felony or a misdemeanor,
15 at the time of the entry. A mere entry into a
16 dwelling without consent is not burglary. If the
17 intent to commit a crime is formed after the entry,
18 it is not burglary.

19 On the other hand, if the defendant
20 intended to commit a crime at the time of the
21 entry, it is a burglary even if the intent was
22 abandoned after the entry. It does not matter that
23 the intended crime was not completed.

24 Intent may be shown by acts of conduct
25 of the defendant and other circumstances from which

JURY CHARGE

1 you may naturally and reasonably infer intent.

2 Finally, the State must prove beyond a
3 reasonable doubt that when entering or while in the
4 dwelling, the defendant was armed with a deadly
5 weapon; or, when entering or while in the dwelling,
6 the defendant used, or threatened to use, a
7 dangerous object; or, when entering, while in the
8 dwelling, or when fleeing, the defendant caused
9 physical injury to someone not participating in the
10 crime; or, when entering, while in the dwelling, or
11 when fleeing, the defendant used, or threatened to
12 use, a dangerous object.

13 Ladies and gentlemen, a deadly weapon
14 is any article, instrument, or substance which is
15 likely to cause death or great bodily harm.
16 Whether an instrument has been used as a deadly
17 weapon depends upon the facts and circumstances of
18 each case. Ordinary objects may become deadly
19 weapons when the facts show that they have been
20 used to invoke serious bodily harm or death.

21 Ladies and gentlemen, I'm now going to
22 reinstruct you on attempted murder. The defendant
23 is charged with attempted murder. In order to
24 prove this crime, the State must prove the
25 defendant, with intent to kill, attempted to kill

JURY CHARGE

1 another person with malice aforethought, either
2 express or implied. Specific intent to commit
3 murder is an element of attempted murder.

4 Malice is hatred, ill will, or
5 hostility towards another person. It is the
6 intentional doing of a wrongful act without just
7 cause or excuse and with an intent to inflict an
8 injury or under circumstances that the law will
9 infer an evil intent.

10 Malice aforethought does not require
11 that malice exists for any particular time before
12 the act is committed, but malice must exist in the
13 mind of the defendant just before and at the time
14 the act is committed. There must be a combination
15 of the previous evil intent and the act.

16 Malice aforethought may be expressed or
17 inferred. These terms, express and inferred, do
18 not mean different kinds of malice, but merely the
19 manner in which malice may be shown to exist. That
20 is either by direct evidence or by inference from
21 the facts and circumstances which are proved.

22 Express malice is shown when a person
23 speaks words which express hatred or ill will, or
24 when the person prepared beforehand to do the act
25 which was later accomplished. For example, lying

JURY CHARGE

1 in wait for a person or any other acts of
2 preparation going to show that the deed was within
3 the defendant's mind would be express malice.

4 Malice may be inferred from conduct
5 showing a total disregard for human life. Inferred
6 malice may arise when the deed is done with a
7 deadly weapon. A deadly weapon is any article,
8 instrument, or substance which is likely to cause
9 death or great bodily harm. Whether an instrument
10 has been used as a deadly weapon depends upon the
11 facts and circumstances of each case. Ordinary
12 objects may become deadly weapons when the facts
13 show that they have been used to inflict serious
14 bodily harm or death.

15 If facts are proved beyond a reasonable
16 doubt sufficient to raise an inference of malice to
17 your satisfaction, this inference would be simply
18 an evidentiary fact to be considered by you, the
19 jury, along with any other evidence in this case,
20 and you may give it the weight that you decide it
21 should receive.

22 Intent means intending the result which
23 actually occurs, not accidentally or involuntarily.
24 Intent may be shown by acts and conduct of the
25 defendant and other circumstances from which you

JURY CHARGE

1 may naturally and reasonably infer intent.
2 Evidence of the character of the act, the character
3 of the instrument used, the manner in which it was
4 used, the purposes to be accomplished and the
5 resulting wounds or injuries may be considered in
6 determining the intent with which the act was
7 committed.

8 Intent may also be inferred when it is
9 demonstrated that the defendant voluntarily and
10 willfully committed an act, the natural tendency of
11 which to destroy another's life.

12 Anything further from the State
13 regarding those two matters?

14 MS. SIGAL: No, Your Honor.

15 MS. SHIVERS: Nothing else, Your Honor.

16 THE COURT: Ladies and gentlemen,
17 again, you will retire, so please take your
18 notepads with you. To my two alternates, just stay
19 seated right there until we have the first 12.

20 Again, is there any reason the first 12
21 of you cannot continue your deliberations? If so,
22 please stand at this time. Thank you.

23 Madame Foreperson, please go back. You
24 have been given the verdict forms and evidence,
25 please begin your deliberations. I understand your

JURY CHARGE

1 lunch is there so please make sure that -- you may
2 only deliberate when all 12 of you are
3 participating.

4 To my two alternates, I'm going to keep
5 you in a separate place until I have been indicated
6 to by the foreperson that everyone is able to
7 deliberate.

8 Please rise for the jury.

9 (Jury out, 12:42 p.m.)

10 THE COURT: You can put them in a
11 separate room. We are going to make sure that you
12 get your lunch too.

13 Thank you. Be seated.

14 All right. Any motions or matters
15 pertaining -- anything I need to address at this
16 time?

17 MS. SIGAL: Nothing from the State,
18 Your Honor.

19 MR. MCNEELY: No, Your Honor.

20 MS. SHIVERS: Nothing from the defense,
21 Your Honor.

22 THE COURT: All right. At this time
23 no further motion or matters from the defense?

24 MR. CHURCH: Just the usual, make all
25 the previous motions for the record and objections.

JURY CHARGE

1 THE COURT: All right. And just for
2 the record, I stand by all of the Court's previous
3 rulings. We will be at ease.

4 I apologize for the confusion with
5 those two, so thank you for bringing that to the
6 Court's attention. Thank you. We will be at ease.

7 (A recess transpired.)

8 THE COURT: We have a note that will be
9 marked as Court's Number 1. What's the instruction
10 on burglary? I have brought counsel in and I will
11 read from first degree burglary down to third
12 degree burglary. We have reviewed the charge that
13 I will read. Anything before we bring in the jury?
14 From the State?

15 MS. SIGAL: No, Your Honor.

16 THE COURT: From the defendant?

17 MS. SHIVERS: No, Your Honor.

18 THE COURT: Just so we're clear, the
19 same aggravators that I used in the first degree
20 will also be used in second degree burglary of a
21 building, correct?

22 MR. MCNEELY: Correct, Your Honor.

23 MS. SHIVERS: Yes, Your Honor.

24 THE COURT: Bring them
25 in.

JURY CHARGE

1 (DFT. 2 EXH. 1, Jury Note, was marked
2 for identification.)

3 (Jury in, 2:59 p.m.)

4 THE COURT: Thank you. Please be
5 seated.

6 Now that it's just the 12 of you,
7 there's only one assigned seat. Thank you, Madame
8 Foreperson, for remaining in your assigned seat.

9 We have received a note indicating that
10 you wish to have further instructions, so I'm
11 simply going to read the entirety of the burglary
12 charge to you.

13 The defendant is charged with first
14 degree burglary. The State must first prove beyond
15 a reasonable doubt that the defendant entered a
16 dwelling without consent.

17 A dwelling is any building, or portion
18 of a building, in which a person ordinarily sleeps,
19 but a building is a dwelling even if the residents
20 are temporarily absent from the building.

21 In order to prove that the defendant
22 entered the dwelling, the State does not have to
23 show that the defendant's entire body entered the
24 dwelling. The smallest entry is sufficient. It
25 may be any part of the body, such as a hand or a

JURY CHARGE

1 foot, or even an instrument such as a hook or other
2 instrument. In addition, the State does not have
3 to prove that force was used to gain entry.

4 Next, the State must prove beyond a
5 reasonable doubt that the defendant intended to
6 commit a crime, either a felony or a misdemeanor,
7 at the time of the entry. The mere entry into a
8 dwelling without consent is not burglary. If the
9 intent to commit a crime is formed after the entry,
10 it is not burglary.

11 On the other hand, if the defendant
12 intended to commit a crime at the time of the
13 entry, it is a burglary even if the intent was
14 abandoned after the entry. It does not matter that
15 the intended crime was not completed.

16 Intent may be shown by acts and conduct
17 of the defendant and other circumstances from which
18 you may naturally and reasonably infer intent.

19 Finally, the State must prove beyond a
20 reasonable doubt that when entering, while in the
21 dwelling, or while fleeing the defendant was armed
22 with a deadly weapon; or, when entering, while in
23 the dwelling, or while fleeing the defendant used,
24 or threatened to use, a dangerous object; or, when
25 entering, while in the dwelling, or while fleeing

JURY CHARGE

1 the defendant caused physical injury to anyone not
2 participating in the crime.

3 A deadly weapon is any article,
4 instrument, or substance which is likely to cause
5 death or great bodily harm. Whether an instrument
6 has been used as a deadly weapon depends upon the
7 facts and circumstances of each case.

8 Ordinary objects may become deadly
9 weapons when the facts show they have been used to
10 inflict serious bodily harm or death.

11 If you find that the State has not
12 proven that the defendant is guilty of burglary in
13 the first degree, you may then determine whether
14 the State has proved that the defendant is guilty
15 of the lesser included offense of burglary second
16 degree.

17 To prove second degree burglary of a
18 dwelling, the State must first prove beyond a
19 reasonable doubt that the defendant entered a
20 dwelling, without consent, and with intent to
21 commit a crime therein without any of the
22 aggravating factors that I just listed in first
23 degree burglary.

24 Again, Section 16-11-311 defines a
25 dwelling as any building or portion of a building

JURY CHARGE

1 in which a person ordinarily sleeps. To prove
2 second degree burglary of a building, the State
3 must prove beyond a reasonable doubt that the
4 defendant entered a building, without consent, and
5 with the intent to commit a crime therein, and when
6 entering, while in the building, or while fleeing
7 the defendant was armed with a deadly weapon; or,
8 while entering, or while in the building, or while
9 fleeing the defendant caused physical injury to
10 anyone not participating in the crime; or, when
11 entering, or while in the building, or while
12 fleeing the defendant used, or threatened to use, a
13 dangerous object.

14 16-11-311 defines a dwelling as any
15 building or portion of a building which a person
16 ordinarily sleeps. 16-11-310 defines a building as
17 any structure, vehicle, watercraft, or aircraft
18 where any person lodges or lives, or where people
19 assemble for the purpose of business, government,
20 education, religion, entertainment, public
21 transportation, or public use, or where goods are
22 stored.

23 If you find that the State has failed
24 to prove beyond a reasonable doubt that the
25 defendant committed second degree burglary of a

JURY CHARGE

1 dwelling or second degree burglary of a building,
2 you may then determine whether the State has proved
3 beyond a reasonable doubt that the defendant
4 committed the lesser included offense of third
5 degree burglary.

6 To prove third degree burglary the
7 State must prove beyond a reasonable doubt that the
8 defendant entered a building, without consent, and
9 with intent to commit a crime therein. Third
10 degree burglary includes all of the elements of
11 second degree burglary of a building, except for
12 the circumstances of aggravation that I previously
13 read.

14 Madame Foreperson, does that answer
15 your question?

16 THE FOREPERSON: (Nodding head)

17 THE COURT: Please return to the jury
18 room and continue your deliberation.

19 (Jury out, 3:05 p.m.)

20 THE COURT: Thank you. Please be
21 seated. We will mark that as Court's 2.

22 Any objection from the State?

23 MS. SIGAL: No, Your Honor.

24 MS. SHIVERS: None, Your Honor.

25 (DFT. 2 EXH. 2, Jury note, was marked

VERDICT

1 for identification.)

2 (A recess transpired.)

3 THE COURT: We have a verdict.

4 Anything before we bring in the jury?

5 MS. SIGAL: No, Your Honor.

6 MS. SHIVERS: No, Your Honor.

7 (Jury in, 3:30 p.m.)

8 THE COURT: Please be seated.

9 Madame Foreperson, I understand you
10 have reached a verdict. If you would please hand
11 the form to my clerk.

12 Thank you.

13 Madame Clerk, please publish the
14 verdict.

15 THE CLERK: The State of South
16 Carolina, County of Berkeley, V Kevin Driggers, in
17 the Court of General Sessions, case no.
18 2016-GS-08-1474. On the Indictment for burglary,
19 first degree, we, the jury, find the defendant,
20 Kevin Driggers, guilty of burglary in the second
21 degree of a dwelling.

22 State of South Carolina, County of
23 Berkeley, V Kevin Driggers, in the Court of General
24 Sessions, case no. 2016-GS-08-1476, on the
25 Indictment for kidnapping of Brenda Mills, we, the

VERDICT

1 jury, find the defendant guilty of kidnapping.

2 The State of South Carolina, County of
3 Berkeley, V Kevin Driggers, in the Court of General
4 Sessions, case no. 2016-GS-08-1475, on the
5 Indictment for attempted murder of Brenda Mills,
6 we, the jury, find the defendant, Kevin Driggers,
7 guilty of assault and battery, second degree.

8 THE COURT: Anything further required
9 of the jury? From the defendant?

10 MS. SHIVERS: No, ma'am.

11 THE COURT: From the State?

12 MS. SIGAL: No, Your Honor.

13 THE COURT: Please be stated.

14 Ladies and gentlemen, this completes
15 your service to this case. It also completes your
16 service for the week. Please return back to your
17 jury room. I will be there in just a few moments
18 to personally thank you for your service to
19 Berkeley County. And thank you, Ms. Martinez.

20 THE FOREPERSON: Thank you.

21 (Jury out, 3:32 p.m.)

22 THE COURT: Please be seated. Are we
23 read to go forward with sentencing at this time?

24 MR. MCNEELY: Your Honor, may I be
25 excused to prepare paperwork?

1 THE COURT: Ready to go forward with
2 sentencing now or you want to wait?

3 MS. SHIVERS: If we may have five
4 minutes with our client.

5 MS. SIGAL: Mr. McNeely will be back up
6 in about five minutes.

7 THE COURT: We'll be at ease. Thank
8 you.

9 (A recess transpired.)

10 THE COURT: All right. Ms. Sigal,
11 anything else from the State?

12 MS. SIGAL: Yes, Your Honor. In regard
13 to sentencing, the State has a few things to put on
14 the record.

15 First of all, the victim, Brenda Mills,
16 was a victim of domestic violence at the hands of
17 this defendant prior to this incident, several
18 times. The defendant was actually convicted of CDV
19 first in 2015; same victim, same defendant.

20 Your Honor, you were obviously here
21 during the trial, you heard the facts and
22 testimony. This incident is going to impact the
23 victim and her son emotionally and mentally for a
24 very long time. The victim stated that she still
25 lives with constant nerve pain and back pain, a

1 constant reminder of this horrible day. She even
2 had to leave her job because of the constant pain
3 she is in.

4 The victim had to testify against the
5 man who brutally beat her and tortured her by
6 methods of stomping her, kicking her, trying to rip
7 her eye out, dragging her across the yard,
8 strangling her, beating her with an ax handle,
9 splitting her head wide open and pinning her down
10 into the ground where she couldn't move. He did
11 this while threatening to kill her.

12 The defendant broke into her home all
13 because he was angry about a breakup. This was an
14 egregious crime and the State's position is that we
15 are asking for the full 30 years due to the
16 egregiousness of all three of these charges.

17 The defendant's prior record, and I'm
18 starting from the most recent, from 2015, was
19 public disorderly conduct, criminal domestic
20 violence first offense, which I stated involved the
21 same victim as this incident, assault and battery
22 third degree; 2012, assault and battery second
23 degree and assault and battery third degree --

24 THE COURT: Who were the victims in
25 those --

1 MS. SIGAL: I'm sorry?

2 THE COURT: Who were the victims in
3 those?

4 MS. SIGAL: I'm not aware of who the
5 victims were. I don't believe it was this
6 victim -- not this victim.

7 THE COURT: All right.

8 MS. SIGAL: I'm sorry, the victim in
9 the assault and batter second degree from 2012 was
10 the defendant's aunt. He was alleged to have
11 strangled her.

12 2010, public disorderly conduct; 2003,
13 resisting arrest; 2001, threatening the life of a
14 public official; 2001, resisting arrest; 1996,
15 assault, two counts; 1994, assault, two counts;
16 1989, driving under suspension.

17 And as I stated, the facts in
18 conjunction with his record, the State is asking
19 for 30 years.

20 THE COURT: All right. Does the
21 victim wish to address the Court?

22 MS. SIGAL: No, Your Honor.

23 THE COURT: Okay. Mr. Church.

24 MR. CHURCH: Ms. Shivers.

25 THE COURT: I will hear from whomever

1 regarding sentencing.

2 MS. SHIVERS: Thank you, Your Honor.

3 First, and foremost, we would like to place on the
4 record that this was not a sexual crime, and we
5 would request Your Honor to indicate that registry
6 is not required.

7 THE COURT: Right here on the
8 sentencing sheet.

9 MS. SHIVERS: Thank you.

10 Kevin is 45 years old. He graduated
11 from Macedonia High School in 1991, he is divorced
12 and has no children and has been doing construction
13 work -- all stages of construction work all of his
14 adult life.

15 Obviously, Your Honor heard the facts
16 in this case and the jury, obviously, agreed with
17 some of what we argued. There's never been an
18 offer in this case. Had there been an offer to a
19 lesser charge, he would have pled and the victim
20 would never have to testify against him. We have
21 been requesting an offer since the time that this
22 case was brought before our office.

23 Mr. Shelton had originally asked for
24 one and nothing has ever been made. The client
25 never admitted the attempted murder and that's what

1 brought this case to trial, and I believe the jury
2 agreed with that, that there was no attempted
3 murder. He has been incarcerated for 477 days.

4 The main issue, obviously, in this case
5 was the burglary and the assault and battery. We
6 would respectfully request Your Honor to impose a
7 three-year sentence on the assault and battery
8 second, a ten-year sentence on the burglary second,
9 nonviolent, and as to the kidnapping, we're asking
10 Your Honor to consider 30 years provided upon the
11 service of ten years, with the understanding that
12 he's going to have to complete a two-year community
13 supervision, and if he doesn't comply, he would be
14 under supervision for the remaining 20 years of
15 that sentence until he either maxes out that
16 sentence or successfully completes community
17 supervision.

18 And that obviously is a strike offense;
19 he would have to do 85 percent of the ten years
20 we're asking for Your Honor to impose. And he does
21 wish to address the Court as well.

22 THE COURT: All right. Happy to hear
23 from you, Mr. Driggers. And I caution you, you
24 understand -- I will not -- I understand some
25 attorneys tell their clients not to address the

1 Court after a conviction because you have the right
2 to appeal this conviction. Do you understand your
3 appellate rights?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: You must do so within ten
6 days of today's date. I will sentence you here
7 today. Do you understand?

8 THE DEFENDANT: Yes.

9 THE COURT: And do you also understand
10 the kidnapping is a violent and most serious
11 offense?

12 THE DEFENDANT: Yes.

13 THE COURT: And the jury found you
14 guilty of those?

15 THE DEFENDANT: Yes.

16 THE COURT: All right. And tell me,
17 just so I'm clear, the CDV first in 2015, that was
18 the same victim.

19 THE DEFENDANT: Yes, ma'am; it was an
20 argument. It was an argument, yes, ma'am.

21 THE COURT: And you had an assault and
22 battery third of that same year. Who was the
23 victim in that?

24 THE DEFENDANT: That was supposed to be
25 her son, yes, ma'am.

1 THE COURT: And assault and battery
2 second, in 2012, that was your aunt?

3 THE DEFENDANT: No. That was a friend
4 of mine.

5 THE COURT: And what happened there?

6 THE DEFENDANT: I pled no contest I
7 think.

8 THE COURT: Tell me what transpired
9 that you were convicted or pled no contest.

10 THE DEFENDANT: I was really -- I mean,
11 me and him had an argument and me and him got into
12 a fight. I got cut up real bad. See my face and
13 all. And they charged me with assault, so I pled.

14 THE COURT: And then the assault and
15 battery third was your aunt?

16 THE DEFENDANT: My aunt?

17 MS. SIGAL: Yes, Your Honor. I can
18 retrieve the --

19 THE DEFENDANT: My aunt? Must have
20 been, I think. I don't know. Yes, ma'am, might
21 have been my aunt. I'm sorry.

22 THE COURT: Well, you also have a '94
23 and '96 assault. Could that have been your aunt?

24 THE DEFENDANT: It might have been. It
25 might have been my aunt there. I don't know.

1 2012? I'm sorry. I'm sorry. I'm sorry, it must
2 have been my aunt. I'm sorry.

3 THE COURT: In 2012?

4 THE DEFENDANT: Yes, ma'am, I'm sorry.
5 I'm sorry.

6 THE COURT: And then I show a
7 resisting arrest and threatening the life of a
8 public official, another resisting arrest, four
9 counts of assault from '94 and '96.

10 Sir, do you have an anger problem?
11 What's going on?

12 THE DEFENDANT: I've had a drinking
13 problem, Your Honor. That's --

14 THE COURT: So when you drink you
15 become angry?

16 THE DEFENDANT: Yes, ma'am, I had a
17 drinking problem. This is the longest I've been
18 sober in a long time, and I'm telling you right now
19 when I get out, I'm not drinking no more. I'm done
20 with drinking.

21 THE COURT: You understand that you're
22 facing 30 plus years in the Department of
23 Corrections?

24 THE DEFENDANT: Yes, ma'am. If I ever
25 get out, that's what I'm saying.

1 THE COURT: Mr. Driggers, why didn't
2 you take care of this issue before?

3 THE DEFENDANT: Your Honor, I was -- I
4 really don't know. I've been to classes and I
5 really -- I would quit drinking and then I would
6 start back up, I would quit drinking and start back
7 up.

8 THE COURT: Were you drinking when
9 this happened that day?

10 THE DEFENDANT: I was drinking a little
11 bit, yes, ma'am.

12 MR. CHURCH: Your Honor, it wasn't much
13 because the officer put --

14 THE DEFENDANT: Yeah, I wasn't drinking
15 much, I mean --

16 THE COURT: Mr. Church, you weren't
17 there and I understand you're being his advocate,
18 but I'm trying to figure out what's going on.

19 MR. CHURCH: Your Honor, may I --

20 THE COURT: I have a wide latitude in
21 crafting this sentence.

22 MR. CHURCH: Your Honor --

23 THE COURT: Mr. Driggers, were you
24 drinking?

25 THE DEFENDANT: I drank the day before.

1 I drank the night before and I drank a little bit
2 that morning like a beer, yes, ma'am.

3 THE COURT: How much had you drank the
4 night before?

5 THE DEFENDANT: Like a pint of whiskey.

6 THE COURT: I don't know what a pint
7 is. How big --

8 THE DEFENDANT: I can't show you with
9 my hands behind my back. A pint is about that
10 right there.

11 THE COURT: Like a big Solo cup?

12 THE DEFENDANT: Yeah, something like
13 that. Yes, ma'am. Two pints make a quart, or
14 something like that.

15 MR. CHURCH: Your Honor, I'm not an
16 expert on this, but I've heard a lot of anecdotal
17 stories. One of his major jobs -- and I talked to
18 his former employer, a painter. And for some
19 reason that seems to exacerbate alcohol drinking.
20 I've seen a lot of people who are painters that
21 admit that to me.

22 THE COURT: Sometimes it's the chicken
23 and the egg. Maybe they're drawn to that
24 lifestyle.

25 MR. CHURCH: Or something in the

1 fumes --

2 THE COURT: Mr. Church, we can't blame
3 anybody but Mr. Driggers for what transpired that
4 day.

5 THE DEFENDANT: I'm not blaming nobody.

6 MR. CHURCH: And he was always willing
7 to admit to the assault.

8 THE DEFENDANT: Yes, ma'am.

9 I would like to apologize to Brenda and
10 pray to God that she gets over everything, and I
11 really am sorry that this happened. I wish I could
12 go back in time. I wish I could invent a time
13 machine because I know that I'd be the richest man
14 in the world to invent a time machine and go back.

15 THE COURT: And if you could go back,
16 what would you do?

17 THE DEFENDANT: I sure wouldn't have
18 done what I did, because I knowed if I could go
19 back and knowing what I did.

20 THE COURT: Why is that?

21 THE WITNESS: I sure wouldn't have done
22 it. I just went over there to get my dog. I
23 wouldn't have gone over there to get my dog. I
24 wouldn't have done none of that. I wouldn't have
25 worried about it. I was stupid.

1 THE COURT: Well, I was kind of hoping,
2 Mr. Diggers, you'd say you would go back and start
3 getting treatment for your anger issues and alcohol
4 issues.

5 THE DEFENDANT: Yes, ma'am, I mean --

6 THE COURT: And you wouldn't have gone
7 over there because you didn't want to cause her any
8 problems and hurt her and you didn't want to
9 threaten children.

10 THE DEFENDANT: Yes.

11 THE COURT: That's what I was hoping
12 you would say to me.

13 MR. CHURCH: Your Honor, at this point,
14 I don't think he can really think clearly.

15 THE COURT: Well --

16 THE DEFENDANT: The thing is hurting my
17 hand back here. I mean --

18 THE COURT: They're not meant to be
19 comfortable.

20 THE DEFENDANT: I know. I know, ma'am.
21 I know. I'm sorry.

22 THE COURT: All right. Mr. Driggers,
23 again, you have the right to appeal this plea and
24 the sentence that I'm about to impose, but you or
25 your attorneys must do so within ten days.

SENTENCING

1 Anything further, Ms. Shivers, or,
2 Mr. Church?

3 MS. SHIVERS: No, Your Honor.

4 THE COURT: Anything further from the
5 State?

6 MS. SIGAL: No, Your Honor.

7 THE COURT: How old are you, Mr.
8 Driggers?

9 THE DEFENDANT: 45.

10 THE COURT: Are you asking for a no
11 contact provision?

12 MS. SIGAL: Yes, Your Honor. Thank
13 you.

14 THE COURT: It is the order of the
15 Court on 2016-GS-08-1475, that you be committed to
16 the State Department of Corrections for a term of
17 three years. I'll give you credit for 477 days.

18 It is the order of the Court on
19 2016-GS-08-1474, that you be committed to the
20 Department of Corrections for a term of ten years.
21 I'll give you credit for 477 days.

22 It's the order of the Court on
23 2016-GS-08-1476, that you be committed to the State
24 Department of Corrections for a term of 30 years
25 provided upon the service of 15 years. The balance

SENTENCING

1 is suspended. I'll give you credit for 477 days.

2 I'm making a note that this is not a
3 sexual offense which does not require the registry.

4 There is to be no contact with the victim.

5 Good luck to you. I will order ATU.

6 MS. SHIVERS: Thank you, Your Honor.

7 MS. SIGAL: Thank you, Your Honor.

8 THE COURT: Ms. Shivers, Mr. Church,
9 Ms. Sigal, Mr. McNeely, I just want to thank you.

10 It's been a difficult trial for a variety of
11 reasons, so I just appreciate that all four of you
12 have been very professional and you were very well
13 prepared. Thank you.

14 MS. SHIVERS: Thank you.

15 And thank you, ma'am.

16 (These proceedings were concluded at
17 4:18 p.m.)

18

19

20

21

22

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24

25

1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 30TH day of May, 2017 at
13 Charleston, Charleston County, South Carolina.

14

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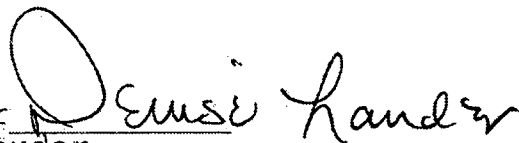
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S/Denise Lauder 
Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017

PSS/0310895
WITNESSES

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2015-11065469

ARREST WARRANT NUMBER

2015A0810401394

DATE OF ARREST

11/05/2015

ACTION OF GRAND JURY

True Bill

Jina Marshall *6/28/16*
Foreperson of Grand Jury Date:

VERDICT

Guilty
Burglary 2nd - Dwelling

E. Martinez *2/23/17*
Foreperson of Petit Jury Date:

DOCKET NO. 2016-GS-08-01474

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2016

THE STATE

VS.

KEVIN DANIEL DRIGGERS

W/M DOB: [REDACTED]-1971

Indictment for

BURGLARY FIRST DEGREE

SC Code: § 16-11-0311

CDR Code: 0079

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

2016 JUN 29 AM 10:12

PK2
FILED

AMCH

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened June 2016, the Grand Jurors of Berkeley County present upon their oath:

BURGLARY FIRST DEGREE

That in Berkeley County, South Carolina on or about November 4, 2015, the Defendant Kevin Daniel Driggers, did enter the dwelling of Brenda Kaye Mills without consent and with the intent to commit a crime therein. That, in addition, the defendant caused physical injury to a person who was not a participant in the crime; and/or the defendant used or threatened the use of a dangerous instrument; in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

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



PRICE S. SIGAL
ASSISTANT SOLICITOR

PSS/0310895
WITNESSES

Berkeley County Sheriff's Office

John 6/28/16
AGENCY CASE NUMBER

2015-11065469

ARREST WARRANT NUMBER

2015A0810401396

DATE OF ARREST

11/05/2015

ACTION OF GRAND JURY

True Bill

Uma Marshall 6/28/16
Foreperson of Grand Jury Date:

VERDICT

*Guilty
A+B-2nd*

E. Martinez 6/23/17
Foreperson of Petit Jury Date:

DOCKET NO. 2016-GS-08-01475

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2016

THE STATE

VS.

KEVIN DANIEL DRIGGERS

W/M DOB: [REDACTED]-1971

Indictment for

ATTEMPTED MURDER

SC Code: § 16-03-0029

CDR Code: 3410

PK2
FILED
2016 JUN 29 AM 10:12
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

AMCH

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

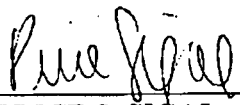
INDICTMENT

At a Court of General Sessions, convened June 2016, the Grand Jurors of Berkeley County present upon their oath:

ATTEMPTED MURDER

That in Berkeley County, South Carolina, on or about November 4, 2015, the Defendant, Kevin Daniel Driggers, did, with intent to kill and malice aforethought, attempt to kill Brenda Kaye Mills. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

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



PRICE S. SIGAL
ASSISTANT SOLICITOR

PSS/0310895
WITNESSES

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2015-11065469

ARREST WARRANT NUMBER

2015A0810401397

DATE OF ARREST

11/05/2015

ACTION OF GRAND JURY

True Bill

Jina Marshall *6/28/16*
Foreperson of Grand Jury Date:

VERDICT

E. Martinez *2/23/17*
Foreperson of Petit Jury Date:

DOCKET NO. 2016-GS-08-01476

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2016

THE STATE

VS.

KEVIN DANIEL DRIGGERS
W/M DOB: [REDACTED] 1971

Indictment for

KIDNAPPING

SC Code: § 16-03-0910
CDR Code: 0095

PK2
2016 JUN 29 AM 10:12
FILED
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

AMCH

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened June 2016, the Grand Jurors of Berkeley County present upon their oath:

KIDNAPPING

That in Berkeley County, South Carolina on or about November 4, 2015, the Defendant, Kevin Daniel Driggers, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Brenda Kaye Mills, without authority of law; all in violation of Section 16-3-910 of the South Carolina Code of Laws (1976) as amended.

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



PRICE S. SIGAL
ASSISTANT SOLICITOR

COUNTY OF BERKELEY

STATE VS.

KEVIN DANIEL DRIGGERSAKA: Kevin D Driggers, Kevin Daniel DriggersRace: White Non-Latino/CaucasianSex: MDOB: 1/19/71SS#: [REDACTED]Address: N. Highway 17ACity, State, Zip: Bonneau, SC 29431-3111DL# [REDACTED]SID# SC00687508*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Burglary Second Degree (Non-Violent)In violation of § 16-11-0312 of the S.C. Code of Laws, bearing CDR Code # 0080☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS

§17-25-15

(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted,☒ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury

Defendant's initials

The plea is: ☐ Without Negotiations or Recommendation.☐ Negotiated Sentence.

Recommendation by the State

ATTEST:

Price S. Sigal
Price S. Sigal, Assistant Solicitor80233
SC Bar #

Defendant

Attorney for Defendant

68550
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment of \$ _____, plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2016-GS-08-1475 & 1476☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 47 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

PTUP

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive _____ months

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: _____

\$ _____

§14-1-206 (Assessments 107.5%)

\$ _____

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$ 100.00

§14-1-211 (A)(2)(DUI Surcharge)

\$100

\$ _____

§56-5-2995 (DUI Assessment)

\$12

\$ _____

§56-1-286 (DUI Breath Test)

\$25

\$ _____

Proviso 61.6 (Public Def/Prob)

\$500

\$ _____

§14-1-212 (Law Enforce. Funding)

\$25

\$ 25.00

§14-1-213 (Drug Court Surcharge)

\$150

\$ _____

§50-21-114 (BUI Breath Test Fee)

\$50

\$ _____

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$ _____

3% to County (if paid in installments)

\$

\$ 3.75

TOTAL

\$ 128.75Clerk of Court/Deputy Clerk: K. MillsCourt Reporter: Denise LanderPresiding Judge: [Signature]Judge Code: 2191Sentence Date: 2/23/17☐ Appointed PD or appointed other counsel.

\$47.12 requires \$500 be paid to Clerk

during probation

COUNTY OF BERKELEY

STATE VS.

KEVIN DANIEL DRIGGERSAKA: Kevin D Driggers, Kevin Daniel DriggersRace: White Non-Latino/Caucasian Sex: MDOB: 1971 SS#: [REDACTED]Address: N. Highway 17ACity, State, Zip: Bonneau, SC 29431-3111DL# [REDACTED] SID# SC00687508*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Assault & Battery, 2nd DegreeIn violation of § 16-03-0600(D)(1) of the S.C. Code of Laws, bearing CDR Code # 3413☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☒ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def's initials)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State

ATTEST:

Price S. Sigal 80233
Price S. Sigal, Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

68550
SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center.for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$, provided that upon the service of days/months/years and/or paymentof \$, plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2016-GS-06-1474 & 1476☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 477 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Recipient: *Fine: \$ §14-1-206 (Assessments 107.5%) \$ §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ §56-5-2995 (DUI Assessment) \$12 \$ §56-1-286 (DUI Breath Test) \$25 \$ Proviso 61.6 (Public Def/Prob) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75Clerk of Court/Deputy Clerk: K. MillsCourt Reporter: Denise LandierINDICTMENT CASE#: 2016-GS-08-01475A/W: 2015A0810401396Date of Offense: 11-04-2015S.C. Code §: 16-03-0029CDR Code #: 3410

SENTENCE SHEET

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive

pmts. of \$ Beginning\$ Paid to Public DefenderOther: ☐ Appointed PD or appointed other counsel.

§47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge: [Signature]Judge Code: 2151Sentence Date: 2/23/17

FILED

17 FEB 23 PM 4:45

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

KWM

KWM

COUNTY OF BERKELEY

STATE VS.

KEVIN DANIEL DRIGGERSAKA: Kevin D Driggers, Kevin Daniel DriggersRace: White Non-Latino/CaucasianSex: MDOB: 1/19/71SS#: [REDACTED]Address: N. Highway 17ACity, State, Zip: Bonneau, SC 29431-3111DL# [REDACTED]SID# SC00687508*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: KidnappingIn violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS

§17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury, _____ (def's initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Blue Seal

80233

Price S. Sigal, Assistant Solicitor

SC Bar #

Defendant

Attorney for Defendant

68550

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ yearsand/or to pay a fine of \$ _____, provided that upon the service of 15 days/months/years and or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2010-GS-08-1474 & 1475☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. *477 days*☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-45 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

PTUP

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

days hours Public Employment

Payment Terms: _____

Obtain GED

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUJ Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75Clerk of Court/Deputy Clerk: K. MillsCourt Reporter: Daniel LanderINDICTMENT/CASE#: 2016-GS-08-01476A/W: 2015A0810401397Date of Offense: 11/04/2015S.C. Code §: 16-03-0910CDR Code #: 0095

SENTENCE SHEET

Presiding Judge: [Signature]Judge Code: 2151Sentence Date: 2/23/17

FILED
 97 FEB 23 PM 4:45
 MARIE P. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, S.C.

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: Not A Sexual offense -
Does Not Require Registry
No Contact with Victim

• ATU☐ Appointed PD or appointed other counsel.

§47.12 requires \$500 be paid to Clerk

during probation.

KWM

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,



Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 8th day of December, 2017.

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,



Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 8th day of December, 2017.

RECEIVED
DEC 08 2017
SC Court of Appeals