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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge

TIMOTHY L. FRADY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000466

APPENDIX

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1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 COUNTY OF HORRY) (2012-GS-26-04266)
3)
4 STATE)
5 VERSUS) TRANSCRIPT OF RECORD
6)
7 TIMOTHY LEROY FRADY) May 12, 13, 14, 2014
8) Conway, S. C.
9)

10 B E F O R E:

11 HONORABLE EDWARD COTTINGHAM, Judge, and a jury.

12 A P P E A R A N C E S:

13 JENNINGS SCOTT HUCKS, ESQ.
14 ASSISTANT SOLICITOR FOR HORRY COUNTY
15 ATTORNEY FOR STATE

16 MELINDA ALLYSON KNOWLES, ESQ.
17 ASSISTANT PUBLIC DEFENDER FOR HORRY COUNTY
18 ATTORNEY FOR DEFENDANT

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DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

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JURY VOIR DIRE

5

1 (THE FOLLOWING TAKES PLACE ON MAY 12, 2014, AFTER JURY
2 QUALIFICATION, AND OUTSIDE THE PRESENCE OF THE JURY VENIRE)

3 THE COURT: All right, now, I' ready to proceed. Are
4 you ready?

5 MR. HUCKS: Yes sir.

6 THE COURT: Ms. Knowles, are you ready?

7 MS. KNOWLES: Yes sir, I'm ready.

8 THE COURT: Bring the jury in

9 All right. Any special voir dire?

10 MR. HUCKS: No sir.

11 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
12 JURY MEMBERS PULLED FROM THE JURY VENIRE FOR SELECTION IN THIS
13 TRIAL.)

14 MS. KNOWLES: Your Honor, before we get started can we
15 approach?

16 THE COURT: Come forward, please.

17 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

18 THE COURT: All right, sir, let's proceed.

19 MR. HUCKS: Your Honor, at this time the State would
20 call the case of State of South Carolina versus Mr. Timothy
21 Leroy Frady. It's indictment (2012-GS-26-04266), and it
22 charges him with criminal domestic violence.

23 THE COURT: Okay. Ms. Knowles, are you ready for
24 trial, subject to that motion that you proposed to make?

25 MS. KNOWLES: Yes sir, I am.

JURY VOIR DIRE

1 **THE COURT:** All right, sir.

2 Ladies and gentlemen of the potential jury, good morning
3 to all of you.

4 By way of introduction, I'm Judge Cottingham from
5 Marlboro County. This young man is my associate, my Law
6 Clerk, John McLeod, of Chesterfield County.

7 We have been assigned here this week under our system of
8 rotation, as the Presiding Judge on various trials that have
9 been scheduled.

10 We need, from your number, twelve jurors and two
11 alternates, twelve jurors with no friends to reward, no
12 enemies to punish, twelve jurors who can say, I would base my
13 verdict on the law and the evidence heard in this courtroom,
14 and from no other source.

15 Again, the Defendant is being tried upon the indictment
16 that alleges what, please, Solicitor?

17 **MR. HUCKS:** Your Honor, criminal domestic violence.

18 **THE COURT:** Criminal domestic violence. And to this
19 indictment this Defendant has specifically pled not guilty,
20 and demands, as is his absolute right, a trial by jury upon
21 the issues.

22 We are going to select twelve of you and two alternates
23 as finders of the facts, to try this case. I propose to
24 select the jury, let you take a break for lunch, and be back
25 and start this case at 2:30.

JURY VOIR DIRE

1 Now, the allegations are criminal domestic violence.
2 Some of you may or may not have had some issues with that
3 charge with yourself or immediate members of your family. I
4 need to know if that be true would that be a bias that would
5 prevent you from being a fair juror in the trial of this case.
6 Do any of you have such bias or prejudice that you feel that
7 you could not be a fair juror where the allegations are
8 criminal domestic violence, if so, please stand.

9 Come forward, please.

10 Counsel, you may join me at the bench.

11 (BENCH CONFERENCE TAKES PLACE.)

12 THE COURT: Your name?

13 A. Ryan Dailey.

14 THE COURT: Sir?

15 A. Ryan Dailey.

16 THE COURT: Your juror number, Mr. Dailey?

17 A. 102.

18 THE COURT: Okay. What is your concern?

19 A. I grew up in a rough household. My mother and father
20 were both alcoholics, one would hit each other, so I grew up
21 in a household with criminal domestic violence, so I can't be
22 a ---

23 THE COURT: I've got you.

24 A. ---I can't be ---

25 THE COURT: I'm going to excuse you from this jury.

JURY VOIR DIRE

8

1 Now there will be several other cases tried this week and we
2 would love to have you.

3 You call in tonight for further instructions after six
4 o'clock.

5 A. On the piece of paper that I got?

6 THE COURT: Yes sir.

7 A. All right. Thank you, sir.

8 THE COURT: Thank you.

9 The Defendant in this case is Timothy Brady.

10 Mr. Brady, would you please stand and face the jury for
11 me, sir?

12 Are any of you related by blood or marriage with Mr.
13 Brady? Any of you have any close personal relationships with
14 Mr. Brady, church members, neighbors, close ---

15 LAW CLERK, MR. MCLEOD: Frady, with an (F).

16 THE COURT: Frady?

17 LAW CLERK, MR. MCLEOD: Frady.

18 THE COURT: How does his name -- how is that -- am I
19 pronouncing it correctly?

20 MR. HUCKS: It's F-R-A-D-Y, Judge, Frady.

21 THE COURT: Frady?

22 MR. HUCKS: Yes sir.

23 THE COURT: Okay. Any of you have any connection with
24 Mr. Frady?

25 How many of you know this Defendant, Timothy Frady, in

JURY VOIR DIRE

1 any capacity whatsoever, please stand.

2 Mr. Frady, you may be seated.

3 The alleged victim in this case, Amy Lynn Frady.

4 Mr. Frady, would you please stand?

5 MR. HUCKS: Your Honor, if I may, just for a moment. I
6 may have put a typo on my sheet. It's Tammi, T-A-M-M-I.

7 THE COURT: Tammi Lynn Frady. Any of you related by
8 blood or connected by marriage with this alleged victim in
9 this case? Any of you have any close personal relationships
10 with Ms. Frady? Do any of you know this individual in any
11 capacity whatsoever?

12 (NOT RESPONSE)

13 It is not likely. Would any of you have any discussions
14 with anyone about any issue in this case? Do any of you have
15 any prior knowledge of any issue resulting in this case?

16 As I've indicated, this is allegations of criminal
17 domestic violence. Do any of you have such feelings that you
18 feel that you could not be a fair juror for either the State
19 of South Carolina or this Defendant? If anybody feels that
20 way please stand and I will excuse you from this case.

21 This case is represented by the Solicitor's Office of
22 the Fifteenth Circuit. Any of you have any connections with
23 the Solicitor's Office? Any of you have any close employees
24 with the Solicitor's Office?

25 Ms. Knowles is here on behalf of the Public Defender's

1 Office of the Fifteenth Circuit. Any of you have any
2 connections with the Fifteenth Circuit or Ms. Knowles in any
3 way?

4 Other than the victim's list, any additional questions,
5 Mr. Hucks?

6 MR. HUCKS: Your Honor, just the witness list. I would
7 just like to ask about the members of the witness list, if
8 they -- anybody knew any of my officers.

9 THE COURT: I understand that, but other than -- I'm
10 going to do that next, but other than that, do you have any
11 other voir dire questions?

12 MR. HUCKS: None whatsoever.

13 THE COURT: Ms. Knowles?

14 MS. KNOWLES: Your Honor, I would just ask if ---

15 THE COURT: Please stand.

16 MS. KNOWLES: I'm sorry. I would just ask if any of
17 them had been victims of violence, or know someone close to
18 them that have, if they've ever been a victim of violence, or
19 if they have a close personal relationship with someone that
20 has been the victim of ---

21 THE COURT: I inquired about that.

22 MS. KNOWLES: If you did I missed it. I'm sorry.

23 THE COURT: Well, I generally ask ***** have they had
24 such a relationship which would prohibit them from being a
25 juror.

JURY VOIR DIRE

11

1 **MS. KNOWLES:** Okay.

2 **THE COURT:** As a result of that one came forward. I
3 would not like to embarrass any particular juror, but I will
4 phrase that question again.

5 Some of you may have been victims of criminal domestic
6 violence, or you may have had some close friend or relative
7 who did. My question is, would that event prohibit you from
8 being a fair juror for the State and for the Defense. If you
9 think it might please stand and I will excuse you from this
10 case.

11 Does that answer, Ms. Knowles, your concerns?

12 **MS. KNOWLES:** It does, Your Honor.

13 **THE COURT:** All right. Ms. Knowles, do you have a
14 witness list?

15 **MS. KNOWLES:** I do.

16 **THE COURT:** Ladies and gentlemen, my associate here
17 will be calling certain names that may be a potential witness
18 for one side or the other. If, as to these names you have a
19 close personal connection please stand and tell me about it.
20 The fact that you may know them casually is not important, but
21 if there's some type of close relationship I need to know it
22 for my information.

23 Proceed.

24 **MR. McLEOD:** Robert Cody of the Horry County Police
25 Department, Greg Lint of the Horry County Police Department,

JURY SELECTION (FORM PREPARED)

12

1 Christopher Britt and Tad (SIC) Wilhelm.

2 THE COURT: All right. That completes the list.

3 Anything further now from the State before we begin the
4 jury selection process?

5 MR. HUCKS: No sir.

6 THE COURT: How about it, Ms. Knowles.

7 MS. KNOWLES: No sir.

8 THE COURT: All right. Give us a jury, five and five.

9 DEPUTY CLERK OF COURT: When I call your juror number
10 and name if you will please come to the front of the
11 courtroom, stand about right here, turn around and face the
12 back of the courtroom, and bring any belongings that you have
13 with you.

14 50, Jerry Brown.

15 (JUROR APPROACHES THE FRONT OF THE COURTROOM.)

16 A. All good?

17 DEPUTY CLERK OF COURT: Yes. If you will just stand
18 about right there where that square is, and turn around and
19 face the back of the courtroom.

20 What say the State?

21 MR. HUCKS: Please present the juror.

22 DEPUTY CLERK OF COURT: Defense?

23 MS. KNOWLES: Please seat the juror.

24 DEPUTY CLERK OF COURT: Please be seated in the jury
25 box.

JURY SELECTION (FORM PREPARED)

13

1 Juror number 51, Sandra Brown.
2 (JUROR APPROACHES THE FRONT OF THE COURTROOM.)
3 DEPUTY CLERK OF COURT: What say the State?
4 MR. HUCKS: Please present the juror.
5 DEPUTY CLERK OF COURT: Defense?
6 MS. KNOWLES: Please excuse this juror.
7 DEPUTY CLERK OF COURT: You are excused from this
8 particular case.
9 5, Theo Adams.
10 (JUROR APPROACHES THE FRONT OF THE COURTROOM.)
11 What say the State?
12 MR. HUCKS: Please present the juror.
13 DEPUTY CLERK OF COURT: Defense?
14 MS. KNOWLES: Please seat this juror.
15 DEPUTY CLERK OF COURT: Please be seated in the jury
16 box.
17 345, Diane Parson.
18 (JUROR APPROACHES THE FRONT OF THE COURTROOM.)
19 What say the State?
20 MR. HUCKS: Please present the juror.
21 DEPUTY CLERK OF COURT: Defense?
22 MS. KNOWLES: Please excuse this juror.
23 DEPUTY CLERK OF COURT: You are excused from this
24 particular case.
25 377, Dessie Ray.

JURY SELECTION (FORM PREPARED)

14

1 (JUROR APPROACHES THE FRONT OF THE COURTROOM.)

2 What say the State?

3 MR. HUCKS: Please present the juror..

4 DEPUTY CLERK OF COURT: Defense?

5 MS. KNOWLES: Please seat this juror.

6 DEPUTY CLERK OF COURT: Please be seated in the jury
7 box.

8 314, Brenda Moore.

9 (JUROR APPROACHES THE FRONT OF THE COURTROOM.)

10 What say the State?

11 MR. HUCKS: Please present the juror.

12 DEPUTY CLERK OF COURT: Defense?

13 MS. KNOWLES: Please seat this juror.

14 DEPUTY CLERK OF COURT: Please be seated in the jury
15 box.

16 496, David Wright.

17 (JUROR APPROACHES THE FRONT OF THE COURTROOM.)

18 What say the State?

19 MR. HUCKS: Please present Mr. Wright.

20 DEPUTY CLERK OF COURT: Defense?

21 MS. KNOWLES: Your Honor, may I inquire as to what he
22 does for a living?

23 THE COURT: Yes.

24 A. I do produce sales.

25 MS. KNOWLES: Okay. Please seat this juror.

JURY SELECTION (FORM PREPARED)

15

1 DEPUTY CLERK OF COURT: Please be seated in the jury
2 box.
3 212, Ericka Hill.
4 (JUROR APPROACHES THE FRONT OF THE COURTROOM.)
5 What say the State?
6 MR. HUCKS: Please present Ms. Hill.
7 DEPUTY CLERK OF COURT: Defense?
8 MS. KNOWLES: Please seat this juror, please.
9 DEPUTY CLERK OF COURT: Please be seated in the jury
10 box.
11 315, Marybeth Morea.
12 (JUROR APPROACHES THE FRONT OF THE COURTROOM.)
13 What say the State?
14 MR. HUCKS: Please present Ms. Morea.
15 DEPUTY CLERK OF COURT: Defense?
16 MS. KNOWLES: Please excuse this juror.
17 DEPUTY CLERK OF COURT: You are excused from this
18 particular case.
19 429, William Stanley.
20 (JUROR APPROACHES THE FRONT OF THE COURTROOM.)
21 What say the State?
22 MR. HUCKS: May we inquire as to what Mr. Stanley does
23 for a living?
24 A. I work for the Horry County Animal Care Center.
25 MR. HUCKS: Please present the juror.

JURY SELECTION (FORM PREPARED)

16

1 DEPUTY CLERK OF COURT: Defense?

2 MS. KNOWLES: Please seat this juror.

3 DEPUTY CLERK OF COURT: Please be seated in the jury
4 box.

5 29, Claudia Beland.

6 (JUROR APPROACHES THE FRONT OF THE COURTROOM.)

7 What say the State?

8 MR. HUCKS: Please present Ms. Beland.

9 DEPUTY CLERK OF COURT: Defense?

10 MS. KNOWLES: Please excuse this juror.

11 DEPUTY CLERK OF COURT: You are excused from this
12 particular case.

13 262, Roger Kline.

14 (JUROR APPROACHES THE FRONT OF THE COURTROOM.)

15 What say the State?

16 MR. HUCKS: May we please inquire as to what Mr. Kline
17 does for a living?

18 A. Nothing.

19 MR. HUCKS: May we inquire as to what he previously
20 did, Your Honor.

21 A. *****

22 MR. HUCKS: Please present the juror, Your Honor.

23 DEPUTY CLERK OF COURT: Defense?

24 MS. KNOWLES: Please seat this juror.

25 DEPUTY CLERK OF COURT: Please be seated in the jury

JURY SELECTION (FORM PREPARED)

17

1 box.

2 THE COURT: That's a good job you've got.

3 DEPUTY CLERK OF COURT: 198, Mary Harless.

4 (JUROR APPROACHES THE FRONT OF THE COURTROOM.)

5 What say the State?

6 MR. HUCKS: Please present Ms. Harless.

7 DEPUTY CLERK OF COURT: Defense?

8 MS. KNOWLES: Please excuse this juror.

9 DEPUTY CLERK OF COURT: You are excused from this
10 particular case.

11 36, Valerie Billings.

12 (JUROR APPROACHES THE FRONT OF THE COURTROOM.)

13 What say the State?

14 MR. HUCKS: Please present the juror.

15 DEPUTY CLERK OF COURT: Defense?

16 MS. KNOWLES: Please seat this juror.

17 DEPUTY CLERK OF COURT: Please be seated in the jury

18 box.

19 349, Jessica Perez.

20 (JUROR APPROACHES THE FRONT OF THE COURTROOM.)

21 What say the State?

22 MR. HUCKS: Please present Ms. Perez.

23 DEPUTY CLERK OF COURT: Defense?

24 MS. KNOWLES: Please seat this juror.

25 DEPUTY CLERK OF COURT: Please be seated in the jury

JURY SELECTION (FORM PREPARED)

18

1 box.

2 413, Sherry Skipper.

3 (JUROR APPROACHES THE FRONT OF THE COURTROOM.)

4 What say the State?

5 MR. HUCKS: I hate to do this again, but may we inquire
6 as to what Ms. Skipper does, one more time? I missed it.

7 A. I'm a *****

8 MR. HUCKS: Please present the juror.

9 DEPUTY CLERK OF COURT: Defense?

10 MS. KNOWLES: Please seat this juror.

11 DEPUTY CLERK OF COURT: Please be seated in the jury
12 box.

13 151, Sallie Floyd.

14 (JUROR APPROACHES THE FRONT OF THE COURTROOM.)

15 What say the State?

16 MR. HUCKS: Please excuse Ms. Floyd from the trial of
17 this particular case.

18 DEPUTY CLERK OF COURT: You are excused from this
19 particular case.

20 268, David Lacey.

21 (JUROR APPROACHES THE FRONT OF THE COURTROOM.)

22 What say the State?

23 MR. HUCKS: Please present Mr. Lacey.

24 DEPUTY CLERK OF COURT: Defense?

25 MS. KNOWLES: Please seat this juror.

COURT TO JURY/JURY OUT/ON RECORD

19

1 DEPUTY CLERK OF COURT: Please be seated in the jury
2 box.
3 One alternate, Judge?
4 THE COURT: Yes Ma'am.
5 DEPUTY CLERK OF COURT: 186, Michelle Griffith.
6 (JUROR APPROACHES THE FRONT OF THE COURTROOM.)
7 What say the State?
8 MR. HUCKS: Please present Ms. Griffith.
9 DEPUTY CLERK OF COURT: Defense?
10 MS. KNOWLES: Please seat this juror.
11 DEPUTY CLERK OF COURT: Please be seated in the jury
12 box.
13 THE COURT: Ladies and gentlemen, you twelve now, and
14 the alternate, if necessary, have been selected as the finders
15 of the facts in the trial of this case.
16 Under our procedure we select from you one person to
17 serve as forelady of the -- or foreman of the jury. That
18 individual selectively presides in the jury room during your
19 deliberations, and will be the jury's spokesman in the
20 courtroom. I, of course, will keep that individual fully
21 informed.
22 I'm going to ask now that you retire to the jury room
23 and select from your numbers someone who is willing to serve
24 as foreperson of the jury. Once that selection has been made
25 advise the Bailiff, and you bring them out to me.

1 You may now retire.

2 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
3 **JURY.)**

4 **THE COURT:** Any motions regarding the composition of
5 the jury?

6 **MR. HUCKS:** None whatsoever, Judge.

7 **MS. KNOWLES:** No sir.

8 **THE COURT:** All right. Before I hear your motions, it
9 came to my attention that there may or may not have been some
10 improper contact between this Defendant and the victim. This
11 comment is made outside the presence of the jury.

12 Tell me what the allegations are from your perspective,
13 from the State.

14 **MR. HUCKS:** Your Honor, my understanding is that Ms.
15 Frady ---

16 **THE COURT:** Wait a minute. Is it your understanding,
17 or you cite for me what the facts are?

18 **MR. HUCKS:** I will cite for you what the facts are.

19 **THE COURT:** I don't want any understand. I ---

20 **MR. HUCKS:** Okay. As relayed to me from Ms. Frady, and
21 relayed to me from our Victims' Advocate, who are both here
22 and can talk about it.

23 He went downstairs into my office. I had her waiting in
24 the waiting room of my office, where he came down there and
25 approached her to talk about ---

1 **THE COURT:** He being who?

2 **MR. HUCKS:** The Defendant, Mr. Frady.

3 **THE COURT:** All right.

4 **MR. HUCKS:** Came down to my office and approached her
5 in my waiting room, and as he was approaching, attempting to
6 talk to her about this case my Victims' Advocate came out and
7 interrupted, but he literally had to come all the way from
8 wherever he was into my office to approach her to talk to her
9 about this case, which is a violation of his bond, which tells
10 him he can't contact her, and which is inappropriate here on
11 the day of trial.

12 **THE COURT:** Have the Victims' Advocate stand for me.

13 **(JANETHA JONES, VICTIMS' ADVOCATE STANDS.)**

14 **THE COURT:** Can you verify on the record that this
15 occurred?

16 **JANETHA JONES, VICTIMS' ADVOCATE:** Yes sir. I ---

17 **THE COURT:** Tell me, in your own words, what your --
18 come forward here, and -- all right, tell me, in your own
19 words, what you observed.

20 **JANETHA JONES, VICTIMS' ADVOCATE:** She was sitting down
21 in my office ---

22 **THE COURT:** She being who?

23 **JANETHA JONES, VICTIMS' ADVOCATE:** Ms. Frady ---

24 **THE COURT:** Okay.

25 **JANETHA JONES, VICTIMS' ADVOCATE:** ---The victim, and

1 she was there just talking to me. He came in the office, went
2 and stood beside her, and tried to talk with her. She would
3 not say anything to him. I asked him, I said, well who are
4 you to Ms. Frady; what kin or you. He said, I'm the nephew.
5 And I looked at her, I said, is that your nephew. She said
6 no, that is the Defendant. He has been harassing her about
7 trying to dismiss the -- signing the paper to dismiss the
8 charges.

9 MR. HUCKS: Just for the record, that's Ms. Janetha
10 Jones with our office. I just want to put her name for
11 purposes of the record.

12 THE COURT: Ms. Knowles, you have any reply to that?

13 MS. KNOWLES: Your Honor, obviously I wasn't present to
14 hear what happened. I will say that Ms. Wilson, a member of
15 my office, told me that my client, as well as the victim, the
16 alleged victim in this case, approached her, inquiring about a
17 possible dismissal.

18 THE COURT: I'm not concerned with that. I'm concerned
19 with allegations that in -- in their office.

20 MS. KNOWLES: I think that it goes both ways, Your
21 Honor. I think that she has contacted him, and I think he's
22 probably contacted her.

23 THE COURT: All right. I'll deal with as appropriate.
24 You had some motions with regards to the trial of this
25 case? Yes sir.

COURT TO JURY/JURY OUT/ON RECORD

23

1 **MR. HUCKS:** Will we dismiss the rest of the jury panel,
2 Your Honor, just for pur -- before we proceed?

3 **(A SHORT DISCUSSION TAKES PLACE OFF THE RECORD WHEREIN**
4 **THE REMAINING JURY VENIRE WAS GIVEN INSTRUCTIONS CONCERNING**
5 **WHEN TO CALL BACK OR RETURN TO COURT.)**

6 **THE COURT:** Ms. Knowles, you approached me at the bench
7 and had some issue about the availability of your potential
8 witnesses. What about that?

9 **MS. KNOWLES:** Mr. Hucks tells me, and I have actually
10 our investigator actually in the process of locating all of my
11 witnesses. There is an officer by the name of Tad Wilhelm
12 that had been called to this home before, actually decided
13 that there was no need for a report to be made, and then
14 there's actually another officer by the name of Christopher
15 Britt that also responded, and filed a report, to this same
16 residence, by this same victim, finding that there was no
17 probable cause to make an arrest.

18 It's our theory in this case that these allegations are
19 made up in order for her to gain full and complete access, and
20 to get possession of the home, the marital home.

21 **THE COURT:** What relationship do they have with each
22 other?

23 **MS. KNOWLES:** They are married.

24 **THE COURT:** Okay. Go ahead.

25 **MS. KNOWLES:** It's my understanding, in speaking with

1 Solicitor Hucks, that Mr. Wilhelm is no longer employed with
2 Horry County Police Department, however, I do think that he
3 lives here locally. I think that we would have no problem in
4 locating him.

5 THE COURT: What about this, Scott?

6 MR. HUCKS: Your Honor, I don't know where he lives. I
7 don't have any contact with him. And as far as Officer Britt
8 that she mentioned as well, in this particular case all
9 Officer Britt did was take the report to the Magistrate to get
10 the warrant, in this particular case.

11 THE COURT: He did not investigate the case?

12 MR. HUCKS: He didn't invest -- the only investigator -
13 - the head investigator on this case is Officer Lint who is
14 sitting right here, ready to testify. Office Cody came to
15 back him up. This residence, Your Honor, is a hotbed of
16 activity. Police are called to that residence pretty
17 regularly, and this particular time -- and he's got four prior
18 convictions for doing this same kind of stuff.

19 THE COURT: I'm curious. Why didn't you subpoena him?
20 You knew you were on the trial list. Why did you wait till
21 this morning in inquire about ---

22 MS. KNOWLES: Your Honor, first of all, I was told up
23 until ten o'clock today that Nancy Livesay and Greg McCollum
24 were first up.

25 THE COURT: You were on the trial list this week.

COURT TO JURY/JURY OUT/ON RECORD

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1 **MS. KNOWLES:** These -- our office policy, I can't
2 change it. I just have to go by it.

3 **THE COURT:** What is your office policy?

4 **MS. KNOWLES:** That we do not -- until our case is
5 called we do not subpoena any witnesses.

6 **THE COURT:** Even though you were on the trial docket
7 this week?

8 **MS. KNOWLES:** That is what our office policy is.

9 **THE COURT:** Well, your office policy can't overcome the
10 Court's procedure.

11 **MS. KNOWLES:** We only have one investigator.

12 **THE COURT:** I think it's ridiculous for you to know
13 that your case is coming up this week and you wait till Monday
14 morning to inquire about the availability of witnesses.

15 **MS. KNOWLES:** Your Honor, the Solicitor's Office has
16 multitudes and multitudes of people that they have access to
17 that can do what our one investigator does.

18 **THE COURT:** You are responsible for having your
19 witnesses. Can you -- I would like to accommodate -- first
20 let's talk about -- do you know where they are? Can we get
21 them here?

22 **MR. HUCKS:** I know where Officer Cody is, the one
23 people, and he's going to be here at two o'clock. We've
24 talked to him.

25 **THE COURT:** All right. That was one of them. We've

1 got him here.

2 MR. HUCKS: Officer -- Officer Britt, who she says she
3 needs as well is our of town. We can't get hold of him to get
4 him here because he's ---

5 Where's he at?

6 THE COURT: What would Britt testify to if he was here?
7 He was not ---

8 MS. KNOWLES: He has -- it goes to our defense, Your
9 Honor.

10 MR. HUCKS: He had a family member graduate from
11 college, and they are on -- they are out -- away, out of town
12 for the graduation of the -- for college. That's where he
13 went.

14 THE COURT: I know, but what would Britt testify to?
15 He was not an investigator here. What would he testify ---

16 MS. KNOWLES: No. Previous incidents where this victim
17 has called, and there has been no probable cause found once
18 the officer arrives to make an arrest. It goes to the crux of
19 our defense.

20 THE COURT: Are you talking about this incident?

21 MS. KNOWLES: No, previously. There's a pattern of
22 conduct.

23 MR. HUCKS: She's saying that the police have gone
24 there several other occasions and not arrested anybody, right
25 Judge.

COURT TO JURY/JURY OUT/ON RECORD

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1 **THE COURT:** I'm not interested in that.

2 **MR. HUCKS:** Which is not relevant under -- it's not
3 relevant under Rule 401.

4 **THE COURT:** No.

5 **MS. KNOWLES:** It's not relevant to their case, but it's
6 relevant to mine.

7 **THE COURT:** Wait a minute. You are entitled to cross-
8 examine her on those previous instances. I will permit --
9 that's the same testimony you will get from Britt. I'll give
10 you full -- a full way to cross-examine her on that.

11 **MS. KNOWLES:** Okay.

12 **THE COURT:** You understand?

13 **MS. KNOWLES:** Yes sir.

14 **THE COURT:** And the other witness is here.

15 Now, Solicitor ---

16 **MR. HUCKS:** Yes sir.

17 **THE COURT:** ---In fairness to her, since he's not -- he
18 can only testify as to previous events, and not this one --
19 you agree with that -- I'm going to let her cross-examine as
20 to prior alleged incidents where she called; do you understand
21 that?

22 **MR. HUCKS:** Yes sir. Well, he's been arrested out of
23 that residence on several occasions. Does that not open the
24 door for his prior -- for the times he was arrested?

25 **THE COURT:** No. No. No. I'll deal with that if he

1 testifies. I'm just simply going to let her go into this
2 since Britt was not available as to that issue.

3 MR. HUCKS: Okay. And I just want to clarify. I'm not
4 fussing, Judge, I just want to clarify. The -- when the
5 victim testifies she can say -- well, she can ask her, the
6 police have been there on several occasions and not arrested
7 anybody. She can say that?

8 THE COURT: Yes.

9 MR. HUCKS: At that point in time I cannot say, well,
10 they've been there on several occasions and arrested him too,
11 haven't they? I can't refute that issue? If that's the
12 Court's ruling I understand. I just want ---

13 THE COURT: Let's leave that alone. I'm letting her do
14 this in fairness to her, that she should have subpoenaed him,
15 and they've got some office penalty (SIC), but he was not a
16 witness to this event. If he testified it would be that she
17 having called them on several occasions, and I'm going to let
18 her, in fairness ---

19 MR. HUCKS: Okay.

20 THE COURT: ---Elicit that limited testimony.

21 MR. HUCKS: And there's a specific -- there's just one
22 more -- one specific instance I would just like to clarify.

23 THE COURT: What?

24 MR. HUCKS: Officer Cody, who will be here at two
25 o'clock, and is on our witness list, arrested this Defendant

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1 for possession of a stolen gun, and a CDV, at that residence
2 just a month and a half earlier, or something to that effect.

3 THE COURT: No sir.

4 MR. HUCKS: Okay.

5 THE COURT: No sir. Let's -- let the jury determine
6 what happened on this day.

7 MR. HUCKS: Oh, yes sir, I -- that's -- that was why I
8 asked that the previous instances not come in.

9 THE COURT: No sir. I'm not going to let that in.

10 MR. HUCKS: Yes sir.

11 THE COURT: With that -- one of the witnesses is going
12 to be here, and the other, I'm going to let you deal with that
13 on cross-examination.

14 MS. KNOWLES: And I have one more. Officer Wilhelm,
15 that no longer is employed, according to Mr. Hucks, with Horry
16 County, but I believe that he lives here locally, and I can
17 get him here if given time.

18 THE COURT: What would he be -- what would he be here
19 for?

20 MS. KNOWLES: Again, he responded on a previous
21 occasion, no probable cause found for an arrest.

22 THE COURT: Get him if he wants to, but I'm going to
23 let you deal with these previous occasions with the victims.

24 MS. KNOWLES: Okay.

25 THE COURT: But -- do you know who she's talking about?

1 **MR. HUCKS:** Officer Wilhelm is no longer employed with
2 Horry County, Horry County Police Department, and the Officers
3 that I called about it today didn't know how to get in touch
4 with him.

5 I -- with Ms. Knowles -- when we were in chambers this
6 morning Ms. Knowles said I can't get my witnesses. I said,
7 well, I'll help you get as many of them here as I can, so the
8 only one that I could guarantee to get here was Officer Cody,
9 who she wanted. The other two ---

10 **THE COURT:** He's going to testify to the same thing as
11 Britt did?

12 **MS. KNOWLES:** No sir. A different -- he was a
13 different -- it's a different officer, different incident. He
14 -- I know for a fact he -- well, I take that back.

15 **THE COURT:** He's going to be -- he's going to be
16 testifying as to prior instances; is that correct?

17 **MS. KNOWLES:** Right. Where false accusations were
18 made.

19 **THE COURT:** I'm going to let you get that in by her
20 cross-examination; you understand that?

21 **MS. KNOWLES:** But I have a report that he wrote that I
22 need to enter into evidence. I can't do that without him
23 here.

24 **THE COURT:** What does the report say? Share it with
25 him. See what it is, and see if it's something we can -- if

1 you don't contest the fact that there's prior instances why
2 not let it in? That's all he's going to testify to anyway.

3 MR. HUCKS: Well, it's hearsay within hearsay. It's
4 him in a report talking about a statement that somebody else
5 gave him.

6 THE COURT: Okay. No.

7 MS. KNOWLES: It's in his normal course of business.
8 It's a business ---

9 THE COURT: What does it say, that she reported some
10 prior false events?

11 MR. HUCKS: It says she called him ---

12 MS. KNOWLES: Specifically. I'll read it to you, Your
13 Honor.

14 It says, on September 16th, which was only a couple of
15 weeks before the alleged incident, that the officer, Officer
16 Wilhelm, responded to [REDACTED] [REDACTED] [REDACTED], located in the Conway
17 section of Horry County, in reference to an harassment charge.
18 Upon arrival the responding officer spoke with the victim who
19 stated that her ex-stepfather, who just got out of jail, is
20 saying that he's going to burn the house down. When asked
21 where the suspect was the victim stated that he lives with
22 her. The responding officer did not see any signs of fear in
23 the victim, and in fact, she ---

24 THE COURT: What's that got to do with the issue in
25 this case?

1 **MS. KNOWLES:** Because, that's their plan all along,
2 that's our position, is that it's the mother and daughter that
3 are trying to get him kicked out of the house and arrested.

4 **THE COURT:** Can't you get to that issue without calling
5 him?

6 **MS. KNOWLES:** I need to have this report in the record.

7 **THE COURT:** I tell you what you needed to do, you
8 needed to subpoena your witnesses last Friday, for sure,
9 knowing that potentially this case would be tried. We are
10 going forward with this case.

11 Now, apparently he lives in this area. Solicitor, she
12 should have subpoenaed him. It's her fault. But use the
13 resources of the County, and the Sheriff's Office, to find him
14 and get him here, today or tomorrow. Would you do that for
15 me?

16 **MR. HUCKS:** Yes sir. I'll see -- I'll call around and
17 see whoever I can find, and I'll get them to ---

18 **THE COURT:** Surely somebody in the Sheriff's Office or
19 the County officers know where he is.

20 **MS. KNOWLES:** I know someone that knows him, that ---

21 **THE COURT:** Can you give that to Scott?

22 **MR. HUCKS:** Then go ahead and call him. He's your
23 witness.

24 **MS. KNOWLES:** I understand. I have to get the number
25 from the person that I know.

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1 **MR. HUCKS:** I'll be more than happy to, Your Honor.
2 I'll use the resources of my office and the Sheriff's Office
3 to see what I can do to find him.

4 **THE COURT:** Well, no question about it, Ms. Knowles,
5 you were derelict in your duty in not preparing your potential
6 witnesses prior to Monday morning when the case is on the
7 docket. I don't care what your procedures are down there, we
8 have court procedures too. But we are going to make every
9 effort to find him, and if I have to stop the case to go get
10 him tomorrow we will do so, Ms. Knowles. I'll make every
11 effort to accom ---

12 **MS. KNOWLES:** Thank you very much, Your Honor.

13 **THE COURT:** All right.

14 Now, is there anything else -- first, let me see this.
15 Bring the jury back ---

16 **MS. KNOWLES:** Your Honor, I haven't done the pretrial
17 motions.

18 **THE COURT:** Wait a minute. Hold on. Hold on.

19 **MS. KNOWLES:** It's a motion to exclude -- or just a
20 motion to exclude certain evidence ---

21 **THE COURT:** Motion to exclude what?

22 **MS. KNOWLES:** It's photos that the Solicitor, I
23 believe, intends on introducing. I just -- I want to make a
24 motion to suppress on the ---

25 **THE COURT:** Why?

1 **MS. KNOWLES:** Because it's overly prejudicial to my
2 client, it's irrelevant to this charge. We question the
3 authenticity of the photos. They weren't taken into evidence
4 by law enforcement.. It was actually handed -- these photos
5 were handed to the Solicitor weeks ago, so it had been over a
6 year before he even got them.

7 **THE COURT:** Well, let me hear your response.

8 **MR. HUCKS:** Yes sir, Your Honor, I'll just grab the
9 photos in question.

10 **THE COURT:** Can you -- do you have a doctor as a
11 witness?

12 **MR. HUCKS:** I do not, sir. I have pictures of the
13 injuries to her.

14 **MS. KNOWLES:** And that's not particularly what I'm
15 talking about. I'm talking about ---

16 **MR. HUCKS:** And what she's talking about, Judge, is --
17 the State's position is going to be that they were fussing.
18 They had been separated and off and on, back together and
19 apart. She was straightening up around the house. He had
20 taken the title to the mobile home that they lived in, and he
21 hide it from her. While he was gone she went and looked for
22 the mobile home title, and while she was looking for it she
23 found a cell phone in the house. She looked at the cell
24 phone, and when she looked in it there was pictures,
25 suggestive pictures of her daughter in the phone. She took

1 the phone, and these are the pictures out of the phone. Those
2 are the pictures that Ms. Knowles has a problem with. And we
3 intend to put them in because it's the reason that the
4 argument started, that led to her getting choked and hit.

5 MS. KNOWLES: Your Honor, if that was the case then law
6 enforcement would have taken them in evidence.

7 THE COURT: The pictures are -- are the child?

8 MR. HUCKS: Well, she's nineteen years old; she's not a
9 child.

10 THE COURT: Why do you need the pictures? You are
11 going to have testimony.

12 MR. HUCKS: Well, to corroborate her story, Your Honor.
13 That's what -- you know, I always thought that's what evidence
14 did, was corroborate people's stories.

15 MS. KNOWLES: I question the authenticity. Law
16 enforcement -- if that's the case -- if the position that he's
17 taking is true, and real, then law enforcement would have
18 taken those photos into evidence whenever they arrested him.

19 THE COURT: Well, no ---

20 MR. HUCKS: That's an issue of fact, Judge.

21 THE COURT: I understand. Who -- who got the pictures
22 off the phone?

23 MR. HUCKS: The victim brought me the phone in
24 question, when I met with her ---

25 THE COURT: And what did you do with it?

1 **MR. HUCKS:** ---And an investigator with my office
2 dumped that phone, and these pictures were on it.

3 **THE COURT:** Is that investigator going to testify?

4 **MR. HUCKS:** She can if we need her to.

5 **THE COURT:** To the authenticity of what she got ---

6 **MR. HUCKS:** Well, she can -- well, I was intending,
7 since they are photographs, to have my victim say, these are
8 the pictures that started the argument, and authenticate them
9 as the pictures.

10 **THE COURT:** That's fine. I have no problems with that.
11 No, I think that goes to his case.

12 **MS. KNOWLES:** How -- how are those authenticated if --
13 if that's the issue then they would have been taken into
14 evidence.

15 **THE COURT:** I would suggest that you have your
16 investigator here to testify that he got those pictures off
17 his telephone.

18 **MR. HUCKS:** Well, she can't say it was his phone.

19 **THE COURT:** No. I'm talking about the investigator.

20 **MR. HUCKS:** Right. The investigator can't say that it
21 was, without a doubt, his phone. The only person who can say
22 that is the victim, who is here to testify.

23 **THE COURT:** Let the victim testify, under the chain,
24 that it was his fault, and then we will find out from the
25 investigator what he got off of it.

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1 MR. HUCKS: Okay. Yes sir.

2 THE COURT: Do it just in the chain. I think it's
3 appropriate.

4 MR. HUCKS: Yes sir. That would -- that would require
5 me to add a witness to my witness list ---

6 THE COURT: That's fine.

7 MR. HUCKS: ---And that would be investigator Ginger
8 Pop, with our office.

9 THE COURT: If you have her testimony that the fight
10 erupted over that issue, and that this is his phone, and that
11 you've got another witness to say he got those pictures off
12 the phone I'm going to admit it.

13 What else, Ms. Knowles?

14 MS. KNOWLES: Your Honor, I just want you to note my
15 objection for the record.

16 THE COURT: I understand.

17 Now, given the fact that this case -- the jury has been
18 selected, we are ready for trial, his bond falls, and I do
19 that for several reasons, one of which there's some
20 testimony - and I don't say who -- who did what, but I'm going
21 to leave him in jail during the trial of this case so that
22 that issue will not come up. I hope you understand that.

23 MS. KNOWLES: I understand that.

24 THE COURT: It's not -- not fair to him or her, so when
25 we release for lunch he belongs to security.

1 The juror, Roger Kline, has been selected as foreperson.
2 Bring my jury in.

3 Scott, make every effort, in fairness to her, to ---

4 **MR. HUCKS:** I just had an officer go outside and call
5 the last available number that they have for him to try to
6 find him, Judge.

7 **THE COURT:** Well, surely he's had contact with former
8 officers, and this, that and the other, but it's really not
9 necessary since I'm going to let her have wide cross-
10 examination on that issue.

11 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
12 **JURY.)**

13 **THE COURT:** Mr. Roger Kline, I understand that the jury
14 has selected you as foreperson of the jury.

15 **MR. KLINE:** Yes sir.

16 **THE COURT:** Congratulations.

17 **MR. KLINE:** Thank you a lot.

18 **THE COURT:** As I indicated, you will preside in the
19 jury room during deliberations, and be the jury spokesman in
20 the courtroom. Please be assured that I will keep you, at all
21 times, fully advised of your duties, and at the appropriate
22 time will prepare for your consideration, and the jurors, an
23 appropriate verdict form.

24 Now, one or two things I need to talk to you about.
25 First, there is another witness -- and what was the name?

1 There's another witness, Ginger Pop. Any of you have any
2 special connections with that witness at all?

3 (NOT RESPONSE.)

4 THE COURT: Now, Mr. Foreman, ladies and gentlemen, it
5 is important that you understand and recognize these
6 admonitions that I give. You must not discuss this case with
7 anyone, permit no one to discuss it with you. If anyone
8 should attempt to do so, not likely, but should they do so,
9 report -- find out who they are, and report that fact to me.

10 This is a case that we feel like we can conclude by this
11 afternoon and tomorrow. During the trial of the case you must
12 not even discuss any issue involving this case among
13 yourselves, and the reason is simply this. You would be the
14 finders of the facts, and you should not begin your
15 deliberative process until you have heard all of the facts,
16 heard all the witnesses, final summation of counsel, and my
17 instructions on the law. So, Mr. Foreman, with regard to any
18 issues in this case, do not permit any conversation in the
19 jury room until I have given you the case for your
20 deliberation.

21 Now, in this day of the internet and iphones people are
22 prone to get on the internet, or look at the phones and seek
23 additional information. You must not do that, for the reason
24 is that whatever your verdict is it must be based on the law
25 and evidence heard in this courtroom and from no other source.

1 As an example, several months ago, in a most serious case, the
2 bailiff came to me and said, Judge Cottingham, we've got a
3 real problem. I said, what is that. He said, one of the
4 jurors came to me with a piece of paper in her hand, said she
5 had made further inquiry on her computer about various issues,
6 and wanted to share them with the rest of the jury.
7 Fortunately she had not had that opportunity, so obviously I
8 excused her immediately. And had that bailiff not stopped her
9 and she shared some authorized information to the rest of the
10 jury that two week case would have had to have been set aside
11 and retried from it's entirety. So I say to you, please don't
12 research any issue in this case on your ipad, or your
13 internet. It would be a total violation of your oath of
14 office.

15 I'm going to release you now and ask you to be back in
16 your jury room promptly at two-thirty, and thank you so much
17 for your willingness to serve this week.

18 You may be excused. See you back at two-thirty.

19 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
20 JURY.)

21 THE COURT: Anything further from the State before we
22 recess?

23 MR. HUCKS: No sir.

24 MS. KNOWLES: No sir.

25 THE COURT: Okay. Please make every effort to assist

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1 Ms. Knowles. Surely if that gentleman lives in this area
2 somebody from County Police, City Police or Sheriff's Office
3 knows it.

4 MR. HUCKS: Yes sir. I'll check on it directly.

5 THE COURT: It's not an absolute necessary witness, but
6 I would like to have him if she wants him.

7 MR. HUCKS: Yes sir. I'll ---

8 THE COURT: With regards to that issue, I'm going to
9 permit wide latitude in cross-examination with regards to any
10 previous alleged false statement.

11 MR. HUCKS: Okay.

12 MS. KNOWLES: Thank you, Your Honor.

13 MR. HUCKS: Thank you, Judge.

14 THE COURT: See you at 2:30. Thank you.

15 MR. HUCKS: Yes sir.

16 THE COURT: Take the victim -- the Defendant into
17 custody, please.

18 (THE FOLLOWING TAKES PLACE AFTER THE LUNCH BREAK, AND
19 OUTSIDE THE PRESENCE OF THE JURY.)

20 THE COURT: Scott, y'all ready to proceed?

21 MR. HUCKS: Yes sir. Before we bring the jury back in
22 I would like to clarify just a couple of things real quick as
23 to your earlier rulings, Judge, if that's okay.

24 THE COURT: All right, what -- what you got?

25 MR. HUCKS: Yes sir. We had an extensive discussion in

1 chambers about some pretrial issues, and we didn't put them
2 back on the record when we got out here, specifically in
3 reference to the admissibility of some evidence, and the
4 admissibility ---

5 **THE COURT:** We were on the record at that time, were we
6 not?

7 **MR. HUCKS:** Not in -- we had a conversation in chambers
8 about the prior convictions, and about the Court ruling on
9 entering prior convictions, being that was a third or
10 subsequent, and I have two, Your Honor, that are from the
11 Conway Magistrate's Courts, Horry County Magistrate's Court,
12 the Conway Division, where the Defendant was convicted in
13 Criminal Domestic Violence Court of two separate criminal
14 domestic violence, first degree, first offense, which would
15 make this a third. He's got four priors total, but these were
16 the two that I limited it to ---

17 **THE COURT:** You want to put four in there. I'll let
18 you do two, because you've got -- that's your evidence and
19 proof.

20 **MR. HUCKS:** And I just wanted to make sure that that
21 was a finding for Ms. Knowles' motion in chambers, for
22 purposes of the record. She had a motion in chambers that we
23 limit it to two, and not be able to bring in four.

24 **MS. KNOWLES:** Right. I have no problem with
25 stipulating to the two that he's mentioned.

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1 **THE COURT:** Did you find that one detective who still
2 lives here?

3 **MR. HUCKS:** Your Honor, he -- we looked for him over
4 lunch. We have found his -- we have found him, but he is
5 under -- he's under the care of a doctor, and he's got an
6 attorney's visit this afternoon. He was medically discharged
7 from the police force due to injury, and he's under a doctor's
8 care all day tomorrow, and this afternoon he is in a meeting
9 with his personal attorney, for some reason or other, that, of
10 course, I'm not privy to.

11 **THE COURT:** Can he be with us tomorrow?

12 **MR. HUCKS:** Tomorrow he's under the care of a doctor
13 all day, is what we were informed.

14 **THE COURT:** I understand that, but having said that,
15 the doctor would not let him come to court?

16 **MR. HUCKS:** My officer just happened to step out, Your
17 Honor.

18 **THE COURT:** If he's under care of the doctor doesn't
19 mean anything to me.

20 **MR. HUCKS:** He was -- what I was informed is that the
21 extent of his injuries, the reason he got, you know, separated
22 from the police force were some very severe injuries, and he's
23 at the doctor for testing tomorrow, and under doctor's care
24 tomorrow, and I don't know the appropriate extent, but that's
25 why I wanted to ask the Court what I needed to do.

1 **THE COURT:** Well, make inquiry. I'm not going to order
2 him to come to court if it's injurious to his health. Make
3 inquiry from whoever if he feels like he could come to court.
4 Being under a doctor's care doesn't mean that he's there
5 twenty-four hours a day. The nature of his injury may
6 conclude him from testifying.

7 Have you shared this with Ms. ---

8 **MR. HUCKS:** Yes. We talked about it in the hallway
9 prior to walking in here, Your Honor.

10 **MS. KNOWLES:** He has.

11 **THE COURT:** You understand if he's sick and under the
12 doctor's care he can't come; you understand?

13 **MS. KNOWLES:** I understand that, Your Honor.

14 **THE COURT:** All right. Well, we've made every effort,
15 but I'm going to still let you cross-examine at length on that
16 issue of the prior complaint; you understand?

17 **MS. KNOWLES:** Okay. Thank you.

18 **THE COURT:** All right. You might make further inquiry.
19 If he can't come, fine.

20 **MR. HUCKS:** Yes sir, Your Honor.

21 **THE COURT:** All right, are we ready?

22 **MR. HUCKS:** Yes sir.

23 **THE COURT:** Bring my jury in, please.

24 **THE COURT:** Heather, swear my jury, please Ma'am.

25 **DEPUTY CLERK OF COURT, HEATHER LEWIS:** Yes sir.

JURY IN/COURT TO JURY/JURY SWORN

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1 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
2 JURY.)

3 THE COURT: Good afternoon, Mr. Foreman, ladies and
4 gentlemen.

5 Swear the jury, please Ma'am.

6 (AT THIS TIME THE JURY WAS SWORN.)

7 THE COURT: A few preliminary remarks, ladies and
8 gentlemen.

9 This case comes before the upon a document known as the
10 indictment, in which certain allegations are made regarding
11 the Defendant's guilt. To this indictment this Defendant
12 specifically pleads not guilty, thereby placing the burden of
13 proof upon the State of South Carolina of proving him guilty
14 of they can, unanimously, by evidence to your satisfaction,
15 beyond a reasonable doubt.

16 This may be the first opportunity that some of you have
17 served in a criminal case, and let me briefly tell you how we
18 will proceed. The State of South Carolina, represented by the
19 Solicitor's Office, has the burden of proof. He will give you
20 an overview of what he says his case is about. Ms. Melinda
21 Knowles, representing the Defendant, will give you a similar
22 statement as to the Defendant's position. These opening
23 statements are some kind of a guideline to help you follow the
24 various witnesses that may be called upon under oath to
25 testify in this case.

1 Now, from this moment on you twelve are the sole and
2 only finders of the facts in this case. From this moment on
3 there's nobody in this wide world that can tell you twelve
4 what the facts are. That's your job, and your sole job. You
5 may say properly, well Judge, we just came here today, how do
6 we know what happened in this case. Well, there will be
7 various witnesses called for your consideration, there well
8 may be documents introduced in the trial of the case. You
9 will judge the credibility, the believability of all the
10 witnesses who testify. You may believe all of what a witness
11 says, or none. You may believe a small portion and disregard
12 the larger. If you choose you may believe one witness against
13 that of many, or the other way around. You, and you alone,
14 are the finders of the facts, you and you alone are the sole
15 and only judges of the credibility of the witnesses.

16 After all the testimony is concluded we will have final
17 summation of counsel for each side, and I will give you the
18 instructions on the law of this case, such that you may put
19 the facts, as you find them to be, to the law as I give it to
20 you as is applicable, and thereafter reach a unanimous verdict
21 of either not guilty or guilty.

22 I look forward to working with you. As I've indicated,
23 this is going to be a relatively short trial, but it's a
24 serious trial. It's serious to the State of South Carolina,
25 the alleged victim, it's certainly serious for this Defendant.

STATE'S OPENING (HUCKS)

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1 Mr. Scott, from you, sir.

2 MR. HUCKS: Thank you, Your Honor.

3 Good afternoon, folks. I am -- my name is Scott Hucks.
4 I'm an Assistant Solicitor in the Horry County Solicitor's
5 Office, and I have a -- I have a really interesting job, a job
6 I care very much about, and that job is to stand here before
7 you and try cases. That's what we do, the Solicitor's Office.

8 I feel probably y'all are from around here. I am. If
9 you don't believe it listen to me, correct.

10 And in some places they are called District Attorneys, a
11 District Attorney's Office. We are attorneys for the State of
12 South Carolina whose job it is to put -- come to jurys and
13 prove cases. The way the legal system works is, the police
14 arrest somebody, they turn that case over to a prosecutor -
15 I'm a prosecutor - and the prosecutor then brings that case to
16 a jury, a jury of you folks. The Constitution entitles every
17 single person in the United States, and in the State of South
18 Carolina, to a jury of their peers. Twelve men and women
19 similarly situated in the world who stand in judgment when the
20 State decides that they have done something wrong, committed a
21 crime.

22 So in this case my job is to prove to you, beyond a
23 reasonable doubt - and we'll talk about that in a little bit -
24 beyond a reasonable doubt that this Defendant, Mr. Frady,
25 committed a crime. The crime he's charged with committing is

1 criminal domestic violence, third or subsequent offense.
2 That's what he has been charge with. What that means,
3 criminal domestic violence, we've heard it, we've seen on TV
4 and heard commercials and that kind of stuff. Don't pay any
5 of that any attention. The only thing you can take into
6 account are the facts that come off the witness stand, what
7 you see in the courtroom, and what the Judge tells you the law
8 is.

9 What I have to prove to you is that, on or about
10 September 28th of 2012, year and a half ago, that this man,
11 Mr. Frady, committed an assault or battery upon his wife, Ms.
12 Frady, who is seated in the courtroom, and whom you will get
13 to hear from.

14 What does that mean, an assault or a battery? Assault
15 or a battery means a touching, an unwanted touching, or to put
16 someone in fear. That would be the assault portion. What it
17 means if you commit criminal domestic violence is that you
18 either put your hands on somebody, or you put them in fear
19 that you are going to put your hands on them, and that's the
20 element of that crime, that they have to be your household
21 member.

22 The Law says a household member is a person with whom
23 you live with, are married to, or have a child in common with.
24 Those are the definitions of a household member under the laws
25 of the State of South Carolina. So what I have to prove to

STATE'S OPENING (HUCKS)

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1 you, beyond a reasonable doubt, prove that evidence, and the
2 witnesses that we are going to call, is that on or about
3 September the 28th of 2012, that Mr. Frady committed criminal
4 domestic violence upon his wife, Ms. Frady.

5 You are not going to have to take my word for it. The
6 Judge already told you, I'm a lawyer; you can't take a
7 lawyer's word for much of anything, can you, most of the time?
8 But what you can do is you can sit in judgment of the
9 witnesses. We've got three witnesses, I believe, I'm planning
10 on calling. They are going to come right up here, and they
11 are going to sit in this box, and they are going to swear,
12 take an oath to tell you the truth. I'm going to ask them
13 some questions, and they are going to tell you some answers.
14 They have a duty to tell you the truth. Gauge them, look them
15 up and down, figure out if they are telling you the truth, and
16 if you don't believe they are telling you the truth, you don't
17 believe he did it, cut him loose, but I don't think that's
18 going to happen, because by the end of this case you are going
19 to have heard Ms. Frady stand up here and tell you that her
20 estranged husband, with whom she was living, I believe what
21 she's going to tell you is, came -- he came to the house, and
22 it's a trailer house, he came there, he had taken the title to
23 the trailer from her so she couldn't sell it, that or do
24 anything with it. He came. She had found the title in the
25 house, and while she was looking for the title she found a

1 cell phone. The cell phone had some provocative things
2 written about her daughter in it. She got upset. She went
3 and hid the cell phone, and hid the title. He came into the
4 house, he caught her hiding the stuff, lost his temper, and
5 you will see ***** in a confrontation ***** finger marks
6 around her neck, and I believe she's going to tell you that he
7 put them there.

8 We also intend to call Detective Lint, who at the time
9 was a road officer. Detective Lint, I think he's going to
10 tell you, that he went to the scene and he saw the finger
11 marks, and he saw the bruising around her eye, and didn't see
12 any marks at all on Mr. Frady to indicate that even if there
13 may have been some mutual combat type situation, and that as a
14 result of that, combined with her demeanor that day, how
15 shaken and upset she was, that he believed that there was
16 probable cause to make an arrest on Mr. Frady. That's what we
17 are here for. I have to prove each element of that crime to
18 you beyond a reasonable doubt, and that's my job, and that's
19 my goal.

20 I want you to please sit back -- don't make your mind up
21 - it's a short trial - don't make your mind up, don't talk
22 about it, don't do anything until the Judge tells you you can,
23 because he's the Judge, right. So, sit back, listen. Use the
24 minds God gave you, and at the end of this thing there's only
25 going to be one verdict that works, and it's that he did it.

DEFENDANT'S OPENING (KNOWLES)

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1 You know why, because he did it. But please sit back. I'll
2 talk to you again at the end. Keep an open mind. Please
3 think critically about everything ***** and I thank you.

4 THE COURT: Ms. Knowles.

5 MS. KNOWLES: Good afternoon, ladies and gentlemen. My
6 name is Melinda Knowles, and I represent the accused in this
7 case, Mr. Timothy Frady. My representation of Mr. Frady began
8 in September of 2012, shortly after he was arrested for this
9 offense. And since that day he has professed his innocence
10 for this crime. He has actually done that since day one. He
11 has been steadfast in his desire to bring us all here today
12 and have this jury trial.

13 Ladies and gentlemen, I'm not here to advocate for
14 people who engage in criminal domestic violence. I actually
15 believe that people should be punished if they are to engage
16 in that sort of behavior; however, over the past seven years
17 of being a Public Defender I've learned many truths, and one
18 of those truths is that, especially in criminal domestic
19 violence situations, you can't take that situation at face
20 value. You have to thoroughly look at the evidence in the
21 case, thoroughly question each and every ***** and then make a
22 decision. I believe that there are two types of victims in
23 every criminal case. First you have the victim that's the
24 true, and the real victim, the person that has had their life
25 changed forever because of the criminal actions of another,

1 the selfish criminal actions of another. The second type of
2 victim that you have is a victim that has a plan or an agenda,
3 something they want to gain out of the situation, and you see
4 this victim a lot of times in CDV type situations. This
5 victim is someone who has an underlying motivation in
6 fabricating their story.

7 Now some examples, because I'm sure that you are a
8 little bit confused at that, of this underlying motivation,
9 could be to gain leverage in a divorce or a custody battle,
10 wanting to get their spouse kicked out of the home, the
11 marital home that they share, or the one that I see most
12 commonly is retaliation. They are upset that this person has
13 moved on with their life, they are dating or seeing someone
14 else, and they want to make that person pay.

15 In our case we have a married couple who have become
16 more than just -- they are not husband and wife. What they
17 are is just roommates. They share a living space. They both
18 realize that they need a divorce, but neither want to take the
19 step to see that process through. And let's be honest, ladies
20 and gentlemen, divorce is not a pleasant experience. You have
21 a lot of cost involved, if you do it the right way, and
22 generally you walk away from that type of situation with less
23 than you started with.

24 Now, it's going to be up to the twelve of you at the
25 close of this case to determine which type of victim Ms. Frady

1 actually is. Is she the first type of victim that I
2 mentioned, or is she the second type, that's out to fabricate
3 a story to gain leverage in a situation.

4 Now, in closing, I want to please ask of you that you
5 not allow the fact that Mr. Frady has two previous convictions
6 control your judgment here today. Each case should be
7 decided on the merits alone. We don't know the facts and
8 circumstances that surrounded those incidents, so they should
9 not play in -- factor here in your decision. Mr. Frady
10 deserves an unbiased, thorough and careful consideration of
11 this case by the twelve of you, and we believe that we've
12 selected the twelve people that are going to give them just
13 that, and thank you. Thank you for your time, and for your
14 service.

15 THE COURT: Thank you.

16 Call your first witness, please.

17 MR. HUCKS: Thank you, Your Honor.

18 The State would call Ms. Tammi Frady to the stand.

19 TAMMI LYNN FRADY, being first duly
20 sworn, testifies as follows:

21 DIRECT-EXAMINATION BY MR. HUCKS:

22 Q. Ms. Frady, what do you do for a living?

23 A. I'm currently in the process of reapplying for
24 disability right now.

25 Q. Where do you live, Ms. Frady?

1 A. [REDACTED] [REDACTED] [REDACTED]. It's on 70 -- off 701 North,
2 Saddlebrook area.

3 Q. Okay. And is that in Horry County?

4 A. Yes.

5 Q. Now, how long have you lived there?

6 A. Since 2004.

7 Q. Every ---

8 A. Off and on though.

9 Q. Now everything we are going to talk about here today,
10 did that all happen at that address?

11 A. Yes.

12 Q. Okay. And is that -- that address is in Horry County?

13 A. Yes.

14 Q. Now, I'm going to ask you, Ms. Frady, how do you know
15 Tim Frady? How do you know him?

16 A. Cause I'm married to him.

17 Q. Okay. When did you get married to him?

18 A. November of 2001.

19 Q. So you guys have been married for thirteen years ---

20 A. Yes.

21 Q. ---Or twelve years. Now, on or about September the
22 28th of 2012, were you guys living together?

23 A. We were residing in the same house.

24 Q. And were you still married?

25 A. We were still married. Yes.

1 Q. Okay. So you lived together and you were married?

2 A. Yes.

3 Q. Did you live in the same bedroom?

4 A. No.

5 Q. Now I want you to walk this jury through the events.

6 What happened on September 28th of 2012, that brought us here
7 today? Walk us through your day. What happened that day?

8 A. Well, I decided to go through some stuff, some items in
9 the house because, like I said, I had been going back and
10 forth some -- for a little while because of the abuse and
11 stuff, trying to figure out what to do, and one of the times
12 that I was gone he took some of my items ---

13 Q. What did he take?

14 A. ---And my title to the mobile home, all kinds of
15 paperwork. He broke in the lock cases and stuff. Important
16 documents, all kinds of stuff. But I was wanting my title
17 back. It had my name on it only, and ---

18 Q. Okay. Hang on for me just a moment.

19 A. Okay.

20 Q. What -- who owned the trailer that y'all were living
21 in?

22 A. It's just in my name.

23 Q. Okay. So the title has whose name on it?

24 A. Mine.

25 Q. Now, and this title was missing?

1 A. Yes, cause he had taken it while I was away.

2 Q. Now, how did you find that title, and did you find the
3 title?

4 A. I went into the room that he resided in. Once --
5 whenever he was around the house, and started looking through
6 stuff, just like he looked through -- but I didn't -- he
7 looked through my stuff and took a lot of it, so I was mainly
8 concerning about finding my important documents, like
9 pictures, my trailer title, things like that, and I found the
10 trailer title. I did find it that day.

11 Q. Where was it?

12 A. It was on a TV stand beside the mattress that he was
13 sleeping on. And then I also ran across some cell phones, and
14 I had had a bunch of different cell phones before, so I didn't
15 know if I had found one of mine or not, but I opened it up,
16 and I never read the books when I buy it. I keep switching
17 cell phones all the time, and I never read the instruction
18 booklet, so I just keep pushing buttons till I figure out how
19 they work, what I need to work on, and while I was pressing
20 buttons on one of the cell phones I realized that that cell
21 phone wasn't mine, it was his, and the way that I knew that,
22 for sure, was -- I may have had one similar to that before,
23 but this one had some pictures on it.

24 Q. What kind of pictures did it have on it, Ms. Frady?

25 A. Of my youngest daughter.

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1 Q. How old is your youngest daughter?

2 A. She's twenty-one now, but now this has been three or
3 four years ago, maybe, that these pictures were took, at
4 least. I actually -- it may have been -- been even longer
5 than that.

6 Q. Okay. Now, is your youngest daughter Mr. Frady's
7 daughter too?

8 A. No.

9 Q. Okay. What were the subject of these pictures? What
10 made -- what made you uncomfortable about these pictures?

11 A. While I was pressing some of the buttons some pictures
12 showed up of some people, looked like having -- somebody
13 having sex, and -- and some pictures of my daughter and her
14 friend, and it had my daughter's name. He would put my
15 daughter's name over the top of the picture, and put ugly
16 words, sexual words behind it. There was actually several of
17 them.

18 Q. All right.

19 MR. HUCKS: May I approach the witness, Your Honor?
20 May I approach, Your Honor?

21 THE COURT: Yes.

22 MR. HUCKS: All right. Now don't show these to the
23 jury. They are not in evidence. I want you to just tell me
24 if you recognize what have previously been marked State's
25 Number 7, 8, 9, 6, 3, 4 and 5. What are these? Do you

1 recognize these, all these things? What are those?

2 A. Every one of them, except maybe this one. I can't make
3 out who that is in this one, but my daughter is in every
4 single one of all the other six, at least.

5 Q. Where did they come from? What are they?

6 A. These were the same pic -- this is copies of the same
7 pictures that I saw on one of his old cell phones.

8 Q. Okay. And Number 6 is the one you had an issue about.
9 Is it -- is it out of that same cell phone?

10 A. It was in -- yes, there was pictures in there too that
11 wasn't of my daughter, but it's a dirty picture.

12 Q. Okay. Now were these the photographs that you saw that
13 got your attention in the phone?

14 A. Yes.

15 Q. What's your youngest daughter's name?

16 A. Amber.

17 Q. Now, are these pictures that I put in front of you
18 here, are they true and accurate reflections of the pictures
19 that were in that phone? Are they the same pictures that were
20 in that phone?

21 A. Yes sir.

22 Q. And are these the pictures that you saw that led you
23 to be concerned?

24 A. Yes sir.

25 Q. Now what did you -- what did you do after you saw those

1 pictures? Tell the jury.

2 A. I took the phone, and I took my title back that I
3 found, and I didn't look through any more stuff that day,
4 and -- because frankly, I was kind of sick whenever I saw
5 those pictures of my daughter on the phone.

6 Q. Hold on one second, Ms. Frady. What do you mean you
7 were sick?

8 A. Sick. Just sick knowing that -- after seeing dirty
9 pictures like that from my suppose-to-be-husband, taking
10 pictures, and labeling them, of my daughter, like that on his
11 cell phones and stuff, but -- so I didn't go -- I don't think
12 I went through any more stuff that day, and so I went and sat
13 down, and I was looking at the title, and I had the cell phone
14 open, still looking at the pictures in the living room and
15 then he -- the door was unlocked and then he came in, home
16 sometime, and he had a bottle of liquor in his hand, and he
17 looked over -- I had the cell phone and the title in my hands,
18 and he stood there and looked over at me, and I knew he saw
19 what I had, so he just stood there to start with and stared,
20 and didn't do anything, and so then he went into the room he
21 had been sleeping in sometimes, and when he went in there
22 that's when I made my get-away to try to hurry and stash the
23 title and the cell phone that I didn't want him to get back
24 because I wanted somebody to see those pictures on it, and I
25 didn't want him to get my title back again. So while -- when

1 he went in his room I went and I hid the title and the cell
2 phone in the baby crib. My youngest ---

3 Q. Hang on for me just a second.

4 A. Okay.

5 Q. Why would you have a baby crib in your house? Why
6 would you hide them in a baby crib?

7 A. Because my youngest daughter, the same one that he's
8 got the pictures of, the copies of -- the pictures on the
9 phone I found, she was pregnant at that time, and we had
10 already bought the baby crib and had it put up, put together,
11 and I know that he would try to take it back, and actually
12 after being in the room that he occupied when he was there he
13 did go and get back up in my face and started fussing about me
14 going through his stuff, and me having the title and the
15 phone, and I told him yes, I had it, it was my title and he
16 went through my stuff so I went through his, and that I got it
17 -- got my title back, and that he wasn't getting his cell
18 phone back because I was going to show people what kind of
19 person he really was. And so he kept arguing, and his eyes
20 started -- when he gets like that his eyes started dilating,
21 and he looks like he starts foaming from the mouth, like spite
22 coming from a mouth, like a dog with the rabies, is what I
23 always call it, but anyway, he started arguing, and he went --
24 he kept getting closer and closer to my face, and I know what
25 will happen when he gets that way, so I knew I needed to get

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1 up, and -- but he wouldn't move, so I told him, I said I don't
2 know if you've already been drinking any of that liquor or
3 not, but you know -- I happen to know for a fact you are not
4 suppose to be drinking, you are going to -- but -- and so you
5 are going to end up getting in trouble, and also I'm going to
6 show these pictures to everybody I see so they can see what
7 kind of person you really are. And then he -- I knew I needed
8 to get away from him, so I pretended I needed to go get
9 something to drink. But every time I would try to go around
10 him he would kind of block me, but I finally got around. He
11 was sitting there yelling, I'm sick and tired of hearing you
12 talk about what I'm going to get in trouble for all the time,
13 and so I acted like I was going to go get something to drink,
14 but I never got nothing to drink yet.

15 Q. Where did you go? Where did you go? What did you do?

16 A. I went like I was going to go get something to drink,
17 but he -- he ended up grabbing me around the neck and started
18 choking me, so -- I'm sorry -- anyway, he started choking me,
19 and was saying that he wasn't going back to jail, if he went
20 back to jail for anything that it was going to be for a good
21 reason, and that nobody would find my body, that it would be
22 threw in a hog pen somewhere way out in the country, and so I
23 kept pushing on him, and pushing on him. I finally got his
24 hands loose off of my neck. But when I did he headed for the
25 other bedroom that had the baby crib in it, and I knew he saw

1 me go that way when I went that way to hide the title to the
2 trailer and the cell phone, so I knew what he must have been
3 going after, and so I followed him into that room, which was
4 my daughter's room, and I followed into that room, and he was
5 looking under the edge of the bed mattress, and started
6 throwing stuff around, and looking around, and then when he
7 got all the way up to baby crib and started messing with it --
8 we had already had the bumper pad and the comforter set and
9 everything all in it, and it fixed up, and that's where I hid
10 the cell phone and the title, and when he got over next to
11 that I had to reach under there and hurry and jerk the title
12 and the cell phone out. Somehow during that process I got hit
13 in the face, and then I had to run out the door. I went out
14 the back door of the home. I dialed 911 but it didn't go
15 through, or it got disconnected one time, but I did get to
16 finally talk cause he -- cause he caused it to drop the call
17 or do something, but I did finally get out and into the yard,
18 and got 911 dialed back up, and I just stayed out at the other
19 end of the house until the cops got there.

20 Q. So you called 911 yourself?

21 A. Yes.

22 Q. When you called 911 the police came shortly after?

23 A. Yes. I think. Seems like I kept asking them how long
24 it was going to take them to get there cause I was freaking
25 out, cause I didn't know -- he had left out the front door and

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1 went out in the yard and was looking for me, or if he was
2 going to go out the back door and go out there and find me or
3 not. Usually I would go out the drive -- out the door and go
4 down the driveway, or go down to the -- go down -- walking
5 down the road or something, but that time I just had to worry
6 about getting out the house, and I went out the back door and
7 sat at the other end of the trailer where he couldn't see me,
8 and that's where I still was when the officers arrived.

9 Q. When you say you went to a place around the trailer
10 where he couldn't see you, you went and hid from him?

11 A. Yes. I got out in the open where I could run.

12 Q. Now, you saw that he -- you got hit in the eye and you
13 got choked; is that right?

14 A. Yes.

15 Q. Now, were you scared when that was happening?

16 A. Of course. He don't think -- well, I don't know what
17 I'm suppose to say and what I'm not suppose to say.

18 Q. Just tell the truth. Were you afraid?

19 A. Yes, I was afraid, but I have good reason to be afraid.

20 Q. Well, I'm going to -- and when the police got there
21 they -- did they defuse the situation?

22 A. I still wasn't -- as a matter of fact I was so afraid I
23 still wouldn't go around -- move from around that spot after
24 the officers got there to start with. I kept telling --
25 asking them, or telling them I wouldn't -- didn't want to go

1 on around to the front part or nowhere unless he was gone
2 already, and I think one of them said that they already had
3 him in the car, and had already left with him before I went
4 around there, and one of them had me to sit in some old chair
5 and took pictures.

6 Q. All right. Well, I'm going to walk up ---
7 If I may approach again, Your Honor.

8 THE COURT: Yes sir.

9 MR. HUCKS: I'm going to show you a couple of exhibits.
10 I'm going to show you what's been marked as State's Number 13.
11 Do you recognize this? What's that?

12 A. So far it looks familiar. Yes.

13 Q. You might not have any battery power, but do you
14 recognize that? What is that ---

15 A. Yes. That's his -- one of his old cell phones. That's
16 the cell phone that had those pictures of my daughter on
17 there.

18 Q. Okay. And is this the cell phone that all those --
19 that all -- all that we've been talking about the whole time?

20 A. Yes.

21 Q. All right. And what did you do with this cell phone?
22 How did it get -- get over here into evidence?

23 A. Ginger, the investigator for the Solicitor's Office.

24 Q. Who did you give -- who did you bring that cell phone
25 to?

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1 A. I brought it to your office.

2 Q. Okay. And then Ms. ---

3 A. And then Ms. Ginger, the investigator for the
4 Solicitor's Office got it.

5 Q. Okay.

6 A. I think.

7 Q. All right. But you dropped it off in my office?

8 A. I dropped it off in your office.

9 Q. Okay. Now, ---

10 A. I kept it for a while because I didn't know what to do
11 with it, because now my daughter is of age, and so I figured
12 that the cops can't do nothing to him about what he did, but
13 them weren't recently took just here in the last few years.
14 Them was took when she was younger.

15 Q. Okay. Well, I'm going to show you what's been marked,
16 Ms. Frady, as State's Number 1 and Number 2. What are these?
17 Just number -- look over here first, number one. What's
18 number one?

19 A. That's a picture of me and a place under my eye, or on
20 my face.

21 Q. What's special about that place under your eye?

22 A. That's where I guess I got hit whenever we were
23 struggling, looking in the crib for the thing ---

24 Q. Okay. What's the ---

25 A. That's where I was squatted down at, and then they told

1 me to sit up there on an old broke down chair before they took
2 pictures.

3 Q. Okay. And is that a true and accurate reflection of
4 what the police had you do, and your eye? Is that what they
5 looked like that day?

6 A. I guess. They took the pictures. I didn't really want
7 to look at them.

8 Q. Okay. Was that picture the one that was taken that day
9 by the police?

10 A. Yes.

11 Q. Okay. Those pictures. And what about Number Two?
12 What are those?

13 A. That's the places on my neck.

14 Q. Okay. And what do those reflect?

15 A. That's where he was choking me.

16 Q. Now those two pictures there that are combined to make
17 up Exhibit Number 2, what are -- what is the red area here?
18 What is that?

19 A. That's, I guess, what do you call it, blood, bruising,
20 was where finger -- thumb print, fingerprint marks or ---

21 Q. Okay. And is that where he was strangling you?

22 A. Yes. He was choking me, with both hands, one at the
23 time, but he was using them both, I know, because I was having
24 to pry them up and pull them off.

25 Q. Now, Ms. Frady, is everything you've told us so far

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1 been what happened that day?

2 A. Yes, I think so.

3 Q. And at that time the police arrested ---

4 A. I'm a little nervous. I'm not sure.

5 Q. I know you are.

6 A. I don't know what I can say and what I can't say.

7 Q. Now -- I know it's -- now, and the police arrested him
8 that day?

9 A. Yes.

10 Q. Now, I've got nothing further for you, Ms. Frady.

11 Please answer any questions Ms. Knowles has for you, okay.

12 A. Okay.

13 THE COURT: Ms. Knowles.

14 MS. KNOWLES: Thank you, Your Honor.

15 CROSS-EXAMINATION BY MS. KNOWLES:

16 Q. Ms. Frady, good afternoon.

17 A. Good afternoon.

18 Q. Now, let's revisit this issue. How long have you been
19 married to my client?

20 A. Thirteen years, but with a lot of problems in thirteen
21 years.

22 Q. Yes Ma'am. Can you -- if you could just answer my
23 questions directly.

24 A. Okay. With a yes or a no?

25 Q. Just directly. Okay.

- 1 A. Okay.
- 2 Q. It will just be easier.
- 3 Now, for the past several years you've had a rocky
4 relationship, wouldn't you agree?
- 5 A. Thirteen years.
- 6 Q. For the past several years, however, of those thirteen,
7 you've had a rocky relationship, correct?
- 8 A. Well, I've had a rocky -- yes, I -- yes.
- 9 Q. I mean, you had mentioned just a few moments ago that
10 the two of you no longer share a bed; you had a room, he had a
11 room.
- 12 A. Well, that depends on what you call rocky. It was
13 rocky whenever I was -- never mind ---
- 14 Q. Yes Ma'am.
- 15 A. Yes. Yes, to your answer, I guess.
- 16 Q. Now, did you ever consider a divorce?
- 17 A. Yes, I have.
- 18 Q. Did you seek counsel?
- 19 A. I kept trying to figure out ways to get out of the
20 abuse. I have called CASA before. I've called places that
21 said they didn't have any empty beds.
- 22 Q. Yes Ma'am.
- 23 A. I have given keys ---
- 24 Q. And again, I just need you to answer just my questions,
25 and not really elaborate. I just ---

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1 **MR. HUCKS:** Your Honor, I would object to that
2 statement. She's got the right to explain her answer if Ms.
3 Knowles asked her ---

4 A. If you ask the question I don't know -- that's why I
5 don't know what to say. I don't ---

6 **MS. KNOWLES:** You are doing fine.

7 **THE COURT:** Ma'am, just listen to the question, please,
8 and answer it as best you can. Okay. You just do the best
9 you can and everybody will be satisfied. Don't you worry
10 about that.

11 **MS. KNOWLES:** You are doing fine, and maybe I'm just
12 asking the questions in the wrong way.

13 A. It's just some things I -- from my understanding, I'm
14 allowed to say in court, and some things I'm not, and I don't
15 know ---

16 **THE COURT:** You can -- no ---

17 **MS. KNOWLES:** I understand.

18 **THE COURT:** ---You -- you may respond as you think
19 appropriate to any question that she makes. Okay.

20 Q. Now, again, have you ever visited an attorney to seek a
21 divorce?

22 A. No, but I'm planning on it.

23 Q. Okay.

24 A. And I have called CASA. I have called the Sheriff's
25 Department, asking them about other stuff, if I could keep --

1 keep him away from me. I have had numerous calls for service,
2 numerous times of ---

3 Q. Yes Ma'am. I'm going to get to those in just a minute.
4 Now, do you work?

5 A. I have worked. I worked all the way up until I got so
6 sick all at once, when everything went out of whack in my
7 body. I saw all kinds of psychiatrists, counselors, and
8 doctors, and all, and they said that the abuse - I've got it
9 in paperwork - that I went through, the adult abuse that I
10 went through with him has caused me to have a whole bunch of
11 serious health conditions now.

12 Q. Now, is this your first marriage?

13 A. No. I'm widowed before him.

14 Q. How as the relationship with the previous husband?

15 A. He was an alcoholic. He drank every day, so he died at
16 a pretty young age, in his thirties, but I had left him eight
17 years before he died.

18 Q. Why -- why did you leave him?

19 A. Cause he was an alcoholic.

20 Q. Okay. Now, did he ever hit you?

21 A. He hit me about twice. He hit me up till I gashed his
22 face up with a bottle of British Sterling on Christmas Eve.

23 Q. Okay.

24 A. He didn't hit me no more after that.

25 Q. Yes Ma'am. Now, do you take prescription medication?

1 A. I knew that would come up today. Yes, I do.

2 Q. What -- what do you take?

3 A. All kinds of specialists say I have severe anxiety and
4 panic attacks. When everything went out of whack like a
5 ticking time bomb that I didn't know was happening in my body,
6 beginning with March 8th, when I got beat very severely again
7 by the same -- by the Defendant.

8 Q. Okay.

9 A. After that, that same day or night, and by the next day
10 ended up hospital, about a day after that, seeing all kinds of
11 doctors and specialists, counselors, psychiatrists,
12 neurologists, I mean bone doctor, you name it. I have to take
13 medications for a severe anxiety, panic attacks. They have me
14 put down with that. They have me put down with tremors. They
15 have me put down with post-traumatic stress disorder. They
16 have me put down with being bi-polar, manic depressive now.
17 They said I'm -- my body is eat slap up with osteoporosis, eat
18 slap up with arthritis, and I'm on -- and I have a blood
19 pressure problem now. I don't know if I left anything out
20 yet. Seems like something else. Oh, and I have severe
21 headaches all the time, and I have to take medication for that
22 too, and they are wanting to do surgery on my neck since March
23 of 2008, for the damage that was done whenever I was beat on
24 before and my neck almost got broke. But a chiropractor said
25 luckily it just dislocated it around sixty-five degrees to the

1 left side of my head.

2 Q. Let's go back.

3 A. Was that good enough?

4 Q. You did great. Whenever you were involved in this
5 other relationship with your ex who passed away, were you
6 taking medication then?

7 A. No.

8 Q. You weren't?

9 A. No.

10 Q. So how many years have you been on medication?

11 A. Every since everything went out of whack. He beat me
12 on March, 2008. I was at the hospital by that same night, or
13 next day, and then the day after that I was at Carolina Forest
14 Family Medicine Center having to be seen every week, and had
15 to see every doctor up in the building till they had to move
16 me to the head doctor. It was like a ticking time bomb had
17 went off inside me. He choked me that day, he tried to
18 smother me and suffocate me that day, and he had my nose and
19 my face touching my chest, from behind, with pressure on my
20 neck and all so long it dislocated my neck bone. It's no
21 longer centered no more. It's around here to the left side,
22 but I won't let them do surgery on it.

23 Q. Okay. Now, as far as ---

24 A. That's when I got so sick, so now I stay sick all the
25 time.

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1 Q. So you had none of these conditions ---

2 A. I had none of them ---

3 Q. ---Till you met Mr. Frady?

4 A. ---Not none of them. And every one of the places told
5 that that's why I have them. They said you thought you were
6 dealing with the abuse, but that's your body's way of letting
7 you know that it could not take any more, and when he beat me
8 that last -- that time it was like something had been on --
9 standing on the edge of a cliff, and when he did it that time
10 it just pushed it the rest of the way over, and everything in
11 my body went out of whack all at once.

12 Q. So although you admit that ---

13 A. But he wouldn't leave the house. He wouldn't leave.
14 He wouldn't leave, and nobody -- he would always tell them, he
15 said, no, I'm not going nowhere, he said, so ---

16 Q. Well, you've just testified that you are familiar with
17 the Order of Protection, right?

18 A. Oh, I just only recently, within this past year, got
19 familiar with the Order -- the Order of Protection, and I wish
20 to God I had -- out of all the times the officers were called
21 out to that residence I was never told that I could take a
22 police report and go and get an order of protection. All
23 those years of abuse and I didn't know it, but now I know it,
24 so when I knew it, because a good officer did finally let me
25 know it I got one.

1 Q. Okay. Now, you are saying that, after being involved
2 in that first relationship, that you admit was abusive ---

3 A. Oh, he didn't hit me. I was with him for years and he
4 didn't hit me no more than about twice, because about the time
5 I gashed his face open he learnt not to hit nobody no more.
6 But see, I was younger then. I didn't care then. When I got
7 older, luckily, for him and a lot of other people, I calmed
8 down, and I started thinking, if I do this I'm going to end up
9 in jail, if I'm in jail who is going to raise my kids, but
10 see, when I was about eighteen, twenty years old I wasn't
11 thinking like that. Somebody hit me I would just lay them
12 open.

13 Q. Did you ever file the report with the police regarding
14 the ex-husband? Did you ever file a report?

15 A. He didn't do nothing but like bust my nose one time
16 because he was drunk.

17 Q. Okay.

18 A. And hit me with a coffee table leg, but he didn't hit
19 me with nothing no more. I gave him his Merry Christmas
20 present. I'm sorry.

21 Q. But Ms. Frady, you never filed a police report or
22 anything?

23 A. That was about when I was eighteen, twenty, going to
24 file a police report because somebody bust your nose while
25 they are drinking?

1 Q. Okay. Who shouldered most of the financial burdens in
2 your home?

3 A. I did, but that's not what he tells everybody.

4 Q. Okay. On September 28th were you working?

5 A. I worked for myself for years after I quit cleaning
6 condos out at Wild Wing Boulevard. I worked for myself. And
7 as a matter of fact, I made more money working for myself. I
8 was able to work for myself up until after -- actually until I
9 got really, really sick, after March 8th of 2009.

10 Q. So on September 28th were you working ---

11 A. Oh, no.

12 Q. You weren't working?

13 A. No.

14 Q. Okay. So is it fair to say that Mr. Frady shouldered
15 most of the financial burden, when it came to bills, etcetera?

16 A. No. No. He wouldn't pay a dime. He said he weren't
17 going to pay a dime. The bills weren't in his name, and he
18 knew it, and he said he weren't -- he was working, he claimed,
19 but he didn't come back round there with no money, and when he
20 was asked for any he said he wouldn't paying not one dime, and
21 he said -- so he knew they didn't get paid because if it
22 didn't then me and my daughter couldn't stay there, so he kept
23 his money, and did what he wanted to do with it, so we had to
24 sit -- I had to sit there, and I had to borrow money from
25 people to pay the bills with, while he kept his.

1 Q. For thirteen years?

2 A. Thirteen years? You said since -- well, since
3 September.

4 Q. I asked if you were working on the 28th of September.

5 A. On the 28th of September was 2012.

6 Q. Right. Were you working?

7 A. I already said no to that question.

8 Q. And when did you last work?

9 A. I went down and done -- I've done that same thing,
10 some, a little bit, since then, probably from '80 -- I don't
11 know, six months or so, or whatever, but you know what, the
12 whole time that I hadn't been since then I help other people
13 do odd and end jobs that they can't do, that can't read and
14 write, and that needs stuff done for them, and stuff, and I
15 get money made that way.

16 Q. How were the bills paid?

17 A. Just like I was just saying. I have people, certain
18 people, that can't read, that can't write. They need their
19 business stuff took care of for them, they need their bills
20 paid, or they need errands run, they need looking after, they
21 are sick and other different stuff, I do odd and end stuff to
22 get money, plus people are having to loan me money still,
23 hoping that I will soon get approved for my disability,
24 because I already applied one time, and they almost passed it
25 the first time.

1 Q. So your testimony to me is that Mr. Frady did not
2 contribute at all?

3 A. He did not contribute at all.

4 Q. Okay. Did ---

5 A. Not after September, or not after -- no. He didn't pay
6 nothing around there then. You got a check stub you can show,
7 and a bill receipt you can show where he paid stuff during
8 then?

9 Q. I just asked you these questions. If it's your
10 testimony that he never contributed a dime ---

11 A. After September the 28th, he wasn't paying nothing,
12 because as a matter of fact, we had had to say something about
13 it to him more than once. We were like, look, you know how
14 hard a time somebody is having, the power has got to get paid,
15 and this has got to be paid, lot rent, and all this other
16 stuff, and you say you work, and so why aren't you helping pay
17 at least something on the -- toward the power bill or
18 something. He said he wasn't paying one dime, and he didn't
19 either.

20 Q. Who is we? You said we. Who is we?

21 A. Me and my daughter. My daughter was staying there at
22 the time.

23 Q. Okay. Now, do you drink?

24 A. No.

25 Q. You don't. Do you smoke marijuana?

1 A. No.

2 Q. You don't?

3 A. If I smoked marijuana I wouldn't be able to find my way
4 out these double doors.

5 Q. Okay.

6 A. You would be black right now.

7 Q. Well, let's hope that doesn't happen.

8 A. It puts me in the dark.

9 Q. Now ---

10 A. I wasn't sick, but you know what, I ain't upset no more
11 - thank you - cause you calmed me down.

12 Q. Well, good. I'm glad I could do that for you.

13 Are you seeing a therapist?

14 A. No, I'm not, because I've seen therapists in all
15 different kinds of places, and you know what, I've had them to
16 sit back in their chair and throw cheese puffs up in their
17 mouth and rock back and forth, and tell me -- they said, you
18 know what, we told you to talk, and you talked, and now that
19 we've heard you talk we know that you are a know-it-all, we
20 don't have to tell you nothing, and you've just finished
21 saying everything we were going to say to you, but you already
22 know it. So, no, I've done saw enough psychiatrists, enough
23 therapists, at enough different places, I was doing all that
24 while I was going to all the other specialists and doctors
25 too. Everywhere I've got paid for, where they got it wrote

1 down, ninety-nine point nine something percent adult abuse.

2 Q. Okay. Now, when did you last visit a therapist or
3 psychiatrist? Do you recall?

4 A. Basically could have been 2010 or '09. It was 2009 or
5 '10, I don't remember for sure.

6 Q. Okay.

7 A. No. No, wait a minute. I did see a therapist a couple
8 of times in a doctor's office sometime this year.

9 Q. Okay.

10 A. But I don't have to see one. I've never been ordered to
11 have to see one. I voluntarily see one if I feel like I need
12 to.

13 Q. Okay.

14 A. I've never been ordered to have to. People ask me,
15 sometimes ***** doctors, no one, if I feel like if I want to
16 try, and I say, well why not, yeah, I will, why not.

17 Q. Okay. Isn't it true that you wanted Mr. Frady out of
18 the house on September 28th?

19 A. Yeah, I wanted him out of the house years and years and
20 years and years ago, but he wasn't going nowhere. Who
21 wouldn't want somebody out of a house that beats the fool up
22 out of somebody.

23 Q. The house is in your name.

24 A. Yeah, it is, but he wouldn't go no where.

25 Q. You know that you can ---

1 A. But that ain't why he hits on people and beats people,
2 so just cause I want him out of the house he gets the right to
3 choke people?

4 Q. Ma'am, I'm just asking you a simple question.

5 A. Okay. Go ahead. I'm sorry, because I've got a
6 condition that causes my voice to get loud. When I get upset
7 it will get louder.

8 Q. And I don't intend to upset you, so if I've done that I
9 apologize.

10 A. I'll lay the Bible back down. Maybe it will help calm
11 me down.

12 THE COURT: You are proceeding most appropriately.

13 MS. KNOWLES: Thank you, Your Honor.

14 Q. Isn't it true that the marriage between you two has
15 been over for some time?

16 A. Yeah. It was over the first time he ever laid his
17 hands on me, to tell you the truth.

18 Q. And isn't it true that you were sort of seeing someone
19 else, and he was seeing someone else at this time?

20 A. He was stalking me. I had to leave my house for a
21 while with not even a changing of clothes to take with me
22 cause he was beating on me, and had to stay gone for quite a
23 while, and what was he doing, stalking me. He was calling the
24 neighbors that lived by where I was having to stay at, and
25 having them to get -- and describing, down to a "T" what I had

1 on that day, what I was doing, where I was at, from head to
2 toe, and he was seen by all the neighbors, all the way around
3 the area, not even in Horry County, in another county, was
4 still stalking me, and my truck, coincidentally, burned.

5 Q. Well, that was unfortunate. I'm sorry to hear that.

6 A. He knew about it. He said that was just too bad, I
7 sure have had fire insurance.

8 Q. Again, Ms. Frady, isn't it true that you were seeing
9 someone else, and he was seeing someone else?

10 A. When?

11 Q. The date that this allegedly took place?

12 A. No.

13 Q. That's not true? Okay.

14 A. No. Not that day.

15 Q. And isn't it true that your daughter had actually
16 called the police just weeks before this alleged incident; do
17 you recall that?

18 A. Yes. My daughter had to call the police because he
19 kept making threats to her, besides him sending sexual stuff
20 to her on her phone, and she's face-booked and sent stuff back
21 to him telling him not to send no stuff to her phone no more,
22 plus, he was trying to peak up under her bedroom doors, again,
23 while she was grown, and pregnant, and he was made because --
24 and was harassing her - not just him, him and one of his
25 friends - because they were mad because somebody got the cops

1 called on them for smoking marijuana out on the front porch --

2 -

3 Q. Okay.

4 A. ---And they thought she was the one that called, so ---

5 Q. Do you remember ---

6 A. ---She got harassed for it.

7 Q. Do you remember about what time, or in relation to this
8 alleged incident, how many weeks, months before that that call
9 took place?

10 A. Before what call took ---

11 Q. Before -- before this alleged incident with your
12 daughter ---

13 A. No. I forgot all -- I ain't even thought nothing about
14 that no more.

15 Q. Okay. But she called the police, and they came out ---

16 A. But it couldn't have been too long because, as a matter
17 of fact, he weren't out of jail hisself too long to start with
18 during the whole period.

19 Q. And that brings me to a great point. This call was
20 made -- would it surprise you it was made on the 31st of
21 August, of 2012? Would that surprise you?

22 A. What's August 31st?

23 Q. Of 2012? The call that your daughter made to police to
24 report a charge, or claim of harassment.

25 A. So.

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1 Q. Okay.

2 A. Well, that must have been the day that he done it that
3 she decided to do it because he kept right on with her. She
4 would tell him to stop but then they would still keep on.

5 Q. Do you know when he was released from prison?

6 A. She may have called on -- when -- August 31st?

7 Q. Yes Ma'am.

8 A. She ain't made no call alleging harassment on him on
9 the 31st if he was in prison.

10 MR. HUCKS: Your Honor, may we approach very briefly,
11 Ms. Knowles and I?

12 THE COURT: Yes, please do.

13 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

14 THE COURT: You may proceed.

15 MS. KNOWLES: Thank you, Your Honor.

16 THE COURT: Now attempt to clarify it for her so that
17 she will understand the time, the date in question.

18 MS. KNOWLES: I will, Your Honor.

19 Q. Again, your daughter calls police on August 31st to
20 report harassment allegedly by my client. Do you know
21 anything about that?

22 A. I know that the officers were called, I think, about
23 harassment, I know at some time another, him and the other guy
24 that got in trouble for having marijuana at our house, got --
25 she ended up telling the cops about it, or somebody about it,

1 but I don't know what date it was.

2 Q. Okay. I'm just going to let you take a look at this
3 service report, because you had mentioned, you know, a call
4 for service. Just take a look at that -- that date so that we
5 are in agreement that it was the 31st.

6 A. I don't -- I still can't agree it's the 31st because I
7 don't remember what date it was.

8 THE COURT: She has answered you sufficiently, counsel.

9 A. Dispatched, arrived, for defense ---

10 MR. HUCKS: Objection, Your Honor. She's having her
11 read something into the record that's not in evidence.

12 A. Something domestic. I don't know what date she called
13 to report it.

14 THE COURT: You may put it in -- put the date in the
15 record that the report ---

16 Q. Okay. I just didn't want to take it away from her.

17 A. I don't know what date she called the cops or nothing
18 and done it. I remember -- I know she was having a problem
19 with them doing it on -- they were doing it in all kinds of
20 ways.

21 Q. Do you know when he was actually released from prison?

22 A. I did, but I don't know right now, but I've got it
23 wrote down somewhere at home.

24 Q. Would it shock you to know that it was September 1st,
25 which would be after the 31st?

1 A. No, may -- no, I think he got out early.

2 Q. Okay.

3 A. It showed in the computer system that he was suppose to
4 get out at a certain time, but come to find out, he got out
5 way early. He was even bragging about it, because it even
6 showed up on the neighbor's computer screen - they showed it
7 to me, to where he wasn't suppose to get out until later, and
8 come to find out he showed up weeks early. He said, bet you
9 surprised, ain't you.

10 Q. Okay. Officers responded on the 31st. Obviously
11 didn't make an arrest because they couldn't, because he was in
12 prison, correct?

13 A. Look here at -- am I her daughter? I mean, am I my
14 daughter?

15 Q. No. No. I don't think so.

16 A. I don't -- you are just confusing me here, because I
17 don't see what this has got to do with why we are here.

18 THE COURT: Wait a minute. No Ma'am. Just answer the
19 question now, no speeches.

20 A. I've already said, I don't know what date something had
21 to be done about him harassing her, but I know they were, him
22 and another boy, and he wasn't in jail at the time, at some
23 time. Now that date I don't know about.

24 Q. Okay.

25 A. And I don't remember now what date he got out of jail

1 for sure, all I -- but I know that he got out weeks before it
2 showed on the computer his -- that he was suppose to get out,
3 cause I had somebody to pull it up next door on the computer,
4 but what time it was showing on the computer as their
5 estimated date of release was wrong. He was out weeks before
6 that.

7 Q. Okay.

8 A. And he's ---

9 Q. Did your daughter tell you ---

10 A. ---Beat and choked me, so why am I having to talk about
11 my daughter?

12 Q. We'll move on. Okay. We'll move on from that.

13 THE COURT: Please, under our rules, now don't ask
14 questions. Please just answer them. Okay.

15 A. I was just trying to speed it up.

16 THE COURT: I understand that, but our rules don't
17 permit you to ask questions. Please just answer them. And
18 you are doing just fine.

19 Q. Ms. Frady, you have spoken to Mr. Hucks before today?
20 Do you need a moment?

21 A. No. Carry on.

22 Q. Have you spoken to Mr. Hucks before today?

23 A. Yes, I have.

24 Q. And have you always wanted to pursue this trial? And
25 again, I remind you that you need to answer truthfully.

1 A. That I'm still under oath.

2 Q. There you go.

3 A. Have I always still wanted this trial? Yes, I wanted
4 this trial.

5 Q. You never once thought ---

6 MR. HUCKS: Objection, Your Honor. It's asked and
7 answered. She asked it, and she answered it. She's trying to
8 en -- push her to say something.

9 THE COURT: Hasn't she answered you?

10 MS. KNOWLES: Okay. I'll move on.

11 THE COURT: Move on, please.

12 MS. KNOWLES: I will, Your Honor.

13 Q. Let's go back to the marital home, okay, and that
14 issue. Do you recall any proceeding in Magistrate Court with
15 regard to the marital home, that had taken place before
16 September 28th of 2012?

17 A. Do I know about it?

18 Q. Do you recall. Right.

19 A. About something in Magistrate's Court?

20 Q. It's called a Notice to Quit.

21 Q. Yes, I know about it. I heard about it.

22 Q. And ---

23 A. I wasn't involved in it, but I heard about it.

24 Q. Well, it involved your home, right?

25 A. My daughter was the one that was responsible for having

1 to pay everything there then, at that time.

2 Q. But that Notice to Quit was ---

3 A. And that is because nobody else -- because he wasn't.

4 Q. Okay. That Notice to Quit proceeding though, that was
5 done ---

6 A. It wasn't ordered.

7 Q. And the -- right, the Judge dismissed it, correct?

8 A. It wasn't ordered.

9 THE COURT: Please use the microphone, as you have been
10 doing.

11 Q. So you made an effort to civil - or not civilly - in
12 lower court, get him kicked out, correct?

13 A. No, I did not make an effort to get him kicked out.
14 When he kept doing stuff, and that he wasn't support to do to
15 my daughter, yes, she tried to have -- had the law called on
16 him, or have something done to him. That's the law. That's
17 what she's suppose to do. Whenever he kept doing something to
18 me that he shouldn't have been doing, yes, the law was suppose
19 to be called on him, and so he should be punished for what he
20 does. That's the way it's suppose to work. They ain't nobody
21 tried to kick him out. If anybody kicked him out he kicked
22 his own self out.

23 Q. Okay.

24 A. And actually he needs to be kicked ---

25 Q. Okay. Now, ---

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1 A. ---So he will know what it feels like.

2 Q. Do you remember talking to officers the night -- or the
3 afternoon whenever this allegedly took place, and they
4 responded? Do you recall speaking to officers?

5 A. On September 28th?

6 Q. Yes Ma'am.

7 A. They didn't -- I didn't do a lot of talking. They were
8 taking pictures.

9 Q. They didn't investigate; they didn't talk to you at
10 all?

11 A. They didn't go inside the house. They took pictures of
12 me on the outside the house.

13 Q. Didn't this altercation that you claim took place,
14 didn't you allege it took place inside?

15 A. Yeah, I did tell them that, and yes, I had the title to
16 the mobile home, and I had the cell phone with me outside,
17 still when the officers arrived there, and they saw the
18 places, and they took pictures, and I stayed outside until I -
19 - I wouldn't even go around the house until I knew that they
20 had took him away ---

21 Q. Did you ever give ---

22 A. ---Cause I was too scared to.

23 Q. Okay. Did you ever give this phone that you claim is
24 his to law enforcement on that day?

25 A. No.

1 Q. Why not?

2 A. Because, I didn't know if they could do anything. I
3 don't know exactly how long it's been since those pictures
4 were took, but I'm sure on there that it's got a date. I just
5 don't know that much about cell phones myself.

6 Q. In fact, you don't even know if that's his cell phone,
7 do you?

8 A. I do know for a fact that's his cell phone though.

9 Q. Okay. And you mentioned a moment ago, a few moments
10 ago when Mr. Hucks was speaking to you, that there were
11 several cell phones.

12 A. That's because I keep having three or four, my daughter
13 had three or four. I mean, I take care of phones when I get
14 them. They last me years, so sometimes I would buy another
15 one and -- I mean, please keep spare cell phones around, so --
16 and I've had plenty of flip phones, and that was a flip phone,
17 so I didn't know if that was mine or whose, and I go to
18 pushing buttons to try to figure out -- to get it to do
19 something. I played around ---

20 Q. Could have been your daughters.

21 A. I play around with them. No, it's not her's, because I
22 remembered, I bought them one just like that before, and I
23 also know the phone number that's in there. That was his
24 phone number one time before.

25 Q. Okay. And why then would you not hand that over to law

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1 enforcement?

2 A. But ---

3 Q. If that was ---

4 A. I told you. Because I don't know how long ago those
5 pictures have been taken. She may be over -- she's over age
6 now, and so unless they were took while she's under age I
7 didn't know they can do anything.

8 Q. Isn't that the whole reason that you claim that you
9 started arguing? According to your testimony that ---

10 A. No. I could show it to people that think that he's --
11 that he acts like he's so goody, goody round, and don't do no
12 wrong, but let -- to let them see, keep the kids away from him
13 because he don't need to be round none.

14 Q. But you just said, you don't even know when those
15 pictures were taken. All your testimony ---

16 A. Because I didn't try to pull it up to look to see. I
17 mean, time I glanced and seen what he labeled over them, and
18 seen that it was my daughter, I think I had looked at them
19 long enough.

20 Q. On direct testimony you said you weren't really even
21 sure who was in that picture.

22 A. No, it wasn't -- oh, that was out of like six or seven,
23 and that was a naked picture of some women. That didn't look
24 like my daughter. I don't know who that was.

25 Q. It could have been the owner of that phone, I mean, I

1 don't ---

2 A. It wasn't the owner of the phone. I know what his
3 phone number used to be. That was his phone.

4 Q. Did your daughter ever have friends over?

5 A. I know every phone my daughter has had.

6 Q. Okay.

7 A. Quiet as a mouse.

8 MS. KNOWLES: One moment, Your Honor.

9 THE COURT: I want to take the afternoon break after
10 this witness.

11 MS. KNOWLES: And I'll try to -- I'll try to be very
12 brief.

13 THE COURT: The jury has been very patient with me.

14 Q. Now, you have neighbors?

15 A. I don't associate with neighbors. That's trouble.

16 Q. Okay. But ---

17 A. I don't do noth -- I don't have nothing in common with
18 the neighbors that's around where my house is now.

19 Q. But if you ---

20 A. They do drugs.

21 Q. But if you felt like your life had been threatened
22 wouldn't you run for help?

23 A. Any more, probably not. I would probably go ahead and
24 kill whoever was threatening my life any more. You know why?
25 Cause I've done been beat on for so many doggone years, and

1 the people's got by with it till I'm sick and tired of them
2 getting by with it. I'm -- but I'm -- I probably need to get
3 some anger out.

4 Q. Okay. So ---

5 A. I don't associate with the neighbors. They probably
6 couldn't even hardly tell you my name, because I -- they just
7 want to be nosey. You make friends with neighbors they'll --
8 the next thing you know they are all up in your business, know
9 everything about your business, or sitting up in your face or
10 something.

11 Q. I don't -- I'm not familiar with where you live, but is
12 it a mobile home, a manufactured home?

13 A. Yes.

14 Q. And there are other homes in that area where you live?

15 A. Yeah, there is now. There used to weren't when it
16 first got put out there. I was told there never would be then
17 neither, but now somebody has put some out there.

18 Q. And that person is within walking distance, right?

19 A. Yes.

20 Q. Okay.

21 A. But you know what, I've done tried to get out the
22 house, plenty enough times. I've done tried grabbing hold the
23 railing on the porch, got pulled loose from it. Made it to
24 the front door, grabbed hold the door frame, got pulled loose
25 from it. Still got me dragged back up into the house before

1 he started -- got the -- shut the door and starts stomping and
2 kicking me in the head and everywhere else, then he drags me
3 to the bedroom and puts a goose down throw around my neck to
4 try to choke me to death, and that's still not good enough for
5 him, he's got to get me stood back up, and get behind me, and
6 lock his hands together, and then see how far he can get my
7 neck and chin and face bent down so he can pop break my neck.

8 So if you are hinting around at why don't I go to the
9 neighbors, I have screamed out outside on that porch plenty of
10 times for help while he was doing what he was doing, and
11 everybody around there claimed they didn't hear a thing.

12 Q. Okay. Now, you claim that you were injured. Did you
13 seek medical attention?

14 A. I have plenty of times.

15 Q. No. For this particular incident, did you ---

16 A. No. I told them I weren't going to no hospital because
17 I got fingernail marks on my neck, and bruises or blood on my
18 neck, or -- that's something I live with. What do I need to
19 go to the hospital up there for with something that's going to
20 just fade away after two weeks or a month.

21 Q. Okay. So you declined medical ---

22 A. But that still don't give him the right to do it. He
23 could have killed me. He's already got my neck messed up they
24 said, so I don't think he needed to have been messing with it
25 no more.

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1 **MS. KNOWLES:** Okay. Thank you, Ms. Frady. No further
2 questions.

3 **THE COURT:** Is there any redirect testimony?

4 **MR. HUCKS:** None whatsoever, Judge.

5 **THE COURT:** All right. You may come down.

6 Mr. Foreman, let's take a short break, and please let
7 the bailiff know when you are ready to come back out. Let's
8 come back out soon as you can.

9 You may go to your jury rooms. You may go to the room.

10 **(THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE**
11 **THE PRESENCE OF THE JURY.)**

1 **THE COURT:** Thank you. Bring my jury in, please.

2 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
3 **JURY.)**

4 **THE COURT:** All right. Call your next witness.

5 **MR. HUCKS:** Thank you, Judge.

6 We would call Officer Greg Lent to the stand, Your
7 Honor.

8 **GREGORY LENT**, being first duly
9 sworn, testifies as follows:

10 **DIRECT-EXAMINATION BY MR. HUCKS:**

11 **MR. HUCKS:** Your Honor, prior to beginning examination
12 of Detective Lent the State would like to move State's Number
13 10 and 11 into evidence. These are the certified prior
14 convictions that we discussed pretrial of the Defendant,

1 vesting jurisdiction in this Court as a third, his prior
2 convictions for criminal domestic violence.

3 THE COURT: All right, sir.

4 MR. HUCKS: We would move them into evidence at this
5 time.

6 MS. KNOWLES: No objection.

7 (PRIOR CONVICTION DOCUMENTS ADMITTED INTO EVIDENCE AS
8 STATE'S EXHIBIT NUMBERS 10 AND 11.)

9 THE COURT: Ladies and gentlemen, the Defendant is
10 charged with criminal domestic violence, third offense. One
11 of the elements to that charge that the State must prove to
12 your satisfaction is that there were two prior offenses for
13 the same thing. If you conclude that the proof is there you
14 may use it only as evidence toward a third offense, but not as
15 any specific evidence as to his guilt in this charge, as
16 simply an evidentiary step that the State must prove. The
17 fact that he has two prior convictions is no evidence that
18 he's guilty of this charge. You take the evidence that you
19 find to be from this charge and either find him not guilty or
20 guilty.

21 MR. HUCKS: We would request to publish -- just
22 published it to the jury since it's in evidence.

23 THE COURT: You may do so. And it is for that limited
24 purpose that I'm admitting that.

25 MR. HUCKS: Yes sir, just to show jurisdiction.

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- 1 **THE COURT:** Yes.
- 2 Q. Now, please state your full name for the record for me.
- 3 A. Gregory Lent..
- 4 Q. And what do you do for a living?
- 5 A. I'm a Detective with the Horry County Police
- 6 Department.
- 7 Q. Now, Detective Lent, what did you do on or about
- 8 September the 28th of 2012?
- 9 A. As far as my employment?
- 10 Q. What was your position? You were in the Horry County
- 11 Police Department.
- 12 A. I was.
- 13 Q. What did you do though?
- 14 A. I was a Corporal, which is a Road Supervisor, in
- 15 uniform patrol.
- 16 Q. Okay. What does that mean? What does that mean you
- 17 did on a shift? Do you do call -- what do you do? You check
- 18 in, you put your gun belt on, you go out, what do you do?
- 19 A. I answer calls for service, enforce whatever laws of
- 20 the County and the State that need to be enforce, and I
- 21 supervise the officers below me.
- 22 Q. Okay. Somebody calls 911, some of the officers you
- 23 supervise, or yourself, go to the scene?
- 24 A. Correct.
- 25 Q. Or all of the above?

1 A. Correct.

2 Q. Now, did you have an occasion to go to the address on
3 Rush Road, [REDACTED] [REDACTED] [REDACTED], on or about September 28th, 2012?

4 A. I did.

5 Q. Now how did that come about? Tell us about it.

6 A. We had -- or our communication center had received a
7 911 call from a female, who stated that she ---

8 MR. HUCKS: Stop you just one second, Officer Lent.
9 How about put that microphone a little closer to you.

10 A. Sure.

11 MR. HUCKS: I think you are a little soft spoken.

12 A. We had received a phone call -- our 911 center had
13 received a phone call from a female, who stated that her
14 husband had been choking her, so I was dispatched to that
15 address.

16 Q. All right. And did you go to the address?

17 A. I did.

18 Q. What happened when you got there? Tell us what
19 happened when you got there.

20 A. When I got there I was the first one on the scene. I
21 pulled up in the driveway and exited my vehicle. We had some
22 other units that arrived with me, at the same time. I walked
23 around the back of the house. It's a mobile home, and when
24 you pull into the driveway you can pull right up onto the side
25 of the mobile home. So the front is to your left, and the

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1 rear is to your right.

2 I walked around to my right to go around the rear of the
3 residence, and the other units had walked around the front.
4 As I walked around to the rear I was able to hear a female
5 crying, sobbing. I looked. I saw Ms. Frady. I couldn't get
6 to her from where I was. Asked her if she was okay, asked her
7 if anybody was there with her. She said no. And I then
8 walked around to the front of the residence and walked back
9 around to where she was.

10 Q. Okay. What happened when she made contact with her,
11 when you got up to her?

12 A. Immediately upon walking to her -- obviously, I mean,
13 she was crying, she was sobbing. Her -- she was short of
14 breath. She was breathing heavily. And I noticed very
15 visible injuries. She had redness to her neck, some swelling
16 to her face, and there were some marks on her neck, looked
17 like finger marks.

18 Q. Now, you took her story. Don't tell us what she told
19 you, but tell us if the evidence matched up to what she told
20 you.

21 A. Yes, it did.

22 Q. Okay. Now, the -- what -- how many criminal domestic
23 violence calls would you say you've been out to in your
24 career? How long have you been an officer?

25 A. Six and a half years.

1 Q. Six and a half years. And how many of those years were
2 you on the road?

3 A. About four, four and a half.

4 Q. Okay. So in four and a half years of being on the
5 road, what -- how many criminal domestic violence calls would
6 you say you went out to?

7 A. Easily hundreds.

8 Q. And in the investigation of a criminal domestic
9 violence case - and I'm sure you get some that you are not
10 exactly sure of, right?

11 A. Sure.

12 Q. And you get to some where you are convinced ---

13 A. Yes.

14 Q. ---Of an occurrence. So what kind of evidence do you
15 look for when you get to a scene of criminal domestic violence
16 call, to see if you believe a criminal domestic violence event
17 has occurred?

18 A. Obviously any visible injuries to the victim would be
19 something you would look for first..

20 Q. And did you have those?

21 A. Yes.

22 Q. And what did you have? Explain it to -- just one more
23 time to clarify.

24 A. Redness to both sides of the victim's neck. There were
25 some finger marks on her neck, and there was some redness to

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1 her face, and looked like some swelling under one of her eyes.

2 Q. And what did that lead you to believe?

3 A. That she had been assaulted; she had been struck, and
4 had a hand placed around her neck.

5 Q. And hard enough to leave marks in either -- in both
6 situations?

7 A. Yes.

8 Q. Is there anything else in particular that you look for?
9 What do you look for in the demeanor of the person when you
10 get to the scene? What kind of things do you look for?

11 A. Look to see how they are acting, if they are nervous,
12 if they fearful, crying, upset. Well, I mean, look for
13 anything, anger, calmness, whatever it might be, however a
14 person is acting is what I'm looking for.

15 Q. What did you notice about Ms. Frady's demeanor that led
16 you to believe that a crime had occurred?

17 A. She appeared to be crying to me, she was upset, she had
18 tears coming from her eyes, she was breathing heavily. She
19 was -- shortness of breath, you know, as she was speaking
20 (DEMONSTRATING), things like that. I mean, you could tell
21 that she was -- she was upset.

22 Q. Okay. Did you notice anything about shaking, or
23 nervous?

24 A. Yes, she was shaking. Her hands were shaking. She was
25 completely shaking from head to toe.

1 Q. And when you spoke to her was she able to be coherent,
2 and did she appear like she was drunk or ---

3 A. No, she didn't appear to be drunk; she just appeared to
4 be upset.

5 Q. You know, some people get drunk and get upset, right?

6 A. Sure.

7 Q. Sometimes people drink just for that occasion, I think,
8 but the -- did that appear to be case?

9 A. No, it did not.

10 Q. Did she appear to be heavily under the influence of
11 anything that would make her lose her calmness, or make her be
12 upset in and of itself?

13 A. No, did not appear that.

14 Q. So, just to summarize, that she was shaking, visibly
15 upset, sobbing, and had bruises to her face and finger marks
16 on her neck?

17 A. Correct.

18 Q. And you saw each and every one of these things with
19 your own two eyes?

20 A. Yes.

21 Q. Who else was in the house?

22 A. The Defendant, Mr. Frady, was inside the house.

23 Q. There wasn't some stranger there just walking around --

24 -

25 A. No, there was nobody else there.

1 Q. Okay. Just the two of them?

2 A. Correct.

3 Q. And did your investigation lead you to believe that he
4 was the one that perpetrated these marks on her?

5 A. Yes, it did.

6 Q. I'm going to show you what's previously been marked as
7 State's Number 1 and Number 2. What are these? Please
8 explain them to the jury.

9 A. These are the pictures that were taken of Ms. Frady
10 while I was on scene. There's four individual pictures. One
11 is a full picture of her. There's one picture of the swelling
12 under her eye, and then there's two pictures, one from either
13 side of her neck, showing the redness and the visible finger
14 marks..

15 THE COURT: Ms. Knowles, you've had opportunity to see
16 these photographs?

17 MS. KNOWLES: Yes sir.

18 THE COURT: All right.

19 MR. HUCKS: And they've been ruled on pre-trial. We
20 discussed them in pretrial.

21 Your Honor, at this time ---

22 Q. Now did you take these picture?

23 A. I believe that I'm the one who took them, yes.

24 Q. Well, are they fair and accurate representations of
25 what Ms. Frady looked like when you got to that house that

1 evening?

2 A. Yes.

3 Q. And are they -- are they true and accurate? Do they
4 accurately depict what you saw with your eyes?

5 A. Yes.

6 Q. And they accurately depict some of the things that you
7 took into consideration in affecting an arrest on Mr. Frady?

8 A. Absolutely.

9 MR. HUCKS: Your Honor, at this time the State would
10 move State's Number 1 and Number 1 into evidence.

11 THE COURT: They are admitted.

12 Do you care to publish at this time?

13 MR. HUCKS: Yes, Your Honor. I was just about to ask.

14 (PHOTOGRAPHS ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
15 NUMBER 1 AND STATE'S EXHIBIT NUMBER 2.)

16 THE COURT: Mr. Foreman, anything that's introduced
17 they may publish at this time, but all of it will be with you
18 in the jury room during your deliberations. He desires to
19 publish at this time. Take a look at them and pass them
20 around, please.

21 Q. Now, were you able to determine, as the Law requires of
22 all policemen who go to criminal domestic violence calls, were
23 you able to determine a primary aggressor in this case?

24 A. I was.

25 Q. Who did you believe, as a result of your investigation,

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1 was the primary aggressor?

2 A. The Defendant, Timothy Frady.

3 Q. Okay. Tell me what that -- tell the jury what that
4 means when I ask you about a primary aggressor. What does
5 that mean? What are you looking for when you determine a
6 primary aggressor?

7 A. The absence, or the same thing I look for in the
8 victim, if there's any injuries on the suspect, or to see size
9 differential, demeanor, anger, whatever that might -- you
10 know, however they might show that, intoxication, anything
11 that would make me think that they would be angry enough to
12 have caused such an assault.

13 Q. Do you look at the difference in the injuries to other
14 party, if somebody says maybe there was mutual combat or
15 something?

16 A. Absolutely.

17 Q. And were there any injuries whatsoever to Mr. Frady?

18 A. No, there weren't.

19 Q. And when you arrived on scene and tried to ascertain
20 what had happened, did you attempt to speak with Mr. Frady?

21 A. I did.

22 Q. And what did Mr. Frady tell you as you were initiating
23 your investigation?

24 A. He stated they had been home for an hour, that there
25 had been no argument whatsoever between him and Ms. Frady, and

1 that he had no idea how she had incurred those injuries.

2 Q. He said he didn't know nothing about nothing?

3 A. No.

4 Q. Now, is there a record made of most of the things we've
5 spoken about thus far?

6 A. Yes.

7 Q. Now what kind of record would that be?

8 A. Well, as a uniformed officer we keep a body mic on our
9 uniform, and we have a camera system within our patrol
10 vehicle, so we do have visual of wherever our vehicle is
11 pointed at, and then we have an audio recording of anything
12 that might be said in my presence.

13 Q. And was that the case in this particular instance?

14 A. It was.

15 Q. I'm going to show you something. I want you to tell me
16 what it is, if you can recognize it.

17 A. It's a DVD disc that -- and that contains a copy of the
18 case file and my investigative report, and the co -- and video
19 r -- and in -- in car video.

20 Q. And that will show everything that your car showed that
21 afternoon in reference to this charge?

22 A. Correct.

23 Q. Okay.

24 MR. HUCKS: And Your Honor, at this time the State
25 would move State's Exhibit Number 12 into evidence. That

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1 would be the roadside video.

2 Q. Oh. Have you reviewed this video?

3 A. I have.

4 Q. And is it true and accurate in it's reflection of what
5 happened that day?

6 A. It is.

7 (VIDEO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
8 12.)

9 THE COURT: Have you seen the video?

10 MS. KNOWLES: I have.

11 Are we playing the entire -- okay.

12 MR. HUCKS: That's the only thing I know to do.

13 Your Honor, at this time we would move to publish it for
14 the jury as well, play the video.

15 THE COURT: You may do so.

16 (AT THIS TIME STATE'S EXHIBIT NUMBER 12 WAS PUBLISHED TO
17 THE JURY.)

18 Q. Now, Detective Lent, if I can, does that video that we
19 just showed the jury, and you just watched, for the umpteenth
20 time, does it clearly and accurately reflect what happened,
21 and what your car would have seen that day?

22 A. Yes.

23 Q. Now, you can't talk about exactly what Ms. Frady told
24 you, but you can talk about whether or not what she told you
25 that day matched up with the injuries she had, and did it?

1 A. It did.

2 Q. Now, you talked about her demeanor, but you said in the
3 course of that video something looked like a fresh abrasion.
4 I don't know what that means. Can you tell me?

5 A. Well, there's a difference between something that had
6 just occurred. It's going to be a little bit of swelling,
7 maybe some redness, like a scrape, when you fall on the
8 ground, as opposed to something that had happened hours
9 before, or days before. It's going to start to scab over, dry
10 up. These things that we -- the injuries that I observed in
11 Ms. Frady were obviously fresh.

12 Q. Now you are not a doctor?

13 A. I'm not.

14 Q. Okay. Or an EMT?

15 A. No.

16 Q. But you can tell a busted eye and a choked neck when
17 you see it?

18 A. Sure.

19 Q. Now, the -- you said something kind of telling in that
20 video when you first got there. What did Ms. Frady have in
21 her possession; do you remember?

22 A. She had a piece of paper that she said was the title to
23 her mobile home, and a cell phone.

24 Q. And you didn't take that cell phone into evidence?

25 A. No, I didn't.

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1 Q. And why not?

2 A. She stated that he had been trying to take the cell
3 phone from her, but there was no other -- further
4 communication with -- between me and her about the cell phone.
5 I was mostly concerned with the injuries that she had
6 incurred. That was my main focus at that time.

7 Q. And she did have injuries?

8 A. Yes.

9 Q. Now, I want to ask you just a question as a supervisor
10 on the road for some period of time. The -- when you go out
11 to these types of calls do you always arrest somebody?

12 A. No.

13 Q. When the police get called out to a house and people
14 are arguing do y'all always lock somebody up?

15 A. No.

16 Q. What does it take for you to lock somebody up from a
17 scene? What do you have to see?

18 A. Well, there has to be one, some evidence of an assault,
19 if an assault had occurred, some visible injury, if not, if
20 the person can articulate some fear, if they are afraid that
21 they were going to be injured, and it's a legitimate fear,
22 then that would also be enough for me to arrest somebody who
23 caused that fear.

24 Q. Did you have each of those here?

25 A. I did.

1 **MR. HUCKS:** Indulge us just one moment, please, Judge.

2 Q. Do you recognize that as similar to the cell phone that
3 she had in her hand that day?

4 A. I ---

5 Q. You can't recognize it?

6 A. No, I don't recollect. I mean, I just know she had a
7 phone. I don't -- I don't ---

8 Q. But she had a cell phone?

9 A. She did.

10 Q. And it was directly related to the events that she told
11 you happened to her?

12 A. She had stated that during whatever ---

13 Q. Don't tell us what she said. Just ---

14 A. Yes.

15 Q. ---The spirit of the conversation related to a cell
16 phone?

17 A. Yes.

18 Q. I've got -- all this happened in Horry County?

19 A. Yes.

20 **MR. HUCKS:** I have nothing further for Detective Lent.
21 Please answer any questions Ms. Knowles has for you.

22 **THE COURT:** Ms. Knowles.

23 **CROSS-EXAMINATION BY MS. KNOWLES:**

24 Q. I want to apologize in advance because it's going to
25 take me a little bit.

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1 Detective Lent, were you the first to arrive on the
2 scene?

3 A. I was the first to arrive. There was another unit that
4 pulled in right behind me.

5 Q. Okay. So you actually arrived with the other -- was it
6 two other officers?

7 A. Yes. Mostly when -- when we respond to an in-progress
8 domestic at least two officers are dispatched.

9 Q. And in viewing that video did you take note of the time
10 that you responded?

11 A. I believe on that video it said it was seven -- it
12 started just before seven, and then it went on and crossed
13 over to seven o'clock.

14 Q. I believe you responded at 6:48. Does that sound about
15 right?

16 A. Yes.

17 Q. And when you arrived you went to the rear of the
18 residence?

19 A. Yes.

20 Q. And why did you go to the rear?

21 A. Wasn't really sure what door they used. In some mobile
22 homes they use either the rear or the front, and being that we
23 pulled up on the side, you go to the front, someone runs out
24 the back, you go to the back, someone runs out the front. One
25 officer went to the front, I went to the rear.

1 Q. Okay. And who was at the front of the residence?a

2 A. I know Officer Cody had acted as backup to me, who is
3 in the courtroom, and there was another officer, an Officer
4 Wilhelm at that time.

5 Q. And didn't they, in fact, speak with my client while
6 you were speaking with ---

7 A. As I went and spoke to Ms. Frady, and when I -- as I
8 was walking around to the front door Officer Cody and Officer
9 Wilhelm were standing at the threshold to the front door, and
10 Mr. Frady was speaking to the two of them.

11 Q. So, in your observations, Mr. Frady didn't flee the
12 scene, no one had to go pursue him?

13 A. No.

14 Q. Okay. Now, you said that you -- when you approached
15 Ms. Frady you could see marks clearly visible?

16 A. Yes.

17 Q. But, in fact, you don't know how those marks got there;
18 you don't know how long they had been there?

19 A. And again, like I said, they appeared to me, from my
20 experience, to be freshly committed, that they had just
21 recently occurred.

22 Q. But those could have been self-inflicted, wouldn't you
23 agree? It's possible?

24 A. From what I saw, no, I wouldn't agree with that.

25 Q. Isn't that possible?

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1 A. From my experience, no, that wouldn't be possible, that
2 those marks would be self-inflicted.

3 Q. You've never had a situation where a victim makes a
4 false accusation ---

5 A. No, I wouldn't say that.

6 Q. ---And goes to the extent of inflicting injury?

7 A. I don't think that I've ever responded to a call where
8 anybody had actually inflicted an injury to themselves. I
9 don't believe that I have.

10 Q. And these weren't serious injuries, were they?

11 A. There were no broken bones. There was nothing that
12 forced me to call an ambulance to her, to have her transported
13 to the hospital.

14 Q. She declined medical treatment?

15 A. Correct. I asked her if she needed an ambulance and
16 she said no.

17 Q. Okay. Now, did you notice any neighbors in the area?

18 A. There's mobile homes all up and down that road.

19 Q. Okay.

20 A. I don't remember if there were any neighbors that were
21 out at that time.

22 Q. Uh huh (indicating positive)

23 Q. I mean, it was -- it was early evening. It was still
24 daylight. I don't remember there being anybody standing
25 around. Nobody had come to the Frady's residence.

1 Q. Did you go and actually try to speak with any of these
2 neighbors to see if they heard or saw something?

3 A. Those trailers are pretty well spread out. No, we
4 didn't speak to any of the neighbors while we were out there.

5 Q. Okay. Are they spread out, or close by?

6 A. No. They are pretty well spread out. There's some --
7 there's a decent amount of distance between each mobile home.

8 Q. Okay. Now, did you observe any marks, bruises,
9 abrasions, or anything on my client?

10 A. No.

11 Q. And generally, in your experience, when someone is
12 involved in some sort of physical altercation the victim,
13 normally, is trying to fight off her attacker, his or her
14 attacker, and generally some sort of evidence is left behind;
15 wouldn't you agree?

16 A. I've been to -- I've answered numerous calls where that
17 might be the case. I've answered numerous calls where that
18 was not the case at all.

19 Q. Okay. Now, you responded at 6:48, and that's already
20 been established. Would it surprise you at -- you probably
21 didn't pay attention to this, but it actually took you seven
22 minutes to make an arrest of my client, that seven minute
23 investigation, from the point that you responded until my
24 client was placed in handcuffs.

25 A. That's correct.

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1 Q. Would you agree that that's a thorough and accurate and
2 complete investigation?

3 A. For the circumstances that I saw when I was on the
4 scene, yes, that was a thorough investigation.

5 Q. Did you go inside?

6 A. After Mr. Frady was placed into handcuffs, yes, I did
7 take a look inside the residence.

8 Q. Did you take any photos?

9 A. No, I didn't take any photos. There was nothing there
10 that appeared -- needed to be photographed.

11 Q. Nothing in disarray?

12 A. The trailer itself -- no, there was nothing that
13 appeared to me would have been signs that a struggle had taken
14 place inside that trailer that I would need to photograph it.

15 Q. And at what point on that video did you go inside the
16 trailer?

17 A. At what point?

18 Q. Yes.

19 A. It was after Mr. Frady had been hand-cuffed and placed
20 in a vehicle.

21 Q. Okay. Because I hear your voice pretty much the entire
22 -- or is that someone else?

23 A. When I went inside the -- the residence has a small
24 little wooden porch out on the front door -- by the front
25 door. That's where Officer Cody and Officer Wilhelm had been

1 standing when they first began to speak to Mr. Frady. What I
2 did was go to that threshold to the door and look inside the
3 residence. Again, I didn't see anything that would prompt me
4 to take any further look inside the house, and that was it.

5 Q. Okay. Now, when you spoke with Mr. Frady, which was
6 not initially whenever you arrived on scene ---

7 A. Correct.

8 Q. ---Did he appear to be shocked, or not aware of even
9 what you were there for?

10 A. He -- he told me that he was not aware. What I ---

11 Q. Did he seem surprised?

12 A. Yes. I think he seemed surprised that the police had
13 been called.

14 Q. Was he fully clothed? Did he have a shirt ---

15 A. I don't remember.

16 Q. You don't remember. Okay. Now, tell the jury, again,
17 what it takes for a person to be ultimately convicted of a
18 criminal domestic violence charge.

19 MR. HUCKS: Objection, Your Honor. She can't ---

20 THE COURT: That's a matter of law. I will explain to
21 the jury the elements of the offense for which the State must
22 prove beyond a reasonable doubt. That's a question of law for
23 me, and I will fully explain to the jury the answer to your
24 question, not from him.

25 MS. KNOWLES: Okay. I'll move on, Your Honor.

1 THE COURT: Okay.

2 Q. The physical title of the trailer, that was one of the
3 issues that she told you that there was some contention, some
4 dispute over; isn't that correct?

5 A. That was said, yes.

6 Q. Did you take that into evidence?

7 A. The title itself?

8 Q. Right.

9 A. No, I would not take the title from someone, of a
10 property that they owned.

11 Q. Was it not your understanding that they were -- that
12 was what ---

13 A. It's a piece of paper. It's not ---

14 Q. Okay. All right. Now there's been a lot of discussion
15 about these photos and this cell phone. Did -- why did you
16 not take that into evidence?

17 A. Nothing was said to me about the photos that were on
18 the phone.

19 Q. You've been present throughout this trial, correct?

20 A. Uh huh (indicating positive)

21 Q. And you heard Ms. Frady testify that that was one of
22 the reasons that this alleged argument started?

23 A. Yes.

24 Q. Why would that not be enough -- why would that not be
25 important enough for you to take into evidence?

1 A. I just -- like I said, nothing was mentioned to me of
2 the photos on the phone. All she explained was that he --
3 that he -- Mr. Frady had tried taking a phone from her, not
4 that there was any photos or anything on the phone. I
5 wouldn't think that there would have been any evidence on the
6 phone from what she had told me at that time.

7 Q. Okay. Now, whenever you arrived you say, what's wrong
8 with you, and she responded with, "He's bothering me", isn't
9 that right?

10 A. Uh huh (indicating positive)

11 COURT REPORTER: Yes or no, please.

12 A. Yes. I'm sorry.

13 Q. And do you generally conduct an investigation that
14 lasts less than ten minutes before you make an arrest?

15 A. I arrived on scene, I saw visible injuries on Mrs.
16 Frady, who was upset, who explained that Mr. Frady had caused
17 those injuries, and when I asked Mr. Frady what had happened
18 he stated he had no idea, and that nothing had occurred.

19 Q. Okay. Now ---

20 A. I mean, I don't know what else I could have done that
21 would have gotten anything else from ---

22 Q. Okay. You mentioned that she was visibly shaken.

23 A. Uh huh (indicating positive)

24 Q. Now, didn't she -- do you recall her not testifying
25 that she suffers from tremors?

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1 A. I do recall even that day that she had started to
2 explain some medical issues that she has. Yes.

3 Q. Should couldn't the shaking be attributed to her
4 condition?

5 MR. HUCKS: Objection, Your Honor. He's not -- he
6 already testified he's not a doctor.

7 THE COURT: No sir.

8 MS. KNOWLES: I am asking him about what he thought.

9 THE COURT: Let's hear -- let me hear your question
10 again, please.

11 MS. KNOWLES: The shaking that she was engaged in, he
12 appears to think that that was as a result of this alleged
13 assault. My question to him is, isn't it true that she
14 suffers from tremors, she testified to that, and that that
15 shaking could be attributed to her condition.

16 THE COURT: Wait a minute. I will -- he's competent to
17 answer that question.

18 You understand the question, do you not?

19 A. I do, Your Honor.

20 THE COURT: You answer it.

21 MR. HUCKS: Thank you, Judge.

22 A. From what I observed when I arrived on scene, her
23 crying, he shaking, and her shortness of breath, I determined
24 that it was from whatever assault had taken place.

25 Q. And did she tell you she was on medication?

1 A. Like I said, she did start to explain to me that she
2 had some medical issues.

3 Q. Okay. And isn't it true that my client told you that
4 he had been home for about an hour, and actually just came
5 home from work; isn't that right?

6 A. Yes. He said that to me.

7 Q. Okay. And on several occasions, didn't he tell you, I
8 swear to God, I promise on my life, I didn't do anything?

9 A. I'm sure he did.

10 Q. And did you not look at his physical appearance,
11 specifically his fist, his hands?

12 A. I did. I asked to see his hands.

13 Q. Uh huh (**indicating positive**) And anything there?

14 A. No, I didn't see any marks on his hands.

15 **MS. KNOWLES:** One moment. Let me just double check
16 here.

17 Okay. Just a few more questions and I promise I'll be
18 done.

19 Q. These two prior convictions, you weren't involved in
20 those at all, were you?

21 A. No, not that I remember.

22 Q. Okay. And in your experience is it common practice for
23 a Judge to give a time-served sentence ---

24 **THE COURT:** Wait a minute.

25 **MR. HUCKS:** Objection, Your Honor.

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1 **THE COURT:** No. That's a legal question. He can't
2 answer that. No.

3 **MS. KNOWLES:** In his experience.

4 **THE COURT:** No. It depends on ten thousand different
5 situations. I'm not going to let ---

6 **MS. KNOWLES:** Okay. We'll move on from that.

7 **THE COURT:** I'm not going to require him to do --
8 that's the Judge's decision, based on numerous factors. No
9 sir.

10 **MS. KNOWLES:** I think that that might be it, but let me
11 just double check with my client.

12 **THE COURT:** All right.

13 **MS. KNOWLES:** No more questions, Your Honor.

14 Thank you, Detective Lent.

15 **MR. HUCKS:** Very briefly, Your Honor.

16 **REDIRECT-EXAMINATION BY MR. HUCKS:**

17 Q. What was the status of the inside of that house when
18 you walked in there? I heard Ms. Frady testify a little bit
19 ago that they were sleeping on mattresses on the floor, so
20 what was the state of that house? Would you call it a cleanly
21 place to hang out, or a disheveled place to be?

22 A. If I were to term it it would be more disheveled than
23 it was cleanly.

24 Q. So what would you have been looking for in a disheveled
25 house to see an indication of an altercation?

1 A. If I'm going to look to see if an alterca -- or to see
2 if there was a scene of an altercation I'll go in and see if
3 any tables were upturned, any chairs are lying on their side,
4 glasses smashed on the floor, anything like that.

5 Q. And did anything Ms. Frady told you that day lead you
6 to believe there was anything broken in the house?

7 A. No.

8 Q. And is it -- you said that -- I heard on the video you
9 asked him to ball his fists up so you could look at his hands.
10 Ms. Knowles just asked you about it.

11 A. Correct.

12 Q. If somebody is getting choked and elbowed, would they -
13 - you have any reason to look for any marks on anybody's
14 fists?

15 A. No. I mean, I did look. Normally if I go on scene I
16 will ask them to put their hands out to check their hard
17 knuckles and what-not, to see if there is any evidence that
18 they had struck anybody.

19 Q. Okay. And the strength -- the choking of someone,
20 would you expect that to leave abrasions on the hands?

21 A. No.

22 MR. HUCKS: I've got nothing further, Judge.
23 Thank you.

24 THE COURT: All right. You may come down.

25 Mr. Foreman, ladies and gentlemen, I apologize for

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1 working you a little late tonight, but it was necessary that
2 we complete the testimony of this witness.

3 I'm going to excuse you for the evening. Ask that you
4 be back in your jury room at 9:30 in the morning. Remember my
5 admonition, don't discuss the case, don't make any inquiries,
6 and I'm asking Heather, here, the Clerk, to have some ham
7 biscuits for you when you get here early in the morning.

8 See you at that time, 9:30. You are excused.

9 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
10 JURY.)

11 THE COURT: All right. Ms. Knowles, I want to get on
12 the record now about these proposed witnesses that you want,
13 you having told me this morning pretrial that you haven't even
14 subpoenaed them; isn't that true?

15 MS. KNOWLES: Your Honor, as I stated previously, it's
16 my office policy, which I have to follow, that we do not
17 subpoena witnesses until the call of the case. I can't help
18 it.

19 THE COURT: When was she notified that this case would
20 be tried this week?

21 MR. HUCKS: Your Honor -- pardon me -- Your Honor, we
22 arraigned this case, what, at least thirty days ago, and it
23 was noticed to be on the May -- I think we might have even
24 said April roster then, that it could be called as early as
25 April - but the main trial roster came out, what, a couple of

1 weeks ago.

2 THE COURT: Well let me ask you this, Ms. Knowles, even
3 this morning -- you didn't make inquiry last week in
4 preparation for the trial as to when they were. You didn't
5 even know where they were, or whether they are even around or
6 not.

7 MS. KNOWLES: Your Honor, again, I was number three,
8 and I was told up until ten o'clock this morning that the
9 number one case would get called.

10 THE COURT: I understand that, but surely you did some
11 preparation. You didn't even bother to inquire as to the
12 whereabouts of two potential witnesses?

13 MS. KNOWLES: I actually did. I gave my investigator
14 notice of who these individuals were, and told Ms. West that I
15 needed these people subpoenaed.

16 THE COURT: And who were the two wit -- I want the
17 officer to come forward here too.

18 Who were the two witnesses?

19 MS. KNOWLES: The list of witnesses that I gave Your
20 Honor?

21 THE COURT: No, I'm talking about those who you want
22 who were not available today.

23 MS. KNOWLES: Tad Wilhelm is one, and the other one is
24 Mr. Britt.

25 THE COURT: Well, I think I permitted you to cross-

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1 examine on what Britt would have testified to; isn't that
2 true?

3 MS. KNOWLES: You did, so that ---

4 THE COURT: Now who is the other witness?

5 MS. KNOWLES: Tad Wilhelm is another witness, and then
6 Officer Cody is present in the courtroom.

7 THE COURT: Pardon me. I mean, I'm talking about the
8 one that you want subpoenaed that is not here.

9 MS. KNOWLES: Last name is Wilhelm.

10 THE COURT: All right. What would Wilhelm be
11 testifying to if he was here?

12 MS. KNOWLES: He responded to this residence weeks
13 before this happened ---

14 THE COURT: Yes.

15 MS. KNOWLES: ---This alleged incident took place, and
16 actually reported that he found that the daughter -- it
17 appeared to him that the daughter was just trying to make
18 accusations to get my client out of the house.

19 THE COURT: What has that got to do with what occurred
20 on this incident when the testimony is there's direct evidence
21 of injury to her neck?

22 MS. KNOWLES: It goes to the theme of our case.

23 THE COURT: Was this officer -- was he there on that --
24 on the date of this incident?

25 MS. KNOWLES: He was one of the two that Detective Lent

1 mentioned that responded.

2 **THE COURT:** And the only thing you want him for is for
3 what occurred how long ago?

4 **MS. KNOWLES:** It was like two weeks before.

5 **THE COURT:** Didn't I permit you to examine, cross-
6 examine at length this Defendant and this witness's testimony
7 about the prior complaints?

8 **MS. KNOWLES:** You did. The only thing that I would ask
9 would just be -- that I would ask of him if he were here,
10 would be what he wrote in his report, what he wrote in his
11 report.

12 **MR. HUCKS:** If I may be heard briefly, Your Honor.

13 **THE COURT:** Sure.

14 **MR. HUCKS:** What she's wanting him to come here and
15 testify to is that the victim's daughter called him and gave
16 him a statement previously, which is hearsay in this
17 particular matter, and is not admissible in any way, shape or
18 form in this particular hearing.

19 **THE COURT:** Well, I would not -- I will not permit
20 that, but you have identified -- I'm not going to permit him
21 to testify to what the daughter said. That has nothing to do
22 with what occurred on this incident, but I'll let her ask what
23 questions she can.

24 You have concluded that he is in Horry County?

25 **MR. HUCKS:** Mr. -- it's my understanding Mr. -- Officer

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1 -- former Officer Wilhelm is in Horry County. Mr. Britt is
2 not in Horry County.

3 **THE COURT:** Well, she doesn't want Britt. She handled
4 that.

5 But with him, you say he's under some doctor's care for
6 something?

7 **MR. HUCKS:** That he -- my understanding -- what I was
8 told is that he has a doctor's appointment -- doctors'
9 appointments all day tomorrow in reference to the injuries he
10 sustained that got him off the police ---

11 **THE COURT:** I suspect though that he would be willing -
12 - he's a former officer.

13 I would -- Officer who testified, do you know the
14 gentleman?

15 A. I do, Your Honor.

16 **THE COURT:** Can you help us get him here just for a
17 short period?

18 A. I spoke -- and I can try. I spoke to him briefly
19 today. His medical issues are somewhat serious from when he
20 was off the force, I mean, he's just gone through ---

21 **THE COURT:** What's the nature, may I, of his medical
22 injuries?

23 A. He had a seizure, and it caused him to injure some
24 vertebrae in his back. He's just had back surgery, which
25 apparently has not solved the problem, but he's continuing

1 more medical.

2 **THE COURT:** Well, based on what her proffer is, her
3 testimony -- that testimony is not relevant to any issue in
4 this case, but if he would be kind enough to come, tell him we
5 would appreciate it. We'll get him in and out of here.

6 Solicitor, how many more witnesses you got?

7 **MR. HUCKS:** Two, Your Honor, and they are both very,
8 very quick witnesses.

9 **THE COURT:** Okay. If he comes I want you to call him
10 first now.

11 **MS. KNOWLES:** Okay.

12 **THE COURT:** But I've got to tell you, Ms. Knowles, when
13 you have thirty days notice, and are on the roster for trial
14 this week, I don't care what your procedures are, it's
15 unacceptable for you not to have them under subpoena knowing
16 that you are subject to call first, second or third.

17 **MS. KNOWLES:** Your Honor, in fairness though, I can't
18 go outside of what my boss tells me.

19 **THE COURT:** I understand that, but I'm telling you, if
20 you are prepared for trial - and you need to be if you know
21 you are this week, you need to have your witnesses subpoenaed.
22 To do what you do you would get a continuance every time you
23 come to court by saying, well, I haven't subpoenaed my
24 witnesses. That's absurd.

25 **MS. KNOWLES:** And like I said, it -- I'm just following

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1 orders as given.

2 **THE COURT:** Well, I'm just telling you, that's not
3 acceptable to the Court. You can't wait till your case is
4 called and then subpoena your witnesses when you've had thirty
5 days to know the case was coming to trial. You can't do that.

6 But Officer ---

7 A. Yes sir.

8 **THE COURT:** ---And to protect the record, in the
9 abundance of fairness, see can you get him here.

10 **MR. HUCKS:** Your Honor, I -- I just got his personal
11 phone number, and I will call him the minute I step out of
12 this courtroom, and ---

13 **THE COURT:** Well, we'll make every effort, but I
14 conclude his testimony that she proffered will not be
15 admissible. We'll see what else -- other questions she's got
16 for him, but I'm not going to let him go into some
17 conversation with his daughter. You can subpoena her if you
18 want to.

19 **MS. KNOWLES:** It would just be his report. That's
20 his ---

21 **THE COURT:** It's hearsay. It's not admissible.

22 **MS. KNOWLES:** His report is not hearsay; he wrote it.

23 **THE COURT:** I understand he wrote it, but sometimes
24 there are hearsay things in the statement. I'm not going to
25 permit that without the Defense -- I mean the State having an

1 opportunity to cross-examine her on that issue.

2 Sure it's hearsay, Ms. Knowles. Just because it's in
3 his report doesn't make it admissible, clearly not.

4 If he can come get him here.

5 A. All right.

6 THE COURT: Let's be ready to go at 9:30 in the
7 morning. Thank you.

1 (THE FOLLOWING TAKES PLACE ON MAY 13, 2014, OUTSIDE THE
2 PRESENCE OF THE JURY.)

3 THE COURT: Good morning, ladies and gentlemen. Please
4 be seated. Thank you.

5 Ms. Knowles, I understand they found that potential
6 witness of yours.

7 MS. KNOWLES: Yes sir. I think they did, and I
8 appreciate the effort.

9 THE COURT: All right. Is the State ready to proceed?

10 MR. HUCKS: Yes sir.

11 THE COURT: Is the Defendant ready?

12 MS. KNOWLES: Yes. He is ready.

13 THE COURT: Bring the jury.

14 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
15 JURY.)

16 THE COURT: Good morning, Mr. Foreman, ladies and
17 gentlemen.

18 I trust that the ham biscuits provided to you were

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1 satisfactory.

2 All right. You may call your case.

3 MR. HUCKS: Thank you, Your Honor.

4 At this time the State would call Investigator Ginger
5 Pop to the stand.

6 GINGER POP, being first duly sworn,
7 testifies as follows:

8 DIRECT-EXAMINATION BY MR. HUCKS:

9 Q. Now, Investigator Pop, what do you do for a living?

10 A. I'm an investigator at the Solicitor's Office.

11 Q. And what is that -- what do you do?

12 A. We do follow-up investigations once they are assigned
13 to a Solicitor from other agencies.

14 Q. Okay. And you work with a specific portion of the
15 Solicitor's Office?

16 A. I work with a team of Solicitors, yes.

17 Q. And that's the team that I happen to be on?

18 A. Yes sir.

19 Q. And could you please tell the jury a little bit about
20 your involvement in this particular case against Mr. Frady.

21 A. It was very minimal. I was just asked to look at a
22 cell phone and retrieve pictures off of it.

23 Q. And ---

24 THE COURT: Talk into the microphone, please, so the
25 jury ---

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1 A. Yes sir.

2 Q. All right. I'm going to show you something. State's
3 Number 13; what is this?

4 A. A cell phone.

5 Q. And do you recognize that cell phone as a particular
6 cell phone that's relevant to this case?

7 A. Yes. It's the cell phone that Ms. Frady provided.

8 Q. Okay. And what did you -- so once Ms. Frady provided
9 this cell phone what did you do with this cell phone once it
10 was in your possession?

11 A. I took it back to my office, attempted to download it
12 on a forensic tool that does cell phones. I was unable to
13 download the phone because it's an older cell phone, but I was
14 to physically get the pictures off the phone just by taking
15 pictures of the picture.

16 Q. Okay. And why were you looking for pictures on the
17 phone?

18 A. I was informed, after speaking with Ms. Frady about the
19 inappropriate pictures, and other descriptions of pictures
20 that were on the phone, and so I was able to look through the
21 phone and find the pictures that she described.

22 Q. Okay. And were those -- did you find, as an
23 investigator, those pictures relevant to this particular case?

24 A. Yes, I did.

25 Q. And is that why you downloaded them?

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1 A. Yes.

2 Q. Or took them.

3 MR. HUCKS: Now, Your Honor, at this time the State
4 would like to move State's Number 13, the cell phone, into
5 evidence.

6 THE COURT: You may do so.

7 MS. KNOWLES: Your Honor, I would object to that.
8 Might we take the jury out?

9 THE COURT: On what basis do you object, please?

10 MS. KNOWLES: Your Honor, that -- this cannot be
11 authenticated. This cell phone was not taken into evidence
12 whenever the arresting officer made his arrest. It was not
13 even turned over until months, twenty-one months after this
14 alleged incident took place.

15 THE COURT: That would be, in my view, for the jury to
16 decide. There is testimony on the record, by the victim in
17 this case, that she knew that phone to be the Defendant's
18 phone. Now that's the testimony, but that's for the jury to
19 decide as finders of the facts.

20 I will permit it in that there is testimony for the
21 jury's consideration that it was, in fact, the Defendant's
22 telephone.

23 Thank you.

24 MS. KNOWLES: For the record, if you could just note my
25 objection.

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1 **THE COURT:** Yes Ma'am. I note it.

2 **(CELL PHONE ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT**
3 **NUMBER 13.)**

4 **MR. HUCKS:** Thank you, Your Honor.

5 Q. Now Investigator Pop, let me show you a few things,
6 State's Number 6, State's Number 4, State's Number 9, State's
7 Number 5, State's Number 3, State's Number 7, State's Number
8 8. Tell me, if you can, when I get them spread out in front
9 of you here, what these are.

10 **THE COURT:** One further comment on her objection.

11 There was further testimony by the victim that the
12 number on that phone she knew belonged to the Defendant.
13 Again, that's a jury question, but that is some testimony on
14 that issue relative to that phone. The jury will make the
15 determination as finders of the facts. Objection noted.

16 **MR. HUCKS:** Thank you, Judge.

17 **MS. KNOWLES:** Thank you.

18 **MR. HUCKS:** Thank you, Your Honor.

19 Q. Tell us what these are. Tell the jury what these are.

20 **COURT REPORTER:** Excuse me. Would you run through the
21 numbers again?

22 **MR. HUCKS:** I will. It's State's Number 8, State's
23 Number 6, State's Number 4, State's Number 9, 5, 3 and 7,
24 should be the ---

25 **THE COURT:** Have those photographs been shared with

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1 Defense counsel?

2 MR. HUCKS: Yes, Your Honor. And they were further
3 authenticated by the victim earlier. I was just further
4 authenticating them to get them into evidence.

5 That should be the last of the State's exhibits.

6 THE COURT: May I see those photographs ---

7 MR. HUCKS: You may. Yes sir.

8 Q. Now, Investigator Pop, you had a chance to take a look
9 at all of these. What are they?

10 A. Would you like to go through them one at a time or ---

11 Q. You don't have to. You can, if you would like. If it
12 makes you -- whatever makes you feel more comfortable.

13 A. State's Exhibit 8 is a picture I found on the phone,
14 and it appears to be two young girls, and there is a title on
15 the top that says, "In Pink".

16 State's Exhibit Number 6 is a -- appears to be a picture
17 of a ---

18 THE COURT: Your voice is trailing off.

19 A. Appears to be a picture of a naked ---

20 THE COURT: I'm not sure those jurors on the far end
21 can hear.

22 A. Yes.

23 It appears to be a picture of a naked female in a sexual
24 position, with the number (11) as a title.

25 State's Exhibit Number 9 is another picture of two young

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1 girls that appear to be in bikinis, with the title of "Amber
2 Tits"

3 State's Exhibit Number 4 is another picture I found on
4 the phone of a young girl, and it just says, (ABE) as the
5 title.

6 State's Exhibit Number 3 is another picture of two young
7 girls with the title on the top that says, "Amber".

8 State's Exhibit Number 5 is another picture of two --
9 two young girls in bikinis, with the title of "Amber Tits".

10 And then State's Exhibit Number 7 is another picture of
11 two females, and the title is "Kim".

12 Q. Now, did -- have you looked at each of these
13 photographs?

14 A. Yes sir.

15 Q. Now, are they true and accurate reflections of what you
16 took off of that cell phone?

17 A. Yes sir.

18 Q. And have they been altered, or changed, or anything
19 done to them?

20 A. Negative.

21 Q. Aside from putting them on paper?

22 A. No sir.

23 Q. And these are the same photographs that you took off of
24 that phone?

25 A. Yes sir.

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1 **MR. HUCKS:** Now, Your Honor, at this time the State
2 would move each of these photographs into evidence.

3 **THE COURT:** You may do so.

4 (PHOTOS ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
5 NUMBERS 8, 6, 4, 9, 5, 3 AND 7.)

6 **MS. KNOWLES:** Your Honor, I object, for the same reason
7 as I objected to earlier.

8 **THE COURT:** Your objection is noted. Thank you.
9 You may proceed.

10 Anything further?

11 **MR. HUCKS:** Thank you, Your Honor.

12 Q. Now, Investigator Pop, did you have any further
13 involvement in this case whatsoever?

14 A. I did not.

15 **MR. HUCKS:** I have nothing further. Please answer any
16 questions Ms. Knowles has for you.

17 A. Thank you.

18 **THE COURT:** Ms. Knowles.

19 **MS. KNOWLES:** Thank you.

20 **CROSS-EXAMINATION BY MS. KNOWLES:**

21 Q. Ms. Pop, were you present whenever these photos were
22 taken?

23 A. No Ma'am.

24 Q. Okay. And did you respond to the scene on September
25 28th?

1 A. No Ma'am.

2 Q. Okay. When did you get involved in this case?

3 A. I'm going to say late April of this year.

4 Q. Of this year?

5 A. Yes Ma'am.

6 Q. And this incident occurred, to your knowledge, in what
7 year?

8 A. 2012.

9 Q. Yes Ma'am. So it was well -- two years had passed
10 almost ---

11 A. Yes Ma'am.

12 Q. ---When you became involved. And are you an expert in
13 the field of digital evidence?

14 A. I am a certified cell phone forensic examiner, Yes
15 Ma'am.

16 Q. Okay. And so in your training were you able to connect
17 those photos in that phone to a client -- to my client's cell
18 phone, to his account?

19 A. Right. I -- I wasn't able to download the phone on
20 modern technology equipment because it is an older phone, so
21 it would not allow me to do that, but I was informed by the
22 victim in this case that it was her husband's phone.

23 Q. So outside of what she told you, did you find any
24 supporting evidence that would substantiate her claim?

25 A. I was only asked to look for the photographs that Ms.

- 1 Frady described, and I did find those photographs.
- 2 Q. But that phone could have belonged to anyone.
- 3 A. But I was told it was Mr. Frady's.
- 4 Q. But isn't it true that phone could belong to anyone?
- 5 Just because she told you that doesn't mean that that's -- her
- 6 word is the gospel; wouldn't you agree?
- 7 A. It is possible.
- 8 Q. Thank you. And do you know any of the people that are
- 9 portrayed in any of these photos?
- 10 A. No. I was told that one of the young girls was her
- 11 youngest daughter named Amber.
- 12 Q. You were told?
- 13 A. By Ms. Frady.
- 14 Q. And you don't know when the photos were taken?
- 15 A. I do not know when the photographs were taken.
- 16 Q. You don't know who the phone actually belongs to,
- 17 outside of what she told you?
- 18 A. I wasn't asked to look to decide ownership of the phone
- 19 so I did not.
- 20 Q. But in order to substantiate her claim, and you are a
- 21 investigator for the State, wouldn't you normally do that?
- 22 A. No. I was strictly asked to just look for the photos
- 23 on the phone.
- 24 Q. Okay. So just to follow up, and I'll go sit down. You
- 25 didn't respond to the scene, correct?

1 A. I did not respond to the scene.

2 Q. You were not involved -- your involvement in this case
3 did not even begin until April of this year?

4 A. You are correct.

5 Q. This incident occurred in September of 2012, correct?

6 A. Yes Ma'am.

7 Q. Okay. You don't know who the phone actually belongs
8 to, do you?

9 A. At this moment I was only told it was Mr. Frady's ---

10 Q. You were told?

11 A. ---And I did not look to see -- to establish ownership.

12 Q. You did not establish ownership. Okay. You don't know
13 when the photos were taken?

14 A. I do not.

15 Q. And you don't know who the photos were intended for?

16 A. The intent of taking the photographs I would not know.

17 Q. So you know none of that.

18 MS. KNOWLES: Okay. Thank you very much.

19 REDIRECT-EXAMINATION BY MR. HUCKS:

20 Q. Were those photographs on that phone?

21 A. The photographs were, indeed, on that phone.

22 MR. HUCKS: Nothing further.

23 THE COURT: You may come down, and may be excused from
24 your Subpoena.

25 A. Thank you.

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1 **MR. HUCKS:** Your Honor, that would be the extent of the
2 State's case.

3 **THE COURT:** All right, sir.

4 Let you go to the jury room for just a moment, and I'll
5 be calling you back very shortly.

6 Thank you.

7 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
8 **JURY.)**

9 **THE COURT:** Ms. Knowles, do you have any motions at
10 this time at the conclusion of the State's case? Yes Ma'am.

11 **MS. KNOWLES:** I do have a motion for a directed
12 verdict. I do not believe that the State has established all
13 of the elements to this offense. There is no ---

14 **THE COURT:** Which ones do you say they haven't
15 established?

16 **MS. KNOWLES:** There is no established injury. This
17 victim did not seek medical attention. We are only going by
18 her claim. We don't know when these injuries were sustained
19 that she claims that my client caused. We just believe that
20 the State has not established that element of this offense.

21 **THE COURT:** Do you care to respond to that?

22 **MR. HUCKS:** Yes sir, Your Honor, very briefly.

23 We've got photographs of injury to her. We have
24 established that they are household members, being married,
25 and this, for all intends and purposes, Your Honor, is a

1 simple criminal domestic violence case where it wouldn't even
2 require injury; it would require -- offer of injury would be
3 enough, just like an old common law assault would be, but
4 we've gone well beyond that. We have even established --
5 we've got photographs of finger marks around the lady's neck,
6 and a busted eye, and I don't know what other injury we would
7 have to show under the law.

8 THE COURT: Ms. Knowles, your motion is respectfully
9 denied. There is nothing in the proof that requires the
10 victim to go to the emergency room.

11 MS. KNOWLES: I understand.

12 THE COURT: In this case there was detailed testimony,
13 thorough testimony from the investigating officer that he
14 observed these various neck injuries and this victim. The,
15 coupled with her testimony that it did occur, makes it a
16 question of fact for the jury.

17 This is an alleged third offense, and there is testimony
18 in the record that he has two priors. I conclude that there
19 is a sufficiency to go forward, and your motion is
20 respectfully denied.

21 MS. KNOWLES: Thank you.

22 THE COURT: Now, would you care for me to examine the
23 Defendant at this time with regard to his right to trial or
24 right to testimony or not testify?

25 MS. KNOWLES: Yes, Your Honor, I would. I am not sure

1 what he wishes to do at this point, so we definitely need to
2 have you address that with him.

3 **THE COURT:** Have him stand.

4 **TIMOTHY FRADY**, being first duly
5 sworn, states as follows:

6 **THE COURT:** Mr. Defendant, as you are now well aware
7 the State has concluded it's testimony against you, and we now
8 move to that spot of the trial where you may testify in your
9 own behalf, and may call any witnesses that you desire; you
10 understand that?

11 A. Yes sir.

12 **THE COURT:** Sir?

13 A. Yes sir.

14 **THE COURT:** With reference to your right to testify,
15 you have the absolute right to do that. In addition to that
16 though, you have the absolute Constitutional Right not to
17 testify, and that is your right too.

18 If -- and I say it advisedly -- if you elected not to
19 testify I would charge this jury that that is your
20 Constitutional Right. You have that absolute right. It is
21 your Constitutional Right, guaranteed by the Constitution of
22 this State and of the United States; do you understand that?

23 A. Yes sir.

24 **THE COURT:** If you elected not to testify I would go
25 further and charge the jury that that fact raises no

1 inferences against you, and that they couldn't even discuss
2 that issue in the jury room; you understand that?

3 A. Yes sir, I do.

4 THE COURT: Now, as to this important issue to testify
5 or not to testify, obviously you would discuss it, if you
6 choose to, with your lawyer, but listen very carefully. The
7 final decision rests with you, and you alone. Whatever your
8 decision is you cannot later be heard to say that your lawyer
9 made you do it, or made you not do it; you understand that?

10 A. Yes sir.

11 THE COURT: Sir?

12 A. Yes. Yes sir.

13 THE COURT: All right. This is a very critical part of
14 these proceedings, and if you have any questions at this time
15 about this issue please let me know. You would not offend me
16 if you have any questions.

17 Yes sir.

18 A. I would just like the jury to know ---

19 THE COURT: Sir?

20 A. I would just like the jury to know why she done this to
21 me.

22 THE COURT: No sir. My question to you is, do you care
23 to testify or not? Do you want a few moments to discuss it
24 with Ms. Knowles?

25 A. Yes, sir. Yes, please.

1 THE COURT: Sir?

2 A. Yes, please.

3 THE COURT: All right. I'll grant that. Fine.

4 Ms. Knowles, discuss it with him, but I want to be on
5 the record as to what his decision is, and that it is his
6 decision.

7 MS. KNOWLES: Your Honor, I think he's ready.

8 THE COURT: All right.

9 A. No sir, I don't ---

10 THE COURT: What is his decision?

11 A. I do not ---

12 THE COURT: Sir?

13 A. ---Want to testify.

14 THE COURT: It is your decision to testify?

15 A. Not to.

16 THE COURT: Sir?

17 A. Not to.

18 THE COURT: Not to testify?

19 A. Yes sir.

20 THE COURT: Now, you understand that is your decision;
21 sir?

22 A. No sir. Yes sir.

23 THE COURT: Do you have any question about it?

24 A. No sir.

25 THE COURT: Sir?

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1 A. No sir.

2 THE COURT: All right. Ms. Knowles, do you agree that
3 it is his decision not to testify?

4 MS. KNOWLES: Yes, I do, Your Honor. I have just given
5 him my advice.

6 THE COURT: Okay. Now, are there any witnesses that
7 you have to call?

8 MS. KNOWLES: We do have two. I believe that one will
9 be here shortly, and the other one is actually already in the
10 courtroom.

11 THE COURT: The one witness that the State was able to
12 get for you, he's going to be here at 10:30?

13 MR. HUCKS: Yes sir, but their other witness, Officer
14 Cody, is in the courtroom and ready to proceed.

15 THE COURT: All right.

16 Bring the jury in.

17 Thank you, Ms. Knowles, and thank you, Mr. Defendant.

18 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
19 JURY.)

20 THE COURT: You may proceed, Ms. Knowles.

21 MS. KNOWLES: The Defense would call Tad Wilhelm to the
22 stand.

23 TAD ADAM WILHELM, being first duly
24 sworn, testifies as follows:

25 DIRECT-EXAMINATION BY MS. KNOWLES:

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1 Q. Mr. Wilhelm, first off, I just want to thank you for
2 being with us today. I know that you have had some medical
3 issues, so we want to thank you for being here.

4 Now, you formerly worked with the County Police, didn't
5 you?

6 A. Yes Ma'am.

7 Q. And tell the Court what you did.

8 THE COURT: Please talk into the microphone for me,
9 Officers.

10 Q. Tell the Court what you did for the County Police.

11 A. I was a Road Officer.

12 Q. And what years did you work?

13 A. 2009 until 2013, April of 2013.

14 Q. And your duties as a Road Officer would include
15 responding to service calls, right?

16 A. That's correct.

17 Q. And I'm sure you don't recall the year 2012, and the
18 incidents you responded to. You would have a better memory
19 than I have if you did. So I'm going to give you a copy of
20 this for the purposes of refreshing your memory, of an
21 Incident Report that you wrote, I believe. If you will take a
22 look at that.

23 A. Yes Ma'am. I wrote the report.

24 Q. Do you recall that incident, after reading that report?

25 A. I'll be honest with you. I've been out to that address

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1 several times.

2 Q. Uh huh (indicating positive)

3 A. I vaguely remember that.

4 Q. Okay.

5 MR. HUCKS: Your Honor, if I may interrupt just
6 briefly.

7 If I could take a look at the report and see which
8 report she's talking about.

9 MS. KNOWLES: Oh. I'm sorry.

10 MR. HUCKS: Your Honor, may we approach very briefly?

11 THE COURT: Sure.

12 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

13 Q. Based upon this report, did you respond to [REDACTED]
14 [REDACTED] on September 16th of 2012?

15 A. Yes Ma'am.

16 THE COURT: Talk a little louder. I'm afraid that
17 juror sitting over there can't hear you.

18 A. Okay. If that's what the report states, yes Ma'am.

19 Q. And did my client, Mr. Frady, make that call? Do you
20 know who made that call?

21 A. No Ma'am.

22 Q. You don't remember that. Okay. Did you arrest anyone?

23 A. No Ma'am, not based on the report.

24 MS. KNOWLES: All right. Thank you very much.

25 CROSS-EXAMINATION BY MR. HUCKS:

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1 Q. Do you remember that incident at all?

2 A. Briefly -- not very.

3 Q. Okay. Do you remember any details of it?

4 A. No sir.

5 Q. Or what you did when you got there?

6 A. No sir.

7 Q. Or who you talked to, aside from what you just read?

8 A. Not besides what I just read.

9 Q. Okay. So you -- it's a long time and really you don't
10 remember it?

11 A. That's correct.

12 MR. HUCKS: All right. I've got nothing further.

13 THE COURT: You may come down. Thank you.

14 A. Yes sir.

15 THE COURT: You may leave at this time if you care to,
16 but you may remain, sir, if you care to, and again, we thank
17 you for your presence.

18 A. Yes, Your Honor. Thank you.

19 THE COURT: Call your next witness.

20 MS. KNOWLES: Defense would call Officer Robert Cody.

21 ROBERT CODY, III, being first duly
22 sworn, testifies as follows:

23 DIRECT-EXAMINATION BY MS. KNOWLES:

24 Q. Officer Cody, where are you employed?

25 A. Horry County Police Department.

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ROBERT CODY, III - DIRECT BY KNOWLES

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1 Q. And for how long have you been there?

2 A. Approximately four years.

3 Q. And what do you do for the Police Department?

4 A. Patrol Officer.

5 Q. And as I told Mr. Wilhelm, I'm sure you don't remember
6 what happened in 2012, do you?

7 A. I know some of 2012, yes.

8 Q. Okay. Do you specifically recall -- hold one second --
9 September 25th of 2012? Let's go back. Let me ask it to you
10 like this. What generally happens when someone calls 911, or
11 calls for help?

12 A. We respond to that location where they are calling for
13 us.

14 Q. And is there a paper trail, so to speak, of all those
15 calls that are made?

16 A. Not necessarily a paper trail, but there is a CAD
17 system that the Dispatch keeps that shows call log, the reason
18 for the call, why we were going out there.

19 Q. Okay. And is that call log also known as a call for
20 service?

21 A. Yes.

22 Q. Okay. And would you recognize that report from
23 Dispatch if I showed you?

24 A. I know September 25th, 2012. I do know that date.

25 Q. All right. And do you recall who called for

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1 assistance?

2 A. As far as we were told by Dispatch it was the daughter
3 of the victim that called for service.

4 Q. Okay. Okay. And when you got there did you -- was my
5 client in the bed asleep?

6 A. I can't tell you that he was in bed asleep. I do know
7 that he came out of the bedroom when asked.

8 Q. Okay. And at what time -- do you recall when this
9 occurred?

10 A. I don't.

11 Q. Okay. Let me give you this, and that. Take a look at
12 the times listed on that report.

13 A. Okay.

14 Q. And what time is specified there?

15 A. Said that we received the call at 03:38 in the morning.

16 Q. Okay. Most people are sleeping at that time, wouldn't
17 you agree?

18 A. I can't answer that question.

19 Q. He came out of the bedroom?

20 A. He came out of the bedroom, yes.

21 Q. And you did not find probable cause to make any arrest?

22 A. No.

23 MR. HUCKS: Your Honor, objection. Just -- we are back
24 at the same thing. The daughter ---

25 MS. KNOWLES: I'm asking him about this service call.

1 **THE COURT:** No. I'm going to let her go into this
2 time. She is not attempting to go into any conversations with
3 anybody else.

4 **MR. HUCKS:** She specifically -- and just for purposes
5 of the record. She specifically asked him who called. He
6 said the daughter ---

7 **THE COURT:** Well, I accept ---

8 **MR. HUCKS:** ---Which has got nothing to do with ---

9 **THE COURT:** ---That, not for the matter for the truth
10 asserted, but as a basis for his going there.

11 **MR. HUCKS:** Yes sir.

12 **THE COURT:** And that's the basis for it, and she's
13 entitled to ask that question.

14 **MR. HUCKS:** Yes sir.

15 **THE COURT:** And not going into hearsay testimony,
16 obviously.

17 **MS. KNOWLES:** And I'm finished. That's all I have.
18 Thank you, Officer Cody.

19 **THE COURT:** And that -- your question was appropriate.
20 You may examine.

21 **MR. HUCKS:** Thank you, Your Honor.

22 **CROSS-EXAMINATION BY MR. HUCKS:**

23 **Q.** Officer Cody, how long you been with the Horry County
24 Police Department?

25 **A.** Approximately four years. Four years.

1 Q. How many calls -- how many days a week do you work?

2 A. We work rotating shifts, but it's -- every two weeks is
3 seven days daytime, and then flip over to nighttime and do
4 seven days of that, so fourteen days in a twenty-eight day
5 period.

6 Q. Okay. So half the days in the year ---

7 A. Correct.

8 Q. ---You work?

9 A. Correct.

10 Q. So three hundred sixty-five days. That's a hundred and
11 seventy-six days, something like that.

12 A. Roughly.

13 Q. Okay. A hundred and seventy-six days a year you work,
14 days or nights, shifts. How long is a shift?

15 A. Twelve point two five hours.

16 Q. Okay. So twelve and a quarter hours. I'm not that
17 smart. I can't add all of that up. But that's a lot, right?
18 How many calls would you say you go to on a twelve hour shift?

19 A. It depends on the day, but you average anywhere from
20 eight to twelve, thirteen calls a day.

21 Q. Okay. That's a shift an hour -- I mean, a call an
22 hour?

23 A. Basically, yes.

24 Q. Okay. A call a hour per shift, Math is getting way
25 too big for me now, but that's a lot, is what I'm trying to

1 get at, right? That's a lot of calls.

2 A. Yes. Not counting follow-ups.

3 Q. Not counting going back and seeing people again, right?

4 A. That's right.

5 Q. Now, what about this address? How many times has your
6 shift been called to this particular address since you've been
7 working that area, that you remember?

8 A. I personally can't say shift. I can say that I
9 personally have been there three times.

10 Q. Okay. How about your sector? I mean, if you were
11 talking about those records that you can look at ---

12 A. Right. The calls for service at that address, a total
13 of twenty-three in the last three years, to include medic
14 calls.

15 MS. KNOWLES: Your Honor, I -- I would object to that.

16 THE COURT: Well, you are the one that opened it up.

17 MS. KNOWLES: No sir, not -- he -- he has no knowledge
18 of all of the calls that were made.

19 THE COURT: Well, when he gets through I'll let you ask
20 some redirect on that issue.

21 MS. KNOWLES: Okay.

22 THE COURT: But you specifically went into that area,
23 and he's entitled to pursue it.

24 MS. KNOWLES: Okay.

25 THE COURT: But I'll permit you to come back at the

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1 appropriate time.

2 Yes sir.

3 Q. So how many times have you personally been to the
4 address?

5 A. Three times.

6 Q. Okay. Including what we are here for today?

7 A. Yes.

8 Q. And this particular time this Defendant was placed
9 under arrest, right?

10 A. Yes sir.

11 Q. And we don't want to talk about -- the one time Ms.
12 Knowles asked you about is fine. I don't want to talk about
13 that other one, okay, so don't think I am.

14 MS. KNOWLES: Your Honor, I would object. He was not
15 arrested on this particular occasion.

16 MR. HUCKS: What we are here for today, he was
17 arrested, Your Honor. That's why the jury is in the box, and
18 the witness is on the stand.

19 MS. KNOWLES: I understand that, but I was asking him
20 about 9/25.

21 THE COURT: No. He's entitled to cross-examination on
22 the incident.

23 MS. KNOWLES: But what he just stated was incorrect.

24 MR. HUCKS: He said he had been there three times, and
25 I said, let's talk about the one that I asking about, and the

1 one we are here for today.

2 THE COURT: The jury is the finders of the facts. I'll
3 let them decide what was said.

4 MR. HUCKS: Okay. Yes sir.

5 Q. Now, when you got there -- you went to this call,
6 right?

7 A. Yes, I did.

8 Q. You were one of the voices that was on that video. Did
9 you see the video ---

10 A. Yes, I did.

11 Q. I'm going to show you what's been marked as State's --
12 and admitted as State's Number 1 and Number 2. Did you have a
13 chance to see Ms. Frady that day?

14 A. I did.

15 Q. And did you have a chance to look at Ms. Frady in the
16 face?

17 A. I did.

18 Q. And I'm going to show you State's Number 1 and Number
19 2. I'm cross-examining you, so if I ask a leading question
20 let me slide - I'm a lawyer, we do weird stuff sometimes.
21 What's that?

22 A. That is a picture of the victim's eye.

23 Q. All right. What's significant about that eye?

24 A. It has redness, and a slight swelling underneath it.

25 Q. Looks like somebody whooped her in the eye?

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1 A. Looks like it, yes it does.

2 Q. Okay. Now, State's Number 2, what -- do you recognize
3 what's around -- what's on her neck right there, don't you?

4 A. Yes. She has redness around the neck.

5 Q. You've been to a thousand calls. You've seen that
6 before, haven't you?

7 A. Many times.

8 Q. What did that lead you to believe? Leads you to
9 believe somebody grabbed her around the neck, didn't it?

10 A. I looked -- it led me to believe that she was --
11 someone possibly choking her, yes sir.

12 Q. Somebody -- she's got finger marks around her neck?

13 A. Correct.

14 Q. Somebody -- somebody has choked this lady?

15 A. Correct.

16 Q. Right. And did you have a chance to talk with her on
17 scene at all?

18 A. I did.

19 Q. And after interviewing her were you able to learn that
20 Timothy Frady, in the course of your investigation, is the one
21 who whooped her in the eye and choked her around her neck?

22 A. By what the victim said. Yes. Right.

23 Q. And by what the evidence shows?

24 A. That's correct.

25 MR. HUCKS: Thank you. I've got nothing further.

1 **THE COURT:** All right, sir.

2 You may redirect.

3 **MS. KNOWLES:** Thank you.

4 **REDIRECT-EXAMINATION BY MS. KNOWLES:**

5 Q. Officer Cody, let me ask you who is listed as the
6 complainant on that call for service. You had said earlier it
7 was the sister -- no, I'm sorry -- the daughter of Ms. Frady.

8 A. I don't believe that I told you who actually called.

9 **MR. HUCKS:** Your Honor, that's outside the scope of my
10 cross-examination.

11 **THE COURT:** I will let that question be asked and
12 answered.

13 **MR. HUCKS:** Okay.

14 A. I do know that the daughter did call, but you didn't
15 ask me in the prior.

16 Q. You stated that the daughter called. That was your
17 testimony just a few moments ago.

18 A. Okay. Don't remember saying that. Yes Ma'am.

19 Q. Okay. And who is listed on this call for service as
20 the complaining person?

21 **MR. HUCKS:** Your Honor, the report is not in evidence.
22 He can't read it if it's not in evidence. Objection.

23 **MS. KNOWLES:** He -- he can refer to ---

24 **THE COURT:** No sir. He's entitled to refresh his notes
25 ---

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1 A. Right in here is Tammi Frady.

2 THE COURT: ---In evidence.

3 Q. It's who?

4 A. Tammi Frady.

5 Q. Thank you. And as far as these injuries go, you don't
6 know how they occurred, do you?

7 A. I personally was not there, no.

8 Q. Okay. And you don't know if they were self-inflicted?
9 You have no idea of knowing that, do you?

10 A. I don't live with everybody in Horry County.

11 Q. But you would have no idea?

12 A. Our job is to investigate, Ma'am.

13 Q. I understand. But would you have -- I mean, is it not
14 possible that these could be self-inflicted wounds?

15 A. No.

16 Q. There's no way possible?

17 A. Not by way of our investigation, I do not believe they
18 are.

19 Q. Do you have -- are you a doctor?

20 A. No.

21 Q. Okay. Did she -- to your knowledge, did she seek
22 medical treatment?

23 A. She refused the EMS.

24 Q. Okay. And you just mentioned a moment ago that it was
25 slight swelling, was that not your testimony, under her eye?

1 A. Yes, what I would consider slight swelling, yes.

2 Q. Okay.

3 MS. KNOWLES: All right. Thank you.

4 THE COURT: All right. You may come down.

5 You may call your next witness.

6 MS. KNOWLES: The Defense would rest at this point,
7 Your Honor.

8 THE COURT: Is there anything in reply?

9 MR. HUCKS: No sir.

10 THE COURT: Mr. Foreman, ladies and gentlemen, we have
11 concluded all of the testimony in the trial of this case.
12 When you return I will give you the final charge with
13 reference to the law in this case, and then you will have
14 final summation of the State and the Defendant, and so I'm
15 going to let you go to the jury room just a minute, and call
16 you back out the conclude this case.

17 You may go to your jury room. I'll be bringing you out
18 very shortly.

19 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
20 JURY.)

21 THE COURT: All right, Ms. Knowles, all of the
22 testimony has been concluded. Any motions at the end of the
23 case?

24 MS. KNOWLES: I would just renew all of my previous
25 objections and motions.

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1 **THE COURT:** And for the reason too that I previously
2 said, there is absolutely sufficient evidence to go forward
3 for the jury to consider in this case. I note your motions
4 for dismissal. I note your motion for insufficient evidence.
5 They are respectfully denied.

6 **MS. KNOWLES:** Thank you, Your Honor.

7 **THE COURT:** All right, Solicitor, are you going to have
8 an opening and a closing both, or just a closing?

9 **MR. HUCKS:** I'll just close, Your Honor. No need to
10 open on the law.

11 **THE COURT:** Is that satisfactory to you, Ms. Knowles?

12 **MS. KNOWLES:** That's fine.

13 **THE COURT:** Would you like to take a short break before
14 we proceed?

15 **MS. KNOWLES:** Please, if you don't mind.

16 **THE COURT:** You may do so.

17 Ms. Knowles, let me ask you this, and the Solicitor, are
18 there any special charges you are requesting?

19 **MR. HUCKS:** No sir, the standard charges are find with
20 me.

21 **THE COURT:** Ms. Knowles?

22 **MS. KNOWLES:** I don't have any special ---

23 **THE COURT:** All right. As is my custom, and with your
24 approval, I'm going to charge the jury prior to summation, and
25 after I do so I'll let the jury step out so you can have any

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1 exceptions or additions.

2 MS. KNOWLES: Okay. Thank you.

3 THE COURT: Jurors -- as you know, I've done this many
4 times. They tell me they prefer that procedure, saying they
5 can follow what the lawyers say better if they knew what the
6 law was.

7 So, go take a short break and then come back and ---

8 MS. KNOWLES: Okay. Thank you.

9 MR. HUCKS: Yes sir.

1 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND WITHIN THE
2 PRESENCE OF THE JURY.)

3 THE COURT: Mr. Foreman, and ladies and gentlemen, you
4 will recall that just prior to our last break we had completed
5 all of the testimony in the trial of this case.

6 The Defendant, as is his absolute Constitutional Rights,
7 elected not to testify. That is his right, as it is yours and
8 mine. A defendant has the option to testify if he chooses, or
9 not testify. This Defendant has exercised his Constitutional
10 Right not to testify, and in that connection I charge you as
11 emphatically as I can, the fact that he did not testify raises
12 absolutely no adverse inferences against him. It is his
13 Constitutional Right. The fact that he did not testify must
14 not even be used by you, the jury, in your deliberations.

15 Now, at the conclusion of the testimony generally we
16 have final summation of counsel, and then the Judge charges

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1 you the law. Some years ago a juror has said to me, Judge, I
2 wish you would have charged the law before they argued, I
3 could have followed their positions better had I know what the
4 law was with regard to the issues in this case, and that made
5 good sense to me, and so it is for the last fifteen years,
6 with the consent of counsel, I've charged the law before
7 summation.

8 Now, my associate and Law Clerk, on last evening and
9 this morning, has prepared the appropriate instructions in the
10 law. You will take the facts as you find them to be, and
11 apply those facts to the law as I give it to you as you find
12 applicable.

13 My associate and Law Clerk is now going to read the law
14 of this case with you. Please accept his rendition as coming
15 from me. I prepared it, I've reviewed it, it is my charge, I
16 just simply have asked that Mr. McLeod read my charge to you.

17 Mr. McLeod.

18 **MR. McLEOD:** The indictment charges the Defendant with
19 Criminal Domestic Violence Third Offense. I remind you that
20 the fact that the Defendant was arrested, charged and indicted
21 in this case is not evidence in this case, and cannot be
22 considered by you as evidence of guilt in this case, nor does
23 it create any presumption or inference of guilt. This
24 document is simply the formal written instrument which
25 contains the charge made against the Defendant. It is the

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1 formal document by which this case is brought into this court.

2 The Defendant has pled not guilty to this indictment,
3 and that plea puts the burden on the State to prove the
4 Defendant guilty. A person charged with committing a criminal
5 offense in South Carolina is never required to prove himself
6 innocent. I charge you that it is an important rule of the
7 law that the defendant in a criminal trial, no matter what the
8 seriousness of the charge may be, will always be presumed to
9 be innocent of the crime for which the indictment was issued
10 unless guilt has been proven by evidence satisfying you of
11 that guilt beyond a reasonable doubt.

12 This presumption of innocence does not end when you
13 begin your deliberations, but it accompanies the Defendant
14 throughout the trial, until you reach a verdict of guilt based
15 on evidence satisfying you of that guilt beyond a reasonable
16 doubt.

17 The presumption of innocence is like a robe of
18 righteousness placed about the shoulders of the Defendant,
19 which remains with the Defendant until it has been stripped
20 from the Defendant by evidence satisfying you of the
21 Defendant's guilt beyond a reasonable doubt.

22 The presumption of innocence is not mere legal theory,
23 it is not just a legal phrase, it is a substantial right to
24 which every defendant is entitled unless you, the jury, are
25 satisfied from the evidence of the Defendant's guilt beyond a

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1 reasonable doubt.

2 The State has the burden of proving the Defendant guilty
3 beyond a reasonable doubt. Some of you may have served as
4 jurors in civil cases where you were told that it is only
5 necessary to prove that a fact was more likely true than not
6 true, such as by the greater weight or preponderance of the
7 evidence.

8 In criminal cases the State's proof must be more
9 powerful than that. It must be beyond a reasonable doubt.
10 Proof beyond a reasonable doubt is proof that leaves you
11 firmly convinced of the defendant's guilt. There are very few
12 things in this world that we know with absolute certainty, and
13 in criminal cases the law does not require proof that
14 overcomes every possible doubt. If, based on your
15 consideration of the evidence, you are firmly convinced that
16 the Defendant is guilty of the crime charged you must find the
17 Defendant guilty. If, on the other hand, you think there is a
18 real possibility that the Defendant is not guilty you must
19 give the Defendant the benefit of the doubt and find him not
20 guilty.

21 I remind you that during this trial you and I have
22 certain duties to perform. As the Trial Judge it is my
23 responsibility to preside over the trial of this case, and I
24 also have the duty to rule on the admissibility of the
25 evidence offered during this trial. You are to consider only

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1 the competent evidence before you. If there was any testimony
2 ordered stricken from the record in this case during this
3 trial you must disregard that testimony. You are to consider
4 only the testimony which has been presented from this witness
5 stand, any exhibits which have been made a part of the record
6 in this case, and any stipulations of counsel.

7 I have the additional duty to charge you the law
8 applicable to this case. As the Presiding Judge I am the sole
9 judge of the law of this case, and it is your duty as jurors
10 to accept and apply the law exactly as I now state it to you.
11 If you already have any idea as to what the law is, or as to
12 what the law ought to be, and it does not agree with what I
13 now tell you the law is, you must abandon this idea because
14 you are sworn to accept the law, and apply the law exactly as
15 I state it to you.

16 In every case tried in this court before a jury the jury
17 becomes the sole and exclusive judge of the facts in the case.
18 A trial judge cannot intimate, state, comment on, or make any
19 statement to a trial jury about the facts in a case. Since
20 you, the jury, are the sole judge of the facts in this case
21 you are not to infer from what I've said during the progress
22 of this trial in ruling upon the admissibility of evidence, or
23 otherwise, or anything that I say now during the course of
24 this instruction to you that I have any opinion about the
25 facts in this case. The law does not allow me to have an

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1 opinion about the facts in this case. This is a matter solely
2 for you, the jury, to determine. As jurors it is your duty to
3 determine the effect, value, weight and truth of the evidence
4 presented during this trial.

5 Necessarily, you must determine the credibility of the
6 witnesses who have testified in this case. Credibility simply
7 means believability. It becomes your duty as jurors to
8 analyze and to evaluate the evidence, and determine which
9 evidence convinces you of it's truth. In determining the
10 believability of witnesses who have testified in this case you
11 may believe one witness over several witnesses, or several
12 witnesses over one witness. You may believe a part of the
13 testimony of a witness, and reject the remaining part of the
14 testimony of that same witness. You may believe the testimony
15 of a witness in it's entirety, or reject the testimony of a
16 witness in it's entirety. You may consider whether any
17 witness has exhibited to you any interest, bias, prejudice, or
18 other motive in this case. You may also consider the
19 appearance and manner of a witness while on the witness stand.

20 I instruct you, and emphasize, that the fact that the
21 Defendant did not testify is not a factor to be considered by
22 you in any way in your deliberation, and in your consideration
23 on the question of the guilt or innocence of the Defendant.
24 It must not be considered by you in any manner whatsoever. A
25 Defendant has the Constitutional Right to remain silent, and

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1 the assertion of this right must not be considered by you in
2 your deliberations. I repeat, under your oath you are to draw
3 no conclusion whatsoever from the fact that the Defendant in
4 this case did not testify. The fact that the Defendant did
5 not testify should not even be discussed in the jury room.
6 The burden of proof, as I have stated to you, is on the State.
7 The Defendant is not required to prove his innocence. The
8 burden of proof remains on the State to prove guilt beyond a
9 reasonable doubt.

10 You have heard evidence that the Defendant was convicted
11 of a crime other than the one for which the Defendant is now
12 on trial. This evidence may be considered by you, if you
13 conclude it as true, only in deciding whether or not the
14 Defendant had two prior convictions of criminal domestic
15 violence, this being an element the State must prove beyond a
16 reasonable doubt in the prosecution of criminal domestic
17 violence third offense, and for no other purpose. You must
18 not consider the Defendant's prior record as any evidence of
19 the Defendant's guilt of the charge we are trying today.

20 The Defendant is charged with criminal domestic violence
21 third offense. The State must prove, beyond a reasonable
22 doubt, that the Defendant caused physical harm or injury to a
23 member of the Defendant's own household, or that the Defendant
24 offered, or attempted to cause physical harm or injury to a
25 member of the Defendant's own household, with the apparent

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1 present ability to cause harm or injury under circumstances
2 reasonably creating a fear of imminent danger.

3 A household member is a spouse, a former spouse, a
4 parent, a child, a grandparent, a brother or sister, a
5 grandchild, a person with whom the defendant has a child in
6 common, and a person of the opposite sex with whom the
7 defendant is living, or has lived in the past.

8 The State must also prove, beyond a reasonable doubt,
9 that the defendant has been previously convicted of criminal
10 domestic violence two or more times within the preceding ten
11 year period.

12 There are two possible verdicts which you may find for
13 the indicted charge, guilty or not guilty. There is no
14 significance whatsoever in the order which I state these
15 possible verdicts. It is simply that one must be stated
16 first. Ladies and gentlemen, your verdict must be a unanimous
17 one.

18 Mr. Foreman, when the jury agrees on the verdict you
19 will write the verdict on the back of the indictment and sign
20 your name as foreperson, then knock on the jury room door and
21 inform the bailiff that you have reached a verdict, and we
22 will receive you back into the courtroom at that time.

23 Mr. Foreman, ladies and gentlemen of the jury, as you
24 retire to begin your deliberation I wish to express the hope
25 that each of you will be mindful of the importance of your

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1 responsibility. You are not called upon to serve as jurors
2 very often, and the proper performance of the duty requires
3 each of you to reach the height of freeing your mind of all
4 improper influences. You and I are acting for the community,
5 and that is why we must see to it that the trial is fair, and
6 the verdict is just.

7 You have observed that the presiding officer of this
8 court is always addressed as Your Honor. The reason is that
9 the Court is entrusted with the honor of this community, the
10 honor of this State, and the honor of this Country in seeking
11 that every case tried here receives fair and impartial
12 justice. Now you, the jury, take into your care the
13 preservation of the honor of this community, the honor of this
14 Country, and the honor of this State.

15 Now do not get the idea that I am trying to intimate to
16 you how I might think you should decide this case. As I have
17 already told you, under the laws of the State of South
18 Carolina you, the jury, are the sole judge of all questions of
19 fact. It would be highly improper for me to influence you in
20 the performance of that duty. So I am not trying to tell you
21 what verdict you should find, but as the presiding officer of
22 this Court I am vitally concerned that whatever verdict you
23 find will be the result of you going into that jury room and
24 confine your consideration to the evidence and the law that
25 you have heard in this courtroom, weighing it fairly and

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1 impartially as I have every confidence that you will.
2 Everyone is entitled to justice in this case, both the State
3 and the Defendant. All are entitled to justice, nothing more,
4 nothing less. You owe no support or sympathy to anyone. The
5 Court is of the confirmed opinion that whatever verdict you
6 will reach will represent truth and justice for all parties
7 involved.

8 Remember, your verdict must be unanimous.

9 **THE COURT:** Thank you, Mr. McLeod.

10 Ladies and gentlemen, please accept his reading and
11 rendition as being my charge to you on the law of this case.

12 Now, during your deliberations you will have with you
13 all of these matters that I have introduced into the trial of
14 this case. Additionally, Mr. Foreman, there will be pencil
15 and paper provided, and if you, or any member of your
16 distinguished jury has any questions with regards to the law
17 please write that question down, let the bailiff know, and I
18 will answer it to the extent possible.

19 As I have said to you in my charge, there are only two
20 verdicts, either not guilty or guilty, and whatever that
21 verdict is it must be the unanimous verdict of all twelve.

22 Mr. Foreman, when you and your jury has reached a
23 unanimous verdict this is the indictment. Please turn the
24 indictment over, and under the word verdict write your
25 verdict, not guilty or guilty, and sign your name. Let the

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1 bailiff know and we will come out to receive your verdict.

2 Now, the only thing remaining is the two charges -- two
3 talks of counsel. I'm going to ask you to go to the jury room
4 in just a moment and I'll be calling you back out for the two
5 summations of distinguished counsel.

6 Have them go to the jury room just a moment.

7 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
8 JURY.)

9 THE COURT: From the State, any exceptions or additions
10 to the charge?

11 MR. HUCKS: No sir.

12 THE COURT: From the Defense, any exceptions or
13 additions to the charge?

14 MS. KNOWLES: No sir. I just need two minutes. I just
15 need to run to the restroom and I'll be right back.

16 THE COURT: That's fine. The charge will stand as
17 given.

18 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND WITHIN THE
19 PRESENCE OF THE JURY.)

20 THE COURT: Ms. Knowles, you may proceed with closing.

21 MS. KNOWLES: Thank you, Your Honor.

22 Good morning, ladies and gentlemen. It's still morning.

23 I first want to tell you that I've got a lot to say, and
24 this is the last time that I'm going to get the opportunity to
25 speak with you guys, so I'll make sure that I cover

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1 everything. Just bear with me.

2 Ladies and gentlemen, people can, and they do change.
3 People learn from their past mistakes. Now, some may do this
4 more quickly than others, but the speed in which they do this
5 should not count; it does not matter. What matters is the
6 fact that they have come to this realization.

7 When my client, Mr. Frady, was released from prison in
8 September of 2012, he, in fact, was a changed man. He vowed
9 on that day that he would never go back to the hell which he
10 was walking away from. He knew how important his freedom was,
11 and he knew that he didn't want to do anything that would
12 jeopardize that again. Unfortunately the promise that he made
13 to himself was only good for him because the newfound
14 appreciation that he had for his freedom wouldn't really
15 matter if his wife made false accusations against him.

16 Now, shortly after arriving home from work on September
17 28th, the day of this alleged incident, he gets home, comes
18 in, sitting down on the couch, then goes takes a shower.
19 Before he could even get fully dressed the next thing he knows
20 the cops are at the front door.

21 Now, he was involved with another young lady, and I
22 believe that Ms. Frady also ---

23 **MR. HUCKS:** Objection, Your Honor. I've never objected
24 in a closing argument in my life, but she's assuming facts not
25 in evidence, but across the board, and testifying for a person

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1 who never testified.

2 MS. KNOWLES: It's a closing argument.

3 THE COURT: Just ---

4 MR. HUCKS: Which allows latitude to be given based on
5 facts in evidence. There's no facts in evidence ---

6 THE COURT: Ms. Knowles, just follow the rules.

7 MS. KNOWLES: Yes sir.

8 THE COURT: You can only comment upon those facts which
9 are in evidence, and which the jury has heard.

10 You may proceed.

11 MS. KNOWLES: Okay. Thank you, Your Honor.

12 Now, Mr. Frady was placed into handcuffs and put into
13 the back of a police car before anyone really took any time
14 with him. From start to finish, the response to the call, and
15 then the ultimate arrest of my client was seven minutes. I
16 don't know about you all, but that's not a thorough
17 investigation in my mind.

18 To know that if you make some poor choices and some
19 mistakes in your life, and those mistakes and those poor
20 choices they scar you for life, they mark you, like a "Scarlet
21 Letter", that's unfortunate, and that's not really what the
22 law is designed for.

23 It's frightening, to say the least, that that is how our
24 world works so to speak, because I know myself, I've made some
25 mistakes. We all have. None of us are perfect. But I

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1 believe in giving people the benefit of the doubt, and
2 thankfully the law agrees with me in this regard. The law
3 says that my client is to be presumed innocent. That
4 presumption will carry with him throughout the trial of this
5 case, until the very end. It's up to the State to prove his
6 guilt.

7 Now let's take a look at what the State has presented in
8 the form of testimony. They called Ms. Frady, the alleged
9 victim here, and what we learned from her testimony is that
10 she and my client have been married for approximately thirteen
11 years. She claims that he never contributed a dime during
12 their marriage, but she testified that she wasn't working.
13 Someone had to pay the bills. I suggest to you that that was
14 my client.

15 Now, she says that he had been abusive for years and
16 years and years. Why not get a divorce? If she felt that she
17 was so unsafe she should have gotten a divorce. I suggest to
18 you that she wasn't afraid of him. She was content with the
19 situation that they had arranged. He was paying the bills.
20 She had her life, he had his life, all was good, until he
21 began paying closer attention to this female and she liked --
22 it was okay for her to do what she wanted to do, but when he
23 wanted to do the same she wanted him out of the house.

24 She tried - and you heard her testimony - to have him
25 evicted from the home. That didn't work. The Judge dismissed

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1 that case. So, when the eviction procedure didn't work the
2 next step, I know how to get him, I'll get him arrested, it
3 worked before.

4 Now, she claims that they were arguing over a physical
5 Title to the home. A home, a physical Title that she, in
6 fact, is the sole listed owner. Why was this so big of a
7 deal? Why would he want that?

8 Now, bear with me just one moment.

9 Now, the next thing I want to talk to you about is the
10 phone, with these photos that the State has presented, and has
11 entered into evidence. Now, this phone was never given to
12 detectives the night that this all happened, never even
13 mentioned. We don't know whose phone this is. We don't know
14 where these photos came from. Don't know when they were
15 taken, so for these photos and this phone to be factored into
16 your decision would be absolutely ludicrous.

17 The injury: Now, she claims that she was injured at the
18 hands of my client, and the red marks around her neck would be
19 proof of that according to her. The red marks around he neck,
20 from the photos that I saw, first of all, they weren't
21 substantial, and could very easily have been caused by her
22 grabbing at her throat. May people do that when they are
23 nervous.

24 Fingernail cut in her neck: Well, my client couldn't
25 have done that because he's a nail-biter; he has no

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1 fingernails.

2 Now, the next person that -- and let's point out too
3 that she declined all medical attention, so if she was that
4 injured I believe that she would have gone to the hospital.

5 The next person that they put up was Detective Lent, and
6 what did we learn from Detective Lent? We learned from him,
7 as I stated a moment ago, that his entire investigation lasted
8 seven minutes, six forty-eight he responded, seven fifty-four
9 PM my client is in handcuffs. Never spoke to my client before
10 he placed him into handcuffs, automatically took this alleged
11 victim's word, never conducted a thorough investigation of the
12 inside of the home where this allegedly took place. They
13 never took into evidence any of the items that they were
14 allegedly arguing over.

15 Now, I would presume that Solicitor Hucks handed me
16 everything that he had in his possession whenever I was
17 assigned to this case, but I did not get these photos of what
18 Ms. Frady claims is her daughter until April -- I believe it
19 was April 1st.

20 **MR. HUCKS:** Objection again, Your Honor. We are back
21 to assuming facts that nobody testified to whatsoever in this
22 case.

23 **MS. KNOWLES:** This is closing argument.

24 **THE COURT:** Please, Ms. Knowles, just refer to that
25 which is in the record, please.

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1 **MR. HUCKS:** Let's just play by the rules.

2 **THE COURT:** The jury will understand what's in the
3 record.

4 **MR. HUCKS:** Yes sir, Your Honor.

5 **MS. KNOWLES:** The testimony is that these photos were
6 not turned over - Ms. Pop told you that - until -- she said
7 they were turned over April of this year whenever she was
8 assigned the case. Now this incident - you do the math -
9 occurred September 28th, 29th, I'm sorry, of 2012. If they
10 were that important why did it take that long for them to be
11 turned over?

12 Now, if Ms. Frady was in fear for her life, in fear for
13 her safety, she had neighbors. She testified to that.
14 Detective Lent testified to that. Could have ran to a
15 neighbor's. Never did that.

16 My client never made any attempt to flee because he
17 didn't do anything wrong.

18 Now, I'm going to finish up here before I get in trouble
19 again. I want to leave you with a quote from one of my
20 favorite authors. I don't know if any of you have read
21 anything that he's written, but he's a really good author.
22 His name is Rick Warren. He said this about our past. He
23 says, "We are all products of our past, but we don't have to
24 be prisoners of it."

25 I suggest to you that the Government in this case, the

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1 police and the Solicitor, want you to allow Mr. Frady's past
2 to determine his future, to determine your decision here
3 today, but you have to determine this case on the facts and
4 the evidence of this case, and this case alone. What happened
5 in 2008 should not be relevant, shouldn't be, but is, if you
6 take the State's version of how things went down.

7 I'm here to tell you that, if you were to do this, if
8 you were to ultimate allow yourself to just rush to judgment
9 based on the fact that he has two prior convictions from 2008
10 that you would not be doing justice, and that's what we are
11 all here for. That's what I'm here for, that's what you are
12 here for, that's what he's here for, that's what the Judge is
13 here for.

14 So, I just ask that you do justice in this case, and
15 that you find my client not guilty.

16 Thank you very much.

17 **THE COURT:** Thank you, Ms. Knowles.

18 Mr. Scott.

19 **MR. HUCKS:** Thank you, Your Honor.

20 Folks, I had a chance to introduce myself to you
21 yesterday, and again, I'm Scott Hucks. I'm an Assistant
22 Solicitor with the Horry County Solicitor's Office.

23 I told you it wouldn't be a particularly long case, and
24 it hasn't been. It's actually gone a little longer than any
25 of us here thought it would.

1 The -- I want to get something out of the way before you
2 right up front here. Nobody in this courtroom, me, the
3 officers, the Judge, Ms. Knowles either, we've never asked you
4 to hold this fellow accountable for any prior convictions.
5 His prior convictions are just what the Judge told you. They
6 are here for one specific reason, just to vest the
7 jurisdiction in you guys for the purposes of an element that
8 we have to prove. That's it.

9 In order to prove that Tim Frady committed criminal
10 domestic violence to you guys it's a third offense, in order
11 to prove it we have to prove that there were two prior
12 convictions, and we further have to prove that this one
13 happened. The only thing in the whole entire world that these
14 two prior convictions are offered for is just to show you that
15 it happened, that he has a prior history, not that it has
16 anything to do with Ms. Frady, or anything at all, just to
17 show that you guys have the jurisdiction to prove this element
18 of the crime. And you are going to get to see these. We are
19 going to hand them -- send them back to you. The Judge will
20 send them back to you.

21 I want to talk with you just a little bit about what we
22 do have to prove, what are -- what does our evidence -- what
23 does the evidence that the State of South Carolina put up,
24 what's it got to show? You remember the Judge's charge. It
25 said, causing an injury, or an offer or attempt to cause an

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1 injury. If I say anything you remember differently than what
2 the Judge said go with the Judge because he's a Judge and I'm
3 just a lawyer, right. You always go with the Judge. Anytime
4 you get a chance to listen to a judge do it. They can throw
5 you in jail for not listening, right?

6 But why we are here, September 20th, what does an offer
7 or an attempted injury mean? Injury in this case means a
8 touching, pushing or shoulder-blocking, anything could
9 possibly -- could be an injury. An injury doesn't mean you
10 have to have a broken arm, or your eyeball has to be hanging
11 out, or something crazy like that. Or an offer, or an attempt
12 to injure. What's an offer? What's an offer to injure?
13 That's when you put somebody in fear that they are going to be
14 injured. That's if I were to draw back to hit you, I can put
15 you in fear. That would be an offer to hit you. Or if I got
16 in your personal space, and was up and slobbering while I was
17 screaming at you, and you believed I was going to hit you, and
18 that was a reasonable thing for you to believe then that would
19 be an offer to cause harm, or it would be an offer to injure
20 you. It doesn't mean that the injury actually has to happen,
21 or an attempt to injure. An attempt to injure would be if I
22 swung at you and missed. All right. That's an intent. Or if
23 I drew back and I -- and got tripped and fell, I attempted to
24 hurt you and I couldn't hurt you. So we have to have either a
25 direct injury, an injury that Mr. Frady committed, or an

1 offer, an implied threat, so to say, or of injury, or an
2 attempted injury. That's the law. And so I -- just to help
3 explain it. I'm not that smart so I have to break it down
4 into small pieces.

5 And we also have to prove that the person that he
6 offered or attempted to injure, injured, offered or attempted
7 to injure is to a household member. A household member, in
8 this particular case, would be someone you are married to, or
9 used to be married to, have a child in common with, live with,
10 or used to live with, in a romantic situation. That's it.
11 Any of those would apply. Any of those would be a household
12 member. You can't -- you can't -- a child is not criminal
13 domestic violence because, even though they live in your
14 household they are not a household member because it's not the
15 romantic type situation.

16 What do we have here? We have Ms. Frady, who stands up
17 and tells you, we are married, we've been married since the
18 year 2000, we got married, and we've been together on and off,
19 had difficulties back -- back and forth, and back together
20 since then, but we've been married, physically and legally
21 married since the year 2000. If you believe that, they are
22 household members. Those certified convictions show that this
23 is third -- that this is a third offense.

24 So what we are really here for today is to decide
25 whether or not Mr. Frady injured, or offered, or attempted to

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1 injure Ms. Frady. That's it. And what do you have? What do
2 you have to show that? The first witness we called was Ms.
3 Frady, and I'm going to tell you, she was up here longer than
4 I cared for her to be. What do you learn about Ms. Frady when
5 she talks? What do you learn about her when she tells her
6 story? What do you learn about her when I asked her questions
7 on direct-examination, and Ms. Knowles asked her questions on
8 cross-examination? We learn about her. I learned a lot about
9 her. I met with her four or five times and I learned a lot
10 about her up there. You know what I learned? I learned that
11 you could see some fear on her face. I learned that when she
12 was cross-examined on a previous marriage, when she talked
13 about how she took a -- I believe it was a liquor bottle and
14 cut her previous husband after he whooped on her, said nobody
15 else is whopping on me, I got whooped on one time and I taught
16 him something. Ms. Knowles, agreeably so, said why didn't you
17 -- why did you take it off of this guy then. She said, well,
18 I grew up, and I've got children, and I've got people I care
19 about, and I want to set the right example for them, so I
20 didn't cut Tim Frady with a liquor bottle, I didn't whoop on
21 Tim Frady, I tried to live a life, I tried to take the spare
22 bedroom of my house, and I tried to turn it into a nursery for
23 my grandchild that was coming, I was trying to live my life
24 the best way that I knew how to live my life. Tim Frady is
25 back in the picture. Tim Frady comes back in the picture.

1 Mr. Knowles asked a very neat question, why is that
2 Title with her name on it that big of a deal; why would that
3 matter to her. Think about talking with Ms. Frady, think
4 about what she had to say when she testified. Think about how
5 many things in the world you reckon she actually owns herself.
6 I'll present to you that that trailer Title is a big deal,
7 because it's a thing that she owns, with her name on it.

8 Now, if you can't figure out anything else from this
9 case you can figure out that criminal domestic violence is
10 about control. This is about control. This is about Tim
11 Frady, who is back into this picture, and taking that Title
12 from her and saying, I'm staying here and you can't do nothing
13 about it, see, I took your Title and I hid it from you, and
14 you can't even dispose of the house that you own anymore
15 because I'm in charge around here now, and I can take pictures
16 of your daughter if I take a notion to take pictures of your
17 daughter, and I can do what I take a notion to do, and that's
18 what he set out to do that night when he came home. She said
19 he came home that evening, he was drinking, had a bottle of
20 liquor. That's fine. I've probably drank enough liquor to
21 float a battleship in my life if you really added it all up,
22 but nothing wrong with that, but he comes home, what's she
23 done? She went and reclaimed the thing that -- or one of the
24 things that helped him have power of her, she's reclaimed it,
25 she went and got that Title, and while she's there she found

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1 that cell phone. You've got to understand, he's going to do
2 what he takes a notion to do, and she took some power from
3 him, she took some of that power from him, and when she took
4 some of that power from him he didn't like it.

5 You heard her say that he got in her face and he was
6 snarling and slobbering when he was hollering at her. We've
7 seen people like that before. I've seen people like that
8 before. Get upset. Why was he upset? He was upset because
9 some power got taken from him, that's it. He lost a little
10 bit of his control.

11 What else did you notice about Ms. Frady's demeanor,
12 did you notice with her up here? She can be a little smart
13 alecky, I'll give you that. But what did you notice? That
14 lady, if she looks nothing else to me she looks awful beaten
15 down. The world hasn't been her (unintelligible). And if she
16 was nothing else to you up here she was honest, I wanted my
17 Title, I wanted the thing that meant something to me, I wanted
18 the thing that I worked for, that I've earned, I wanted my
19 stuff.

20 You saw on video. We called Detective Lent after that.
21 Detective Lent, you know, he used to be a road officer, he got
22 up there. We watched that video, about thirty minutes of
23 video, and some of it was driving, some of it was talking, and
24 some of it was the investigation. We can talk about how
25 simple the investigation was till we are blue in the face. My

1 contention to you is, if you need anything more than to walk
2 up on a lady hiding in her back yard, shaking, and squalling,
3 crying, shaking all over and crying, with a busted eye and
4 finger marks around her neck to figure out somebody has
5 roughed her up and scared her then he wouldn't be much of a
6 cop if he needed to spend more than ten minutes on that one to
7 figure out what happened. Think about it.

8 One of the things we have to ask ourselves in this job
9 all the time, and you may have to ask yourself over and over
10 again as you deliberate, in your own mind, is what makes
11 sense, what makes sense. Under the Defense's theory of the
12 case that you just heard all about what makes sense? What was
13 it? She is -- this lady, right here, is so conniving, and so
14 devious, and so smart that she is some sort of James Bond
15 villain, setting him up, getting him over here, setting him
16 up, faking injuries, faking everything, faking her excitement,
17 faking her fear, faking her tears, and strangling herself, and
18 busting her own eye. You heard her testimony. Think about it
19 this way. If she was going to lie about what happened to her
20 eye and her neck, if she were going to lie what would she have
21 said? She would have said, he penned me to the wall, and he
22 whooped me, that's what he did. Right. That's what she would
23 have said. She -- it would have sounded great. That's not
24 what she said, is it? What she said is, while we were in the
25 spare bedroom we were over there -- I was over there at the

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1 crib trying to get that Title and that phone, and when I was
2 he was shoving on me and we were struggling, and when we were
3 struggling I got bumped in the eye. That's what she said.
4 Now that's not the most angry, lascivious thing anybody has
5 ever come across, is it? You know why it's not? Because
6 she's up here telling you the truth. She's up here telling
7 you the doggone truth. Now she's got her own way of going
8 about it, but she's telling you the truth on this stuff.
9 After that went on to -- I got on -- I was on the couch and I
10 was fighting with him, fussing with him, arguing with him; I
11 got up to try to get out the back door. What did he do, he
12 caught me into the kitchen and he choked me till I broke away
13 from him, and I ran outside and I hid in the back yard.
14 That's an awful complicated story for that lady to make up,
15 the lady you heard, the lady in this courtroom, the lady that
16 you heard testify to go through. Think of all the things that
17 would have to fall into place, all the circumstances that
18 would have to work for her to get what Ms. Knowles says her
19 devious mind came up with. Think about it. This is a lady
20 that can't keep a job anymore.

21 You are going to get to take these exhibits back with
22 you, and State's Exhibit Number 1, that's some pictures of Ms.
23 Frady, and Number 2. See her whooped eye. Her eye is
24 bruised. Somebody cracked her in the eye. Somebody bumped
25 her in the eye. It's not black. Her skull is not fractured,

1 so if somebody didn't crack her in the eye -- that goes right
2 in line with the story that she told you on the witness stand.

3 Look at her neck on State's Exhibit Number 2 each side
4 of her neck. You've got a thumb print. You've got finger
5 marks, and you've got a fingernail cut. You heard those
6 officers testify to each of those things, here's what I saw.
7 I don't know if he bites his fingers or not. I don't remember
8 one word of that coming up here. Don't much care, because the
9 lady is injured. The police get there she's in the back yard
10 hiding, crying, shaking, and upset. He's been bothering me
11 again, he choked me, he's been bothering me again, he choked
12 me. You heard it. You heard it on the video. What else did
13 you hear on the video?

14 When Officer Lent showed up he walked in, walked over
15 there. She came out and he said, what have you got there? He
16 came after me over this Title and this cell phone. She said
17 that. He came after me over this Title and this cell phone.
18 What did she tell you on the witness stand he came after her
19 for, the Title and a cell phone. Did the police take the cell
20 phone into custody? No, they didn't take it into custody
21 because she didn't say I saw the pictures on the cell phone.
22 Well, why would he be coming after her over the cell phone if
23 there wasn't something on the cell phone? I've got you.
24 Well, we've looked at the cell phone, and the pictures are in
25 the cell phone. Why? What could possibly be on that cell

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1 phone that was so important that she needed to hide it from
2 him, to show it to other folks? First of all, why would she
3 be so afraid of him to start with, that she needed to hide
4 things that are in her own house, that she owned, her Title
5 for gracious sakes. What was she upset about? What could she
6 possibly have been upset about? Two pictures of her daughter.
7 "Amber's tits". That's what it said. She was upset enough to
8 hide them. Why would she hide them? Why? Because she's
9 afraid. He's put her in fear. That's enough, folks, putting
10 her in fear of being harmed is enough. That's where the
11 State's burden could stop, but we don't have that, because the
12 State -- I've been doing this for about six years now, and the
13 State of South Carolina, I promise you, we relish in our
14 burden, we want to carry our burden, our burden to prove to
15 you, beyond a reasonable doubt, that a crime occurred, and
16 that this fellow did it, is what we do every day. That's why
17 we get up in the mornings, to make sure we do right. And when
18 you ask yourself a question on what makes sense, what makes
19 sense? That she was upset, found these and tried to hide
20 them, her trailer Title that he had taken and taken control,
21 to cement control with her, when she was attempting to take
22 them back and do something with them and he harmed her. Does
23 that make sense? Or because of the fact that she's some kind
24 of dealing off of a GI Joe cartoon that can put together these
25 giant complicated plans. What makes more sense?

1 The truth is all that anyone can ask you to do, and
2 that's all you owe the State of South Carolina, and that's
3 surely all that you owe Tim Frady, is to come back with a
4 verdict that speaks the truth, and the truth is very simple
5 here, folks, it don't get much simpler.

6 If you want to see the video again you can. Just knock
7 on the door and ask to see it again. You are more than
8 welcome to. I believe the Judge say you can watch it all
9 again if you want to watch it all again.

10 But the elements, folks ---

11 **THE COURT:** Your time is expiring.

12 **MR. HUCKS:** Yes sir.

13 **MR. HUCKS:** I'm long-winded.

14 Folks, there's only one verdict here that speaks the
15 truth. That's where we get the word from. And the only
16 verdict here is that he's guilty, guilty. The evidence shows
17 he's guilty, and please come back and speak the truth, and
18 whatever your verdict is it will be a true and a just verdict.

19 Thank you.

20 **THE COURT:** Thank you, Mr. Hucks, and thank you, Ms.
21 Knowles.

22 Mr. Foreman, ladies and gentlemen, you have now heard
23 all of the testimony in this case. I've instructed you with
24 regards to the law, and you heard final summation by counsel
25 for both sides.

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JURY OUT/ON RECORD

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1 It now becomes your job to deliberate, and to reach,
2 unanimously, the verdict of not guilty or guilty.

3 As I indicated before, Mr. Foreman, this is the
4 indictment. Please turn the indictments over, and under the
5 word verdict write your verdict, and sign your name.

6 You will now retire to the jury room. Do not begin your
7 deliberations until this evidence comes in, and then you may
8 begin your deliberations.

9 Thank you.

10 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
11 JURY.)

12 THE COURT: All right. Come forward and let's agree on
13 what's going into evidence, please.

14 (AT THIS TIME THE EVIDENCE WAS REVIEWED AMONG COUNSEL
15 FOR THE STATE, COUNSEL FOR THE DEFENDANT, AND THE COURT
16 REPORTER. THE EXHIBITS WERE PASSED INTO THE JURY ROOM AND THE
17 JURY WAS INSTRUCTED TO BEGIN DELIBERATION. DELIBERATION BEGAN
18 AT 11:46 AM.)

1 (THE FOLLOWING TAKES PLACE AT 2:45 P.M., OUTSIDE THE
2 PRESENCE OF THE JURY.)

3 THE COURT: All right. Let's get on the record.

4 I have earlier received the following communication from
5 the jury. I'm going to read it on the record in the record
6 now as follows. The response was agreed to by the attorneys
7 for the Defendant.

JURY OUT/DELIBERATING
JURY OUT/ON RECORD

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1 JUDGE'S LAW CLERK, MR. McLEOD: The first question was,
2 "Where was the daughter during all of the trouble, when all of
3 this happened?"

4 Judge Cottingham's response was: "This fact is not in
5 evidence, and not for your consideration."

6 THE COURT: And we agreed, Mr. Hucks -- y'all agreed to
7 that answer?

8 MR. HUCKS: Yes sir.

9 THE COURT: Counsel, for the Defense?

10 MS. KNOWLES: Yes sir. Yes sir, that's correct.

11 THE COURT: All right. The second one.

12 JUDGE'S LAW CLERK, MR. McLEOD: The second question was,
13 "Who made the phone call to 911?" Judge Cottingham's answer
14 was, "Ms. Frady testified that she called 911."

15 THE COURT: You agreed to that?

16 MR. HUCKS: Yes sir, we did.

17 THE COURT: You agreed to that?

18 MS. KNOWLES: Yes sir.

19 THE COURT: All right. That's made a part of the
20 record.

21 (NOTE FROM THE JURY MARKED COURT'S EXHIBIT NUMBER 1.)

22 THE COURT: Now, I have received the following
23 communication, and what is it, Dixie? Read it for me.

24 COURT REPORTER: I don't have it.

25 LAW CLERK, MR. McLEOD: The question is, "Judge

JURY IN/COURT TO THE JURY

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1 Cottingham, we would like to hear Detective Lent's part about
2 the hands on her neck."

3 THE COURT: Dixie has, in the interest of time -- his
4 total testimony was something like fifty minutes. We are
5 going to find that portion of his testimony and read it to the
6 jury, and while she's researching that I will not be able to
7 take any pleas at this time.

8 As soon as we deal with this issue I'll deal with the
9 plea.

10 (COURT REPORTER IS SEARCHING FOR THE TESTIMONY
11 REQUESTED.)

12 THE COURT: Bring the jury in.

13 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
14 JURY AT 2:50 PM.)

15 THE COURT: Good afternoon, Mr. Foreman, ladies and
16 gentlemen.

17 I have received your communication where you request
18 that you would like to hear the -- again, the testimony of the
19 Detective regarding certain issues.

20 This request is made a part of the record, and we are
21 going to replay his testimony on that issue. His total
22 testimony I'm advised by my Court Reporter is about fifty-five
23 minutes. I'm going to only play the limited part that you
24 request; however, if you want some more of it, or all of it it
25 will be available to you, Mr. Foreman. Do you understand

1 that?

2 FOREMAN: I do.

3 THE COURT: And if your jury wants to hear some more
4 we'll be glad to do that.

5 Proceed with -- can you put the microphone where they --
6 loud enough for the jury to hear it?

7 (AT THIS TIME A PORTION OF THE TESTIMONY OF OFFICER LENT
8 WAS PLAYED FOR THE JURY.)

9 MS. KNOWLES: I think that's all they wanted was ---

10 THE COURT: What?

11 MS. KNOWLES: I think that's all that they wanted, was
12 just that portion.

13 MR. HUCKS: Your Honor, I would like to require as to
14 the Foreman if they want to hear more.

15 THE COURT: Would you like to hear more, Mr. Foreman?

16 FOREMAN: Yes sir.

17 THE COURT: Play it.

18 Thank you.

19 When you've heard enough let me know.

20 (COURT REPORTER CONTINUES TO PLAY TESTIMONY OF OFFICER
21 LENT.)

22 THE COURT: Mr. Foreman, does that encompass that which
23 you request, or would you like to continue playing the ---

24 FOREMAN: That's all I need. That's all I heard.

25 THE COURT: Pardon me.

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1 **FOREMAN:** That's what I heard. That's fine.

2 **THE COURT:** Is everybody -- is that comfortable with
3 your request?

4 **(SEVERAL JURORS ANSWERED IN THE AFFIRMATIVE.)**

5 **FOREMAN:** Yes.

6 **THE COURT:** Return to the jury room. If you have any
7 other requests, or want to hear any more of that testimony, or
8 anybody else's it's available to you, and we will be glad to
9 comply.

10 Thank you, Mr. Foreman.

11 **FOREMAN:** Thank you.

12 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
13 **JURY.)**

14 **(NOTE FROM JURY MARKED COURT'S EXHIBIT NUMBER 2.)**

15 **THE COURT:** I think probably the appropriate time to
16 deal with that new issue that arose would be after the verdict
17 of the jury.

18 What says the State?

19 **MR. HUCKS:** I would that would be the appropriate time,
20 Your Honor.

21 **THE COURT:** Ms. Knowles.

22 **MS. KNOWLES:** As long as it's dealt with, Your Honor.

23 **THE COURT:** It will be dealt with. I may or may not be
24 necessary.

25 All right.

1 (THE JURY CONTINUED TO DELIBERATE AND THE FOLLOWING
2 TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

3 THE COURT: I have a following communication -- where
4 is Ms. Knowles?

5 (MS. KNOWLES ENTERS THE COURTROOM.)

6 LAW CLERK, MR. McLEOD: "Dear sir. Sorry. We are now a
7 hung jury."

8 (NOTE FROM JURY MARKED COURT'S EXHIBIT NUMBER 1.)

9 THE COURT: Bring the jury out. I'm going to give them
10 an Allen charge and send them back.

11 MS. KNOWLES: Before you bring them back, do we need to
12 address the issue that we spoke about in chambers?

13 THE COURT: No. I'm going to address it at the
14 conclusion of the jury's duty.

15 MS. KNOWLES: Okay.

16 THE COURT: You are going to be on the record about it,
17 but it's not necessary to do it at this time.

18 Bring the jury in.

19 Wait a minute. Hold on. Do you want to address that
20 now?

21 MS. KNOWLES: I just want to make sure that I'm
22 covered.

23 THE COURT: Well, go ahead and let's deal with it now.
24 I think you are asking for a mistrial, I'm not sure, but go
25 ahead.

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1 **MS. KNOWLES:** Your Honor, I was under the impression,
2 upon reading this statute, that the evidence of the prior
3 convictions was actually an element of the offense of ---

4 **THE COURT:** Does the statute say that?

5 **MS. KNOWLES:** It does not. It's actually silent on
6 that.

7 **THE COURT:** Well that's what I thought. I don't read
8 that in it, but go ahead.

9 **MS. KNOWLES:** And I guess it was my inexperience, I
10 should have caught it, but I didn't, and I do not want to have
11 my client have to pay for my, you know, mishap. I should have
12 caught that.

13 **THE COURT:** What is your motion now?

14 **MS. KNOWLES:** I would make a motion for a mistrial at
15 this time.

16 **THE COURT:** On what specific basis?

17 **MS. KNOWLES:** Specifically, evidence was entered into
18 the record that should not have been entered into the record.

19 **THE COURT:** To what?

20 **MS. KNOWLES:** Specifically, his prior convictions.

21 **THE COURT:** Okay. I just want to let for your -- I
22 just wanted to be on the record.

23 All right, Mr. Hucks, what's your response?

24 **MR. HUCKS:** Your Honor, prior -- we discussed in
25 chambers, and then again out here. It was based on Ms.

1 Knowles' request to the Court that we be allowed -- because
2 he's got four priors including a criminal domestic violence
3 high and aggravated charge, because of those she asked
4 specifically that we put in two prior convictions.

5 **THE COURT:** That is correct.

6 **MR. HUCKS:** And we discussed it in chambers, we
7 discussed it again out here. Based on the agreement of all
8 the parties that's what we agreed to based on her request,
9 Your Honor.

10 **MS. KNOWLES:** Your Honor ---

11 **MR. HUCKS:** We did not take it up any further than
12 that. We discussed it since then, again in chambers, and I do
13 not believe that the statute precludes it based on the fact
14 the jurisdictional issues, if the Court -- even if it is a
15 violation, Judge, for sake of violation, you wanted the jury
16 at the -- when they were coming in you told the jury they
17 couldn't take them into consideration, and then again in your
18 charges to the jury at the conclusion of the case you told
19 them specifically, these cannot -- you can't take these into
20 consideration. Those two things are -- even if it is a
21 violation, or any -- or affixes to any potential violation,
22 and take away any potential prejudice.

23 **MS. KNOWLES:** And Your Honor, I think that, to some
24 degree, the State should have said something, because he has
25 said from day one it's an element of the offense; he said that

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1 in chambers, he said that in his closing, he said that in his
2 opening, he said that on direct-examination.

3 THE COURT: Let me address those issues. No question
4 about it, in chambers you knew he had four priors and you
5 wanted him to limit it to two, and I said I was going to do
6 that because this was third offense and not fifth. Having
7 charged the jury in full, even as to that issue, charging them
8 that the priors was a part of the State's elements of proof I
9 charged the jury -- I asked them to leave upon my charge and
10 prior to summations, and at that time I specifically said, for
11 the State, any exceptions or additions and he said none, for
12 the defense, any exceptions or additions, and you said none.
13 Now, clearly, I charged the jury at the time of introduction,
14 and later in my charge that those two prior records were
15 introduced only as an evidentiary matter, and was in no way an
16 proof of guilt of the charge for which he's being tried.

17 There is another element in this case. If they were not
18 to be permitted into evidence the indictment just should have
19 said criminal domestic violence and we would consider it for
20 sentencing purposes. The indictment, on the body of it,
21 didn't say that. It said guilty of criminal sexual --
22 violence in the third degree. With that indictment and
23 assertion that the State says they can prove it beyond a
24 reasonable doubt obviously they then had to show the first
25 two, because the indictment said third, and there's no way

1 that the jury, under that indictment, could convince a jury
2 unless there was proof of the first two, and so for that
3 reason, and the reason that it was done without objection from
4 anybody, I conclude that it was proper.

5 Secondly I conclude, if given the specific charge it is
6 harmless error. But you are protected on the record.

7 MS. KNOWLES: Thank you, Your Honor.

8 THE COURT: All right. Thank you.

9 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
10 JURY AT 3:17 PM.)

11 THE COURT: Mr. Foreman, and ladies and gentlemen,
12 please know that we, and this Court, the litigants, appreciate
13 your services in this case.

14 I have been advised by your note that the ---
15 Please read the note.

16 LAW CLERK, MR. McLEOD: Says, "Dear sir, Sorry, we are
17 now a hung jury."

18 THE COURT: That was your communication to me.

19 Let me say this. When several people, or groups have an
20 issue in dispute initially they are sovereign together with
21 the facts. Ultimately, however, after exchanging views back
22 and forth, generally they come to a comprehensive agreement as
23 to what occurred, and that is our jury process in this
24 Country.

25 I've been on the bench thirty years, and I've told the

JURY IN/COURT TO JURY

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1 jurors, as I have told you, that you are finders of the facts,
2 and seldom, if ever can twelve people initially, after hearing
3 the testimony, agree on what the facts are, but generally,
4 after mature, thoughtful deliberation it's been my experience
5 over the thirty years that we generally get a verdict of
6 either not guilty or guilty. That's what generally occurs.

7 Now, if we had a hung jury that simply says that nobody
8 wins; it says that everybody loses, and our system has failed.
9 If the State of South Carolina, and this alleged victim is
10 entitled to a verdict they, and she, is entitled to it today,
11 not tomorrow, next year. Equally important, if this Defendant
12 is entitled to a verdict at your hands he's entitled to it
13 today, not tomorrow, not next year.

14 Now, you have delved into this problem prior to lunch,
15 according to my records an hour and fifteen minutes. You have
16 not had an opportunity to really consider it this afternoon.
17 Surely I can conclude that, given the length of the testimony
18 that an hour and fifteen minutes is not sufficient for twelve
19 people to come to an agreement. I tell you that jurors,
20 generally, all disagree after hearing the testimony for a
21 while, but finally, after mature deliberation, and the give
22 and take among them we reach a verdict.

23 I don't know, and don't care to know how y'all stand
24 numerically in this case. But I say to you that the majority
25 ought to discuss with the minority whatever it is, tell me why

1 you feel as you do, and why you can convince me that you are
2 right, and vice-versa. This case didn't take long to try, but
3 that doesn't mean it's not a serious case. It's certainly
4 serious to the State of South Carolina and this alleged
5 victim, and it's equally serious to this Defendant.

6 Now, I know that all of you have worked hard, but an
7 hour and fifteen minutes, considering the volumes of testimony
8 here, in my view, is clearly not sufficient for all the issues
9 to be resolved among all of you. As I said before, a mistrial
10 is an unfortunate thing. It simply means that everybody
11 loses, no winners. What is the effect of a mistrial in this
12 case? It simply means that another day, and another time I
13 will select a jury in the same process as you were selected.
14 At that trial the same lawyers will be here, the same
15 witnesses will testify, and that jury will go and do what you
16 couldn't or wouldn't do. There is no reason in this wide
17 world for me to believe that, in the selection of another jury
18 to try this issue that I can get one more intelligent jury,
19 more capable than you, one who under their oath will do their
20 duties more profoundly than you twelve.

21 We've got all afternoon and tomorrow. This case needs
22 to be resolved for the reasons that I stated.

23 Please, in your negotiations, exchange views with those
24 in the minority, and those in the majority, and see if that
25 discussion can bring the opposing parties together, and that

JURY IN/COURT TO JURY

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1 quite frequently occurs.

2 Now, be assured I would never ask a juror to give up his
3 hard and heartfelt conviction as to his opinion with reference
4 to guilty or not guilty. I do not do that at this time, I
5 would never do that. I only suggest that those of you who
6 have one view or the other, discuss it with the opposing
7 group, and see, through the testimony that -- the issues with
8 which you may be concerned as to not guilty or guilty can be
9 resolved by amicable discussions.

10 Debating a serious case like this considering for an
11 hour and fifteen minutes is totally unsatisfactory. I
12 recognize that many of you are, for the first time, have sat
13 on a jury, and you need to know that our jury system is a
14 deliberative process, sometimes taking days, surely hours, and
15 so I'm going to ask now that you go back, deliberate
16 extensively, exchange your views, and see if you can come to a
17 common meeting of the minds with a verdict of not guilty or
18 guilty. And having said that, I would never ask nor expect a
19 juror to give up his heartfelt convictions.

20 I do emphasize to you that a mistrial simply means
21 everybody loses, and we will have to replay, before another
22 jury, this entire process, therefore, I ask that you, the
23 jury, resolve the issues today, or tomorrow morning, between
24 these litigants.

25 You may now return to the jury room, and thank you so

1 much.

2 (THE JURY RETIRED TO CONTINUE DELIBERATION AT 3:30 PM.
3 THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

4 THE COURT: Any exceptions or additions to that charge?
5 What says the State?

6 MR. HUCKS: None whatsoever, Judge.

7 MS. KNOWLES: No sir.

8 THE COURT: Thank you.

9 All right. We are in recess, subject to the call of the
10 jury.

11 Thank you.

1 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
2 JURY AT 4:20 PM.)

3 THE COURT: Mr. Foreman, have you and your
4 distinguished jury reached a verdict in this case?

5 FOREMAN: We have, Your Honor.

6 THE COURT: If this verdict be unanimous, please
7 so signify by raising your right hand.

8 (EACH AND EVERY JUROR RAISES HIS OR HER RIGHT HAND.)

9 THE COURT: The jury has so signified.

10 Ms. Heather, accept the verdict for me, please.

11 DEPUTY CLERK OF COURT, HEATHER LEWIS: Indictment Number
12 (2012-GS-26-04266), State of South Carolina, County of Horry,
13 versus Timothy Leroy Frady. On the charge of criminal
14 domestic violence we, the jury, by unanimous consent, find the

JURY DELIBERATING
JURY IN/VERDICT

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1 Defendant guilty.

2 Dated May 13th, 2014. Signed by Foreperson, Roger
3 Kline.

4 Ladies and gentlemen of the jury, if this is your
5 verdict so signify by raising your right hand.

6 (EACH AND EVERY JUROR RAISES HIS OR HER RIGHT HAND.)

7 DEPUTY CLERK OF COURT, MS. LEWIS: Thank you.

8 THE COURT: For the jury's edification, let's hear this
9 Defendant's prior record.

10 MR. HUCKS: Yes sir, Your Honor. The Defendant's prior
11 record, within the last ten years, consists of a 2005 criminal
12 domestic violence conviction, 2008, Your Honor, the two prior
13 convictions that were into evidence, his NCIC further shows a
14 criminal domestic violence of a high and aggravated nature
15 conviction, 2009, criminal domestic violence second offense,
16 and 2012, criminal domestic violence second offense,
17 consisting of four prior convictions.

18 THE COURT: Ladies and gentlemen, I permitted into the
19 testimony two prior convictions because in an indictment
20 charging a third, and of course that then made it an element
21 of proof. I did not let in the evidence for convictions
22 because I thought that that would be detrimental to his fair
23 trial.

24 In this case, under your oath as jurors, you
25 collectively, and unanimously, rendered a verdict. The people

JURY DELIBERATING
JURY IN/VERDICT

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1 of South Carolina, and this Court, you have my gratitude, and
2 my appreciation. Criminal domestic violence comes to our
3 court all too frequently, and it must, and will be dealt with
4 in a most serious manner.

5 I'm going to let you go to the jury room. I'm going to
6 come back there in just a minute and speak to you, but I'm
7 going to have to ask all of you to return downstairs in the
8 morning at 9:30. There will be at least one jury selected,
9 and possibly two.

10 So, let them go to the jury room and I'll be back there,
11 and they will come downstairs at 9:30 in the morning, please.

12 Thank you.

13 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
14 JURY.)

15 THE COURT: I wish to speak with this jury and I'll be
16 right back. Everybody remain in the courtroom for sentencing,
17 and motions.

18 (THE FOLLOWING TAKES PLACE AFTER A SHORT BREAK.)

19 THE COURT: We'll have the sentencing procedure, and
20 then I'll hear any post-trial motions, counsel.

21 All right, sir, the State.

22 MR. HUCKS: Yes sir, Your Honor.

23 Your Honor, we've heard the facts, and the jury has come
24 back and listened to the facts again, and you've heard all the
25 testimony. His prior history is made up of CDVs and CDV High

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1 and Aggravated. This charge, the Supreme Court has ruled,
2 that the minimum year on a CDV third is not -- is a day for
3 day year, the person has to serve all three hundred and sixty-
4 five days of it before they are eligible to start receiving
5 good time credits or any of that prison -- any of the things
6 that the Department of Corrections do.

7 The -- I've talked with Ms. Frady, and Ms. Frady's
8 indication to me, and asked me to speak on her behalf, is that
9 she wants a divorce, she wants this thing done with. She
10 actually asked if I would convey her consider -- convey her
11 opinion to you that she would just like for him to get enough
12 time for her to get away from him and move on with her life
13 and get a divorce from him. I told her that's not the job of
14 this Court, the job of this Court is to hold him accountable
15 for what he's done.

16 And his prior criminal history, the longest amount of
17 time he's ever served, according to his NCIC, is a six-month
18 sentence. Of course in that six-month sentence he was
19 eligible for good time credits and all that, and I just felt
20 an interest in justice in letting the Court know that that's
21 the longest amount of time he's ever spent in prison on all of
22 these things.

23 And it's the State's position that the Court is in a
24 position to understand it's a very -- what happened, and
25 understand the intricacies of it, and we just ask that you do

1 what you believe to be the right thing, Judge.

2 **THE COURT:** Ms. Knowles.

3 **MS. KNOWLES:** Thank you, Your Honor.

4 Mr. Frady is thirty-three. He is married, has no
5 children. He is from Horry County, gainfully employed.

6 He had moved out of the marital home, has his own home
7 now. I don't believe that he would contest a divorce in this
8 case. I think that they both need to move on with their
9 lives; it's time to separate.

10 **THE COURT:** I'm not concerned with whether he does or
11 does not. That's not a concern.

12 **MS. KNOWLES:** I understand. And as the Solicitor
13 stated, this is a day for day, minimum one-year sentence. We
14 would ask that you consider the minimum sentence. He was
15 offered a thirty day credit for time served sentence by the
16 State, and he rejected that to come to trial, but I say that
17 just to point out that the State gave him that good of a deal,
18 so they must have thought ---

19 **THE COURT:** They didn't have no deal with me. I would
20 never have considered such a thing for a CDV third, and I
21 don't know of any Judge that -- could not have done it. The
22 minimum is a year, couldn't give him thirty days.

23 **MS. KNOWLES:** He was going to allow him to plead to a
24 CDV second offense.

25 **THE COURT:** Well, not -- would not have in my court,

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1 but ---

2 MS. KNOWLES: Your Honor, it's obvious that there were
3 genuine issues here or the jury would not have deliberated for
4 the length of time that they did.

5 I would just ask, as I stated earlier, that you consider
6 the minimum sentence of one year. If you feel like probation
7 is necessary to follow that, that's fine too. We just would
8 ask that you consider that, and I have my own motions after --
9 -

10 THE COURT: The Defendant -- from this testimony,
11 you've been beating on that unfortunate woman for fifteen
12 years. There's just no question about it. Your guilt in this
13 case, there's no way in the world that twelve people, sworn to
14 find the truth, in my view, based on this testimony, could
15 have found you not guilty. She reported it, they came, they
16 saw her marks on her neck, the black eye, and you've done it
17 four times to date.

18 I'm going to sentence you to five years. I'm going to
19 suspend that upon the service of four years, and I place you
20 on probation for three. I would ordinarily give you the whole
21 five years based on your record here, but I wanted a year
22 hanging over your head for three years since that.

23 If I find out that you go near that woman at any time in
24 the future I'm going to bring you back and you are going to
25 serve the remaining year. Do you understand that?

1 **DEFENDANT:** Yes sir.

2 **THE COURT:** Sir?

3 **DEFENDANT:** Yes sir.

4 **THE COURT:** Listen to me very carefully. My
5 admonitions to leave her alone, including phone calls, if I
6 find out that while you were in prison you are harassing her
7 with phone calls I'm going to bring you back and deal with you
8 in a most serious manner; you understand that?

9 **DEFENDANT:** Yes sir.

10 **THE COURT:** Do you?

11 **DEFENDANT:** Yes sir.

12 **THE COURT:** And when and if you get out of prison, if I
13 find out that you've contacted her, or riding by her place of
14 employment or home, I'm going to bring you back and deal with
15 you again; you understand that?

16 **DEFENDANT:** Yes sir.

17 **THE COURT:** I want that lady to live in peace. You've
18 harassed her for fifteen years, and it's over.

19 Thank you. That's the judgment of the Court.

20 Take him away.

21 **MS. KNOWLES:** Your Honor, at what point do I need to
22 make my motions?

23 **THE COURT:** You better make them now. Leave him here
24 while I hear from you. I'll never know more about the case
25 than I know right now, so let's hear your post-trial motions,

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1 please.

2 MS. KNOWLES: Okay. Your Honor, I make a motion for a
3 new trial based on the grounds that I had stated in my motion
4 for a mistrial. There was evidence of prior convictions that
5 should not have been entered into evidence and were. That was
6 -- as I stated, I will take the blame; that was error on my
7 part. So, on that ground I would make a motion for a new
8 trial.

9 THE COURT: The record will reflect the basis for my
10 denial of your motions previously, and those bases are still
11 here as I deny your motions, post-trial motions.

12 I want to emphasize one more time with reference to
13 admission of the two priors. That was done on two bases.
14 First, it was done without exception by counsel for the State
15 and you. Also, it became necessary when the indictment, on
16 the face of it, alleged CDV third. Having alleged that then
17 they had the burden of proving first and second to the jury.
18 Had that not been -- gone in the record they would not have
19 been able to prove the allegations in the indictment for CDV
20 third.

21 Ms. Knowles, you tried the case very professionally.
22 The facts were very difficult for you to get around, but the
23 evidence -- the evidence was just overwhelming. I don't
24 understand how he thought twelve people, sworn to find the
25 truth, could do other than convict him, when the evidence is

MOTIONS

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1 just simply overwhelming.

2 Do you care to respond to her post-trial motions which
3 are respectfully denied?

4 MR. HUCKS: Your Honor, I would just reiterate the
5 arguments that we made, both in chambers and what we made out
6 here on the subject, just for purposes of the record.

7 THE COURT: All right, sir. That would be the judge --
8 thank you, Ms. Knowles.

9 Ms. Knowles, how long has he been in jail?

10 MS. KNOWLES: Two days.

11 THE COURT: Give him credit for time served.

12 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
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CERTIFICATE OF REPORTER

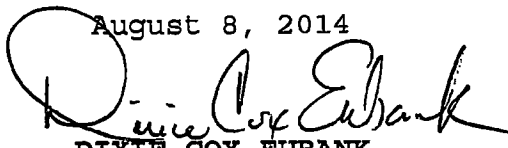
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C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the TRIAL of the captioned case, relative to appeal, in the COURT OF GENERAL SESSIONS for HORRY COUNTY, SOUTH CAROLINA, on the 12th, 13th, and 14th days of May, 2014.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

August 8, 2014


DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

WITNESSES

Robert Cody Horry County Police Department

DOCKET NO. 2012-GS-26- **04266****The State of South Carolina**
County of Horry

J. Scott Hucks

12H04483

COURT OF GENERAL SESSIONS**December, 2012 TERM****ARREST WARRANT NUMBER**

M974864

CDR: 2390 16-25-0065, 17-25-0030

DOA: 9/29/2012

THE STATE**vs.**Timothy Leroy Frady
W/ M**ACTION OF GRAND JURY**

Foreperson of Grand Jury

Date:

DEC 13 2012

VERDICT**"Guilty"**

Rosa M. Klem

Foreperson of Petit Jury

Date:

05/13/14

ATTORNEY:**Indictment for****CRIMINAL DOMESTIC VIOLENCE****J. Gregory Hembree, Solicitor**

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

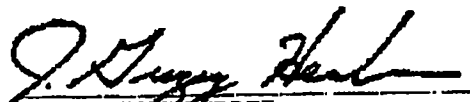
At a Court of General Sessions, convened on December 13, 2012, the Grand Jurors of Horry County present upon their oath:

CRIMINAL DOMESTIC VIOLENCE

CDR: 2390 16-25-0065, 17-25-0030

That Timothy Leroy Frady did in Horry County on or about September 28, 2012, cause physical harm or injury, or did offer or attempt to cause physical harm or injury to the defendant's own household member, Tammy Frady, such being the third offense, having two more offenses within a ten year period, in violation of Section 16-25-0020(A)(D), S. C. 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.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATEHorry
VS.

Timothy Leroy Frady

AKA:

Race: WHITE

Sex: M

Age: 33

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2604266

A/W#: M974864

Date of Offense: 9/28/2012

S.C. Code § : 16-25-0020 (A);(D)

CDR Code #: 3055

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Criminal Domestic Violence - 3rd☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-25-0020 (A);(D) of the S.C. Code of Laws, bearing CDR Code # 3055

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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:

SCB76948

Hucks, J. Scott

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 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 4 days/months/years and/or paymentof \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 3

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ 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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*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 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforc. 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 \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90 + 40.00 = 173.90

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 25.00 beginning 06/13/2018

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel.
§ 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2041

Sentence Date: 05/13/14

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY FRADY,

APPELLANT

APPELLATE CASE NO. 2014-001954

FINAL BRIEF OF APPELLANT

TIFFANY L. BUTLER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred by admitting a cell phone and photographs that Appellant allegedly took of Tammi Frady's adult daughter, Appellant's step-daughter, where Frady gave the phone to the solicitor almost two years after Appellant's arrest, the photographs were not relevant to the CDV charge, and even if they were, they should have been excluded under Rule 403, SCRE, the State offered no evidence that the cell phone belonged to Appellant, and there was no evidence presented of when the photographs were taken?

STATEMENT OF THE CASE

On December 13, 2012, an Horry County grand jury indicted Appellant for criminal domestic violence, third offense. R. 214 The matter proceeded to a jury trial before the Honorable Edward Cottingham and a jury. R. 1. Melinda Allyson Knowles represented Appellant. Jennings Scott Hucks represented the State. R. 1.

After a two-day trial, Appellant was found guilty. R. 204. Judge Cottingham sentenced Appellant to five years imprisonment, suspended upon the service of four years, with three years of probation. R. 208.

Appellant appealed his conviction and sentence. This brief follows.

ARGUMENT

The trial judge erred by admitting a cell phone and photographs that Appellant allegedly took of Tammi Frady's adult daughter, Appellant's step-daughter, where Frady gave the phone to the solicitor almost two years after Appellant's arrest, the photographs were not relevant to the CDV charge, and even if they were, they should have been excluded under Rule 403, SCRE, the State offered no evidence that the cell phone belonged to Appellant, and there was no evidence presented of when the photographs were taken.

Motion to Exclude the Cell Phone and Photographs

Prior to trial, defense counsel moved to exclude a cell phone that Tammi Frady claimed belonged to Appellant. R. 33. Counsel also moved to exclude suggestive pictures of Frady's adult daughter, Appellant's step-daughter, that were on the phone. R. 33 – 34. Counsel argued that the cell phone and photographs were overly prejudicial and irrelevant to the CDV charge. R. 34. Counsel also questioned the authenticity of the photographs because Frady did not turn over the cell phone until almost two years after the alleged incident. R. 138, lines 2 – 11.

The solicitor argued that the cell phone and pictures corroborated Frady's story. R. 35, lines 12 – 14. The solicitor explained to the judge that his investigator downloaded the photographs from the phone. R. 35, line 25 – R. 36, line 2. He also explained that he would have Frady testify that she found the phone with the pictures on it and that is what started the argument between her and Appellant. R. 36, lines 6 – 9.

Judge Cottingham told the solicitor to have the investigator testify that she retrieved the photographs from the cell phone that Frady gave her. R. 36, lines 15 – 17. Over defense

counsel's objection, Judge Cottingham allowed the cell phone and photographs to be admitted into evidence. R. 37, lines 9 – 16; R. 133; R. 137.

Facts at trial

Tammy Frady claimed that on September 28, 2012, she was at her residence of [REDACTED] Rush Road, in Horry County, sorting through her belongings. R. 54 – 55. After finding the title to her trailer that Appellant had taken from her, Frady discovered a cell phone lying on the television stand in Appellant's bedroom. R. 56, lines 2 – 13. She opened the cell phone and claimed to see suggestive pictures of her daughter and Appellant's step-daughter, Amber, with sexual words on top of them. R. 56, line 22 – R. 57, line 17. While Frady was looking through the cell phone in her living room, Appellant walked into the house. R. 59, lines 6 – 25.

According to Frady, Appellant saw the cell phone and title in her hands and walked into his bedroom. R. 59, lines 17 – 21. Frady immediately went to hide the title and cell phone in her daughter's baby's crib so that Appellant would not take them. Tr. 60, lines 1 – 2. Appellant started "fussing" with her about going through his things and walked "closer and closer." R. 60, lines 5 – 24. As she tried to walk away from him, Appellant allegedly grabbed her around the neck and started choking her. R. 61, lines 15 – 18.

Appellant then walked into the room where Frady hid the title. R. 61, lines 24 – 25. While trying to grab the title and cell phone before Appellant could find it, Frady claimed that she was hit in the face. R. 62, lines 12 – 13. She grabbed the title and cell phone from inside the crib and ran out the door. She called 9-1-1 and stayed outside until officers arrived. R. 62, lines 13 – 19.

Detective Gregory Lent responded to Frady's home that night. R. 98, lines 16 – 17. He observed marks on her neck, redness on her face, and swelling under her eyes. R. 100, line 22 – R. 101, line 1. Appellant was inside of the house. R. 102, lines 21 – 22.

Despite Appellant's denial that anything happened, Det. Lent arrested him. R. 106, lines 2 – 3. Frady declined any medical treatment. R. 113, lines 14 – 15. Frady never said anything to the detective about pictures being on the cell phone nor was the phone collected as evidence. R. 117, lines 14 – 18.

Ginger Pop, an investigator with the Solicitor's office, did not recover the photographs from the cell phone until April 2014, almost two years after the alleged incident. R. 138, lines 2 – 11. She was unable to determine whether the cell phone even belonged to Appellant or when the photographs were taken. R. 140, lines 2 – 17.

Discussion

The trial judge erred by admitting a cell phone and photographs that Appellant allegedly took of Tammi Frady's adult daughter from the cell phone. Frady gave the phone to the solicitor almost two years after Appellant's arrest and there was no proof that the cell phone belonged to Appellant. The photographs were not relevant to the CDV charge and there was no evidence of when the photographs were taken.

It is elementary that all evidence must be relevant to be admissible. Rule 402, SCRE. Relevant evidence is evidence having the tendency to make some matter in issue more or less probable. Rule 401, SCRE; State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009); State v. Crocker, 366 S.C. 394, 408, 621 S.E.2d 890, 898 (Ct. App. 2005).

However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE. In analyzing probative

value, an appellate court “considers the importance of the evidence and the significance of the issues to which the evidence relates.” State v. Gray, 408 S.C. 601, 610, 759 S.E.2d 160, 165 (Ct. App. 2014); see also State v. Torres, 390 S.C. 618, 703 S.E.2d 226 (2010).

To determine the prejudicial effect of offered evidence, an appellate court must look at the entire record. State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007). The result will generally turn on the facts of each case. *Id.* Before an appellate court reverses a case based on erroneous admission or exclusion of evidence, it must find error in the lower court’s ruling and prejudice resulting from that ruling. State v. White, 372 S.C. 364, 373, 642 S.E.2d 607, 611 (Ct. App. 2007).

Here, the suggestive photographs of Frady’s daughter and the cell phone that Appellant allegedly used to take the photographs should not have been admitted into evidence. The State failed to establish an evidentiary predicate. The photographs and cell phone were not relevant to prove the issue of whether Appellant assaulted Frady. Even if the photographs and cell phone were relevant to corroborate Frady’s account of why the argument between Frady and Appellant started, their probative value was substantially outweighed by their prejudicial effect to Appellant.

Given the age of Frady’s daughter at the time, nineteen, and the sexual words written over the photographs, seeing the photographs invited a conviction on an improper basis of the jury believing there was a spurious, improper relationship between Appellant and Frady’s daughter. Further, there is no evidence that the photographs were taken without the daughter’s consent. Frady’s daughter did not testify.

Other than what Frady claimed, there were no phone records or any other evidence presented that confirmed Appellant owned and used the cell phone. There was no evidence

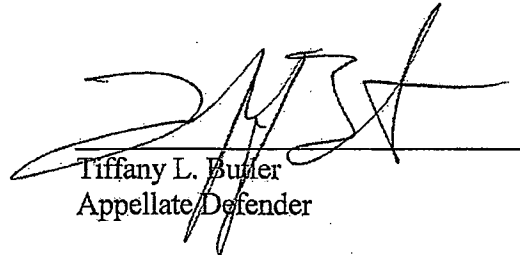
presented to show the jury when the pictures were taken, which was significant because Frady did not turn the phone over to the State until April 2014. The incident allegedly occurred in September 2012, but Frady never mentioned the cell phone or photographs to police.

The photographs had absolutely no probative value, and even if there was, the probative value was substantially outweighed by their prejudicial effect. Because the trial judge admitted them into evidence, Appellant was denied a fair trial.

CONCLUSION

For the foregoing reasons, Appellant Timothy Frady respectfully requests this Court to reverse his conviction and sentence and remand to the lower court for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Butler', is written over a horizontal line.

Tiffany L. Butler
Appellate Defender

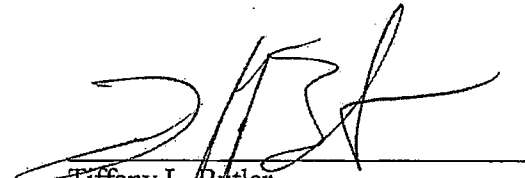
ATTORNEY FOR APPELLANT

This 29th day of June, 2015.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR.

June 29, 2015



Tiffany L. Butler
Appellate Defender

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

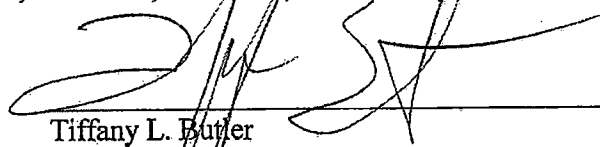
V.

TIMOTHY FRADY,

APPELLANT

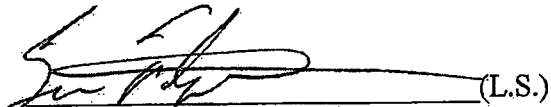
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Sussanah R. Cole, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 29th day of June, 2015.


Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of June, 2015.


(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable Edward B. Cottingham, Circuit Court Judge

Appellate Case No. 2014-001954

THE STATE,

Respondent,

v.

TIMOTHY FRADY,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL**I.**

The trial court judge did not err in allowing the introduction of explicit photographs found on the Appellant's cell phone because the pictures corroborated the victim's testimony and their probative value outweighed any prejudicial impact on the jury.

II.

The trial court did not err in allowing the admission of the cellphone because the proper evidentiary foundation was demonstrated at trial.

III.

Even if the trial court should not have allowed the photographs into evidence, their admission was harmless error, as the jury had substantial additional evidence to corroborate the victim's testimony.

STATEMENT OF THE CASE

Appellant was indicted for criminal domestic violence, third offence, on December 13, 2012, by an Horry County grand jury. (R. pp. 214-15.) The Appellant was found guilty before a jury trial before the Honorable Edward Cottingham. (R. p. 205 line 1) The Appellant was represented by Melinda Allyson Knowles, Esquire and Assistant Solicitor Jennings Scott Hucks represented the State. Judge Cottingham sentenced Appellant to five years imprisonment, suspended to four years imprisonment, with three years of probation (R. p. 209, lines 18-22). Appellant filed a timely Notice of Appeal, and this Appeal follows.

STATEMENT OF FACTS

The victim, Tammi Lynn Frady, and the Appellant, Timothy Leroy Frady, were married in November of 2001. (T p.54, lines 14-18.) At the time of the incident, the Appellant and the victim were both living in the marital home, a mobile home located at [REDACTED] Bush Road, but maintained separate bedrooms. (R. p. 54, lines 1-25 and p. 55, lines 3-4.)

On September 28, 2012, the victim was looking for some missing items and documents that belonged to her, including the title to the mobile home in which the victim and the Appellant were currently living. (R. p. 55, lines 8-12). The title was in her name only. (R. p. 55, line 24). She was also missing some of her pictures. (T. p. 56, line 9.) She found the title in the Appellant's bedroom on a TV stand beside a mattress on which he was sleeping. (R. p. 56, lines 12-13.) At the same time she found the title to the trailer, she also found a cell phone she did not recognize. (R. p. 56, line 15.) She opened the phone and began "pressing buttons." (R. p. 56, lines 19-20.) She then saw the pictures of her youngest daughter, the Appellant's stepdaughter. (R. p. 56, line 25 and p. 57, line 8.) The pictures contained images of the victim's daughter with the stepdaughter's name and explicit language written on top of the pictures.(R. p. 57, lines 11-17). The victim found images of other females on the phone that were of a graphic sexual nature. (R. p. 58, lines 10-11.). After finding the pictures and the title to her home in the Appellant's room, the victim felt "sick." (R. p. 59, lines 2-5.) She sat down in the living room with the title and the cell phone in her hands and was looking at the photos on the phone when Appellant walked in. (R. p. 59, lines 12-15.) Appellant had a bottle of alcohol in his hands. Appellant stared at the victim with the title and phone in her hands, and then walked back to his bedroom. (R. p. 59, lines 19-21.)

When Appellant walked back to his bedroom, the victim hid the title and phone in a baby crib that was set up in anticipation of the birth of her grandchild. (R. p. 60, lines 1-2.) The victim's daughter (the subject of the pictures) was pregnant at the time. (R. p. 60, line 9.)

Appellant returned from his room and the two began arguing over the phone and the title. (R. p. 60, lines 13-19.) The victim refused to return the phone to Appellant, stating that she was going to show the photographs to others so she could show "what kind of a person he really was." (R. p. 60, lines 18-19.) The argument escalated, and the victim, recognizing the signs of Appellant becoming enraged, attempted to get away from Appellant by claiming she needed to get something to drink. (R. p. 61 lines 7-9.) Appellant began choking the victim and claimed that no one would find her body. (R. p. 61, lines 17-21.) The victim was able to break free and get his hands off of her neck. (R. p. 61, lines 24.)

Appellant then went to the other bedroom that contained the crib to look for the items the victim hid. (R. p. 62 lines 1-3). Appellant began searching the room for the items, but the victim was able to grab the title and phone from the crib before Appellant could reach them. (R. p. 62, lines 4-12.) During this altercation, the victim was struck in the face. (R. p. 62, lines 12-13.) She ran out of the room and out of the back door of the house and tried to call 911, but was disconnected. (R. p 62, lines 13-16.)

She stayed outside in the back yard and called again, worried that Appellant would come out of the house into the backyard and find her. (R. p. 62, lines 18-25 and p. 63, lines 5-8.) She was hiding when the officers arrived. (R. p. 63, line 8). The victim refused to come out of hiding and around to the front part of the house until the officers told her that Appellant was detained in the patrol car. (R. p 63, lines 23-25 and p.64, lines

1-3.) The officers then took photos of the victim. (R. p. 64, line 5.) The photographs showed marks under her eye (R. p. 65, line 22-23), red marks and fingerprints on her neck (R. p 66, lines 19-24). The victim delivered the cell phone to the solicitor's office some time later. (R. p. 65, line 1). She claimed she did not turn the phone over to the police on the day of the assault because she "didn't know if they could do anything." (R. p. 90, line 2.) Although she knew the phone was the Appellant's (R. p. 90, lines 23-24.), she was unsure when the photos were taken and if her daughter was underage at the time. (R. p 91, lines 4-7).

Detective Gregory Lent was the responding officer to the 911 call. (R. p 97, lines 2-24.) He found the victim crying and distraught in the back of the residence. (R. p 99, lines 4-5.). Detective Lent noted her injuries to her neck and face. (R. p. 99, lines 14-17.) Detective Lent determined Appellant was the primary aggressor. (R. p. 105, line 2.) Detective Lent noticed the title and cell phone in the victim's hands upon his arrival, but did not take the phone into evidence. (R. p. 108, lines 20-25.) Investigator Ginger Pop was later unable to download the images, but was able to reproduce copies of the images on the cell phone by taking pictures of the images. (R. p. 132, lines 11-15.)

ARGUMENT

I.

The trial court did not err in allowing the introduction of explicit photographs found on Appellant's cell phone because the pictures corroborated the victim's testimony and their probative value was not substantially outweighed by any prejudicial impact on the jury.

Appellant argues that the admission of the cell phone and photographs are not relevant to his CDV charge, and even if so, should have been excluded pursuant to Rule 403, SCRE. The trial court, however, correctly found the photos were relevant because they corroborated the victim's testimony, were probative of the circumstances leading to the assault, and ultimately, were harmless in light of the State's overwhelming evidence of Appellant's guilt.

Broadly speaking, evidence is relevant if it tends to make more or less probable a fact in issue. State v. Huggins, 336 S.C. 200, 205, 519 S.E.2d 574, 576 (1999). Whether evidence is relevant in a criminal prosecution is an issue within the trial judge's discretion. State v. McWee, 322 S.C. 387, 472 S.E.2d 235 (1996). Appellate courts have been highly deferential to the trial judge's discretion. "If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 598 (Ct. App. 2001) *overruled on other grounds by* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

With respect to pictures, "the relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court." State v. Holder, 382 S.C. 278, 290, 676 S.E.2d 690, 697 (2009) (quoting State v. Nance, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996)). Admitting photographs which serve to

corroborate testimony is not an abuse of discretion. State v. Martucci, 380 S.C. 232, 250, 669 S.E.2d 598, 607 (Ct. App. 2008).

The photographs in this case were clearly used to corroborate the victim's testimony of the events leading to the altercation between the victim and the Appellant. The victim testified she was aware that her daughter, the subject of the photographs, had a hostile relationship with Appellant (R. 81, lines 18-25.), and Appellant had tried to "look up under her bedroom door." (R. 81, line 22.) She also testified that discovering these photos made her feel "sick," and that Appellant "saw what she had." (R. p. 59, lines 8 and 17-19.) The phone was mentioned again at trial by Detective Lent, who noticed the victim holding a phone and piece of paper in her hands. (R. 108, lines 22-2). Detective Lent testified the victim stated that Appellant was attempting to take the cell phone from her at the time of the assault. (R. p 109, lines 2-3.) Although the phone was not entered into evidence by the police on the day of the assault, evidence of a cell phone and "a piece of paper" are indeed corroborated by Detective Lent's testimony. The photographs, in addition to the missing title to the mobile home, aid in the jury's understanding of why the victim and Appellant were in conflict. Moreover, the explicit nature of the wording over the photographs of the victim's daughter would reasonably predict that the conflict might become volatile. The pictures also refute the defense's assertion that the allegation was fabricated, by providing physical evidence, which, on its face, provide a reason for the victim's distress. In other words, the cell phone and pictures are relevant because they corroborate the victim's version of events.

The Appellant alleges the photographs were unduly prejudicial because they suggested a "spurious, improper relationship between Appellant" and the victim's daughter. (Initial Brief of Appellant, p. 8.) A prior bad act may be admissible under the

res gestae theory where it is “an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in understanding the context in which the crime occurred. State v. Owens, 346 S.C. 637, 652, 552 S.E.2d 745, 753 (2001). As previously stated, the photographs explain why the victim was upset and why Appellant was angry. They provide clear contextual evidence for the crime.

Given the trial court’s discretion to admit photographic evidence that corroborates testimony at trial, the judge did not err in allowing these photographs on the Appellant’s cell phone to be admitted.

II.

The trial court did not err in allowing the admission of the cellphone because the proper evidentiary foundation was demonstrated at trial.

Appellant argues the trial court should not have allowed the cell phone and photographs into evidence because “the State failed to establish evidentiary predicate.” (Initial Brief of Appellant, p. 8.) At trial, however, the victim testified she identified the cell phone as belonging to Appellant because she found the phone in his room beside his bed and recognized the subject of the photographs. (R. p. 56, lines 12-23.) The victim also identified the cell phone from the phone’s number, which she recognized as Appellant’s. (R. p. 90, lines 22-24.) At trial, she identified State’s Exhibit’s 3 – 9 as the photographs she saw on the cell phone. (R. p. 58, lines 17-21.) Appellant argues that because the police did not take the phone into evidence at the time of the incident, that the evidentiary predicate was not established. Rule 901 states “evidence sufficient to support a finding that the matter in question is what its proponent claims” satisfies the authentication requirement for admissibility. Rule 901(a), SCRE. The victim’s testimony was sufficient to lay the foundation to submit the evidence to the jury. She recognized the photos and identified them as the ones she found on Appellant’s phone on the day of the assault. (R. p. 58, lines 17-21.)

Trial judges have considerable discretion in ruling on the admission or exclusion of evidence, and an appellate court will not reverse a trial judge’s ruling on evidentiary matters absent a clear abuse of that discretion resulting in prejudice to Appellant. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) (“The appellate court reviews a trial judge’s ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great

deference to the trial court.” (emphasis added). In this case, the trial judge correctly used his considerable discretion to allow the cell phone and photographs into evidence when the proper evidentiary foundation was presented by the State.

III.

Even if the trial court should not have allowed the photographs into evidence, their admission was harmless error, as the jury had substantial additional evidence to corroborate the victim's testimony.

Generally, our courts find error harmless beyond a reasonable doubt if it did not contribute to the verdict obtained. State v. Collins, 409 S.C. 524, 537-38, 763 S.E.2d 22, 29 (2014), reh'g denied (Sept. 24, 2014) "To say that an error did not 'contribute' to the ensuing verdict is not, of course, to say that the jury was totally unaware of that feature of the trial...." Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Rather, "[t]o say that an error did not contribute to the verdict is ... to find that error unimportant *in relation to everything else the jury considered on the issue in question*, as revealed in the record." Id. at 166, 420 S.E.2d at 839 (citation omitted) (emphasis added). In Collins, the court also cited State v. Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006), saying error "is harmless where a Appellant's guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached." State v. Collins, 409 S.C. 524, 538, 763 S.E.2d 22, 29-30 (2014), reh'g denied (Sept. 24, 2014).

Even if the trial court erred in admitting the cell phone and photographs into evidence, the error was harmless, as the State provided other conclusive, competent evidence of Appellant's guilt for the jury's consideration. The victim testified Appellant choked her and hit her in the eye. (R. p. 61, line 18 and p. 62, lines 12-13.) Her testimony was corroborated by the Detective Lent, who testified he saw the marks on the victim's face and neck (R. p. 112, lines 15-16), and by the photographs taken of the victim. (R. p. 103, lines 9-14.) The jury also saw the video taken at the time of the incident, and was able to assess the victim's credibility on that basis, as well. (R. 107, lines 7-8.) Further, during deliberations, the jury expressed interest in the whereabouts of the daughter at the

time of the 911 call, the instigator of the 911 call, and Detective Lent's testimony about the marks on the victim's neck. (R. p. 192, lines 1-25 and p. 193, lines 1-2.) These questions suggest what the jury considered important in relation to everything else submitted by the State. Thus, the State's other compelling evidence of Appellant's guilt demonstrated that the jury could reach no other rational conclusion, and the error, if any, was harmless.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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SUSANNAH R. COLE
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ATTORNEYS FOR RESPONDENT

June 16, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable Edward Cottingham, Circuit Court Judge

Appellate Case No. 2014-001954

THE STATE,

Respondent,

v.

TIMOTHY FRADY,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and 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."

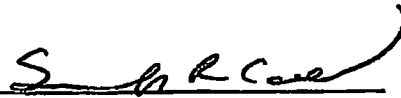
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ATTORNEYS FOR RESPONDENT

June 16, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable Edward Cottingham, Circuit Court Judge

Appellate Case No. 2014-001954

THE STATE,

Respondent,

v.

TIMOTHY FRADY,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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S.C. Commission on Indigent Defense
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I further certify that all parties required by Rule to be served have been served.
This 16th day of June, 2015.


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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Timothy Leroy Frady, Appellant.

Appellate Case No. 2014-001054

Appeal From Horry County
Edward B. Cottingham, Circuit Court Judge

Unpublished Opinion No. 2015-UP-508
Submitted September 1, 2015 – Filed November 4, 2015

AFFIRMED

Appellate Defender Tiffany Lorraine Butler, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Assistant
Attorney General Mary Williams Leddon, and Staff
Attorney Susannah Rawl Cole, all of Columbia; and
Solicitor Jimmy A. Richardson, II, of Conway, for
Respondent.

PER CURIAM: Timothy Leroy Frady appeals his conviction for criminal domestic violence, arguing the trial court erred in admitting several photographs and a cell phone into evidence because they were irrelevant, overly prejudicial, and not properly authenticated. We affirm.

1. The trial court did not err in admitting the photographs into evidence. *See State v. Anderson*, 386 S.C. 120, 126, 687 S.E.2d 35, 38 (2009) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." (internal quotation marks omitted)). First, the trial court did not err in finding the photographs were relevant. *See* Rule 401, SCRE ("'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."); *State v. Holder*, 382 S.C. 278, 290, 676 S.E.2d 690, 697 (2009) ("The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court. If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it." (citation and internal quotation marks omitted)). Second, the trial court properly found the photographs were not overly prejudicial. *See State v. Dial*, 405 S.C. 247, 260, 746 S.E.2d 495, 502 (Ct. App. 2013) ("A trial [court's] decision regarding the comparative probative value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstances." (internal quotation marks omitted)); Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . ."). Third, the trial court did not err in finding the photographs were properly authenticated. *See* Rule 901(a), SCRE (providing authentication is satisfied "by evidence sufficient to support a finding that the matter in question is what its proponent claims"); Rule 901(b)(1) and (4), SCRE (listing as examples of authentication "[t]estimony that a matter is what it is claimed to be" and an item's "[a]pppearance, contents, . . . or other distinctive characteristics, taken in conjunction with circumstances").

2. The trial court did not err in admitting the cell phone into evidence. First, Frady's arguments regarding the cell phone's relevance and prejudicial effect are unpreserved. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]."); *id.* at 142, 587 S.E.2d at 694 ("A party may not argue one ground at trial and an alternate ground on appeal."). Second, the trial court did not err in determining the cell phone was properly authenticated. *See* Rule 901(a), SCRE (providing authentication is satisfied "by

evidence sufficient to support a finding that the matter in question is what its proponent claims"); Rule 901(b)(1) and (4), SCRE (listing as examples of authentication "[t]estimony that a matter is what it is claimed to be" and an item's "[a]pppearance, contents, . . . or other distinctive characteristics, taken in conjunction with circumstances").

AFFIRMED.¹

HUFF, WILLIAMS, and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF HarryTimothy Frady
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

20 15 CP26 8676APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and veified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clr to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exerce care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay threes and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Harry County J
2. Name and location of Court which imposed sentence _____
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012GS2604266
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 05-13-14 5 years Suspended to 4 years
 - (b) with 3 years probation

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ went to trial had Hung Jury Judge over ruled them
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Appeal from Harry county The Honorable Edward B.
- ii. Cottingham, Circuit Court Judge
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. That the Judgment and conviction of the lower Court
- ii. be affirmed.
- iii. _____
- (c) the date of each such result:
- i. may 12 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. none
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Insufficient Counsel

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) She was not prepared for my case.

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? yes (Appeal)

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Appeal Turn down.

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. Horry County Edward B. Cottingham Circuit

ii. Court Judge

iii. _____

iv. _____

(c) the disposition thereof:

i. Affirmed

ii. _____

iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. May-12-15
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- _____
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. melinda Knowles 203 laurel st Conway S.C. 29526
 - ii. Tiffany L Butler 1330 Lady Street Suite 401 Columbia S.C. 29201
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. plea, Court, sentencing
 - ii. Appeal
 - iii. _____

19. State clearly the relief you seek in filing this application:

To Get my Sentencing overturned & charges dropped

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA

County of

VERIFICATION

20 15 CP26 8676

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jim Freedy

SWORN to and subscribed before me this 4th
day of December, 2015.

Norma Bastille (L.S.)
Notary Public

My Commission Expires: 10-16-2016

2015 DEC 10 AM 8:10
CLERK OF COURT

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

20 15 CP26 8676

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Tim Fiedt
Applicant

SWORN or affirmed to and subscribed before me this

4th day of December, 2015

Norma Bantille
Notary Public

My Commission Expires: 10-16-2016

2015 DEC 10 AM 8:10
CLERK OF COURT
HUGGINS

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
OF THE FIFTEENTH JUDICIAL CIRCUIT

Timothy L. Frady,
S.C.D.C. No. 351671,

Case No.: 2015-CP-26-8676

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

In response to Applicant's post-conviction relief application filed December 10, 2015, Respondent would respectfully show this Court:

I.

Applicant is presently incarcerated with the South Carolina Department of Corrections pursuant to the Horry County Clerk of Court's orders of commitment. The Horry County Grand Jury indicted the Applicant at the December 2012 term for criminal domestic violence, 3rd offense (2012-GS-26-4266). Melinda A. Knowles, Esquire, represented Applicant.

The case proceeded to a jury trial on May 12, 2014. On May 13, 2014, the Honorable Edward B. Cottingham sentenced Applicant to five (5) years confinement, suspended to four (4) years of active confinement and three (3) years of probation.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Tiffany L. Butler, Esquire. By opinion filed November 4, 2015, the South Carolina Court of Appeals affirmed Applicant's conviction. State v. Frady, Appellate Case No. 2014-001054 (filed November, 4, 2015).

II.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective Assistance of Counsel.

Respondent denies Applicant is entitled to relief on this claim, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this return and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate record, and the records of this action. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. Respondent asserts Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

Respondent submits Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE having made its Return, Respondent requests that a hearing be held and counsel appointed to represent Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BULCHOZ
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

CAITLIN BAZAN HASTINGS
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

December 15th, 2016

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

TIMOTHY L. FRADY, 351671,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

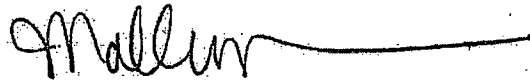
2015-CP-26-8676

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. James K. Falk, Esquire
 Falk Law Firm, LLC
 PO Box 1058
 Charleston, SC 29402

DATED this 15th day of December, 2016.



Mallory Morris, Legal Assistant
 For Respondent

1

2 State of South Carolina) Court of Common Pleas
3 County of Horry) 2015-CP-26-08676

4

5

6 Timothy L. Frady)

7

vs.)

Transcript of Record

8

State of South Carolina)

9

10

November 28th, 2017

11

Conway, South Carolina

12

BEFORE:

13

Honorable William H. Seals, Judge.

14

APPEARANCES:

15

James K. Falk, Esq.

16

Attorney for the Applicant

17

Johnny E. James, Jr., Esq.

18

Attorney for the State

19

20

21

22

Teresa J. F. Bautz, RPR
Official Court Reporter

23

24

25

I N D E X

WITNESS	DIR	CROSS	RED	REC
Melissa Knowles				
Mr. Falk	5	--	--	--
Mr. James	--	--	--	--

E X H I B I T S

NO.	DESCRIPTION	ID	EV
No exhibits submitted.			

Exhibits retained by Clerk of Court.

1 (WHEREUPON, the hearing commenced at approximately
2 1:51 p.m.)

3 THE COURT: We're ready.

4 MR. JAMES: If it may please the Court?

5 THE COURT: Yes, sir.

6 MR. JAMES: The next matter is Timothy Frady
7 versus State of South Carolina, Docket No.
8 2015-CP-26-8676. Mr. Frady was indicted during the
9 December 2012 term of the Horry County Grand Jury for
10 criminal domestic violence, third or subsequent
11 offense. He was represented by Ms. Melinda Knowles.

12 On May 12th, 2014, Mr. Frady proceeded to a jury
13 trial before the Honorable Edward B. Cottingham, where
14 he was convicted as indicted. Judge Cottingham
15 sentenced Mr. Frady to five years in prison, suspended
16 upon the service of four years imprisonment and three
17 years probation.

18 A notice of appeal was filed and an appeal was
19 perfected on Mr. Frady's behalf. Following briefing
20 and oral argument, the South Carolina Court of Appeals
21 affirmed Mr. Frady's conviction and sentence. The
22 remittitur was sent on November 20, 2015.

23 On June 2nd, 2015, Mr. Smith [sic] filed an
24 application for post-conviction relief alleging that he
25 was being held in custody unlawfully based on

1 allegations that counsel was ineffective for failing to
2 prepare his case for file.

3 Your Honor, upon personal conversation with
4 opposing counsel yesterday, the State's understanding
5 of the allegations they are proceeding upon today
6 narrows it down to ineffective assistance of counsel
7 for failure to object to the admissibility of the cell
8 phone records based upon their relevance and
9 prejudicial effect, and ineffective assistance of
10 counsel for failing to argue consistent with Riley v.
11 California. And the citation for that case, Your
12 Honor, is -- well, right now, all I have is 134 S
13 Court, 2473. And that case came down June 25th, 2014.

14 Your Honor, Mr. Frady is present here today, is
15 not in custody, and he is represented by Mr. Jim Falk.
16 All of that said, I will concede the floor to opposing
17 counsel.

18 THE COURT: All right. Mr. Falk.

19 MR. FALK: Yeah, I think that accurately states
20 our arguments. It's not necessarily cell phone
21 records, it's photographs that were taken from the cell
22 phone, but...

23 THE COURT: Okay. All right.

24 MR. FALK: And at this time, if we are ready to go
25 forward, we will call his trial counsel to the stand.

1 THE COURT: Okay.

2 MR. FALK: Ms. Knowles.

3 MELISSA KNOWLES, after being duly sworn, testified
4 as follows:

5 THE CLERK: You can have a seat. State your name.

6 THE WITNESS: Okay. Melissa Knowles. Last name
7 is K-N-O-W-L-E-S..

8 DIRECT EXAMINATION

9 BY MR. FALK:

10 Q Ms. Knowles, if I stand here, can you hear me?

11 A Yes.

12 Q How did you come to be appointed to represent
13 Mr. Frady in this case?

14 A At the time that I was appointed, I was actually
15 serving in the capacity as a public defender for Horry
16 County, so I was appointed in that way.

17 Q And how long had you been a public defender?

18 A I started in 2007. And this case was in 2014, so
19 about seven years.

20 Q Okay. I've had an opportunity to read the
21 transcript. Can you tell us about the -- were there
22 some photographs that were an issue in this case?

23 A Yes, there were. Go ahead.

24 Q And can you describe -- what's your recollection
25 of the photographs?

MELINDA KNOWLES-DIRECT BY MR. FALK

6

1 A My recollection of the photographs at issue were
2 that they were of Mr. Frady's then stepdaughter, she --
3 it was compromising photos. She, I don't believe, was
4 living in the home that Mr. Frady shared with his then
5 wife who was the victim in this case.

6 But needless to say, the photographs were on a
7 cell phone, and it could not be determined. And during
8 the course of the trial, no evidence was presented that
9 connected Mr. Frady to the phone that these photographs
10 were on.

11 Q And was there some -- the daughter, she was 18,
12 19?

13 A Yes. She was of age, yeah.

14 Q Okay. And without using the term, there was maybe
15 some disparaging titles that were put on the...

16 A I believe so.

17 Q Or referring to parts of a female's anatomy?

18 A Yes.

19 Q And naming the -- naming -- her name was Amber; is
20 that your recollection?

21 A I do not recall her name. I just know that it was
22 his stepdaughter. Because, like I said, this was some
23 years ago.

24 Q We could obviously look at the transcript, but
25 maybe the title said the stepdaughter's name, and then

1 this particular part of the female anatomy?

2 A It might have.

3 Q Okay. And what was the relevance of those
4 photographs regarding the case against Mr. Frady?

5 A The State argued that there was some sort of
6 argument over that cell phone. Mrs. Frady uncovered
7 the cell phone and the photographs that were on it and
8 confronted Mr. Frady, I believe, about it. And that's
9 what the argument, you know, was over.

10 MR. FALK: May I approach the witness?

11 THE COURT: Yes.

12 Q Do you have a copy of the transcript there?

13 A I do.

14 Q Can you pull it to page 57.

15 MR. FALK: Your Honor, I'm on page 57 of the
16 transcript.

17 THE COURT: All right.

18 Q Lines 11 through 17, if you could just read those.
19 I believe at that time that's Tammy Frady's description
20 of these photographs.

21 A Yes, it appears so.

22 Q Does that sort of refresh your recollection of
23 what the photographs were about?

24 A Yes.

25 Q And did the State need to prove -- to enter those

MELINDA KNOWLES-DIRECT BY MR. FALK

8

1 photographs in order to prove -- possession of those
2 photographs was not an element of the offense of
3 criminal domestic violence; was it?

4 A No, sir. And to that effect, I actually made a
5 pretrial motion to suppress this evidence here. And
6 that motion was denied.

7 Q When was that?

8 A That was done the day of trial.

9 Q It would appear that it was not on the record?

10 A It was on the record. If you will turn to page
11 33. I termed it a motion to exclude, but line 21
12 through --

13 Q What was the basis for excluding or suppressing
14 them?

15 A If you turn to the next page, lines one through
16 four, I argued that the photos were overly prejudicial
17 and irrelevant to the charge. I also questioned the
18 authenticity of the photos.

19 Q And what did the Court...

20 A The Court overruled and allowed the State to enter
21 those.

22 Q When they were that -- and so what were the -- I'm
23 sorry, so what was the grounds for your objection?

24 A That the photos were overly prejudicial and
25 irrelevant to the charge for --

1 Q A 402, 403 kind of objection?

2 A Yes.

3 Q And you also had questions about the
4 authentication?

5 A Right.

6 Q And that was made at a motion in limine?

7 A Yes, sir.

8 Q Prior to?

9 A Yes, sir.

10 Q And then there was testimony that took place; is
11 that correct?

12 A Yes, sir.

13 Q And so when the photographs got admitted, did you
14 object to them?

15 A Yes, sir, I did.

16 Q As I'm looking at page 133, is that...

17 A Yes, sir.

18 Q And the grounds for your objection there would be
19 authentication?

20 A Yes, sir.

21 Q Did you renew your objection on the grounds of the
22 402, 403 relevance?

23 A I believe that -- I do not see where it was
24 renewed at that time. But I did argue that it could
25 not -- the photos could not be authenticated.

1 Q Okay. But would you agree that at least by
2 looking at the record, it does not appear that you
3 renewed your objection based on whether or not the
4 prohibitive value was outweighed by the fact of unfair
5 prejudice?

6 A That would be a fair statement.

7 Q Thank you. Did you consider -- but would you
8 agree that those photographs were prejudicial to
9 Mr. Frady?

10 A I certainly would agree that they -- yes, yes, I
11 would say that.

12 Q Because they would kind of paint Mr. Frady in a
13 bad light between some of the jurors?

14 A And they were irrelevant, yes.

15 Q And the fact that who's this guy that's got these
16 sexy pictures of his stepdaughter on his phone?

17 MR. JAMES: Objection, leading.

18 THE COURT: Sustained.

19 Q What were your concerns if the jury saw those
20 photographs?

21 A That it might inflame the jury. They might lose
22 focus on what we were really there for.

23 Q Okay. Can you tell me how the photographs got
24 into the possession of the solicitor in this case.

25 A It was my understanding that they were turned --

1 that the phone was turned over that had these photos
2 almost two years after the incident by Mrs. Frady. And
3 I'm not sure if she gave them to the solicitor's
4 investigator, or I don't recall or if she turned them
5 over to law enforcement. I just know it was sometime
6 after the incident that they were turned over.

7 Q And the photos were apparently on Mr. Frady's
8 phone; is that correct?

9 A Yes. Again, they could not make any connection
10 during the trial that this was, in fact, Mr. Frady's
11 cell phone.

12 Q Did Mrs. Frady make a representation that it was
13 Mr. Frady's cell phone?

14 A She did say that.

15 Q So when the solicitor's office had the cell phone,
16 they thought that they had Mr. Frady's cell phone?

17 A I guess so, yes.

18 Q And then, they went on the cell phone and
19 downloaded -- and the testimony in this case, can you
20 look at page 132.

21 A Sure. Okay.

22 Q So on page 132, lines 11 through 15.

23 A Um-hum.

24 Q So the phones went back with Ginger Popp, who was
25 the forensic investigator in the case?

1 A If that's what -- it appears, yes, based upon --

2 Q And so that she downloaded the pictures off of the
3 phone; is that correct?

4 A That's what it seems, um-hum.

5 Q Did she have a warrant?

6 A Not to my knowledge, no.

7 Q Did you consider a possibility of suppressing the
8 introduction of the photos based on the fact that they
9 were recovered without a warrant?

10 A No, I did not consider that. I was more focussed
11 on the other arguments.

12 Q If you could have put forth an argument that you
13 would have had a -- your argument was based on
14 evidentiary issues?

15 A Yes.

16 Q 402, 403?

17 A Yes.

18 Q But he also potentially had a constitutional right
19 to privacy in his cell phone; is that correct? I'm
20 saying potentially.

21 A Potentially, yes.

22 Q So that would have been an additional ground to
23 raise; is that correct?

24 A Yes, it would have been.

25 Q Now, certainly I'm not holding you to be

1 clairvoyant, but are you familiar with the United
2 States Supreme Court case in Riley versus California?

3 A I am.

4 Q And what's your understanding of that case?

5 A My understanding of that case is that law
6 enforcement needs to have an actual search warrant
7 before they search cell phone and download data from
8 that.

9 Q Now, Riley was argued on April 29th, 2014, which
10 was three weeks after April -- let me get this right,
11 yeah, three weeks before this case went to trial, then
12 it was decided on June 25th which is after the case
13 went to trial.

14 A Right.

15 Q But there also were appellate court decisions,
16 they are United States Circuit Court opinions that were
17 part of the Riley decision?

18 A Um-hum.

19 Q And, I mean, did you look -- did you consider
20 whether or not you could make an argument to try and
21 suppress the evidence?

22 A Again, I thought that our argument of it being
23 overly prejudicial and irrelevant would be enough.
24 But, you know, it wasn't in this case.

25 Q Okay. Would it have -- was it a -- just tell me,

MELINDA KNOWLES-DIRECT BY MR. FALK

14

1 is it a trial strategy decision not to have tried to
2 argue to suppress them based on a violation of a right
3 to privacy?

4 A I would assume so, yes, it would be -- would have
5 been a trial strategy just --

6 Q It was your decision not to -- I mean, you
7 consciously decided not to try and suppress them based
8 on they were a warrantless search of his property?

9 A Right. Because my arguments were more focussed on
10 the authentication issues that were present as well as
11 the overly prejudicial argument, the 403.

12 Q Well, how would have asserting additional grounds
13 have taken away from that argument?

14 A I mean, looking back, I probably should have. But
15 again, you know, hindsight is always 20/20.

16 Q Sure, sure. Without putting words in your mouth,
17 are you saying you focused on an issue you thought was
18 good?

19 A Correct.

20 Q And you thought that was enough?

21 A Correct.

22 Q But you're not saying you consciously decided
23 that, I don't want to raise another ground?

24 A Right, right.

25 Q Okay, okay.

1 A I mean, yeah, I did not -- I certainly didn't want
2 to do anything that would hurt Mr. Frady's case in any
3 way, I wanted to help him. So, you know, anything that
4 I felt like was relevant at the time and were good
5 arguments, I raised those arguments.

6 Q Okay. And you're familiar with the recent South
7 Carolina Supreme Court case that actually says that in
8 South Carolina the right to privacy in some instances
9 actually is a greater right to privacy than is found in
10 the Fourth Amendment?

11 A Um-hum.

12 Q Did you ever have a chance to look at opinion in
13 this case, the Court of Appeals opinion?

14 A I did.

15 Q And did you see in the opinion in paragraph two of
16 the opinion, numerical paragraph two, where they say
17 that the issues as far as the 402, 403, was not
18 preserved, the relevancy issue was not preserved?

19 A I don't know that I have that in front of me right
20 now.

21 MR. FALK: May I approach?

22 A Sure. Yeah, I'll take a look at what you have.

23 MR. JAMES: I have a physical copy if you want to
24 use in paper.

25 MR. FALK: Okay.

MELINDA KNOWLES-DIRECT BY MR. FALK

16

1 Q It's right there (indicating).

2 A I do see what you're referring to.

3 Q Okay. And that indicates that that issue was
4 raised in the brief as far as the relevancy. But that
5 the Court of Appeals said that the issue was not
6 preserved for review.

7 A I see that. Again, I mean, I would disagree --

8 Q Of course, yeah.

9 A -- just based upon what's in the trial transcript.

10 Q I'll grab that back from you.

11 MR. FALK: One moment, Your Honor.

12 (Discussion off the record.)

13 MR. FALK: Nothing further, Your Honor.

14 THE COURT: All right. State?

15 MR. JAMES: May I beg a moment's indulgence, Your
16 Honor. I have no questions for this witness, Your
17 Honor.

18 THE COURT: All right. You have a good day.

19 THE WITNESS: Thank you.

20 (Witness excused.)

21 THE COURT: Call your next witness.

22 MR. FALK: We have no further witnesses.

23 THE COURT: All right. Anything from the State?

24 MR. JAMES: We have no witnesses, Your Honor.

25 THE COURT: All right.

1 MR. FALK: Can I summarize my points?

2 THE COURT: Go ahead.

3 MR. FALK: Your Honor, I think we heard testimony
4 from his trial counsel that these photographs were
5 potentially inflammatory. She described the
6 photographs, they're described in the record, and...

7 THE COURT: That's why she made the motion in
8 limine.

9 MR. FALK: She made the motion in limine. But
10 then the motion in limine was not preserved. The fact
11 that it was -- the issue was briefed in the -- the
12 issue was presented to the Court of Appeals, the Court
13 of Appeals said the issue was not preserved.

14 THE COURT: Right.

15 MR. FALK: So, I mean, I do think that South
16 Carolina has extremely difficult issue preservation
17 rules, but the law is what it is and that's what we're
18 required to practice by. And I do think that this was
19 not just some piece of evidence, this was --

20 THE COURT: Did Judge Cottingham weigh the
21 prejudicial effect against its probative value in the
22 record?

23 MR. FALK: It's not in the record. And I believe
24 there was probably some conversations in chambers.

25 THE COURT: What page is that on, 33?

1 MR. JAMES: There is some back and forth
2 conversation about it in front of the Court at the
3 preliminary hearing, pages 34 through 37.

4 THE COURT: Okay.

5 MR. JAMES: It starts on 33, but the meat of it
6 starts on 34.

7 THE COURT: Go ahead, Mr. Falk, anything else you
8 want to say?

9 MR. FALK: Your Honor, I'm certainly not trying to
10 hold trial counsel responsible for a United States
11 Supreme Court decision that came out a month after the
12 trial. But still, it was built on case law that
13 existed prior to this. And there was a case, the
14 decision in Riley was a combination of two cases, one
15 out of California and one out of Massachusetts.

16 And the Court of Appeals in Massachusetts found
17 that the State in that case had violated the person's
18 right of privacy by taking the data off the cell phone.
19 In the California case, they surprisingly found that
20 there wasn't. So, I mean, it's not an issue that was
21 completely new to the bar and possibly would have been
22 another ground to have raised as a basis for keeping
23 these photographs out.

24 And especially because -- and I've lost the name
25 of the case, what was it, Counts? What's the new knock

1 and announce case that -- there's a recent Supreme
2 Court case.

3 MR. JAMES: Are you referring to Counts?

4 MR. FALK: Counts, Counts. And I'm referring to
5 the South Carolina Supreme Court case in Counts where
6 it did recognize that South Carolina's right of privacy
7 as found in the South Carolina Constitution goes beyond
8 the right of privacy that is, you know, crafted out of
9 the Fourth Amendment. So on that basis you think that
10 the photographs are prejudicial.

11 And also, if you consider the fact that this jury
12 first said that they were hung, and then they had to
13 come back and deliberate further, you can infer from
14 that that this was possibly a close case.

15 THE COURT: All right. Mr. James.

16 MR. JAMES: Your Honor, if I may, I should
17 actually like to address the allegations in reverse
18 order and start with a bit of a personal story that I
19 think is appropriate to kind of framing this correctly.

20 A friend of mine recently complained to me that
21 she has finally made the staged decision to put a
22 password on her own cell phone because she has gotten
23 into the bad habit of, whenever being out and about and
24 being social, of letting other people hold her phone
25 only to discover in the next day in a clearer mind that

1 the person to whom she has handed that phone has gone
2 off and sent provocative texts to everybody that she
3 knows.

4 And I bring that to the Court's attention because,
5 one, not only does Riley versus California occur a
6 month after trial, but this own State case law has
7 found that the right to privacy that one has in a phone
8 can be abandoned by the time police search it. And in
9 this case the phone was delivered to the police, not
10 because the police went searching through the
11 Applicant's house or his person but because Ms. Frady
12 delivered the phone to them.

13 However Ms. Frady got ahold of that phone,
14 Mr. Frady abandoned his right to privacy to anything
15 and everything in and on that phone by whatever means
16 he transmitted it to Ms. Frady. And, Your Honor, the
17 case that I am referring to here is State versus --

18 THE COURT: Whose phone was it; was it Ms. Frady's
19 phone?

20 MR. JAMES: At trial it was purported to be Mr.
21 Frady's phone. Ms. Frady, however, is the one who
22 delivered it to law enforcement, and then law
23 enforcement went and searched it.

24 So, Your Honor, the case to which I'm referring is
25 State versus Brown, 414 South Carolina 14, 776 S.E.2d

1 917. That is a Court of Appeals case from September
2 23rd, 2015. And in full disclosure, that case is
3 presently on certiorari before the Supreme Court.

4 Furthermore, Your Honor, as to the ineffective
5 assistance of counsel for failure to object to the cell
6 phone records based on irrelevance and prejudicial
7 effect, Your Honor, counsel did object in a preliminary
8 hearing. She did renew her objection at least to
9 authenticity at or about page 132 through 134 and got a
10 ruling on that.

11 And she thereafter again renewed her objection
12 when the photographs themselves were actually admitted
13 into evidence at 137, quote, "Your Honor, I object for
14 the same reason as I objected to earlier."

15 Your Honor, the State's position is that renewed
16 the prior objection. And even if it did not, Your
17 Honor, the relevance of those photographs to the case
18 were not -- excuse me, were not outweighed by any undue
19 prejudicial effect for many of the same reasons that
20 the State argued in its final brief on direct appeal,
21 and very specifically that they helped to corroborate
22 the victim's testimony, were probative of the
23 circumstances leading to the assault, and ultimately
24 that their admission is harmless in light of the
25 State's overwhelming evidence against Mr. Frady.

1 And so, Your Honor, for all of these reasons, the
2 State respectfully requests that relief be denied in
3 this case.

4 THE COURT: All right. I'll take it under
5 advisement and let you know.

6 MR. JAMES: Thank you, Your Honor.

7 THE COURT: Thank you.

8 (WHEREUPON, the hearing concluded at approximately
9 2:18 p.m.)

10 (End of Transcript of Record)

11

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1 CERTIFICATE OF REPORTER

2

3 STATE OF SOUTH CAROLINA)
4 COUNTY OF HORRY)

5

6 I, TERESA J.F. BAUTZ, Official Court
7 Reporter for the Fifteenth Judicial Circuit of the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete Transcript
10 of Record of the proceedings had and evidence
11 introduced in the trial of the captioned case, relative
12 to appeal, in the Court of Common Pleas for Horry
13 County, South Carolina, on the 10th day of June, 2018.

14

15 I FURTHER CERTIFY that I am neither of
16 kin, counsel nor interest to any party hereto.

17

18

19

S/Teresa J. F. Bautz

20

TERESA J.F. BAUTZ, RPR
Official Court Reporter

21

22

23

24

25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
Timothy L. Frady,	)	
Applicant,	)	Case No.: 2015-CP-26-08676
v.	)	
State of South Carolina,	)	ORDER OF DISMISSAL
Respondent.	)	

HORRY COUNTY
 2018 FEB 28 PM 12:45
 HENRY J. EVANS
 CLERK OF COURT
 HORRY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Timothy L. Frady ("Applicant") on December 10, 2015. Respondent made its return on or about December 15, 2016. The Court convened an evidentiary hearing into the matter on Tuesday, November 28, 2017, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by James K. Falk, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant's trial counsel, Melinda A. Knowles, Esq. ("Counsel") testified at the evidentiary hearing. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant was previously confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the December 2012 term of the Horry County Grand Jury for criminal domestic violence, third or subsequent offense (2012-GS-26-04266). Melinda A. Knowles, Esq. represented Applicant,

and J. Scott Hucks, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On May 12, 2014, Applicant proceeded to trial before the Honorable Edward B. Cottingham and a jury. The jury found Applicant guilty as indicted on May 13, 2014. Judge Cottingham sentenced Applicant to imprisonment for a term of five years, suspended to four years' incarceration and three years' probation.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Tiffany L. Butler, Esq., who raised the following issue:

Whether the trial judge erred by admitting a cell phone and photographs that Appellant allegedly took of Tammi Frady's adult daughter, Appellant's step-daughter, where Frady gave the phone to the solicitor almost two years after Appellant's arrest, the photographs were not relevant to the CDV charge, and even if they were, they should have been excluded under Rule 403, SCRE, the State offered no evidence that the cell phone belonged to Appellant, and there was no evidence presented of when the photographs were taken?

By opinion decided November 4, 2015, the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Frady, Op. No. 2015-UP-508 (S.C. Ct. App. filed Nov. 4, 2015). The Remittitur was issued on November 20, 2015.

Present Application

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Insufficient Counsel"
 - a. "She was not prepared for my case."

At the evidentiary hearing, Applicant proceeded forward instead on allegations that trial counsel was ineffective for (1) failing to object to the introduction of Applicant's cell phone records based on relevance and prejudicial effect, and (2) failing to object on the basis of Riley v. California, 134 S.Ct. 2473 (2014).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at

689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry at 117-18, 386 S.E.2d at 625 (citing Strickland at 694).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

1. Failure to Object and Argue Relevance, Prejudicial Effect

Applicant alleges counsel was ineffective for failing to object and argue against the introduction photographs taken from his personal cell phone.

Immediately prior to trial, Counsel made a motion to exclude photographs of Applicant’s 19-year-old daughter taken from Applicant’s phone by law enforcement. (Tr. 33-34.) Counsel argued the photos were overly prejudicial to Applicant, irrelevant to the charge, and of

questionable authenticity. (Tr. 34.) The State explained the argument leading to criminal domestic violence started due to the victim's discovery of Applicant's phone and the pictures thereon. (Tr. 34-35.) Counsel argued against the authenticity of the photos on the grounds that they were not taken into evidence at the time of the argument; rather, the victim provided Applicant's phone to law enforcement at a later date. (Tr. 35-36.) Law enforcement at that time "dumped that phone," and thereby acquired the photographs. (Tr. 36, ll. 1-2.) Judge Cottingham ruled: "If you have her [the victim's] testimony that the fight erupted over that issue, and that this is his phone, and that you've got another witness to say he got those pictures off the phone I'm going to admit it." (Tr. ll. 9-12.)

During trial, the State elicited testimony from the victim that her argument with Applicant began after Applicant returned home and found the victim looking through the pictures on his cell phone. (Tr. 57-63.) The victim identified the pictures, but the State did not introduce them into evidence at that time. (Tr. 57-58.) Gregory Lent, of the Horry County Police Department, testified that he did not take the cell phone into evidence while responding to the scene because he "was mostly concerned with the injuries that she had incurred. That was my main focus at that time." Tr. 108-09. Lent further explained on cross-examination that there was no mention of photos at the time of the crime. (Tr. 117-18.) Investigator Ginger Pop, of the Fifteenth Circuit Solicitor's Office, testified to receiving a cell phone provided by the victim, who indicated inappropriate pictures were on the phone. (Tr. 132-33.) Counsel objected to the introduction of the cell phone, arguing the phone could not be authenticated, as it was not turned over until "twenty-one months after this alleged incident took place." (Tr. 133, ll. 7-14.) Counsel renewed her earlier objection as the photographs from the phone were separately introduced. (Tr. 137, ll. 1-8).

At the evidentiary hearing, Counsel testified she felt her strongest arguments against the admissibility of the phone were on grounds of authenticity and Rule 403, SCRE. Counsel testified she renewed her objection when the photographs were admitted, focusing on authentication, but was not sure if she renewed her pre-trial motion as it pertained to relevance. Counsel testified she disagreed with the holding of the Court of Appeals and affirmed her belief the issue was properly preserved for appellate review.

The Court finds no deficiency on the part of Counsel, nor prejudice therefrom. Applicant's allegations, as set forth orally at the outset of the evidentiary hearing, pertains to the photographs of the cell phone—not the cell phone itself. A thorough review of the trial transcript and appellate filings shows that Counsel did properly object to the admissibility of the photographs on the basis of relevance and Rule 403. The first section of the Court of Appeals' opinion found that "the trial court did not err in finding the photographs were relevant[.]" and further found [the trial court properly found the photographs were not overly prejudicial." Frad at 2. The question of the admissibility of the cell phone *itself*, and whether or not Counsel preserved that issue for appeal, is of no consequence to the admissibility of its *contents* and Counsel's arguments thereto.¹ Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

2. Failure to Object on Grounds of Warrantless Cell Phone Search

Applicant also argues Counsel was ineffective for failing to object to the admission of his cell phone's contents as the result of a unconstitutionally warrantless cell phone search. In an opinion issued June 25, 2014, a little over a month after Applicant's trial, the United States

¹ Even if Applicant had raised the issue of Counsel's failure to preserve for appellate review the relevance and prejudicial effect of the physical cell phone, as opposed to its contents, this Court cannot conceive of how the admission of a hunk of glass, plastic, and silicon could be unduly prejudicial. It was certainly relevant as the vessel of photographs which led to the argument which resulted in the victim's injuries at the hands of Applicant. The phone plays a central role in the victim's testimony—she was trying to hide it from Applicant.

Supreme Court held that, in conducting a search incident to arrest, law enforcement must generally obtain a warrant before searching information stored or accessible on a cell phone. Riley v. California, -- U.S. ---, 134 S.Ct. 2473 (2014). However, an attorney is not required to be clairvoyant, and cannot be expected in the course of regular competence to anticipate or discover changes in the law not yet come to pass at the time of trial. Thornes v. State, 310 S.C. 306, 309-10, 426 S.E.2d 764, 765-66 (1993)(citations omitted).

At the evidentiary hearing, Counsel explained she focused on what she felt were her strongest arguments against the admissibility of the photographs—authenticity and Rule 403. Counsel noted that Riley did not come down until after Applicant's trial, but conceded she should have argued on Fourth Amendment grounds.

The Court finds no deficiency on the part of Counsel, nor prejudice therefrom. Riley was an open question at the time of trial, and Counsel could not be held to have expected its outcome at the United States Supreme Court. Furthermore, Counsel articulated a valid trial strategy of focusing on what she felt were her most compelling arguments against the admissibility of the photographs. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

[Conclusion and signature on following page]

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

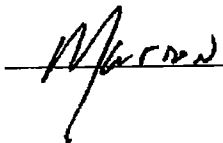
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 15 day of Feb, 2018.


 WILLIAM M. SEALS, JR.
 Presiding Judge
 Fifteenth Judicial Circuit

 _____, South Carolina