

STATE OF SOUTH CAROLINA

 ORIGINAL

In The Court of Appeals

APPEAL FROM PICKENS COUNTY

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY LEVERN COBB,

APPELLANT

RECORD ON APPEAL

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**** STATE'S EXHIBITS 4 AND 5 (CD'S OF 911 CALLS) ARE BEING TRANSPORTED TO THE COURT OF APPEALS.****

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,

PLAINTIFF,

-VS-

TIMOTHY LEVERN COBB,

DEFENDANT.

NA2010-GS-39-01804

OCTOBER 24, 2011

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

BAKER CLEVELAND, ESQUIRE
ATTORNEY FOR THE STATE

STEVEN ALEXANDER, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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STATE'S EXHIBITS

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Juror #	Name	Race	Sex	Strikes			Accept
				Ct	Pl	De	
27	Davis, Rebecca C	W	F				x
99	Robinson, Ruby M	W	F			x	
3	Bagwell, Rebecca P	W	F				x
68	Jackson, Tynesha D	B	F				x
130	Youssef, Jean G	W	F				x
67	Jackson, Sweetie	B	F				x
86	Padgett, Anthony A	W	M				x
90	Patterson, Danny M	W	M				x
59	Hodge, Charles W	W	M				x
109	Smith, Michael W	W	M		x		
80	Moreland, Bishop Leslie A	W	F			x	
108	Smith, Lynn M	W	F		x		
112	Splady, Sue G	W	F				x
16	Cantrell, Dawn F	W	F			x	
62	Howard, Ronnie C	W	M		x		
117	Thomas, Emily A	W	F				x
24	Dacus, Allen H	W	M				x
19	Childress, Doris M	W	F			x	
71	Clamovich, Argelis D	W	F				x
74	Martinez-Dawson, Rose	W	F			x	
116	Taylor, Charles W	W	M				x

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1 October 24, 2011

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had.)

4 (WHEREUPON, State Exhibit Numbers 1, 2 and 3 were
5 marked for identification.)

6 THE COURT: Good morning, ladies and gentlemen.
7 I'm Eddie Welmaker. I'm glad to be working here in Pickens
8 this week. We're conducting a term of what's called
9 General Sessions Court or criminal court where the State of
10 South Carolina has brought certain charges against
11 individuals. We need some jurors to determine the facts of
12 these cases. We need to get your qualified to see if
13 you're eligible to serve as a juror this week.

14 I know you're here at a great inconvenience to you.
15 We're going to do everything we can to accommodate your
16 time so that when you're not actually serving on a jury,
17 you can go about your activities, your work, your other
18 activities that you have. You've had a chance, I'm sure
19 already to meet our fine Clerk of Court, Mr. Welborn, and
20 his staff, Ms. Garrett and others will be here to assist
21 you during the week. The bailiffs are here to assist you
22 in anyway that they can.

23 We have several things we need to take care of this
24 morning to determine your qualification. The first thing
25 we're going to do is have a roll call. In a few moments

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1 the clerk will call your name. I'll ask if you would,
2 please, stand at that time and give us some basic
3 information about yourself. We need to know where you
4 work. Some of you may be out of the workforce now because
5 of a recent layoff. Some of you may have been disabled for
6 some reason from the workforce or recently retired. If
7 you've recently left the workforce, please tell us where
8 you worked before leaving work. Some of you may be self-
9 employed. If that's the case, please tell us the type of
10 work you do as a self-employed individual. For those of
11 you married, we would appreciate the same information about
12 your husband or your wife, where he or she works and the
13 nature of that work if self-employed.

14 After we get that information I'll need to ask you
15 some questions to determine your eligibility to serve and
16 I'll explain that in a little more detail as we go along as
17 to the statutory requirements. We want to make sure that
18 we have accurate information from everyone, so I'll ask
19 when you stand -- we have a beautiful courtroom, but we
20 have a very high ceiling and sometimes your voices don't
21 carry as well as they need to. Hopefully you can hear me
22 speaking. And if you can hear me speaking then we need the
23 same volume for you to speak back to me and to the clerk to
24 give us that information. We also want to make sure the
25 information is accurate, so the Clerk is going to

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1 administer an oath to you, after which he'll call the roll,
2 and again, if you'll give us the basic information of where
3 you work, where your spouse works, we'll then proceed from
4 there.

5 Mr. Clerk.

6 (WHEREUPON, the jury panel was duly sworn, after which
7 roll call was commenced and then panel voir dire.)

8 THE COURT: This case that we have on our docket
9 today, I have before me an indictment that states that Mr.
10 Timothy Levern Cobb here in Pickens County on or about
11 January the 8th, 2010, with malice aforethought, committed
12 an assault upon a Rosetta Brown and had the present ability
13 to complete that act. Mr. Cobb has been charged with the
14 offense of assault with intent to kill. He's entered a
15 plea of not guilty to this charge. By entering a plea of
16 not guilty, that places the burden on the State of South
17 Carolina to prove his guilt beyond a reasonable doubt.

18 Every person charged with committing a criminal
19 offense in South Carolina is presumed innocent until the
20 State meets that burden beyond a reasonable doubt to show
21 that the Defendant is, in fact, guilty to that jury's
22 satisfaction. I'm going to be the Judge of the law in this
23 case, decide what the law is. We need to find twelve fair
24 and impartial jurors to decide what the facts are in this
25 case.

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1 You've heard me recite the allegations from this
2 indictment. Is there any member of the jury panel have any
3 prior knowledge about this particular alleged incident,
4 either from living in the community or having some
5 knowledge through media or otherwise? If you have any
6 prior knowledge from whatever source, would you please
7 stand?

8 Yes, sir. You believe you know something about this
9 case?

10 THE JUROR: Yes, sir.

11 THE COURT: What's your name, please?

12 THE JUROR: Thomas Foster.

13 THE COURT: All right. Mr. Foster, if you would,
14 please, come around. Let me just ask you some questions up
15 here at the bench.

16 Yes, sir. What do you know about it and how did you
17 find out about it?

18 THE JUROR: My wife read it in the newspaper. I
19 think she has some information about it.

20 THE COURT: You think she's got information about
21 this?

22 THE JUROR: Yes, sir.

23 THE COURT: What information do you think she has
24 about this?

25 THE JUROR: I think she -- well, she's an editor.

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1 THE COURT: Do you think she's read something in
2 the paper. Has she told you anything about it? I'm not
3 asking you what she knows about it. I'm now asking you
4 what you know about the case.

5 THE JUROR: I couldn't say honestly.

6 THE COURT: You're just saying because your wife
7 who works for the Pickens Sentential, that there might be
8 something. Of course, you're not going to be talking to
9 her about the case.

10 THE JUROR: No, sir.

11 THE COURT: Do you have any knowledge yourself
12 about this case?

13 THE JUROR: Not particularly.

14 THE COURT: Well, what do you know? In
15 particular, what do you know about the case?

16 THE JUROR: Well, she covered a story ---

17 THE COURT: What do you know?

18 THE JUROR: --- similar ---

19 THE COURT: Similar to what?

20 THE JUROR: To this type of case.

21 THE COURT: But what do you know about the case?

22 THE JUROR: Oh, not anything.

23 THE COURT: Has she told you anything about the
24 case?

25 THE JUROR: I can't really say for sure.

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1 THE COURT: Do you have any idea what the case --
2 idea about how it happened?

3 THE JUROR: I know it was assault and battery.

4 THE COURT: I just told you that.

5 THE JUROR: I already knew that.

6 THE COURT: But what was it about? How did he
7 assault her?

8 THE JUROR: I don't know.

9 THE COURT: You don't know?

10 THE JUROR: No, sir.

11 THE COURT: Well, do you believe you could be a
12 fair juror in this case?

13 THE JUROR: No.

14 THE COURT: You don't believe you could?

15 THE JUROR: (Negative nod).

16 THE COURT: All right, sir. I'll just let you go
17 back and have a seat. I'll excuse you from the trial of
18 this case.

19 All right. Juror number 46 has been excused for
20 cause. You don't need to respond any more to the questions
21 I ask.

22 Several witnesses may be called upon to testify in
23 this case. Of course, I need to ask you if anybody knows
24 any -- has any blood relationship or marriage relationship
25 to Mr. Timothy Cobb. Is anyone related by blood or

1 marriage to Mr. Cobb? If so, please stand.

2 (No response.)

3 THE COURT: Is there any member of the panel have
4 a close business or social or a personal relationship with
5 Mr. Cobb. If so, would you please stand.

6 (No response.)

7 THE COURT: Thank you. There is no response.

8 Among the possible witnesses who may testify in this
9 case would be, from the Central Police Department, Chad
10 Roper, Jason Holcombe, Carrie Nowaczch, Kevin Peppers.
11 Also, possible witnesses would be Dara Murray, Rosetta
12 Brown, Brittany Roper. Is there any member of the jury
13 panel related by blood or marriage to any of these
14 potential witnesses? If so, would you please stand?

15 Yes, ma'am, you're related to one?

16 THE JUROR: Brittany Roper.

17 THE COURT: All right. And what is your
18 relationship with her?

19 THE JUROR: Cousin.

20 THE COURT: A cousin. A first cousin?

21 THE JUROR: No.

22 THE COURT: All right. The fact that you're
23 related to Brittany Roper, if she were to be called upon to
24 testify in this case, would that affect your ability to be
25 a fair juror?

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1 THE JUROR: No.

2 THE COURT: You could be -- you could listen to
3 her testimony, listen to all the other testimony, and make
4 a decision on the truthfulness of all the testimony in
5 light of the law that I give you?

6 THE JUROR: Yes.

7 THE COURT: Thank you. You may be seated.
8 You're qualified.

9 MR. ALEXANDER: Your Honor, could we have the
10 juror's name?

11 THE COURT: Your name and number, please? Or
12 name?

13 THE JUROR: Ruby Robinson.

14 THE COURT: Thank you, Ms. Robinson.

15 Is there any member of the jury panel have a close
16 business or social or personal relationship with any of
17 these potential witnesses. If so, would you please stand?

18 (No response.)

19 THE COURT: Thank you. There is no response.

20 Is there any member of the jury panel expressed or
21 formed an opinion in any way about the facts in this case.
22 If so, would you please stand?

23 (No response.)

24 THE COURT: Is there a member of the jury panel
25 who has any bias or prejudice in any way that would affect

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1 your ability to be a fair juror if you were selected? If
2 so, would you please stand.

3 (No response.)

4 THE COURT: Thank you. There is no response.

5 Is there any member of the jury panel who is a
6 contributing member of any organization whose primary
7 concern is the promotion of law enforcement or victim's
8 rights, such as MADD, SADD, PARR, CAVE, The Sheriff's
9 Association, any such organization. If you're a
10 contributing member to any of those, would you please
11 stand?

12 (No response.)

13 THE COURT: Thank you. There is no response.

14 Is there any member of the jury panel or a member of
15 your immediate family involved in law enforcement. If so,
16 would you please stand?

17 All right. Let me just start here. If you'd
18 remaining standing, all of you. Your name, please?

19 THE JUROR: Emily Hendricks.

20 THE COURT: And what relative do you have?

21 THE JUROR: I have a nephew on the Pickens Law
22 Enforcement, Pickens City.

23 THE COURT: In the City of Pickens?

24 THE JUROR: City of Pickens.

25 THE COURT: A nephew?

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1 THE JUROR: Yes.

2 THE COURT: All right. If you'd remain standing
3 just a moment. Yes, sir.

4 THE JUROR: My son is a sergeant in Oconee
5 County.

6 THE COURT: Sergeant in Oconee?

7 THE JUROR: Yes.

8 THE COURT: All right. If you would remain
9 standing. Your name, please?

10 THE JUROR: Danny Patterson.

11 THE COURT: All right. Mr. Patterson. All
12 right. Yes, ma'am. Your name, please?

13 THE JUROR: Ilene Ruppert. My son is an officer
14 at the City of Easley.

15 THE COURT: Yes, ma'am, your name, again, please.

16 THE JUROR: Judy Robinson. My son is an agent.
17 And my brother-in-law is a Lieutenant with Pickens County.

18 THE COURT: With Pickens County? Yes, sir, your
19 name, please?

20 THE JUROR: Wayne Taylor. Charles Wayne Taylor.

21 THE COURT: And what relative do you have in law
22 enforcement?

23 THE JUROR: My brother is a guard at Perry
24 Correctional.

25 THE COURT: Okay. A guard a Perry.

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1 Yes, ma'am, your name, please?

2 THE JUROR: Mattie Reese Dupree. My husband's an
3 ex-lieutenant at Greenville Detention Center.

4 THE COURT: All right. And, yes, sir, your name?

5 THE JUROR: Allen Dacus. My step-son-in-law is a
6 Sheriff Deputy for Greenville County.

7 THE COURT: All right. All right. Those of you
8 that are standing. You've all indicated you have a
9 relative in law enforcement. The State of South Carolina
10 and, of course, Mr. Cobb, in this case, they desire to have
11 fair jurors to hear this case, to make a decision based on
12 what that juror hears from the witness stand, the evidence
13 that's presented, the law that I give you and that alone.
14 They not only desire to have fair jurors, they deserve to
15 have fair jurors.

16 Of those of you who are standing, if you believe that
17 because of this relationship with a relative that you could
18 not be fair to both the State of South Carolina and to the
19 Defendant in this case and base your decision on the law
20 and the evidence and that alone, but because of that
21 relationship you would feel like you could not be fair to
22 both sides, I'm going to ask if you would to please remain
23 standing if you believe you could not be a fair juror. If
24 you believe you could be a fair juror, please be seated.

25 Let the record reflect that all the jurors have been

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1 seated.

2 Is there any member of the jury or a member of your
3 immediate family ever been the victim of a violent crime, a
4 crime of violence against you or a member of your immediate
5 family. If so, would you please stand?

6 THE JUROR: Am I understanding a violent crime
7 against a family member?

8 THE COURT: A person, right.

9 THE JUROR: My son.

10 THE COURT: You have or a member of your family
11 has?

12 THE JUROR: Yeah. My son.

13 THE COURT: Your son?

14 THE JUROR: (Affirmative nod).

15 THE COURT: If you'll remain standing. Your
16 name?

17 THE JUROR: Ilene Ruppert.

18 THE COURT: All right. Yes, sir.

19 THE JUROR: My daughter was a victim of a mugging
20 in DC recently.

21 THE COURT: All right. Those of you who are
22 standing who have a family member who has been a victim of
23 a violent crime, again, I ask you the same question, would
24 the fact that you've had that relative be a victim of a
25 crime of violence, would that interfere with your ability

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1 to be a fair juror? Could you put that aside? Could you
2 listen to the evidence and the law and make a decision on
3 that and that alone? Do you believe you could be a fair
4 juror in that aspect, Ms. Rupert?

5 THE JUROR: Yes, sir.

6 THE COURT: Thank you. You may be seated. Mr.
7 Lake?

8 THE JUROR: It will have an effect.

9 THE COURT: All right. I'll excuse you from the
10 trial of this case. Thank you, sir. You may be seated.

11 At this time I'll ask the attorneys if you would
12 please stand and introduce yourselves to the jury.
13 Solicitor.

14 MR. CLEVELAND: Thank you, Judge. Good morning,
15 ladies and gentlemen. My name is Baker Cleveland. I'm
16 Assistant Solicitor here in Pickens County. I prosecute
17 criminal cases on behalf of the State of South Carolina.

18 THE COURT: Mr. Alexander.

19 MR. ALEXANDER: I'm Steven Alexander. I'm an
20 attorney here in Pickens and practice here and I represent
21 Mr. Cobb in this case.

22 THE COURT: Thank you, gentlemen.

23 Is there any member of the panel related by blood or
24 marriage to either of these attorneys or members of the
25 Solicitor's Office? If you are a relative of either of

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1 these, will you please stand?

2 (No response.)

3 THE COURT: Is there any member of the panel who
4 has a close business or a social or a personal relationship
5 with either of these attorneys. If so, would you please
6 stand?

7 (No response.)

8 THE COURT: Thank you. There is no response.

9 I've asked you lots of questions, ladies and
10 gentlemen. The ultimate question comes down to whether or
11 not you could be fair to the State, fair to Mr. Cobb, and
12 if you're selected render a verdict that would speak the
13 truth just on the evidence that's presented, the law that I
14 give you and that alone.

15 If there's a member of the jury panel who believes for
16 any reason you could not be fair in this particular case
17 and render such a verdict, would you please stand?

18 (No response.)

19 THE COURT: Thank you. There is no response.

20 Any other questions from the State?

21 MR. CLEVELAND: Nothing from the State, Your
22 Honor.

23 THE COURT: From the Defense?

24 MR. ALEXANDER: No, Your Honor.

25 THE COURT: All right. Let's select a jury.

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1 Ladies and gentlemen, we've been handed a sheet that
2 has been randomly -- the Clerk has -- some of you may have
3 served in the past where a canister was spun around and
4 your name picked out. We have computers to randomly put
5 your names in a program and then there's a printout that
6 has your names on it in a random manner. In a moment the
7 Clerk will call your name. If you would, please, just
8 stand in place and then he'll give you further directions
9 from there.

10 Let's select a jury.

11 THE CLERK: Juror number 27, Rebecca C. Davis.

12 What says the State?

13 MR. CLEVELAND: Please present Ms. Davis.

14 THE CLERK: And the Defense?

15 MR. ALEXANDER: Please present Ms. Davis.

16 THE CLERK: If you would, come forward, please,
17 ma'am, and have a seat in the jury box.

18 Juror number 99, Ruby M. Robinson. What says the
19 State?

20 MR. CLEVELAND: Please present Ms. Robinson.

21 THE CLERK: And the Defense?

22 MR. ALEXANDER: Please excuse Ms. Robinson from
23 the trial of this case.

24 THE CLERK: If you would, have a seat, please,
25 ma'am.

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1 Juror number 3, Rebecca P. Bagwell. What says the
2 State?

3 MR. CLEVELAND: Please present Ms. Bagwell.

4 THE CLERK: And the Defense?

5 MR. ALEXANDER: Please present Ms. Bagwell.

6 THE CLERK: If you would, come forward, please,
7 ma'am, and have a seat in the jury box.

8 Juror number 68, Tynesha D. Jackson. What says the
9 State?

10 MR. CLEVELAND: Please present Ms. Jackson.

11 THE CLERK: And the Defense?

12 MR. ALEXANDER: Please present Ms. Jackson.

13 THE CLERK: If you would, come forward, please,
14 ma'am, and have a seat in the jury box.

15 Juror number 130, Jean G. Youssef. What says the
16 State?

17 MR. CLEVELAND: Please present Ms. Youssef.

18 THE CLERK: And the Defense?

19 MR. ALEXANDER: Please present Ms. Youssef.

20 THE CLERK: If you would, come forward, please,
21 ma'am, and have a seat in the jury box.

22 Juror number 67, Sweetie Jackson. What says the
23 State?

24 MR. CLEVELAND: Please present Ms. Jackson.

25 THE CLERK: And the Defense?

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1 MR. ALEXANDER: Please present Ms. Jackson.

2 THE CLERK: If you would, come forward, please,
3 ma'am, and have a seat in the jury box.

4 Juror number 86 Anthony A. Padgett. What says the
5 State?

6 MR. CLEVELAND: Please present Mr. Padgett.

7 THE CLERK: And the Defense?

8 MR. ALEXANDER: Please present Mr. Padgett

9 THE CLERK: If you would, come forward, please,
10 sir, and have a seat in the jury box.

11 Juror number 98, Danny M. Patterson. What says the
12 State?

13 MR. CLEVELAND: Please present Mr. Patterson.

14 THE CLERK: And the Defense?

15 MR. ALEXANDER: Please present Mr. Patterson.

16 THE CLERK: If you would, come forward, please,
17 sir, and have a seat in the jury box.

18 Juror number 59, Charles W. Hodge. What says the
19 State?

20 MR. CLEVELAND: Please present Mr. Hodge.

21 THE CLERK: And the Defense.

22 MR. ALEXANDER: Please present Mr. Hodge.

23 THE CLERK: If you would, come forward, please,
24 sir, and have a seat in the jury box.

25 Juror number 109, Michael W. Smith. What says the

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22

1 State?

2 MR. CLEVELAND: Please excuse Mr. Smith from the
3 trial of this case.

4 THE CLERK: If you would, have a seat, please,
5 sir.

6 Juror number 80, Leslie A. Moreland Bishop. What says
7 the State?

8 MR. CLEVELAND: Please present Ms. Moreland
9 Bishop.

10 THE CLERK: And the Defense?

11 MR. ALEXANDER: Please excuse the juror from the
12 trial of this case.

13 THE CLERK: Okay. If you would, have a seat,
14 please, ma'am.

15 Juror number 108, Lynn M. Smith. What says the State?

16 MR. CLEVELAND: Please excuse Ms. Smith from the
17 trial of this case.

18 THE CLERK: If you would, have a seat, please,
19 ma'am.

20 Juror number 112, Sue G. Splady. What says the State?

21 MR. CLEVELAND: Please present Ms. Splady.

22 THE CLERK: And the Defense?

23 MR. ALEXANDER: Please present Ms. Splady.

24 THE CLERK: If you would, come forward, please,
25 ma'am, and have a seat in the jury box.

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1 Juror number 16, Dawn F. Cantrell. What says the
2 State?

3 MR. CLEVELAND: Please present the Ms. Cantrell.

4 THE CLERK: And the Defense.

5 MR. ALEXANDER: Please excuse Ms. Cantrell from
6 the trial of this case.

7 THE CLERK: Okay. If you would have a seat,
8 please, ma'am.

9 Juror number 62, Ronnie C. Howard. What says the
10 State?

11 MR. CLEVELAND: Please excuse Mr. Howard from the
12 trial of this case.

13 THE CLERK: Thank you. If you would have a seat,
14 please, sir.

15 Juror number 117, Emily A. Thomas. What says the
16 State?

17 MR. CLEVELAND: Please present Ms. Thomas.

18 THE CLERK: And the Defense?

19 MR. ALEXANDER: Please present Ms. Thomas.

20 THE CLERK: Okay. If you would, come forward,
21 please, ma'am, and have a seat in the jury box.

22 Juror number 24, Allen H. Dacus. What says the State?

23 MR. CLEVELAND: Please present Mr. Dacus.

24 THE CLERK: And the Defense?

25 MR. ALEXANDER: Please present Mr. Dacus.

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1 THE CLERK: If you would, come forward, please,
2 sir, and have a seat in the jury box.

3 Juror number 19, Doris M. Childress. What says the
4 State?

5 MR. CLEVELAND: Please present Ms. Childress.

6 THE CLERK: And the Defense?

7 MR. ALEXANDER: Please excuse Ms. Childless from
8 the trial of this case.

9 THE CLERK: If you would, have a seat, please,
10 ma'am.

11 Juror number 71, Argelis D. Cliamovich.

12 THE JUROR: Cliamovich.

13 THE CLERK: Yes, ma'am. I'm sorry. I'm having
14 trouble with your name. What says the State?

15 MR. CLEVELAND: I'll probably have trouble too.
16 Please present Cliamovich.

17 THE CLERK: And the Defense?

18 MR. ALEXANDER: Please present the juror for the
19 trial of this case.

20 THE CLERK: Okay. If you would, come forward,
21 please, ma'am, and have a seat in the jury box.

22 And this will be for the alternate. Juror number 74,
23 Rose Martinez-Dawson. What says the State?

24 MR. CLEVELAND: What number?

25 THE CLERK: 74.

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1 MR. CLEVELAND: Thank you, Mr. Clerk. Please
2 present Ms. Martinez-Dawson.

3 THE CLERK: And the Defense?

4 MR. ALEXANDER: Please excuse the juror.

5 THE CLERK: Okay. If you would, have a seat,
6 please, ma'am.

7 Juror number 116, Charles W. Taylor. What says the
8 State?

9 MR. CLEVELAND: Please present Mr. Taylor.

10 THE CLERK: And the Defense?

11 MR. ALEXANDER: Please present Mr. Taylor.

12 THE CLERK: If you would, come forward, please,
13 sir, and have a seat in the jury box.

14 THE COURT: Any matters we need to take care of
15 with the attorneys as far as the selection of the jury in
16 this case?

17 MR. CLEVELAND: None from the State, Your Honor.

18 THE COURT: From the Defense?

19 MR. ALEXANDER: None, Your Honor.

20 THE COURT: All right. Ladies and gentlemen who
21 were not selected for the trial of this case, I can excuse
22 you for the rest of the day. Please call back tonight
23 after six o'clock. There will be a message for you on the
24 answering machine as to when you need to report back.

25 Everyone else, please remain seated while the jury is

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1 excused. Mr. Foster, if you would just wait a few moments.
2 I need to talk with you, sir.

3 (WHEREUPON, the jury panel exited the open courtroom
4 at approximately 11:05 a.m.)

5 THE COURT: Ladies and gentlemen, you've seen the
6 process by which you were selected in this case. We have
7 some preliminary matters we need to take care of in this
8 case before it's actually ready to try. I'm going to ask
9 if you would just go back to your jury room, just briefly.
10 We'll get these matters taken care of. And another
11 separate issue I also need to take care of. We'll
12 certainly not keep you back there beyond what's necessary.
13 If I see it's going to take a little long, I'll let you
14 know and give you a more extensive break.

15 But let me remind you and I'll tell you that further,
16 but while you're back there, you shouldn't be discussing
17 the case, speculating on what it's about. You'll hear the
18 case. These attorneys will present what you need to hear.
19 But while you're back there you can get to know each other.
20 They'll have some refreshments for you. But don't discuss
21 the case. We'll call you back in just a few moments. If
22 you will go with Mr. Teal at this time, please.

23 (WHEREUPON, the jury exited the open court at
24 approximately 11:06 a.m.)

25 THE BAILIFF: The door is closed, Your Honor.

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1 THE COURT: Mr. Foster, could I see you just a
2 moment? Mr. Foster, if you would just come up here to Mr.
3 Welborn. What I might do, since your wife works with the
4 Sentenial, you're going to have the same problem on every
5 case that comes up, I guess, aren't you? Reading the news?

6 MR. FOSTER: I don't know, sir.

7 THE COURT: If it happened locally? I

8 MR. FOSTER: Possibly.

9 THE COURT: I also don't want you to be deprived
10 of your opportunity to serve as a juror. I appreciate your
11 candor. What I think I'm going to do is next week, if it's
12 -- next week is not-- we've got a week of what's called
13 Common Pleas, civil cases, probably she wouldn't be
14 reporting on, car wrecks or whatever it is. I don't what's
15 on there.

16 MR. FOSTER: Right.

17 THE COURT: Could you just serve next week in
18 Common Pleas?

19 MR. FOSTER: Yes, sir.

20 THE COURT: And then that way -- we've got a
21 general sessions too. I'll go through -- I'll be here or
22 Judge Verdin will and we'll go through the process again to
23 qualify you. Then they can put you in a civil suit panel
24 pool. Because I would suspect with a small paper, if you
25 feel like you had a conflict on this one, you're going to

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1 have a conflict on any criminal case. We've only got
2 criminal court going on this week. Next week we're going
3 to have both sides, civil and criminal. Could you report
4 back next Monday?

5 MR. FOSTER: Yes, sir.

6 THE COURT: There won't be another notice coming
7 to you now. But we'll be looking for you here at nine
8 o'clock next Monday, okay?

9 MR. FOSTER: Okay.

10 THE COURT: All right.

11 MR. FOSTER: Thank you, Your Honor.

12 THE COURT: Anything else you need from him, Mr.
13 Welborn?

14 THE CLERK: No. Just remember to come back next
15 Monday.

16 MR. FOSTER: Okay.

17 THE COURT: That way -- if next week is
18 inconvenient, we can move it to another week in December.
19 Will you be all right next week?

20 MR. FOSTER: Yes, sir.

21 THE COURT: All right. Thank you.

22 MR. FOSTER: Thank you, sir.

23 THE COURT: All right. Gentlemen, if we could
24 take a short break on this case, I need to take care of Ms.
25 Horlbeck. And I've got something with Mr. Cantrell

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1 briefly, and then we'll be ready to get back with y'all;
2 okay? If y'all can't work things out or if y'all got any
3 exhibits to mark and things like that.

4 (WHEREUPON, the Court stood at recess for a short
5 break.)

6 (WHEREUPON, State Exhibit Numbers 4, 5, 6, and 7 were
7 marked for identification.)

8 THE COURT: All right. Gentlemen, anything we
9 need to take care of before we have our jury sworn?

10 MR. CLEVELAND: Nothing directly at this time
11 from the State, Judge.

12 MR. ALEXANDER: I do have a couple of Motions,
13 Your Honor.

14 THE COURT: All right, sir. Mr. Alexander.

15 MR. ALEXANDER: Your Honor, first there are, I
16 believe, three 9-1-1 calls. The first one, I have no
17 objection to. I believe that for the State's purposes.
18 That's the one that's basically an open call and there was
19 little if no conversation on it. However, I do object to
20 the second and third call, which is basically, if I
21 remember correctly, is between the two -- basically between
22 two different dispatchers, Your Honor. And on the second
23 call there's a statement from one of the dispatchers to the
24 other that I would object as hearsay. And it was,
25 allegedly, a statement from the alleged victim, Rosetta

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1 Brown, that she made a statement about, something to the
2 effect of gas being poured on her. I would object to that
3 coming in. I can't speak for the State but he had -- Mr.
4 Cleveland had given some indication that he wouldn't offer
5 that, except to potentially impeach Ms. Brown. But he's
6 going to -- I object to those calls being played. And the
7 third call is simply an update between the two dispatchers
8 that repeats some of the same information and I would
9 object to that on the same grounds of relevancy, Your
10 Honor. That would be the first one. If you want to hear
11 from the State.

12 THE COURT: All right. Solicitor.

13 MR. CLEVELAND: Judge, I think he's putting the
14 cart in front of the horse a little bit, frankly. I'm not
15 sure what the testimony is going to be and I can't really
16 take a position on the 9-1-1 calls until that time.

17 THE COURT: Okay. Are you going to put the first
18 one -- 9-1-1 in?

19 MR. CLEVELAND: The first one I plan to.

20 THE COURT: All right. Well ---

21 MR. CLEVELAND: We'll cross that bridge ---

22 THE COURT: --- as they come you make your
23 objections, Mr. Alexander, and I'll rule upon them.

24 MR. ALEXANDER: Yes, sir.

25 THE COURT: Any other pre-trial matters?

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1 MR. ALEXANDER: Yes, sir, Your Honor. There's
2 been some -- I move to exclude any testimony or reference
3 to a prior or -- I guess in this case, it would be post-
4 incident, alleged bad acts on behalf of my client or that
5 were involved specifically between my client and the
6 alleged victim, Rosetta Brown. I know specifically there's
7 two incidents that there were -- incident reports, one from
8 September 21st, 2010 and one from October 7th, 2011. No
9 charges were ever filed. No arrest made. Just reports
10 made by the Central Police Department. And I would move to
11 exclude any references to those, Your Honor.

12 One, on the basis that they're not relevant to the
13 facts that are under this indictment before the Court and
14 then, two, they're to be inadmissible under both Rule 404
15 as well as Rule 403, Your Honor. That would be my position
16 on those.

17 THE COURT: All right. Solicitor, what relevance
18 would that have to the case?

19 MR. CLEVELAND: Thank you, Your Honor. Again, I
20 don't know what the testimony is going to be and would have
21 to assess at a later time in the trial if those instances
22 would be relevant to the State's case if I chose to produce
23 them. Cursorily, I don't think it's so much a 404 type,
24 proving character. I think it more goes to Rule 608 as
25 evidenced by bias, prejudice or any motive to misrepresent.

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1 And the reason that is, is again I don't know what the
2 testimony is going to be, but it's pretty apparent that
3 there is a long history of, or at least a couple of
4 instances of history of a struggle between these two, yet
5 the relationship goes on. And I would just -- as far as
6 evidence and bias, I think those other instances and
7 subsequent reconciliations, if that's what the testimony is
8 -- I don't know what the testimony's going to be -- could
9 serve as bias on some instances in this case. But like I
10 said, I'll cross that bridge when we get there. I don't
11 know what the testimony is going to be and I can't really
12 articulate a response to the Defense's objection until I
13 actually know what testimony is given and what testimony it
14 is I seek to elicit.

15 MR. ALEXANDER: Well, Your Honor, I mean,
16 certainly he's spoken with the alleged victim, at least has
17 some idea what the alleged victim is going to say. I've
18 talked to her. I have some idea what she's going to
19 testify to. You know, I guess my position and problem is
20 it's kind of hard to un-ring the bell, so to speak, if he
21 asks her a question about prior incidents involving Mr.
22 Cobb, the jury is going to know something's going on, even
23 if Your Honor excludes it at that point. But it would be
24 my position that none of that is relevant, Your Honor.
25 We're here for one specific incident. If she testifies

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1 solely as to what happened on that day in question, what
2 did or didn't happen on a separate day is irrelevant, Your
3 Honor.

4 And even if there is any probative value to it, which
5 we don't believe there is, we certainly believe it doesn't
6 pass the balancing test under Rule 403. Any probative
7 value would be greatly outweighed by the prejudicial effect
8 to my client, especially the alleged facts, if they were
9 allowed to go on the alleged facts of these other
10 incidents.

11 THE COURT: All right. Solicitor, before you're
12 indicating that the -- if the witness answers non-
13 responsive to what you think the witness would be, that you
14 would want to impeach your witness. Is that what you're
15 asking?

16 MR. CLEVELAND: Again, it's hard to say. But,
17 basically, Judge, I -- that's about as good of a
18 characterization as I could put it, Judge.

19 THE COURT: All right. Well, before you ask the
20 question we'll have a -- if you see that developing, before
21 you ask the question, just -- you can approach the bench or
22 we can take a legal matter out -- I don't know how the
23 evidence is going to unfold either. But just prior to
24 asking that question then you can approach or either we can
25 send the jury out to get it resolved based on what I hear

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1 as well.

2 MR. CLEVELAND: I understand, Judge. Thank you
3 very much.

4 THE COURT: All right. Anything else, Mr.
5 Alexander?

6 MR. ALEXANDER: Yes, Your Honor, the last thing,
7 there's a reference in a report, I guess, this would be
8 from Officer Roper that he -- when he's responding to the
9 call, he makes some reference about prior knowledge of the
10 individuals involved. And, therefore, he turned his blue
11 lights on and proceeded expeditiously to the location. I
12 would ask that that be excluded, Your Honor, because it
13 gives implications of the prior incidents that will not be
14 in evidence, Your Honor, and have no probative value as to
15 what did or didn't happen in this alleged incident, Your
16 Honor.

17 THE COURT: Solicitor, what about that?

18 MR. CLEVELAND: Well, Judge, I hadn't really
19 thought about it, to be honest, that part of the report.
20 But certainly it's the State's burden of proving every
21 element of the offense including ultimately the identity of
22 the Defendant and the manner. And if the officer had prior
23 knowledge of who it was, I think it's relevant to show that
24 -- I mean, I don't think the report indicates how he knows
25 he had prior knowledge. But just -- I don't see how the

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1 fact that the officer did have prior knowledge of the
2 Defendant would not be relevant in this case, and would not
3 be -- would be excluded.

4 MR. ALEXANDER: Your Honor, it would be that --
5 the implication is there. He's a law enforcement officer
6 and responding to the call that -- even if it's not overtly
7 stated, expressly stated, the implication is that he has
8 prior knowledge of these individuals, he needs to get there
9 quickly based on some prior knowledge. And they're ---

10 THE COURT: Couldn't that be benign knowledge,
11 though, that -- small town, he happens to know these
12 people.

13 MR. ALEXANDER: But that doesn't explain why he
14 would need to get there expeditiously, I guess. I guess
15 that was my problem that that's what he says in his report,
16 I believe, Your Honor. Initiated blue lights and opted to
17 proceed expeditiously to the scene, is what he said in the
18 report. So, yes, I certainly agree, Your Honor, ---

19 THE COURT: Well, wouldn't all officers try to
20 expeditiously get to a scene once they activate a blue

21 light? Isn't that the purpose of a blue light to get to
22 the ---

23 MR. ALEXANDER: Well, that's the first time I've
24 seen it referenced like that in a report, I guess.

25 THE COURT: Well, again, I don't know what he's

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1 going to -- I don't know if he's going to read his report,
2 but, you know, I think the Solicitor and the witnesses know
3 what's proper to ask and hopefully what's proper to testify
4 to. At this stage we're not going to be bringing up any
5 kind of evidence that they had prior knowledge. There are
6 no bad acts that are going to be before the jury based on
7 what we have now. You have that, Solicitor?

8 MR. CLEVELAND: Yes, Your Honor. I do.

9 MR. ALEXANDER: Thank you, Your Honor.

10 THE COURT: Okay. Anything else, Mr. Alexander?

11 MR. ALEXANDER: No, Your Honor, that's all at
12 this time.

13 THE COURT: All right. Let's have our jury come
14 in if they're ready, Mr. Teal.

15 (WHEREUPON, the jury entered the open court at
16 approximately 11:56 a.m.)

17 THE COURT: Thank you, ladies and gentlemen, for
18 your patience with us. I apologize for keeping you
19 waiting, but we had three or four other matters I needed to
20 take care of, plus getting some preliminary matters taken
21 care of here. So we're now ready to proceed with the trial
22 of this case.

23 I'm honored to be working with you. You're going to
24 be the judges of the facts. You're going to decide what
25 the facts are and I'm going to judge the law. I'm referred

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1 to as the Judge. I wear the black robe, but I want you to
2 know that you're ever bit as much a judge as I am in this
3 case because of the fact that you're going to have that
4 aspect of judging the facts and the evidence. I'm going to
5 have the aspect of judging the law. You may have never
6 served as a juror before. You may have some apprehension
7 about where you're now sitting, having perhaps never been
8 in a courthouse before and now you're in a courtroom and
9 now you find yourself seated in a jury box and think to
10 yourself, well, I've been crowned with the title of judge
11 and I'm not capable of being a judge. But I assure you,
12 ladies and gentlemen, you bring into this Courtroom every
13 skill you're going to need to be the judge of the facts
14 because you bring into this courtroom the everyday
15 experiences that you enjoy as a citizen in the workplace,
16 in the home, and social activities throughout your life.
17 You also bring into this courtroom the good common sense
18 with which you've been blessed. And that's what you're
19 going to need to utilize as you determine what the facts
20 are.

21 You're going to be observants of the trial process.
22 You're going to watch the attorneys, you're going to study
23 the witnesses, listen to the witnesses and decide on their
24 demeanor who's truthful and who has the means of
25 credibility that you can believe.

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1 I'm going to judge the law and I'll tell you what the
2 law is at the end of the case and going to, under the oath
3 that you'll soon take, you're going to have to accept that
4 law and apply the law just as I state it to you. Part of
5 my job also is to conduct the trial of the case. We'll
6 take periodic breaks. Normally, we'll go for an hour or an
7 hour and fifteen minutes or so, sometime a little longer
8 before we take a break, depending on a witness and where we
9 are in that particular witness, cross-examination and so
10 forth.

11 Since I've told you you need to be a good listener,
12 it's vitally important that you be comfortable, of course,
13 because if you're uncomfortable in any way, you can't be
14 the listener that you need to be and you can't make the
15 decision that you need to in this particular trial. So if
16 I haven't called for a break and you need a break, please
17 get my attention, let me know. We'll take that break when
18 you need it. If you can't get my attention, we have other
19 folks here that will certainly be able to assist you.
20 You've already met Mr. Welborn our Clerk of Court. Seated
21 beside him, the young lady seated directly in front of me
22 is Ms. Danette Hanks. She's the court reporter. She's
23 going to be taking down everything that's said during the
24 course of the trial. She might be marking some exhibits,
25 keeping track of where the exhibits are. A valuable asset.

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1 She certainly will help you in any way that she can. The
2 young man seated beside me is Mr. Sean Hinton, a recent law
3 school graduate, a recent member of the bar -- or soon to
4 be admitted to the bar later, I guess, next month. He'll
5 be assisting me up here, perhaps in the office upstairs,
6 taking care of paperwork and other things that we need.
7 He'll certainly be of assistance if he can if you can get
8 his attention, even. Various bailiffs are around the
9 courtroom. You've met some of them, I'm sure, before. Mr.
10 Smith's over behind me. Mr. Teal over to your left and to
11 your right is Mr. Schumacher. And these gentlemen
12 certainly will be here to assist you in any way that they
13 can during the course of the trial as you come and go.

14 During the course of a trial there's oftentimes cases
15 or times in the trial where a legal matter has to be
16 resolved. The timing of a trial is such that I have to
17 rule on legal matters. Sometimes in the case itself there
18 may be an objection made by one of the lawyers or the
19 other. Frequently, I can rule on that objection by merely
20 saying sustained or overruled and we move on to the next
21 question or the next exhibit. Sometimes, as you probably
22 have seen during your break, we may have a conference up
23 here at the bench where we can whisper and hopefully
24 resolve an objection or a scheduling matter, an exhibit.
25 Sometimes, there might be a legal matter that comes up in

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1 the course of a trial, just on the timing or because of one
2 of the attorneys, which I may need to send you back to your
3 jury room so I can resolve that legal matter. It may be a
4 matter in which I need to hear testimony that wouldn't even
5 be properly presented before you. It may be a document
6 that I need to examine. It may be a statute that I need to
7 look at from our Legislature, a case that the lawyers need
8 to present their positions about. Those are matters that I
9 need to resolve as the Judge of the law that have no
10 concern of yours. It's not that I'm hiding things from
11 you, but I want to make the very best decision that I can
12 as the judge of the law. And sometimes I need to hear
13 testimony you couldn't -- wouldn't be properly presented to
14 you or study some legal matters. And I hope you understand
15 that while you're back there, it's not that I'm out here
16 twiddling my thumbs. I'm trying to reach that legal
17 decision as best I can and in a sound manner that I can.

18 While you're a judge as I am a judge, when the case is
19 completed and you're back there in your jury room
20 deliberating, I, as a fellow judge, am not going to be back
21 there with you. You're going to make the decision on the
22 facts, even as I make the decision on the law. So I won't
23 be back there giving you my idea of facts because under the
24 law our Constitution in South Carolina prohibits a Trial
25 Judge from having an opinion or expressing an opinion about

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1 the facts. That's totally up to you, ladies and gentlemen,
2 to decide that.

3 Cases normally start with an opening statement from
4 the attorneys. They'll give you an overview of the case,
5 what you can expect to hear as the case develops and then
6 we'll have examination of witnesses and cross-examination
7 of witnesses. There may be documents or other tangible
8 evidence admitted. After all the evidence is in, the
9 attorneys will again have a chance to address you in a
10 closing statement. Then I'll instruct you on the law.
11 While the case is in progress, you should not be talking
12 about the case one with another, until all the evidence is
13 in and until I have instructed you on the law. You can,
14 certainly while you're back in your jury room, talk about
15 other matters, but you should not be talking about the
16 case. Same when you're out for lunch today, you may eat at
17 a restaurant and you are sitting at a table and there's
18 some folks on a table nearby you talking about this case.
19 You should not be influenced by that. You should take the
20 initiative and get up and either tell them that you're a
21 juror and you are overhearing matters, or just move to
22 another table. It's very important that the process that
23 we have, the commitment that you've made to these parties
24 is fulfilled. The process that we're in, the purity
25 thereof, it stays intact.

1 And just as these lawyers will certainly make sure
2 that they do everything in their power to refrain from any
3 accidental contact with you. You may see them in the
4 hallways as we come and go for lunch or in the elevator and
5 they may seem very unfriendly towards you and high-hat you
6 in some way and you think to yourself what a unfriendly
7 person that is. These lawyers have been trained to avoid
8 any appearance of any impropriety. So they want to make
9 sure that even though it might be an innocent conversation
10 in the hallway about football or weather or any other fact,
11 they want to make sure that whoever may be seeing that
12 doesn't draw the wrong conclusion and there's no appearance
13 of any impropriety. And so as you come and go, ladies and
14 gentlemen, if the lawyers seem to walk in a different
15 direction as they see you as a juror, then don't hold that
16 against them. I assure you, they're both friendly young
17 men and they are not trying to purposely do that towards
18 you.

19 I look forward to working with you. It makes me proud
20 that you've accepted this responsibility. We're going to
21 beginning with the opening statements in just a moment.
22 I'll remind you that the opening statements are not
23 evidence. What the lawyers say to you in their opening is
24 not evidence. Still, I urge you to listen carefully as
25 they address you in a few moments. That opening statement

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1 will hopefully give you a good overview of what you can
2 expect.

3 Before that takes place, I'm going to ask the Clerk to
4 administer an oath to you. I urge you, ladies and
5 gentlemen, to listen carefully as this oath is administered
6 to you. It's a time-honored oath. It's been in existence
7 well before the foundation of our country. It's been used
8 by courts in England. It's been used by Courts throughout
9 America. Jurors, such as yourself, have sat in a jury box,
10 heard cases, taken oath very similar to this. So I urge
11 you to listen carefully as the Clerk administers the oath
12 to you. After that, the Solicitor and the Defense attorney
13 will address you in their opening statements.

14 You may swear the jury, Mr. Welborn.

15 THE CLERK: If you would, please stand. Again,
16 after the oath is administered, answer by saying I will.
17 Raise your right hand.

18 You shall well and truly try the issue joined in this
19 case of the State versus Timothy Levern Cobb, and a true
20 verdict render according to law and evidence, so help you
21 God?

22 (WHEREUPON, all jurors answered I will and were duly
23 sworn.)

24 THE CLERK: Thank you. You may be seated.

25 THE COURT: Solicitor, you may address the jury

1 in your opening.

2 MR. CLEVELAND: Thank you, Your Honor, may it
3 please the Court.

4 OPENING STATEMENT

5 BY MR. CLEVELAND:

6 Good morning, ladies and gentlemen. I apologize for
7 the delay so far. Usually jurors reflect on their
8 experiences, the waiting is the first part of the whole
9 ordeal. At this time we're ready to get started.

10 It's often said that actions speak louder than words.
11 That's precisely why we're here today because of the
12 actions of Mr. Timothy Levern Cobb seated over at the
13 Defense table. Back on January 8th, 2010, the evidence
14 will show you that Mr. Cobb and his long-time girlfriend,
15 Rosetta Brown, engaged in an argument. The argument
16 escalated and at some point in time Mr. Cobb exited the
17 residence, went and withdrew a gasoline can and went back
18 into that residence with that gasoline can and threatened
19 either to do harm to himself or Ms. Brown, depending on
20 what you hear today. But the long and short of it is he's
21 charged with assault with intent to kill for his use of
22 that gasoline can against the victim, Ms. Rosetta Brown.

23 There's a word missing, you may notice, from the
24 charge in this case. It's just assault with intent to
25 kill. It's not assault and battery with intent to kill.

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1 And I want to make a little distinction on why that is.
2 Commonly, and even before I started in law enforcement
3 doing these criminal trials, an assault seemed like
4 somebody hit somebody and that's what I took as the casual
5 meaning. That's not actually the legal meaning of it. An
6 assault is basically an unlawful attempt or an overt act
7 that a person does to another to put them in fear that
8 they're in bodily harm and that act is situated as such to
9 where a person could complete it if they want to. A very
10 common analogy is if I'm within striking distance of you
11 and I draw my fist back, even without striking you, that
12 action is alone is that assault. The battery, which is not
13 present in this case, thankfully, is the actual making of
14 contact. It's the actual use of force. Like I said,
15 thankfully in this case, this is not an assault and battery
16 with intent to kill case and this is not a murder case.
17 The assault is as far as it got, but it's still a very
18 serious crime, because it's coupled with that intent to
19 kill.

20 Intent to kill is another legal abnormality. It's
21 really a little bit of play on words, because even though
22 the charge is assault with intent to kill, the intent to
23 kill isn't specifically required. All that's required is
24 that Mr. Cobb, when he committed that assault that he put
25 Ms. Brown in fear of bodily injury with that gas can, is

1 that he did it with malice.

2 Now, malice means basically a willful and wanton, evil
3 wicked sense of no legal justification, bent on doing
4 wrong, to paraphrase it. The Judge will give you a little
5 better example of what it is, but what he's charged with is
6 assaulting Ms. Brown based on -- after the argument. He's
7 assaulting her and he was doing it with basically no
8 disregard for human life. We'll see how that develops as
9 the facts go on. I'm not going to discuss the facts
10 anymore because that will all come from the witness stand.
11 It's real important because as jurors in this case, your
12 purview, your -- what's part of your job is assessing the
13 credibility of these witnesses as they come forward to
14 testify. You can choose to believe a witness. You can
15 choose to disbelieve a witness. You can believe some of
16 what they say. You can believe none of what they say. You
17 can consider, using your common sense, what incentive the
18 witness would have to tell the truth and what incentive a
19 witness may have not to tell the complete truth. It's
20 solely within your discretion as the finder of fact in this
21 case to determine the facts of this case and believe or
22 disbelieve as much or as little of the testimony as you
23 want.

24 Now, I say that because you're the finder of the fact
25 in the case and I'm the one that has to prove it to you. I

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1 bear the burden in this case. It's a burden of proving a
2 case beyond a reasonable doubt. There's a little bit of a
3 jump there between beyond a reasonable doubt and actually
4 finding the facts of this case but that's what you've got
5 to do. Y'all are going to say what happened in this case
6 with your verdict. You're going to say he's guilty of
7 assault and battery with intent to kill or he's not guilty.
8 And you only have to prove it beyond a reasonable doubt,
9 which is not without any doubt. You might say, Baker, how
10 can you expect us to say what the facts are in this case if
11 you don't have to prove it completely, you just have to
12 prove it beyond a reasonable doubt? Well, that, ladies and
13 gentlemen, is where, again, your common sense comes in.
14 While there may be no room for emotion or sympathy in your
15 deliberations, certainly you did not check your common
16 sense at the door. Your God given common sense to hear a
17 situation, to understand what played out and find the facts
18 of what really happened that night is what makes your job
19 exceptionally important and what makes our justice system
20 here in the United States one of a kind. A very, very
21 unique judicial system. I've got the sole burden to prove
22 it. He doesn't have to prove anything. And y'all are the
23 ones that have that job. I'll go ahead and tell y'all, I'm
24 proud to accept that burden here today.

25 Through the testimony that I'm going to present I feel

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1 confident that each and every one of you will be able to
2 agree at the end of this case that what Mr. Levern --
3 Timothy Levern Cobb did was an assault and that he did
4 enact that assault with malice and he's guilty of assault
5 and battery with intent to kill.

6 I thank y'all again now for y'all's attention
7 throughout this whole case. I really appreciate y'all's
8 service. I guess, just to kind of clarify how strong your
9 service is, y'all have a job that no one else in the legal
10 profession can do. There's no officer, there's no judge,
11 there's no lawyer, all the way up to the Supreme Court that
12 can say a person is guilty without their consent. We need
13 jurors like yourselves and the ones that sat before you
14 many, many centuries now in this Country are the only ones
15 charged with that duty of being able to tell a fellow
16 citizen that we agree that you are guilty of this charge,
17 without their consent. It's a call to honor and I
18 appreciate y'all taking an oath to do that.

19 One more distinction I want make in this case, when I
20 stood up and introduced myself and y'all were all still
21 sitting out there, I said I represent the State of South
22 Carolina in this case, which is true. I do not represent
23 the victim in this case, Ms. Rosetta Brown, nor do I
24 represent the Central Police Department or the Pickens
25 County Sheriff's Office. I represent the State of South

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1 Carolina and I'm prosecuting this case on that basis for
2 the citizens of South Carolina. And I'll tell you why
3 that's an important distinction. Oftentimes victims,
4 participants and officers, in crimes, their position, their
5 opinion on what should happen, their outlook on the case,
6 may not align with justice. There are some times it very
7 likely does and some times it's selfish and either over
8 aggressive, sometime it's not. But I want to make it clear
9 that the State of South Carolina, not the victim in this
10 case, Rosetta Brown, not the Central Police Department, is
11 charged with prosecuting this case. South Carolina is the
12 one that has the interest of justice in this case. South
13 Carolina alone has the job of seeking justice in this case.
14 I guess it would be the State of South Carolina also that
15 is the one who is responsible for enacting justice,
16 wherever that justice may be found. It's kind of hard to
17 think about that this is an assault against a person. You
18 say, well, isn't that person kind of the only victim in
19 this case? Well, no. The victim may have a -- certainly
20 has rights associated with being a victim, and certainly
21 has an interest in the case. However, any crime against
22 any citizen of this State is also a crime against the State
23 of South Carolina and that's what we're here to determine
24 today, a crime against the State of South Carolina.

25 Thank y'all again for your attention and I will be

1 back again to address you at the end of this case.

2 THE COURT: Mr. Alexander, you may address the
3 jury in your opening.

4 MR. ALEXANDER: Thank you, Your Honor, Mr.
5 Cleveland.

6 OPENING STATEMENT

7 BY MR. ALEXANDER:

8 Ladies and gentlemen, I'm Steven Alexander. I
9 introduced myself earlier. I represent Timothy Cobb in
10 this case.

11 Now, I'll try to be brief so we can get on to the
12 testimony and the trial of the case, but I just want to
13 touch on a few things. And I do agree with some of the
14 things that Mr. Cleveland said, especially about everyone's
15 common sense and bringing that into the courtroom. I won't
16 repeat everything he said, but I certainly concur with
17 that. Each of y'all has a varying range of experiences and
18 common sense that y'all have brought into the courtroom
19 today and all we ask is that you use that and apply that
20 along with whatever other instructions the Judge gives you
21 when you get to the point of deliberating in this case
22 because those are certainly important things that you
23 shouldn't just set aside when you're deliberating.

24 Mr. Cobb -- as Mr. Cleveland said, they have the
25 burden of proof in this case, beyond a reasonable doubt.

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1 And in addition to that in deciding that, Mr. Cobb is
2 presumed innocent in this case. The fact there was an
3 arrest warrant issued, the fact there was an indictment
4 issued which brings the matter into the courtroom, does not
5 prove one thing towards the ultimate guilt or innocence in
6 this case. It's simply documents which has brought the
7 case into the court. It's just pieces of paper.

8 Mr. Cobb has what some of my colleagues like to call,
9 a cloak of innocence around him. He brings that into the
10 courtroom with him today and he still has it on him now and
11 he'll still continue to wear that through the conclusion of
12 the testimony in this case and as you begin your
13 deliberations. The State's job in trying to prove their
14 case beyond a reasonable doubt is to try to remove that
15 cloak. And unless they meet their burden, that cloak stays
16 on and you must return a not guilty verdict. So just keep
17 that in mind throughout the case and as you hear the
18 testimony.

19 And I won't go into what I think the facts may come
20 out, as they play out on the stand as to what the testimony
21 will be, but I will say just a couple of things. When
22 you're listening to the testimony, this was an -- and I
23 will say this alleged incident took place at a residence
24 and I believe the facts will show that the only people
25 inside the residence were Mr. Cobb and Ms. Rosetta Brown.

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1 And I think you'll hear from Ms. Brown here today. But
2 just listen to what Ms. Brown has to say and what she says
3 played out, as well as the other witnesses. But that's all
4 you can base it on.

5 Y'all are the judges of the facts. And listen to the
6 testimony and determine the credibility of each of the
7 witnesses. You can believe all of their testimony, part of
8 their testimony or none. The Judge will go over that with
9 you in making that determination.

10 But we thank you for your time here today in advance
11 for your service in this case. And we just ask that you
12 listen closely to all the testimony, as I know you will.

13 And I think ultimately, once you hear all the testimony,
14 the State, you will find, will not have met their burden of
15 proof beyond a reasonable doubt, the highest burden we have
16 in our system of justice, in our court system. I believe
17 that you'll be able to return a verdict of not guilty at
18 the conclusion of this case.

19 THE COURT: Solicitor, you may call your first
20 witness.

21 MR. CLEVELAND: Thank you very much, Your Honor.
22 Briefly, may I approach the bench?

23 THE COURT: Yes, sir.

24 (WHEREUPON, Mr. Cleveland and Mr. Alexander approached
25 the bench.)

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1 MR. CLEVELAND: Thank you, Judge. The State, at
2 this time would call Rosetta Brown.

3 THE CLERK: Place your left hand on the bible and
4 raise your right hand to be sworn, please.

5 Do you solemnly swear or affirm the testimony you're
6 about to give will be the truth, the whole truth and
7 nothing but the truth, so help you God?

8 THE WITNESS: I do.

9 THE CLERK: If you would, have a seat and state
10 your name for the record.

11 THE WITNESS: Ms. Rosetta Brown.

12 ROSETTA BROWN,

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION

15 BY MR. CLEVELAND:

16 Q. Good morning, Ms. Brown.

17 A. Good morning. How you doing?

18 Q. Do you know the Defendant, Mr. Cobb?

19 A. Yes, I do. I stay with him, live with him.

20 Q. How would you classify y'all's relationship?

21 A. Oh, ups and downs. We have good times. Ups and
22 downs, you know. A regular relationship. A regular
23 relationship.

24 Q. Boyfriend/girlfriend?

25 A. Well, a little closer than that.

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1 Q. Are y'all married?

2 A. No. We've been together for about three and a half
3 years..

4 Q. Okay. I want to just go ahead and cut to the chase
5 and go to ---

6 A. Uh-huh (affirmative).

7 Q. --- do you remember the night of January 8, 2010?

8 A. Specifically what night was it? What -- go ahead and
9 tell me what's going on.

10 Q. Do you remember the night involving a gas can with Mr.
11 Cobb?

12 A. Oh, the gas can?

13 Q. Yes?

14 A. Yes, I do.

15 Q. What were you and Tim doing that night?

16 A. We had a disagreement, like anybody has a
17 disagreement.

18 Q. What was the disagreement over?

19 A. Over some money. He gave me some money and told me to
20 keep his money and to give it back to him, so that's what I
21 did. You know what I'm saying? Trust and understanding --
22 trust in a relationship. You trust each other with the
23 things.

24 Q. All right, Ms. Brown. Hold on just a second. Ms.

25 Hanks here is taking down everything you say and so you're

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1 speaking really fast and I want to make sure ---

2 A. I'm sorry. Because -- I'm sorry -- I talk fast. I'm
3 sorry.

4 Q. --- she can get everything.

5 A. He gave me some money to keep for him and I kept the
6 money like he asked me to, to give back to him, so ---

7 Q. Did he ask you ---

8 A. --- he came back and asked for the money and I
9 wouldn't give the money back to him.

10 Q. Okay.

11 A. I said, no. You told me to keep the money here until
12 the next day.

13 Q. Okay.

14 A. So that's what I did.

15 Q. Okay. Had Tim been drinking that night?

16 A. Yes, he had.

17 Q. Had you been drinking at all that night?

18 A. I don't drink.

19 Q. Okay. How did Tim react when you didn't give him the
20 money back?

21 A. He was fussing, that's my money, you know, give me my
22 money. He was fussing and going on. I said, no, I'm not
23 giving you the money.

24 Q. Did he get hostile?

25 A. Well, he ain't hit me or nothing like that. We didn't

1 physical fight. He just jawing and we was fussing.

2 Q. Did he get angry?

3 A. He got angry and I cussed him a couple of times. He
4 cussed me a couple of times, bad words, in other words,
5 excuse me. Foul language. Foul language, put it like
6 that.

7 Q. Where were y'all when this argument happened?

8 A. Well, we was in the room, in the bedroom.

9 Q. Whose residence were you at?

10 A. His residence.

11 Q. What's the address of that residence?

12 A. Oh, lord.

13 Q. If you don't remember, just say you don't. That's
14 fine.

15 A. Well, I had my own residence but I was at his house.
16 I don't remember. I don't remember. I can't ---

17 Q. Single-wide trailer, double-wide trailer?

18 A. Single-wide, two bedroom, one bath, living room,
19 kitchen, two doors, front and back.

20 Q. All right. In response to his becoming angry, did you
21 give him the money back when he got angry?

22 A. No, I didn't.

23 Q. At what point in time did he go get a gas can?

24 A. Okay. If I didn't give him the money -- we had a
25 little discussion, argue, argue, argue, argue. He said,

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1 well, I be back in a minute. I said, well, whatever. I'm
2 not giving you the money. So he left and went out the
3 door. He say, I'm tired. I said, what you tired of?
4 What's wrong with you? He said, I'm tired. I'm fed up. I
5 said, what's wrong, Tim? What's wrong? He was crying, you
6 know what I'm saying. He was crying. He was upset. And I
7 said, what's wrong with you? He told me, he said, I'm just
8 so tired and just upset ---

9 Q. You don't have to tell me what he said.

10 A. Okay. He said he was tired. So he had the gas --
11 come in the house with the gas can.

12 Q. Well ---

13 A. You asked me. Let me tell you.

14 Q. Well, I just want to ask you at what point in time ---

15 A. Oh, excuse. Let me tell the jury.

16 Q. No, no. Talk to me, Ms. Brown.

17 MR. ALEXANDER: Your Honor, she's trying to
18 answer the question.

19 A. Yeah. I'm trying to answer the question best I can.

20 THE COURT: Okay. Well ---

21 A. It's been since January, you know what I'm saying.

22 I'm ---

23 THE COURT: All right. Well, just do your best
24 in answering the question.

25 A. Okay. Okay. So after he came back inside he was

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1 saying he was tired. He was upset and he was tired. I
2 said, tired of what? What you tired of? He said, I'm just
3 tired. It's tired of living. I'm tired. I said, tired of
4 living, what you mean you're tired? You know, we were
5 discussing stuff like that. We were arguing back and
6 forth. He had a gas can in his hand. I said, what you
7 going to do with the gas?

8 Q. Well, I just ask if he left to get the gas can?

9 A. Yeah. And he came in the house with the gas can.

10 Q. All right. Well, you ---

11 A. He came into the mobile home with the gas can.

12 Q. Where were you at that point in time?

13 A. I was in the front room eating.

14 Q. Okay. Did -- what kind of room is the front room?

15 A. It's a living room.

16 Q. Okay.

17 A. I came out from the bedroom and went to the living
18 room.

19 Q. Did you ever call 9-1-1 that night?

20 A. Yes, I did. I sure did.

21 Q. Did you get to talk to the dispatcher on 9-1-1?

22 A. Yes, I think I did.

23 Q. On the first time you called, did you get to talk with
24 the dispatcher?

25 A. I don't know. I know I talked to them. I talked to

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1 them.

2 Q. Isn't it true that Tim got the phone out of your hand
3 the first time you called the dispatcher?

4 A. Yeah. He took the phone, yes. Then I got the phone
5 back.

6 Q. All right. But the first time you called 9-1-1, you
7 never even got the dispatcher, is that a true -- you never
8 even got to speak to the dispatcher. Is that correct?

9 A. I don't know. I know I talked to them one time.

10 Q. Okay. Did they call you or did you call back?

11 A. I called back.

12 Q. Did they ever call you back?

13 A. Yeah. If you don't talk to them, they will.

14 Q. Okay. What was Tim doing with the gas can inside --
15 after he got the phone back from you, what was going on
16 inside the house then?

17 A. He went and got the gas, like I said, walked back
18 inside the house. He kept saying he was tired, he was
19 tired, tired. I said, tired of what, Tim? What you tired
20 of? He just kept saying he was tired of living, you know
21 what I'm saying? He was just going through some problems
22 and stuff. And he said, look, I'm going -- he was going to
23 ignite himself with in gas, he was going to pour gas on
24 hisself and burn hissself up.

25 Q. Well, where were you when he was going to put gas on

1 himself?

2 A. I was standing there looking at him.

3 Q. All right. How far away were you?

4 A. I was in the hallway, he was in the front room. I got
5 away from that gas can. I was going down the hallway some.

6 Q. How far away would he have been? As far away from me
7 to you?

8 A. Let's say from the officer -- the living room is say
9 from the officer -- you come back a little bit, you come
10 back over here. You come up a little bit. Okay. That's
11 where he went, right there.

12 Q. Right where I am?

13 A. The officer in the black. The one in the black?

14 Q. This guy?

15 A. Here's the living room. You got the hallway right
16 there. That's the bedroom around there.

17 Q. Okay.

18 A. You got the bathroom between this small, it's a small
19 little old-time trailer.

20 Q. But isn't it true during this ordeal that Tim wouldn't
21 let you leave the house?

22 A. Say what?

23 Q. Isn't it true that ---

24 MR. ALEXANDER: Objection, Your Honor. Leading.

25 THE COURT: Overruled.

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1 Q. Isn't it true during this ordeal that Tim wouldn't let
2 you leave the house. Isn't that correct?

3 A. That's not the thing, is us leaving the house.

4 Q. Yes or no.

5 A. No.

6 Q. Isn't it true that -- is it true that -- didn't you
7 tell -- isn't it true that you told the police officer that
8 he wouldn't let you leave the house?

9 A. No.

10 Q. Now, did the police arrive?

11 A. The police came. The sheriff, the Central police, so
12 many police out there. They went in and ---

13 Q. Just yes or no, Ms. Brown. That's all I want to know.

14 Did the police arrive.

15 A. Okay.

16 Q. Where were you when the police arrived?

17 A. When the police arrive, I was inside the house. I was
18 inside the mobile home.

19 Q. Where was Tim when the police arrived?

20 A. He was in the mobile home, too.

21 Q. What room were y'all in?

22 A. I was invited to the bedroom. And he back in the
23 front room. And the lights went out.

24 Q. Whoa, whoa, whoa, hold on just a second.

25 A. Uh-huh (affirmative).

1 Q. So you weren't in the kitchen, is your testimony, when
2 the police arrived?

3 A. No, I was in the back. I was in the back bedroom.
4 Understand? I was in the hallway. You got the hallway.

5 You've got the bedroom, bathroom and the big bedroom.

6 You've got the front room on the front and the kitchen.

7 Q. When the police arrived you were in the bedroom?

8 Where was Tim?

9 A. In the front room.

10 Q. Did Tim ---

11 A. Still fussing.

12 Q. Did Tim answer the door?

13 A. He went over there. He said something to them, but he
14 wouldn't open the door though.

15 Q. He did not open the door?

16 A. He didn't open the door.

17 Q. He would not. Did he ever open the door?

18 A. Yeah, he opened the door.

19 Q. When did he open the door?

20 A. He opened the door, I think, when one of the officers
21 came to the door and kept telling Tim, come on out, Tim,
22 let me talk to you. I was out of the house then. I had
23 left and went out of the house then.

24 Q. So Tim never opened the door. You never saw Tim open
25 the door?

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1 A. He opened the door?

2 Q. Until you were out of the house?

3 A. I went out the house. I know he wouldn't open the
4 door.

5 Q. All right. So the only time Tim opened the door was
6 after you had already let the house. Is that what your
7 testimony is today?

8 A. When Tim opened that door, I was outside the house. I
9 was outside the trailer.

10 Q. But the first time you saw Tim talk to the police,
11 your testimony is, is when ---

12 A. When I went back in there? I went back into the
13 trail.

14 Q. No, when you was already out, you was already outside?

15 A. Uh-huh (affirmative).

16 Q. Now, even after ---

17 A. He was talking to the police.

18 Q. After Tim got the gas, did you give him the ten
19 dollars?

20 A. Can you rephrase it? You just keep doing. You the
21 prosecutor.

22 Q. I know. I'm just -- let me ask the questions, Ms.
23 Brown.

24 A. Okay.

25 Q. And then I'll give you a chance to explain it.

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1 A. Uh-huh (affirmative).

2 Q. Now, isn't it true that Tim had some knives on him as
3 well?

4 A. Is that in the police report? I was outside. Is that
5 in the police report?

6 Q. Isn't it true that Tim had knives on him when you were
7 inside the house?

8 A. I seen him with the gas can. He did have a knife.

9 Yes, he did have a knife. Yes, he did.

10 Q. How many knives did he have?

11 A. He had two.

12 Q. Where was he when he had the knives?

13 A. In the kitchen.

14 Q. Were you in the kitchen with him when he had the
15 knives?

16 A. No, I was not.

17 Q. Now, did you hear Tim talk to the police?

18 A. Through the door. Uh-huh (affirmative). Yes, I did.

19 Q. What did Tim say to the police?

20 A. Tim said -- the police told him, open the door, Tim.

21 Open the door. Tim said, I'm not going to open the door.

22 And he said, open the door, Tim, and they told him, let us
23 talk to you.

24 Q. Well, let me ask you real quick. Where were you when
25 you heard this conversation?

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1 A. I came back into through back. I came back into the
2 trailer. That's what I'm telling you. If you'll let me
3 tell the story, I'll tell the story for you.

4 Q. Ms. Brown, with all due respect, I'm not going to --
5 I'll ask the questions.

6 A. You go ahead ---

7 THE COURT: Ms. Hanks can't pick up but one
8 person talking at a time.

9 WITNESS: Sorry.

10 THE COURT: She's going to have to get his
11 question, then she's going to give you the chance to answer
12 your question. So when two people are talking, it's
13 impossible for her to -- you see her mask, she's taking
14 down everything you say and taking down everything the
15 Solicitor says, so just make sure that you let him finish
16 and I'm going to make sure he lets you finish answering the
17 question.

18 WITNESS: Okay. Thank you.

19 THE COURT: Just try to answer the question that
20 he asks and then if you need to explain it, I'll certainly
21 give you a chance to explain the answer, okay?

22 WITNESS: Okay.

23 THE COURT: All right. You may ask your
24 question, Solicitor.

25 Q. Ms. Brown, I think we're getting our times messed up.

1 Let's just go back to the beginning. Did you call 9-1-1
2 because you were scared that time was going to pour gas on
3 you?

4 A. I called 9-1-1 because he had the gas.

5 Q. Did you -- answer the question. That's not what I
6 asked. I said, did you call 9-1-1 because you were scared
7 Tim was going to ---

8 A. I was ---

9 THE COURT: You're interrupting.

10 Q. --- pour gas on you?

11 THE COURT: Wait, wait, wait just a minute,
12 ma'am. You're interrupting. Let him finish what he has to
13 say and then I'm going to let -- make sure he lets you
14 finish what you have to say, okay? Listen to all of his
15 question and then you can answer, all right?

16 A. Go ahead.

17 Q. Did you call 9-1-1 because you were scared Tim was
18 going to pour gas on you?

19 A. No.

20 Q. Did you call 9-1-1 because you were scared Tim was
21 going to pour gas on himself?

22 A. Correct.

23 Q. Isn't it true that Tim said he was going to pour gas
24 on you?

25 A. No.

1 Q. Your testimony is that Tim did not threaten to pour
2 gas on you?

3 A. That he was going to pour gas on himself.

4 Q. Did you tell officers that he said he was going to
5 pour gas on you?

6 A. No.

7 Q. Did you tell the police that Tim said, and I quote,
8 he's going to burn us both up?

9 A. No.

10 Q. Now, isn't it true that you weren't free to leave that
11 house when Tim had that gas and those knives? He was keep
12 you there?

13 A. That's not true.

14 Q. Is it true that you told the police that Tim would not
15 allow you to leave the house?

16 A. That's not true.

17 Q. Why did you run out of there? What your testimony is,
18 you were fearful for Tim. Is that correct? Him hurting
19 himself?

20 A. Uh-huh (affirmative).

21 Q. Why is it then that you ran out of the trailer?

22 A. To get the officer.

23 Q. Did Tim follow you out of the trailer?

24 A. No, he stayed in the trailer.

25 Q. Where was Tim when you ran out of the trailer?

1 A. He was in the front, in front of the door between the
2 kitchen and dining room, the kitchen and living room.

3 There's no dining room. It's joined with the kitchen.

4 It's a door here, the kitchen here, then it goes in the
5 middle. I'm down the hallway at the back door. It was
6 snow on the ground, as a matter of fact.

7 Q. There was snow on the ground?

8 A. Uh-huh (affirmative).

9 Q. Did Tim ever pour gas on you?

10 A. No, he did not.

11 Q. Did he ever pour it on himself?

12 A. No. I moved the gas can.

13 Q. Would you agree with me that Tim was in a very hostile
14 state, though?

15 A. No. I wouldn't say hostile state. I said he was
16 drunk, tipsy whatever, drinking.

17 Q. Would you agree with me he was angry?

18 A. He was drinking.

19 Q. Do you agree that he was angry?

20 A. Not really angry. Upset. There's a level of anger
21 you can be.

22 Q. So your testimony is he was just being upset is what
23 caused him to go get the gas out of the back yard?

24 A. He was mad at me because I wouldn't give him the
25 money.

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- 1 Q. Once he got the gas, did you give him the money?
- 2 A. No, I did not.
- 3 Q. Once he got the knives, did you give him the money?
- 4 A. No, I did not. He went -- when he got the knives, I
- 5 went to the door, out the door. The answer is no.
- 6 Q. Where did you go when you went out of the house?
- 7 A. The side of the trailer to the police car. It's a big
- 8 pecan tree, it's real narrow ---
- 9 Q. That's okay. I understand.
- 10 A. I was barefoot, too.
- 11 Q. You were barefoot?
- 12 A. Uh-huh (affirmative).
- 13 Q. And there was snow on the ground?
- 14 A. Uh-huh (affirmative).
- 15 Q. Did you ever go back in the trailer that night?
- 16 A. Yes, I did.
- 17 Q. Was that after Tim come out of there?
- 18 A. No, I went back in there while he was in there.
- 19 Q. Did you watch the police arrest Tim that night?
- 20 A. Uh-huh (affirmative). Yes, sir. They tased him.
- 21 They tased him with that taser thing.
- 22 Q. Where were you ---
- 23 A. When they tased him?
- 24 Q. When the tased him, where were you?
- 25 A. I was inside the trailer.

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1 Q. You were inside the trailer?

2 A. I went back inside the trailer. I went back inside
3 the trailer when they tased him.

4 Q. Let me clarify this.

5 A. Yes, sir.

6 Q. Just tell me if I'm right. You were inside, you came
7 out and you came back in and then that's when the tased
8 him?

9 A. They let me out of the police car. They let me out of
10 the police car. They let me back out because I told them I
11 need some shoes on my feet. I was cold. And they let me
12 back out. I went back down to the thing, to the side,
13 excuse me, into the side of the trailer. I went back into
14 the door. And when he seen me open the front door, the man
15 tased him, an officer tased him. When he tased him, the
16 taser -- there's two things on the taser. One of them hit
17 him and the other one went into the paneling on the
18 trailer. You see what I'm saying? It's like a paneling
19 inside the trailer. Both the things didn't hit him.

20 Q. Did not?

21 A. One hit him and one went on this side. This here's
22 Tim, this is Tim, I'm Tim. One went into him and the other
23 went that way.

24 Q. To make it real easy, was the taser effective on him?

25 A. No, he just pulled it off of him, no.

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1 Q. So it's your testimony, though, that Tim never went to
2 the door until after you went back inside the house, right?

3 A. He was at the door. But when I went in the house, the
4 door was open then.

5 Q. He never opened the door?

6 A. He opened the door. The door was open when I got into
7 the house.

8 Q. But that was after you'd left the house barefoot in
9 the snow, correct?

10 A. Uh-huh (affirmative). Yes, sir.

11 Q. After Tim was arrested -- did you see them arrest him?

12 A. Yes, sir. I was up there.

13 Q. Did you talk to the police?

14 A. I was in the police car.

15 Q. But isn't it true that you had a conversation with the
16 police about what was going on that night?

17 A. Yeah. I talked to one of them. The one that -- I
18 think -- I don't know if it was a lady or a man. It was
19 one of the officers.

20 Q. Yes or no, did you talk to them?

21 A. Yes, I talked to them. Yes, I did. Yes, yes.

22 Q. Did you ever give a written statement?

23 A. Yeah, I wrote a statement. If you can read it for the
24 jury.

25 Q. Well, I'm going to hand you what I've marked State's

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1 Exhibit Number 7. I want you to just take a look at that,

2 Ms. Brown, please?

3 A. This is it.

4 Q. Did you give that statement?

5 A. Uh-huh (affirmative). Yes, sir. That's it.

6 Q. Did you give that -- is that your handwriting in that
7 statement?

8 A. Yeah. This is it. Yes, I did.

9 Q. Okay. Is that your signature at the bottom of it?

10 A. This is it.

11 Q. Did you give that statement of your own free will?

12 A. Yes, I did.

13 Q. No one promised you anything or told you they'd do
14 anything for you to get you to make that statement?

15 A. No. But one officer did tell me if I would give them
16 a statement, if I didn't sign it, he would lock me up,
17 also.

18 Q. So there was -- it wasn't voluntary. That's what
19 you're testifying to?

20 A. No. I wrote that myself.

21 Q. Okay.

22 A. But the officer say he was going to make a statement
23 on his own is what I'm telling you. He was going to make a
24 statement and he wanted me to sign it. You can read mine.

25 But you can read it. And he said, he said that if I didn't

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1 cooperate with him or sign the paper that he would lock me
2 up, also. I said, how you going to lock me up? I'm not
3 going to the station. I said, how you going to lock me up?
4 You can't lock me up for something if I don't sign. That's
5 not right.

6 Q. Okay. Now ---

7 A. And I think he was going to write my statement over
8 because of the way I writ my statement. I told the truth
9 and he wanted it another way and I told him, uh-uh, no.

10 Q. I want you to read ---

11 A. Which one?

12 Q. I'm a little confused. In this statement, if I may

13 ---

14 A. Okay.

15 THE COURT: Do you need a copy of your statement
16 to refresh your memory.

17 WITNESS: Absolutely.

18 Q. You just hang on to that. I've got mine. I'm sorry,
19 Ms. Brown.

20 A. Okay.

21 Q. Do you see in the middle of your statement where you
22 wrote, Tim went to the door?

23 A. Uh-huh (affirmative). And the officer ... Go ahead.

24 Q. Yeah. I'm getting there.

25 A. Okay.

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- 1 Q. It says the officer shot him with the taser gun.
- 2 A. Uh-huh (affirmative).
- 3 Q. Now ---
- 4 A. Tim pulled a knife.
- 5 Q. Now we go down to the bottom, you see about down where
- 6 it says, when he went to the front room, I ran out the back
- 7 door.
- 8 A. Let me see if I can get to that.
- 9 Q. Take your time if you need to find it.
- 10 A. I am. Let's see. Okay. That said I went out the
- 11 front door, and I went out the back door.
- 12 Q. But just to go back, didn't you testify that Tim was
- 13 in the -- you'd already left by the time Tim got tasered?
- 14 A. I said I came back. I just told you I came back into
- 15 the trailer. You can't cross my words up. I know what I
- 16 did because I went through it over again.
- 17 Q. We're not crossing words, Ms. Brown. Can you point in
- 18 this statement to where you said you left the trailer and
- 19 then came back in before Tim got tased?
- 20 A. Let me see that right. I'm back. We're on the
- 21 statement. Let's see.
- 22 Q. I'll save you the trouble. It's not in there, Ms.
- 23 Brown.
- 24 A. Let me read it, please.
- 25 Q. Would you agree that it's not in there?

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1 A. You ask me to read it.

2 THE COURT: We'll give her a chance to read over
3 it.

4 THE WITNESS: I can't see it to read over it.

5 THE COURT: Just read your statement. Answer the
6 question, please, ma'am.

7 WITNESS: Yes, sir.

8 A. You're right. Go ahead. I don't see it. All right.
9 Go ahead.

10 Q. Would you agree with me that it's not in there. You
11 never said you ran out of the trailer and came back in
12 before Tim got tasered?

13 A. I did run out of the trailer and come back in, but
14 it's not in there. Because I wanted my shoes. I didn't
15 have no shoes on. That's what I said when they tased him.

16 Q. You testified that the taser wasn't effective.

17 A. No. They shot one right here and the other one hit
18 the wall.

19 Q. I understand that. Let me finish my question. You
20 said the taser wasn't effective. When did they arrest Tim?

21 A. Tim gave himself up. Tim came on out, and just gave
22 himself up.

23 Q. Right after he was tased?

24 A. When Tim pulled the taser out of him, they told Tim,
25 lie down. Tim, lie down. They put him on the ground,

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1 straight on the ground. They locked him up.

2 Q. Now, in your statement you testified Tim went -- put
3 the knives down and went straight to the ground, correct?

4 He gave up after he was attempted to be tased. Is that
5 what you're saying?

6 A. Yes, he did.

7 Q. Now ---

8 A. One officer knowed Tim and went to school with him or
9 whatever.

10 Q. All right.

11 A. But they talked to him. That's how he got him on out
12 there. Yes, sir.

13 Q. Now, in your statement you wrote, Tim pulled out --
14 there's a statement, the officer shot him with a taser gun.
15 Is that correct? I'm in the middle of the page. You
16 wrote, Tim pull them out and then the lights went out in
17 the house because of bad electricity? Are you following
18 along with me? Didn't you write ---

19 A. Breaker box.

20 Q. --- so he come in the room ---

21 A. Breaker box.

22 Q. --- to the breaker box to fix the lights on.

23 A. That breaker box, they didn't -- the lights was on
24 when they tased him. The breaker box went out before
25 they tased him because I was still inside the house while

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1 the lights was going off.

2 Q. Which is the truth, Ms. Brown?

3 A. I'm telling you, listen. It's a old mobile home,
4 okay?

5 Q. All right.

6 A. The breaker box went out before I went out the door.
7 At any time because I asked -- I was scared the police is
8 going to shoot me in the house.

9 Q. Let me ask the question.

10 A. Go ahead.

11 Q. Did he fix the electricity after he was tased or did
12 he give up after he was tased?

13 A. Before. He fixed the electricity before he was tased.
14 It was light inside the house and I was still in there when
15 the lights was off. Because I was scared. I got down
16 beside the bed. I was scared they was going to shoot, the
17 police was going to shoot.

18 Q. Do you agree with me that that's not what your
19 statement says?

20 A. Yes, sir. I agree that's not what my statement says.
21 It's not on there.

22 MR. CLEVELAND: Your Honor, at this time, the
23 State wishes to move State's Exhibit Number 7 into
24 evidence.

25 THE COURT: Any objection?

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1 MR. ALEXANDER: No objection.

2 THE COURT: Without objection, State's Exhibit
3 Number 7 is admitted into evidence.

4 (WHEREUPON, State Exhibit Number 7 was admitted into
5 evidence.)

6 Q. Now, where did you give that statement, Ms. Brown?

7 A. At the police department.

8 Q. How did you get to the police department?

9 A. A police officer. I ride the car there.

10 Q. You didn't drive your car?

11 A. Or did I drive my car? Let me think. Did I drive my
12 car or did I ride with them? I really don't know because,
13 you know what, I had a Nissan. I'm trying to think. Did I
14 ride in the back of the car, the police car or drive my
15 car. Or did my mama come. I don't know. I can't tell
16 you. I don't know. Honestly, I can't say.

17 Q. When Tim got angry, right at the beginning of y'all's
18 argument, did you feel any danger for your personal safety?

19 A. No, I didn't.

20 Q. When Tim went outside and came back in with a gas can,
21 did you feel any danger for your personal safety?

22 A. No, Tim won't hurt me. He won't hurt me. I didn't
23 know what he was going to do with it, but he wouldn't hurt
24 me.

25 Q. When Tim withdrew knives ---

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1 A. Oh, he didn't draw no knife on me, honey.

2 Q. When he had them on, did you ever feel ---

3 A. No.

4 Q. How long after this incident was it before you and Tim
5 reconciled?

6 A. The next day. Because he was -- you saying when we
7 was back together, what you saying?

8 Q. Yes, ma'am.

9 A. The next day.

10 Q. Does the, does the bedroom in that trailer have its
11 own door?

12 A. Huh?

13 Q. Does the bedroom in that trailer have its own door?

14 A. The bedroom from the bathroom door. The bedroom, no,
15 no, no.

16 Q. That's okay.

17 A. The back door is in front of the bathroom.

18 Q. All right.

19 A. You got a bedroom here, big bedroom, little a bedroom
20 there, a living room, kitchen and the front door.

21 Q. Does the -- what room does the front door go into?

22 A. Into the -- if you go in the front door, you got your
23 kitchen on the left side and the living room here.

24 Q. How is the kitchen and the front room separated?

25 A. It's the sink, the utility closet, cabinet, yeah.

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1 Q. Is there a wall in between the kitchen and the ---

2 A. Yeah. No, it's opened up. It's an opening over the
3 sink.

4 Q. Are you still staying with Mr. Cobb today?

5 A. Uh-huh (affirmative). Yes, I am.

6 Q. Did y'all come to the courthouse together today?

7 A. Yes, I come -- yes, we did. Yes, sir.

8 Q. You want anything to happen to him about this
9 incident?

10 A. Huh?

11 Q. You want anything to happen to him because of this
12 incident?

13 A. No, I don't, no. Everybody has problems. I'm just
14 going to say to myself -- can I speak now?

15 Q. Let me ask the questions, Ms. Brown, with all due
16 respect.

17 A. Okay.

18 Q. Do you feel like you can take care of yourself in a
19 physical situation like this?

20 A. What kind of physical situation you talking about?

21 Q. Like this situation that you had?

22 A. Like who had?

23 Q. The night in question. Do you feel like you could
24 take care of yourself if things got out of hand?

25 A. Yeah, I could, but wasn't nothing that got out of

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1 hand, though. Yes, I could.

2 Q. But you agree you still called 9-1-1 that night,
3 correct?

4 A. Yes, I did.

5 Q. Did Tim always have the gas or did you get the gas
6 away from him?

7 A. I got the gas.

8 Q. Did Tim always have the knives or did you go get the
9 knives away from him?

10 A. No, I didn't get a knife from him. He always had the
11 knives. He didn't always had it. He just got it at the
12 end. He didn't always have the knives with him. He just
13 went in and got the knives then. He has emotional
14 problems, real bad problems.

15 Q. Show me in your statement that you have in front of
16 you -- if you want, I can show it to you again -- show me
17 where you wrote you never felt threatened?

18 A. Well, if you read the statement ---

19 Q. Just answer the question, Ms. Brown.

20 MR. ALEXANDER: Your Honor.

21 Q. Can you show me where you said you never felt
22 threatened?

23 A. Well, it says he's getting upset.

24 MR. ALEXANDER: Your Honor, I would ask that she
25 be allowed to just ---

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1 A. And ---

2 THE COURT: Wait just a moment. Yes, sir.

3 MR. ALEXANDER: Your Honor, I'd ask that she be
4 allowed to read the entire statement. He's asked it
5 piecemeal.

6 THE COURT: You'll be allowed to cross-examine
7 the witness, Mr. Alexander.

8 MR. ALEXANDER: Yes, sir.

9 A. So, I, Rosetta, called 9-1-1 and told ... put the gas
10 down. Okay. He put the gas down. I went and got the gas,
11 moved the gas. The gas was still inside the mobile home,
12 but I moved the gas. And then to answer your question, I'm
13 being threatened

14 Q. Have you found it yet?

15 A. I'm looking for it. ... Do not shoot. I do see where
16 I wrote, do no shoot, it's me. ... Now, you show me where
17 I said I was afraid for my life.

18 Q. I'll ask the questions, Ms. Brown, with all due
19 respect.

20 A. I'm sorry.

21 Q. Show me where you said you got the gas away from him?
22 I apologize. Or took it from you. I guess you can't do
23 it. I thought it was mine. I apologize. I can save you
24 the trouble. It's not in there.

25 A. I know. I didn't see it either, so, no.

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1 Q. Isn't it true that you also never told the officers
2 you weren't threatened?

3 A. Do what?

4 Q. Isn't it true you never told the officers you never
5 felt threatened?

6 A. I didn't feel threatened.

7 Q. You never told the officers that, did you?

8 A. I can handle myself. And what Tim was doing, the
9 statement says everything. Read the statement. The
10 statement says everything. Tim was trying to hurt his
11 self.

12 Q. I just ask just a simple question. Did you tell the
13 officers you never felt threatened?

14 A. No, I never said I felt threatened.

15 Q. Ms. Brown, isn't it true you've been in trouble with
16 the law just a little bit in the last ten years?

17 A. What?

18 Q. Back in -- isn't it true that about ---

19 A. The case about me and about Tim, Mr. Cobb?

20 Q. It's about you. It's about you. Isn't it true that
21 back in March of 2005 you were either found or pled guilty
22 to three counts of fraudulent checks?

23 A. That when I wrote checks, my checks bounced?

24 Q. Yeah.

25 A. Everybody do that, that don't balance the checkbooks.

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1 Q. All right. Back in ---

2 A. So I didn't write no check belong to me. They were my
3 checks. I was paying bills and I didn't get my checkbook
4 right and it bounced, yes. And I paid the checks. Thank
5 you.

6 Q. And isn't it true you had two more counts of
7 fraudulent checks in April of 2005 for a total of five
8 fraudulent checks?

9 A. They was taken care of. I paid them.

10 Q. Wouldn't you agree with me that writing a fraud check,
11 that's writing a check when you ain't got the money in your
12 account, right?

13 A. No, it's writing a check when you're over balance your
14 checkbook. And I think a lot of people have that.

15 Q. Would you agree if you write a check ---

16 A. Who's on trial, me or Timmy?

17 Q. Let me ask the question.

18 A. Excuse me, sir. I'm not trying to be rude.

19 THE COURT: Let him finish his question, please,
20 ma'am.

21 Q. Do you agree with me that writing checks to get
22 something when you don't have any money in your account is
23 being dishonest to get something that you want?

24 A. No. If you're paying a bill, sir, if you're paying a
25 bill ---

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1 Q. That's good enough.

2 MR. CLEVELAND: I don't have any further
3 questions, Judge.

4 Ms. Brown, please answer anything Mr. Alexander has.

5 THE COURT: You may cross-examine the witness.

6 MS. ALEXANDER: Thank you, Your Honor.

7 **CROSS-EXAMINATION**

8 **BY MR. ALEXANDER:**

9 Q. All right, Ms. Brown. Let's kind of go back to the
10 beginning here. This incident, we'll call it, happened in
11 January of 2010. Is that right?

12 A. Right.

13 Q. Is that right?

14 A. Yeah, that works.

15 Q. Almost two years ago?

16 A. Uh-huh (affirmative).

17 Q. Is that a yes?

18 A. Yes, sir.

19 Q. Okay. And would it be fair to say that trying to
20 recall exactly in the order everything happened is
21 difficult?

22 A. Yes, it is.

23 Q. Okay. Now, I'll give you back here your statement,
24 State's Exhibit 7. I want you to just read that out loud
25 to the jury, okay?

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1 A. Okay.

2 Q. Just take your ---

3 A. I can't see. It says, Rosetta Brown. It says ---

4 Q. Just start where you ---

5 A. At 130 Curtis Circle in Central?

6 Q. --- where you started writing?

7 A. I stay at -- I'm forty-nine years old. I'm fifty-one

8 now. And I stayed at 130 Curtis Circle in Clemson then.

9 Okay. It says, Tim was -- let me get it to where I can

10 see. Tim was -- what is that -- drinking? Yeah. Tim was

11 drinking some beer. Okay. It says Tim was drinking some

12 beer. Now, I wrote this and I can't hardly see it. I was

13 in the house at the time. And I had to initial my name at

14 the top of it. Me and Tim talked. Tim asked me for some

15 money. I told him I did not have -- I did not have any, no

16 money. I said, I did not have no money at the time. So he

17 got mad at me. Tim needed help. Tim needs help. I cannot

18 say Tim got the gas -- is that gas -- the gas can from the

19 outside. And the gas can from outside, and said, I am

20 going to kill myself. So, Tim went outside and got the gas

21 can and said he was going to kill his self. And then right

22 here it says, so I, Rosetta, called 9-1-1 and told them --

23 I told him to put the gas can down. I told him, put the

24 gas down. That's what it says right here. And the 9-1-1

25 people still was on the phone, so he put -- so he pulled

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1 the phone from me and I got it back from him. Let me see.
2 Then the officer come to the call. Tim went to the door.
3 The officer shot the taser, shot Tim with a taser gun. Tim
4 pulled them out of him. Then, let me see, then the -- what
5 is that -- then the lights went out into the house because
6 of the electric -- the bad electricity box. So he come in
7 the room and fixed the breaker box and I tried to fix --
8 are you trying to fix -- I asked him are you trying to fix
9 the lights, trying to fix the lights on? I said, trying to
10 get out of the -- I said, trying to -- lights on. He say
11 -- turned the lights on. And he said, I am trying to fix
12 the lights. He was trying to fix the lights, the breaker
13 box. It's an old trailer. Okay. Then when he went into
14 the front room and ran -- what does that say -- when he
15 went into the front room, I ran out the back door to the
16 police so they -- what is that -- went to the house trying
17 to talk to him to open the door. They went to the house
18 trying to get Tim to open the door. I came out of the side
19 -- I came outside and said, do not shoot. Because the
20 lights was off, you know, what I'm saying. The trailer ---
21 Q. You don't have to explain. Just read the statement
22 right now.
23 A. That's what it says. Because I just wrote it again.
24 And he said, lay down on the ground. Do not shoot. I told
25 them it was me. Do not shoot. But then Tim came outside

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1 and the officer said, don't -- Tim said to the officer,
2 don't shoot. He went to the officer and Tim said, don't
3 shoot. Then the officer said, lay down on the ground.
4 That's what he told Tim. So he laid down on the ground and
5 the police handcuffed him and put him in the police car.
6 And, let's see if that's all.

7 Q. Read those last two lines.

8 A. That's all. He did calm down -- oh, he did come out
9 with the knives, yeah. He come -- the officers got the
10 knives from Tim, but he did lay on down. They did lock him
11 up.

12 Q. Read that, the last ---

13 A. They put him down ---

14 Q. --- verbatim?

15 A. Okay. And said, shoot me. Oh, he did say, shoot me.
16 He did -- before he lied down he told them to shoot him.
17 He did tell them to shoot him because he was tired of
18 living. He did say that. It's on there. He told the
19 officer, shoot me.

20 MR. ALEXANDER: May I publish her statement to
21 the jury?

22 THE COURT: You may do so.

23 Q. All right. Ms. Brown, let's go back a little bit. So
24 let me see if I've got the time line right. You tell me
25 whether I'm correct or not. So you and Tim were arguing

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1 over him wanting some money, right?

2 A. That was his money. I had his money.

3 Q. All right. And y'all argued -- how long did y'all
4 argue about that?

5 A. About twenty or thirty minutes.

6 Q. Okay. And then at some point Tim went outside and got
7 a gas can. Is that right?

8 A. Uh-huh (affirmative).

9 Q. All right. And he said he was going to kill himself?

10 A. Uh-huh (affirmative).

11 Q. Is that right?

12 A. That's correct.

13 Q. Okay. Did he say how he was going to kill himself?

14 A. Put that gas on himself, I guess, because he had the
15 gas can.

16 Q. All right. Did he have a lighter with him?

17 A. No, he didn't have no lighter.

18 Q. Okay. So he got the gas and then you called 9-1-1 at
19 that point?

20 A. Uh-huh (affirmative).

21 Q. You've got to say yes or no?

22 A. Yes, I did.

23 Q. Okay. And when you called 9-1-1 did he still have the
24 gas can in his hand?

25 A. Yes. Then I went up the hallway. He grabbed the

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1 phone from me.

2 Q. Hang on. Let's take it one at a time?

3 A. Yes, he did.

4 Q. Okay. And then he got the phone from you at some
5 point?

6 A. Yes, he did.

7 Q. And 9-1-1 was still on the phone?

8 A. Yes.

9 Q. And then you got the phone back?

10 A. Yes.

11 Q. Did you just take it back out of his hand or what?

12 A. I just jerked it. Yeah, I just jerked it out of his
13 hand.

14 Q. All right. And then -- all right. So in your
15 statement in there it says the officers -- when you're
16 talking about the officers, did they call Tim to the door.
17 Is that right?

18 A. Uh-huh (affirmative). They was on the door, knocking
19 on the door.

20 Q. All right.

21 A. Because I was in there.

22 Q. So is it -- at this point had you gotten the gas from
23 him?

24 A. Uh-huh (affirmative). Yes, I have.

25 Q. And what did you do with the gas can?

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- 1 A. I put the gas down in the kitchen.
- 2 Q. All right. Sat it on the kitchen table or what?
- 3 A. On the floor.
- 4 Q. On the floor, okay. And so Tim went to the front door
- 5 at that point. Is that right?
- 6 A. Uh-huh (affirmative). And opened the door.
- 7 Q. And opened the door.
- 8 A. Uh-huh (affirmative).
- 9 Q. Okay. And he had those kitchen knives?
- 10 A. Correct.
- 11 Q. Well, I think it's been called knives. Were they
- 12 kitchen knives?
- 13 A. Kitchen knives.
- 14 Q. Okay. Kind of long kitchen knives?
- 15 A. Kitchen knives.
- 16 Q. And he talked to the police some?
- 17 A. Uh-huh (affirmative).
- 18 Q. Actually kind of yelling at them, right?
- 19 A. Yeah. They was fussing back and forth. He told the
- 20 officer, he says, y'all want to shoot me, just shoot me
- 21 here. I'm tired of living. I'm tired of living. Then
- 22 they tased him at the door. They ---
- 23 Q. Hang on, let's -- one at a time. Take a step at a
- 24 time. So he told the officer -- they asked him to put the
- 25 knives down. Is that right?

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1 A. Correct.

2 Q. Well, let me back up. They asked him whether he had
3 any weapons. Do you remember that?

4 A. Uh-huh (affirmative).

5 Q. Is that a yes?

6 A. Yes.

7 Q. And he said that he had the knives, with some colorful
8 language. Is that right?

9 A. Right.

10 Q. Okay. And they asked him to put the knives down. Is
11 that right?

12 A. Correct.

13 Q. And he wouldn't do it?

14 A. Correct.

15 Q. And told -- he told them to go ahead and shoot him.
16 Is that right?

17 A. Correct.

18 Q. And that's when they tried to shoot him with the taser
19 gun?

20 A. Taser.

21 Q. And only got one of the things on him?

22 A. Only got him one time.

23 Q. So he was able -- and then he went back into the
24 house?

25 A. He was never -- he was at the front door. He was

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1 still at the front door. He didn't never put his foot on
2 the front step.

3 Q. Okay. But the door was open?

4 A. The door was open.

5 Q. I got you.

6 A. He was standing in front of the door.

7 Q. I got you.

8 A. So if he had put his foot out there, they'd have shot
9 him, but he didn't.

10 Q. Okay. And so he shut the door back?

11 A. No, the door was still open.

12 Q. Okay. Now, when he was standing at the front door,
13 where were you at at that point in time?

14 A. When he was standing in the front door, I'm in the
15 front room. I came back in and I went to the front room.

16 Q. So you were kind of behind him in the front room?

17 A. There's a wall right here, the front door here,
18 there's a wall here, the kitchen, kitchen here. Oh, lord.
19 This is your front door. Okay. Let me do it to the jury.
20 Okay. This is the front door here.

21 Q. Right.

22 A. The kitchen's over here. You've got the wall right
23 here. See what I'm saying? You come in. It's a clock
24 here. Yeah, a clock hanging here in the front room on this
25 side.

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1 Q. Okay.

2 A. And then you go down the hallway there. But you open
3 the door, you got the hall because this -- right here, this
4 straight piece.

5 Q. So you were in the front room?

6 A. Uh-huh (affirmative).

7 Q. Not in the kitchen?

8 A. Uh-uh (negative). I was in the front room.

9 Q. And the rear exit is going away from the kitchen,
10 right?

11 A. Going down that front room, down the hallway.

12 Q. So at that point in time, if you'd wanted to leave why
13 he's standing at the front door, all you had to do is walk
14 out the back door?

15 A. Yeah. Uh-huh (affirmative). That's correct.

16 Q. Okay. All right. So he shuts the door and comes back
17 in. Is that when the electricity went out?

18 A. The electricity -- the power box went out.

19 Q. Okay.

20 A. Yeah. And I thought they were going to shoot and I
21 was scared. I said, don't shoot, don't shoot, don't shoot.

22 You know what I'm saying? And asked Tim to get the breaker
23 box fixed because it goes out all the time. It was bad

24 wiring. It's an old trailer. It's bad wiring. And then
25 he come in there and tried to fix it.

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1 Q. All right. And in your statement you said when he
2 went into the room to fix the breaker box, you ran out the
3 back door?

4 A. Uh-huh (affirmative). It was dark. The whole trailer
5 was black dark. And I was scared the officers was going
6 to shoot into the house, you know what I'm saying? I
7 didn't want to get shot.

8 Q. Okay.

9 A. And I went out the door I was shouting, it's me, it's
10 me, it's me, it's me, it's me.

11 Q. Okay.

12 A. And I went out the back door.

13 Q. Okay. So you ran out -- you say you ran out the house
14 ---

15 A. Uh-huh (affirmative).

16 Q. --- so that the officers wouldn't shoot into the
17 house. Is that what you're saying?

18 A. Uh-huh (affirmative). I was scared they were going to
19 shoot in the house.

20 Q. Because the lights went out?

21 A. Uh-huh (affirmative).

22 Q. And because Tim had just ---

23 A. But he got them back on. He got them back on before I
24 went out.

25 Q. All right. So you went out and went to the police

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1 car, right?

2 A. Uh-huh (affirmative).

3 Q. Is that right?

4 A. That's correct.

5 Q. And Officer Roper, I think it was, did he frisk you,
6 searched you, when you went out there?

7 A. No. He just opened the back door and let me in the
8 back seat.

9 Q. But he put you in the police car?

10 A. Uh-huh (affirmative). Back seat.

11 Q. All right.

12 A. And I was cold.

13 Q. And then Tim came out the front door, right?

14 A. They got Tim out the front door.

15 Q. So not long after you went out the back door, Tim came
16 out the front door?

17 A. The front door.

18 Q. And he eventually laid down and they arrested him?

19 A. Uh-huh (affirmative). Well, he asked -- he was -- he
20 asked me, I was -- I said, let me get out of the car. He

21 said, what are you pressing charges, what you doing, I
22 didn't do nothing. I said, I know you didn't do nothing.

23 I know you didn't do nothing.

24 Q. All right. So then when you were testifying and Mr.

25 Cleveland was questioning you about leaving the house -- it

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1 was something about leaving the house twice ---

2 A. Twice.

3 Q. --- and coming back. You only left the house once
4 then, right?

5 A. I'm going to tell you the truth. I left the house
6 twice. The first time I went back in. I did leave the
7 house twice.

8 Q. After the police got there?

9 A. I went out, went to the police car. I went back in
10 the house, back through the back door. Uh-huh
11 (affirmative). I did leave the house twice.

12 Q. But the statement ---

13 A. Says once.

14 Q. Well, that's okay. But as best you remember your
15 statement is accurate. Is that correct?

16 A. Uh-huh (affirmative).

17 Q. You have to say yes or no?

18 A. Yes, it is.

19 Q. Okay. Now, Mr. Cleveland asked you to point out where
20 you told the police that you weren't threatened, which
21 that's -- you didn't say that in your statement?

22 A. I didn't.

23 Q. But you also didn't say in your statement that you
24 were threatened. Isn't that right?

25 A. I wasn't threatened.

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1 Q. All right. Let's -- this gas can, what did it look
2 like?

3 A. A little small gas can.

4 Q. Like maybe a two-gallon gas can?

5 A. I don't recall. It might hold a gallon.

6 Q. Okay.

7 A. One of the little small ones, like a little weed eater

8 ---

9 Q. For like a lawnmower or something?

10 A. Weed eater, lawnmower or something, a small gas can.

11 Q. Okay. Just the standard red plastic gas can?

12 A. Uh-huh (affirmative). I think it was red.

13 Q. And it was plastic?

14 A. Uh-huh (affirmative). It was plastic.

15 Q. All right. Had a little spout on it?

16 A. I believe so.

17 Q. Okay. Did he ever pour any gas out of it into a cup
18 or anything?

19 A. No.

20 Q. Okay.

21 A. Wasn't that much in there. There wasn't much in
22 there.

23 Q. Yeah. You said that you had got a hold of it at one
24 point. Is that right?

25 A. Uh-huh (affirmative).

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1 Q. How much gas ---

2 A. It was -- it wasn't nothing, maybe a dollar's worth
3 maybe or a half a dollar, fifty cents worth.

4 Q. Less than half full?

5 A. Yeah. It wasn't half full. It wasn't that much in
6 there.

7 Q. Okay. And he didn't have no lighter on him as you
8 saw?

9 A. Uh-uh (negative).

10 Q. Did he ever pull a lighter out ---

11 A. No.

12 Q. --- and say, I'm going to burn myself up or anything?

13 A. No. No, sir.

14 Q. All right. So let me make sure I understand. So you
15 called 9-1-1 because you were afraid Tim was going to hurt
16 himself and that was after he threatened to kill himself?

17 A. Correct.

18 Q. Okay. And when he went and got the gas, he never
19 threatened you in any way?

20 A. No, he did not.

21 Q. Okay. Did you ever feel threatened by his actions?

22 A. No.

23 Q. Okay. Him holding the gas up and having it in his
24 hand, you never felt threatened?

25 A. No. He had the gas in his hand like that. He never

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1 poured anything out. You got to tip it for that to come
2 out, you know.

3 Q. Did he ever, you know, tilt it over towards you like
4 he was going to pour it on you?

5 A. No. No, sir.

6 Q. Okay. Did he ever make any actions towards you to try
7 to pour it on you?

8 A. No, sir.

9 Q. All right. When he got the knives, did he threaten
10 you with the knives in any way?

11 A. No, sir.

12 Q. Okay. Were you at any point in time not free to leave
13 this trailer?

14 A. I could leave any time.

15 Q. Okay.

16 A. I wanted the lights were back on before I left out. I
17 said, I ain't going to get shot. You know, I'm scared of
18 getting shot by the police, coming back to the door.

19 Q. This happened after midnight, around midnight?

20 A. It was late.

21 Q. Okay. In January?

22 A. Yeah. It was in January. It was late.

23 Q. So it was cold outside?

24 A. Yeah. It had snowed. We had a little snow down there
25 at that time. And that was the second day it was snowing

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1 because we went out. It was snow out, but some of it had
2 melted.

3 Q. Did you not want to leave to the house because it was
4 cold, is that part of it?

5 A. Well, I went out the door barefooted.

6 Q. And you did that ---

7 A. And I came back in.

8 Q. --- to go to the police so that they could try to get
9 Tim to surrender?

10 A. Uh-huh (affirmative).

11 Q. Is that right?

12 A. Get some help.

13 Q. And shortly after you came out, Tim did surrender. Is
14 that right?

15 A. Yes, he did. He came out, gave them the knife, and
16 laid down on the ground.

17 Q. Mr. Cleveland asked you about your prior offenses
18 about dishonesty and stuff. You certainly understand the
19 importance of telling the truth here today?

20 A. Yes, I do. Yes, I do.

21 Q. If Mr. Cobb had assaulted you in some way or that you
22 felt threatened by Mr. Cobb in some way, would you be the
23 first person to say he threatened me?

24 MR. CLEVELAND: Objection, Judge. That calls for
25 speculation.

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1 THE COURT: Wait. I sustain the objection.

2 MR. ALEXANDER: Your Honor, he questioned her
3 about ---

4 THE COURT: Okay. Well, rephrase your question.
5 The way you were asking the question, I sustain the
6 objection.

7 MR. ALEXANDER: All right.

8 Q. All right. Ms. Brown, if you had felt threatened that
9 day, or that Mr. Cobb had assaulted you in some way, would
10 you have reported that to the police?

11 A. Yes, I would have.

12 Q. Okay.

13 MR. ALEXANDER: One moment, Your Honor. That's
14 all the questions I have for Ms. Brown.

15 THE COURT: Any redirect?

16 MR. CLEVELAND: Just briefly, Your Honor.

17 THE COURT: Briefly.

18 **REDIRECT EXAMINATION**

19 **BY MR. CLEVELAND:**

20 Q. Just to shore up your testimony, Ms. Brown.

21 A. Yes, sir, go ahead. I'm cold.

22 Q. You were not -- it is your testimony today that you
23 were not threatened, correct?

24 A. That's right.

25 Q. And it is your testimony that you would have told the

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1 police if you were threatened?

2 A. Uh-huh (affirmative).

3 Q. So to follow that, your testimony is you never -- that
4 you never told anybody that you were threatened?

5 A. I wasn't threatened. He was trying to kill his self.

6 Q. You've never told anybody he threatened to pour gas on
7 you?

8 A. No, I didn't.

9 Q. You never told anybody he poured gas on you?

10 A. No, he didn't pour no gas on me. No.

11 Q. It was just y'all two in the trailer that night?

12 A. Yes.

13 Q. Nobody else?

14 A. That's all.

15 Q. Okay.

16 MR. CLEVELAND: That's all the State has, Judge.

17 THE COURT: All right. Thank you, ma'am. You
18 may step down from the witness stand.

19 WITNESS: Okay. Thank you, sir.

20 THE COURT: Be careful now getting down.

21 WITNESS: Yeah. Thank you.

22 THE COURT: Ladies and gentlemen, we've worked a
23 little past lunch time, but we're going to take a lunch
24 break now. I'm going to ask if you would when you go to
25 lunch, make sure you don't talk to anyone about the case.

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1 I've told you already that it would be improper for anyone
2 to approach you, for you to talk with anyone. I would not
3 expect anyone would try to approach you and ask you
4 questions or give you information. And if that were to
5 happen, please explain to that person that you're on the
6 jury and you can't be talking about the case. If possible,
7 and if that person persist, you get the name and report it
8 back to me, I assure you I'll take care of that matter.

9 I know we're curious by nature. You may meet with
10 some family members or business colleagues or you may have
11 lunch with your fellow jurors. Of course, you know not to
12 talk about the case. Other folks that may be curious about
13 your jury service and what the case is about, while the
14 case is going on is not the time to be discussing that.
15 You'll have an opportunity to share with your loved ones
16 and friends about your experience as a juror, but while the
17 case is in progress is not the time to do that. So don't
18 discuss it and don't let anyone discuss it with you.

19 If you'll be back twenty minutes until three, that
20 gives you about an hour and fifteen minutes to have your
21 lunch, we'll be ready to start back at two forty. Have a
22 good lunch, ladies and gentlemen. If you'll go with Mr.
23 Teal now, he'll show you where to report back.

24 (WHEREUPON, the jury exited the open court at
25 approximately 1:24 p.m.)

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1 THE BAILIFF: The door's closed, Your Honor.

2 THE COURT: All right. We'll be at ease until
3 twenty minutes of three.

4 (WHEREUPON, the court stood at recess for a lunch
5 break.)

6 THE COURT: Thank you. Please keep your seats,
7 ladies and gentlemen. Are you ready to proceed, Solicitor?

8 MR. CLEVELAND: The State's ready to proceed,
9 Your Honor.

10 THE COURT: If the jury's ready you can have them
11 come in, Mr. Teal.

12 (WHEREUPON, the jury entered the open court at
13 approximately 2:46 p.m.)

14 THE COURT: All right. Ladies and gentlemen,
15 thank you very much. We are now ready to proceed.
16 Solicitor, you may call your next witness, please.

17 MR. CLEVELAND: Thank you, Judge. The State
18 would call Carrie Nowaczch.

19 THE CLERK: Place your left hand on the bible and
20 raise your right hand.

21 Do you solemnly swear or affirm the testimony you're
22 about to give will be the truth, the whole truth and
23 nothing but the truth, so help you God?

24 THE WITNESS: I do.

25 THE CLERK: If you would, have a seat and state

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1 your name for the record.

2 THE WITNESS: Carrie Nowaczch.

3 CARRIE NOWACZCH,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. CLEVELAND:

7 Q. Thank you, Ms. Nowaczch. Where do you work?

8 A. I work in communications in the Pickens County
9 Sheriff's Office.

10 Q. And how long have you worked with communications
11 there?

12 A. Five years.

13 Q. What is your main job, I guess, description in
14 communications?

15 A. We take incoming calls, emergent and non-emergent 9-1-
16 1 for the County, as well as dispatching for EMS, Fire and
17 Rescue and the Sheriff's office.

18 Q. Okay. Were you working on the night of January 8th,
19 2010?

20 A. Yes, I was.

21 Q. And did you take the call relating to the incident
22 that we're having the trial for today?

23 A. Yes, I did.

24 Q. Could you describe that call?

25 A. The call came in as a 9-1-1 from a land line. No

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1 contact with anybody on the scene, but you could hear
2 people arguing in the background.

3 Q. All right. How do you particularly refer to that call
4 when there's no one on the line?

5 A. Anytime we get a 9-1-1 call from any location, whether
6 there's contact or not, it is our standard procedure to
7 send an officer to that location.

8 Q. All right. Could you determine where that location
9 was?

10 A. Yes. Due to the 9-1-1 screen.

11 Q. All right. Where was that location, do you recall?

12 A. I believe it was 132 Raymond Circle in Central.

13 Q. Okay. That would have been Pickens County?

14 A. It is in Central City within Pickens County, yes, sir.

15 Q. Did you ever, throughout the course of that call,
16 speak to anybody?

17 A. No, I did not. Not until I transferred the call and
18 spoke to a dispatcher at Clemson.

19 Q. Okay. Why did you transfer the call to Clemson?

20 A. Because Clemson dispatches for Central.

21 Q. Okay. So even though -- well, why did the call come
22 to the Sheriff's Office then?

23 A. Because at the time all Central land line 9-1-1 calls
24 came in through the County.

25 Q. Okay. It may be a bit cyclical, but just so I

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1 understand you, Central calls come to Pickens County and
2 you have to refer it back to a closer agency to dispatch,
3 correct?

4 A. Correct.

5 Q. Okay. I'm going to show you what I have marked as
6 State's Exhibit Number 4 in this envelope and there's a CD.
7 Do you recognize that?

8 A. Yes, I do.

9 Q. What is that CD?

10 A. That is the 9-1-1 call recording.

11 Q. All right. Have you had a chance to review the
12 contents, listen to this CD?

13 A. Yes, I have.

14 Q. Is this recording on here a true and accurate
15 recording of that telephone call?

16 A. Yes, it is.

17 MR. CLEVELAND: Judge, at this time, I'd like to
18 move State's Exhibit Number 4 into evidence.

19 THE COURT: Any objection from the Defense?

20 MR. ALEXANDER: No objection to that, Your Honor.

21 THE COURT: Without objection, Exhibit 4 is
22 admitted into evidence and may be published.

23 (WHEREUPON, State Exhibit Number 4 was admitted into
24 evidence).

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1 MR. CLEVELAND: May I publish it to the jury at
2 this time, Judge?

3 THE COURT: yes, sir.

4 (WHEREUPON, State Exhibit Number 4 was published for
5 the jury.)

6 Q. Now, Ms. Nowaczch, did you ever make contact with that
7 residence outside of that phone call?

8 A. I did not.

9 Q. Did you ever speak with anyone inside the residence at
10 all?

11 A. No, I did not.

12 Q. It was a bit quiet, obviously, but could you tell if
13 the phone line with the residence remained connected
14 throughout that entire call or did it cut off? Could you
15 tell?

16 A. You can hear after the transfer to Clemson when it
17 clicks out and they disconnected.

18 Q. Okay. Is that a disconnect you did at your office or
19 is that a disconnect that happened at the residence?

20 A. That's a disconnect from the residence.

21 Q. Did you talk to anybody else regarding this incident
22 anymore throughout this evening?

23 A. I spoke back with Clemson, I believe, two times after
24 the incident.

25 Q. Okay. I'm going to, just for identification purposes

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1 now, show you State's Exhibits 5 and 6. The disk inside
2 those envelopes are marked as State's Exhibit 6. Do you
3 recognize that disk?

4 A. Yes, I do.

5 Q. And what is the contents of that disk?

6 A. That was getting back in touch with Clemson, they were
7 calling requesting assistance.

8 Q. Okay. Have you had a chance to review that disk?

9 A. Yes, I have.

10 Q. Is it a clear and accurate reproduction of a recording
11 of that phone conversation?

12 A. Yes, it is.

13 Q. Does your voice appear on the tape?

14 A. Yes, it does.

15 Q. And the same with Exhibit 6?

16 A. Correct.

17 Q. You recognize this, State's Exhibit Number 6?

18 A. Yes, I do.

19 Q. Another phone call?

20 A. Yes.

21 Q. Clear and accurate description of that phone call
22 again?

23 A. Yes.

24 Q. It was a little quiet, but could you hear anything
25 specifically that happened on that call?

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1 A. All you could tell was that two people arguing in the
2 background. You couldn't really make out what they were
3 saying.

4 MR. ALEXANDER: Your Honor, I object. Calls for
5 speculation.

6 THE COURT: Overruled.

7 MR. ALEXANDER: Thank you, Your Honor.

8 MR. CLEVELAND: The State doesn't have any
9 further questions.

10 Thank you, Ms. Nowaczch. Answer anything Mr.
11 Alexander may have.

12 MR. ALEXANDER: I have no questions.

13 THE COURT: All right. Thank you, ma'am. You
14 may step down. The State may call its next witness.

15 MR. CLEVELAND: The State calls Dara Murray.

16 THE CLERK: Place your left hand on the bible and
17 raise your right hand.

18 Do you solemnly swear or affirm the testimony you're
19 about to give will be the truth, the whole truth and
20 nothing but the truth, so help you God?

21 THE WITNESS: I do.

22 THE CLERK: If you would, have a seat and state
23 your name for the record.

24 THE WITNESS: Dara Murray.

25 DARA MURRAY,

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1 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MR. CLEVELAND:

4 Q. Hi, Ms. Murray. Who do you work for?

5 A. The City of Clemson.

6 Q. And what's your capacity that you work for the City of
7 Clemson?

8 A. I'm a communications officer and a jailer.

9 Q. How long have you worked in communications in Clemson?

10 A. Six years in all.

11 Q. Do you have any other law enforcement experience
12 outside of your work at the City of Clemson?

13 A. Yeah. I've worked for the City of Asheville and the
14 City of Greenville and the City of Easley.

15 Q. Very good. Were you working for the City of Clemson
16 the night of January the 8th, 2010?

17 A. I was.

18 Q. Did you receive a call in reference to this case?

19 A. I did.

20 Q. You were in the courtroom and heard that -- were you
21 in the courtroom when the last witness testified?

22 A. I was.

23 Q. Did you hear the call that was played?

24 A. I did.

25 Q. Was that your voice on the other end of the line?

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1 A. It is.

2 Q. During that phone call -- what did you do as a result
3 of that phone call?

4 A. Well, our policy for Central is if we get an open line
5 or a 9-1-1 disconnect, we immediately dispatch them to the
6 scene. We get a phone number if we can get one and try to
7 call it back.

8 Q. Did you get a number in this case?

9 A. I did.

10 Q. Did you attempt to call it back?

11 A. I did.

12 Q. What happened when you called that number back?

13 A. A female answered the phone and ---

14 MR. ALEXANDER: Your Honor, I would object to
15 anything that anybody else said.

16 THE COURT: All right. Well, how far is your
17 question going? What happened and ---

18 MR. CLEVELAND: If we can approach briefly. I'm
19 sorry.

20 THE COURT: All right. If you would, please.

21 (WHEREUPON, Mr. Cleveland and Mr. Alexander approached
22 the bench.)

23 THE COURT: Ladies and gentlemen, we need to take
24 a short legal break. I'm going to ask you to go back to
25 your jury room just briefly. While you're back there, what

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1 I'd like for you to do, we have an alternate juror. He was
2 picked last in case there were to be a break-down in our
3 jury panel as set, he's ready to step in the shoes. One of
4 you may have an emergency during the course of the day. We
5 don't know how long the trial may take, but we often get an
6 alternate. He has a seat designated. I'm going to ask, if
7 you would while you're back there, among the first twelve
8 of you to select a foreperson.

9 What the foreperson does is -- it doesn't mean that
10 person has more votes than anyone else, but it means that
11 while you're back there, sometimes you have a need that you
12 need to inquire about or ask a question of me about the
13 law. You may have a question for the Clerk or one of the
14 jurors may need to make a phone call or contact someone
15 about being late. Whatever the need may be, your
16 foreperson is going to be the liaison with the Court or
17 with the Clerk's office through the bailiffs. So whatever
18 that need from whatever juror, that foreperson that you
19 select would just write it out and give it to the bailiff
20 and we'll get it to the right person to take care of for
21 you. Sometimes you need that communication while you're
22 back there. If you have a question, then we'll certainly
23 try to respond to it. You've already seen, sometimes
24 there's documents that are presented to the jury to look
25 at. The lawyers will hand it to the foreperson to pass

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1 around.

2 Ultimately, what the foreperson is going to be is the
3 one who will facilitate that discussion, to make sure that
4 all the jurors have their input into their view of the
5 facts, his or hers, and that foreperson will facilitate
6 that discussion on behalf of fellow jurors, write out the
7 verdict form. The foreperson will have a designated seat.
8 That person will be on the front row in the seat closest to
9 the witness chair here. The alternate will always occupy
10 the seat he's in. So if you would, select a foreperson.
11 That'll give you a little bit of time to take care of that
12 we need to have done and then we'll resolve this legal
13 matter in the meantime.

14 Just take a short break. Don't discuss the case,
15 ladies and gentlemen. If you'll just write the name down,
16 knock on the door and let the bailiff know, we'll be ready
17 to proceed in a few moments.

18 (WHEREUPON, the jury exited the open court at
19 approximately 3:02 p.m.)

20 THE BAILIFF: The jury's secure, Your Honor.

21 THE COURT: All right. Mr. Alexander, I believe
22 you've objected to the question. Is that correct?

23 MR. ALEXANDER: Yes, sir.

24 THE COURT: And the basis of your objection is
25 what?

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1 MR. ALEXANDER: That's correct, Your Honor. I
2 object to under Rule 613 primarily, that prior inconsistent
3 statements state when you're trying to impeach the witness,
4 which in this case is Ms. Brown, the questioning party is
5 required to -- I want to get it right -- is advise the
6 substance of the statement, time and place it was allegedly
7 made and the person to whom it was made and give the
8 witness an opportunity to explain or deny the statement.

9 Presumably, the current witness is going to testify
10 that Ms. Brown made some kind of statement about gasoline
11 being poured on her. That specific statement was not
12 questioned of Ms. Brown during her direct or redirect
13 examination. And I didn't ask her about it on the cross-
14 examination. The State questioned generalities about
15 making threats or did she tell anyone this and that. The
16 only specific statement that they questioned her about,
17 from my recollection anyway, was the statement to Officer
18 Roper about whether she said that he said, I'm going to
19 burn us both up. Other than -- that was the only
20 statement, Your Honor. I don't believe they've complied
21 with the Rule and, therefore, it should be inadmissible,
22 Your Honor. It's hearsay.

23 THE COURT: All right, Solicitor. I'll be glad
24 to hear from you.

25 MR. CLEVELAND: Thank you, Judge. The State's

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1 position is we have complied with 613(b) to use extrinsic
2 evidence to show a prior inconsistent statement. Ms. Brown
3 on her direct testimony stated that she never told police
4 that anyone had thrown gas on her, that she felt threatened
5 or anything of that nature. The scope of any interrogation
6 or any statement she made was contained to the subject
7 matter of that night in question, whether it was there in
8 her written statement or to the police. She admitted she
9 talked to 9-1-1 on the phone. The officer has -- Officer
10 Murray has been identified as an officer and she
11 specifically said she never told any police that anyone had
12 thrown gas on her. I believe that's what I asked her. She
13 said no to that question.

14 Furthermore, Judge, the statement being made as
15 subject of a 9-1-1 call, I also believe the State could
16 come in as an excited utterance, 9-1-1. I don't have the
17 specific jurisprudence in front of me. I have it in my
18 office.

19 THE COURT: Hang on just a minute. All right.
20 You may continue, Mr. Cleveland.

21 MR. CLEVELAND: Thank you, Your Honor. As I was
22 saying, on an alternative theory, the statement may come in
23 under an excited utterance. She made the call while she
24 was in the residence, while the event was on-going,
25 certainly under the stress of the event. If the witness

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1 can testify to the fact that she did say had gas poured on
2 her over the phone, while she was in the residence, when
3 she called her back shortly after the first 9-1-1 call was
4 made, I think that statement should be allowed in as an
5 excited utterance.

6 Excited utterance is defined under 803, as a statement
7 relating to a startling event or condition, made while the
8 declarant was under the stress or excitement cause by the
9 event or condition. I think being on the phone in the
10 house with the defendant in this case, when there's already
11 been testimony of gas going on, she makes the statement
12 that he said something about pouring gas on me, would
13 certainly qualify as an excited utterance and even if the
14 prior inconsistent threshold has not been made under 613,
15 then the statement should come in under that.

16 THE COURT: All right. Mr. Alexander, what about
17 that under 803?

18 MR. ALEXANDER: I don't believe that applies,
19 Your Honor. The witness was on the stand. She testified.
20 It's not as if the witness is not available.

21 THE COURT: And she denied it.

22 MR. ALEXANDER: But she wasn't confronted with
23 the statement, Your Honor. I think the purpose of the Rule
24 613 is to give the witness an opportunity to explain or
25 deny it. And she wasn't given that opportunity because he

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1 didn't question her, did you talk with the dispatcher? Did
2 you tell the dispatcher, X, Y, and Z? He didn't do that.
3 If he had and she had denied it, then it would be
4 admissible under Rule 613, I believe. But she possibly
5 would have explained it.

6 THE COURT: But how about 803? It says that even
7 if the witness is available, the declarant is available but
8 it's an excited utterance, it comes under the accepted
9 hearsay.

10 MR. ALEXANDER: We have to have the startling
11 event.

12 THE COURT: You don't think a call to dispatch
13 would be a startling event?

14 MR. ALEXANDER: Not if the -- Ms. Brown's
15 testimony is to be believed, Your Honor. I mean, she
16 testified she wasn't under any threat.

17 THE COURT: But she called 9-1-1? That's not an
18 excited utterance when a person's calling 9-1-1?

19 MR. ALEXANDER: Well, I don't -- it's not on the
20 9-1-1 tape, Your Honor.

21 THE COURT: I thought it was on the 9-1-1 tape.

22 MR. ALEXANDER: It's -- Ms. Murray's statement is
23 on the tape, Your Honor, not my client's statement. And
24 correct me if I'm wrong, but I believe Ms. Murray is --
25 they wanted her to testify as to what Ms. Brown told her.

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1 There is no recording of that, of what Ms. Brown said.

2 THE COURT: But wasn't that immediately after the
3 9-1-1 call? Is that what she testified to, that she called
4 -- well, maybe I haven't heard that yet. But that she
5 called back when they had a ---

6 MR. ALEXANDER: That's the understanding, yes,
7 sir.

8 THE COURT: All right. I'll allow that statement
9 in under 803, too, as far as an excited utterance. As far
10 as this statement. Are there other statements that you
11 intend to evoke from this witness, Solicitor?

12 MR. CLEVELAND: Not from this witness, Judge.

13 THE COURT: Are other statements you intend to
14 evoke from other witnesses while the jury is out under 613?

15 MR. CLEVELAND: Yes, I ---

16 THE COURT: Your position is that you specified
17 what the statement was, when and where it was given and
18 sufficiently for impeachment under 613?

19 MR. CLEVELAND: Yes, Your Honor. If you'll
20 recall the statement are statements made to law enforcement
21 immediately outside the house, without even continuing the
22 excited utterance, which I believe after the testimony
23 would fit that as well, I did ask her if she talked to the
24 police. She said, yes, in the back of the car. That's how
25 I recall the testimony. And I asked her three specific

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1 statements whether she made to police, which are contained
2 within the incident report as what the officer reported she
3 said. She said, no, she did not make those statement.

4 THE COURT: At the scene?

5 MR. CLEVELAND: At the scene. There's the
6 written statement later. I said, did you talk at the
7 scene? And I asked her the content of those statements.
8 And she denied making those. And I'd like to impeach her
9 on that as well.

10 MR. ALEXANDER: And the only two specific
11 statements I recall, Your Honor, is that he did ask about
12 whether or not -- whether or not she told the officer that
13 Mr. Cobb said, I'm going to burn us both up. And whether
14 or not she told those officers if she had been threatened
15 or not. If there's additional ones -- those are the two
16 that I made note of.

17 MR. CLEVELAND: I also asked her if she told the
18 officers that Tim refused to let her leave the residence
19 and she denied making that statement as well, Judge.

20 MR. ALEXANDER: I believe that's correct.

21 THE COURT: So that's the three you're intending
22 to ---

23 MR. CLEVELAND: She admitted -- yes. The verbal
24 statements she made to law enforcement, according to the
25 records or the incident report was that she wasn't injured,

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1 that there weren't any guns. I didn't ask her about that.
2 I'm not going to. That they were having an argument, which
3 she admitted, that Tim became hostile, which she admitted.
4 And then she denied Tim refusing to let her leave the
5 residence. She denied telling them that he said he's going
6 to burn them both up and she denied being threatened. At
7 the scene, to the officer who was with her at the scene.

8 THE COURT: All right. With those limitations
9 I'll allow it in under Rule 613(b). I think the
10 substantial groundwork is laid for those statements on
11 those three that we're talking about. Plus, I'll let this
12 one in under res gestae or excited utterance.

13 Any other matters we need to take care of now before
14 the jury comes back?

15 MR. CLEVELAND: If I may have ninety seconds to
16 run to the restroom, Your Honor. And then I'll be very
17 brief, Your Honor.

18 THE COURT: All right.

19 MR. CLEVELAND: Thank you.

20 THE COURT: We'll take a ninety second break.

21 (WHEREUPON, the court stood at recess for a short
22 break.)

23 THE COURT: All right. Are you ready to proceed,
24 gentlemen?

25 MR. CLEVELAND: Yes, sir, Your Honor. The

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1 State's ready.

2 THE COURT: If the jury's ready, have them come
3 in, please.

4 (WHEREUPON, the jury entered the open court at
5 approximately 3:17 p.m.)

6 THE COURT: All right. Thank you, ladies and
7 gentlemen. We are now ready to proceed. You may continue
8 your examination of the witness, Solicitor.

9 MR. CLEVELAND: Thank you, Your Honor.

10 Q. Ms. Murray, as we were saying, you received a phone
11 number from dispatch for the residence. Is that correct?
12 Is that about where we were?

13 A. Yeah. That's correct.

14 Q. And did you attempt to call that phone number back?

15 A. I did.

16 Q. Did you call that phone number back before or after
17 you had dispatched officers?

18 A. After.

19 Q. Were you able to make contact with anyone at the
20 residence when you called that phone number back?

21 A. I did.

22 Q. Who did you make contact with?

23 A. It was a female screaming.

24 Q. All right. Did the female on the other end of the
25 line tell you anything?

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1 A. She stated something about having gasoline poured on
2 her, screaming for the police to hurry up, and there was a
3 lot of background on the line.

4 Q. Okay. How did her voice sound, were you able to tell?
5 Was it a calm voice, was it agitated?

6 A. She was agitated. She sounded scared, I would say.

7 MR. ALEXANDER: Objection. Calls for
8 speculation.

9 THE COURT: Overrule the objection.

10 Q. Do you have the tape of that actual call?

11 A. No, I don't.

12 Q. Why don't you have a tape? Why doesn't a tape exist
13 of that call?

14 A. There's a computer system that maintains our phone and
15 radio recordings and it clears itself every three months.
16 It had gotten cleared prior to any tape requested of it.

17 Q. Okay. Is that the same computer system y'all
18 currently use?

19 A. No. We've got a new system that actually puts
20 everything on a CD.

21 Q. Did you, based on that phone conversation that you
22 had, did you update the officers you dispatched about this
23 situation or anything like that?

24 A. Yes, I did.

25 Q. Did -- let's be clear. That phone call, I guess,

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1 wasn't recorded, because it was arbitrarily or accidentally
2 erased?

3 A. That's correct.

4 Q. Did you talk to anybody else involving this incident
5 any later or was that pretty much your involvement?

6 A. As far as at the scene?

7 Q. Yeah.

8 A. All I spoke to was the officer and then county
9 dispatch trying to get him some help.

10 Q. Okay. All right. Thank you.

11 MR. CLEVELAND: No further questions from this
12 witness, Judge.

13 Please answer anything that Mr. Alexander may have.

14 THE COURT: You may cross-examine the witness.

15 MR. ALEXANDER: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. ALEXANDER:

18 Q. Do you maintain some kind of report and type up notes
19 as you're on one of these calls?

20 A. I do.

21 Q. And I show you -- I'm going to show you four pages and
22 I've kind of got them in sleeves, front and back. Is that
23 -- do you recognize that document?

24 A. Yes. It's a CAD sheet from my computer system.

25 Q. All right. Does that appear to be the CAD sheet from

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1 the January 8th, 2010 incident that you're here to testify
2 about?

3 A. It is.

4 Q. All right. And what did you type in -- read for me
5 that highlighted ---

6 MR. CLEVELAND: I'm going to object to this,
7 Judge. The contents are not for impeachment. If he wants
8 to introduce it, he can introduce it, but I don't know what
9 the purpose is.

10 MR. ALEXANDER: I believe I'm allowed to ask her
11 ---

12 THE COURT: I'll overrule your objection.

13 Q. On the first page of it, read the highlighted portion
14 of it.

15 A. I typed in, Mildred Black heard something about
16 gasoline being poured on her son Tim Black on the scene.

17 Q. Okay. And you -- Mildred Black heard something about
18 gasoline being poured on her son Tim Black on the scene.
19 And where did the name Mildred Black come from?

20 A. County dispatch said that that was the registered
21 owner of the phone, so it was the assumption on my part
22 that the female that called would be Mildred Black.

23 Q. Okay. And so you're typing these notes as the phone
24 call is taking place or ...

25 A. Most of the time, I mean, I have to multi-task.

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1 Q. Sure.

2 A. We have two radio channels and multiple phone lines.

3 Q. Is it fair to say it was done either as the call was
4 going on or shortly thereafter?

5 A. That would be correct.

6 Q. And you typed in something about being poured on her
7 son Tim. That's what you noted, correct?

8 A. I'd have to see it again. I'm sorry.

9 Q. In your notes you typed that she said gasoline being
10 poured on her son Tim.

11 A. Actually, it's the one that's for me and my other
12 dispatcher so that we kind of know what's going on between
13 us because we -- like if I'm on the phone, she will
14 actually dispatch, so ...

15 Q. Okay. But I guess my question is, are you more likely
16 to remember what the statement was as you're typing it or a
17 year, almost two years later, with no other written record
18 of it?

19 A. Well, sir, it's kind of rare that gasoline -- it's
20 actually the first time I've actually had someone who said
21 they had gasoline thrown on them. I mean, you kind of
22 remember the bigger incidents in ten years in law
23 enforcement.

24 Q. Okay. But you said -- but you typed in gasoline being
25 poured on her son, not on herself, correct?

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1 A. That's correct.

2 Q. And the tape, you said that she was screaming, I think
3 was your word that you said. Is that right?

4 A. Yes.

5 Q. Talking fast?

6 A. Yes.

7 Q. Okay. Was the phone call clear? Well, you said it
8 was unclear?

9 A. It was loud.

10 Q. Okay. All right. And there's no recording of this
11 because of y'all's procedure to delete the record after
12 three months?

13 A. It's not really our procedure. The system, that's
14 what it used to do.

15 Q. Has that been changed?

16 A. We've got an upgraded system this year that puts
17 everything on CD.

18 Q. All right. And you said it was cleared because nobody
19 requested the tape. Is that right?

20 A. Correct. In the time frame that's required.

21 Q. Which the time frame was ninety days?

22 A. I believe so. That's what I was told.

23 Q. And law enforcement normally requests that. Is that
24 correct?

25 A. They don't to me. That's the procedure I'm

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1 understanding it to be.

2 Q. But I guess the Solicitor said it was accidentally
3 erased. It wasn't accidentally erased. It was erased
4 because of the, for lack of a better word, procedure of it
5 being deleted after three months. Is that a fair
6 statement?

7 A. I would assume so.

8 Q. All right.

9 MR. ALEXANDER: That's all the questions I have.

10 THE COURT: Any redirect?

11 MR. CLEVELAND: Yes, Your Honor.

12 **REDIRECT EXAMINATION**

13 **BY MR. CLEVELAND:**

14 Q. Ms. Murray, look again at that CAD sheet. Do you --
15 you said that that was for your records pretty much only?

16 A. It is.

17 Q. Do you use proper punctuation when typing a CAD sheet?

18 A. No. We use abbreviations, slang, whatever, just to
19 convey to the other dispatcher what's going on.

20 Q. Do you ---

21 A. And ---

22 Q. I'm sorry. Go ahead.

23 A. Central doesn't have it, but Clemson officers actually
24 can see what we're typing so they kind of know what our
25 abbreviations mean. It gives them ---

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1 Q. All right. Do you use the proper capitalization?

2 A. No.

3 Q. Commas?

4 A. No.

5 Q. Periods?

6 A. (Negative nod).

7 Q. Did you capitalize "M" in Mildred or "B" in Black when
8 you typed that?

9 A. No.

10 Q. Have you reviewed this and you agree that that is your
11 notes, correct?

12 A. That's correct.

13 Q. Is it inconceivable to think that Mildred Black -- or
14 would you, I guess -- what I'm trying to say is if you put
15 some punctuation in this sentence, the meaning changes
16 pretty significantly, wouldn't it?

17 A. Yes.

18 Q. Mildred Black, for instance, period. Heard something
19 about gasoline being poured on her, period.

20 MR. ALEXANDER: Objection, Your Honor. He's
21 testifying as to what ---

22 THE COURT: I sustain the object as the question
23 is asked or as the statement is made. You may ask the
24 witness a question, Solicitor.

25 Q. After you spoke to the female on the scene, was it

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1 your impression that the gasoline was being poured on her
2 or being poured on her son or a male?

3 A. It was being poured on a female.

4 Q. Did you relay that information to anybody else?

5 A. I relayed it to the officer that was on the way to the
6 scene?

7 Q. Did you relay it back to the Pickens County Dispatch?

8 A. I did.

9 Q. I'm going to show you what's marked as State's Exhibit
10 Number 5. It's a disk. The envelope's marked State's
11 Exhibit 5. The disk says, call 2, on it. Do you recognize
12 that disk?

13 A. I do.

14 Q. Have you had the opportunity to review the contents of
15 that disk?

16 A. I have.

17 Q. What is contained on this disk?

18 A. That's me calling the Pickens County back requesting
19 ten seventy-eight, or backup.

20 Q. All right. And did you say anything about gasoline on
21 that call?

22 A. I did.

23 Q. And what did you tell the ---

24 A. Well, we told them why we needed backup. So I had a
25 single officer going to the incident and then we got

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1 another Central officer cleared to go to the incident, but
2 he was coming all the way from Wal-Mart, so ...

3 MR. CLEVELAND: Your Honor, at this time the
4 State would request to move State's Exhibit Number 5 into
5 evidence.

6 THE COURT: Any objection?

7 MR. ALEXANDER: Well ---

8 THE COURT: Without objection?

9 MR. ALEXANDER: Well, just I renew the objection
10 about the statement coming in, Your Honor, previously made.

11 THE COURT: Overruled. Exhibit 5 admitted into
12 evidence.

13 (WHEREUPON, State Exhibit Number 5 was admitted into
14 evidence.)

15 MR. CLEVELAND: And permission to publish this to
16 the jury at this time.

17 THE COURT: Publish it if you desire.

18 (WHEREUPON, State Exhibit Number 5 was published to
19 the jury.)

20 Q. Is that a true recording of that phone call?

21 A. It is.

22 MR. CLEVELAND: Nothing further on redirect,
23 Judge.

24 THE COURT: Any recross?

25 MR. ALEXANDER: One moment, Your Honor. No

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1 recross, Your Honor.

2 THE COURT: All right. Thank you, ma'am. You
3 may step down. You may call your next witness, Solicitor.

4 MR. CLEVELAND: Briefly, Judge. May the witness
5 be excused?

6 MR. ALEXANDER: No objection.

7 THE COURT: Without objection, this witness may
8 be excused.

9 MR. CLEVELAND: And Ms. Nowaczch as well.

10 THE COURT: Both witnesses.

11 MR. ALEXANDER: No objection.

12 THE COURT: Without objection.

13 MR. CLEVELAND: Thank you very much, Your Honor.

14 The State calls Deputy Chad Roper to the stand.

15 THE CLERK: Place your left hand on the bible and
16 raise your right hand to be sworn, please.

17 Do you solemnly swear or affirm the testimony you're
18 about to give will be the truth, the whole truth and
19 nothing but the truth, so help you God?

20 THE WITNESS: I do.

21 THE CLERK: If you would, have a seat and state
22 your name for the record.

23 THE WITNESS: Chad Roper.

24 CHAD ROPER,

25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

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DIRECT EXAMINATION2 **BY MR. CLEVELAND:**

3 Q. Deputy Roper, who do you work for?

4 A. The Pickens County Sheriff's Office.

5 Q. How long have you been with the Pickens County
6 Sheriff's Office?

7 A. About five days.

8 Q. And prior to working for the Pickens County Sheriff's
9 Office, what law enforcement experience do you have?10 A. I worked for, almost four years, Central Police
11 Department.12 Q. Do you have any experience prior to working with the
13 Central Police Department?

14 A. I've been in law enforcement.

15 Q. Were you working for the Central Police Department on
16 January 8th of 2010?

17 A. I was.

18 Q. And did you have an opportunity, or I guess were you
19 dispatched to respond to an incident that's the subject of
20 this trial today?

21 A. I was.

22 Q. Where were you dispatched? To what location were you
23 dispatched to?24 A. The address is 132 Raymond Circle, and that's within
25 the town of Central.

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1 Q. Is that within Pickens County?

2 A. It is.

3 Q. Did -- what type of -- I guess, what type of call did
4 you respond to when you were told to respond to it?

5 A. Initially, I thought it was just an active assault.

6 Q. Okay. Did that information come from dispatch?

7 A. Yes, sir.

8 Q. Did you have any knowledge of any weapons being
9 involved in this active assault before you got on the
10 scene?

11 A. It was just passed along that gasoline was involved.

12 Q. Okay. Tell me about the incident location. When did
13 you arrive at the incident location, about what time, at
14 about?

15 A. Very shortly after twelve a.m.

16 Q. And describe the type of incident -- what type of
17 location where the incident was located?

18 A. It's a trailer park.

19 Q. All right. The residence, and specifically the
20 residence at 132 Raymond Circle, what kind of house is it?

21 A. That's a single-wide trailer.

22 Q. I want to show you ---

23 MR. ALEXANDER: No objection.

24 Q. I'm going to show you these two photographs marked as
25 State's Exhibits 1 and 2. Would you take another look at

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1 those?

2 A. Yes, sir.

3 Q. Is that the residence at 132 Raymond Circle?

4 A. Yes, sir, it is. There's noticeable improvements.

5 Q. But substantially, does that picture accurately
6 reflect the way that residence looked the night of January
7 8th, 2010?

8 A. It does, with the exception of the front door. There
9 was no glass present there.

10 Q. Anything else different in the photos from that
11 photograph and the night in question?

12 A. Just improved features around the home and a
13 driveway's been put in place. There's some rocks around.
14 Other than that, a stairway leading to the front door, all
15 other aspects of the home are the same. Also, the rear
16 door, it appears to be similar to what I experienced that
17 night. There's no glass.

18 MR. CLEVELAND: Your Honor, at this time, the
19 State would like to move State's Exhibits 1 and 2 into
20 evidence, two photographs.

21 THE COURT: Without objection, Exhibits 1 and 2
22 are admitted into evidence.

23 (WHEREUPON, State Exhibit Numbers 1 and 2 were
24 admitted into evidence.)

25 MR. CLEVELAND: I beg the Court's indulgence for

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1 just a moment, Judge. I apologize.

2 Q. When you initially responded to the location at 132
3 Raymond Circle, were you alone or did you have anybody with
4 you?

5 A. I was alone.

6 Q. What did you encounter when you arrived at 132 Raymond
7 Circle?

8 A. Timmy, Timothy Cobb was standing in the doorway --
9 well, the front door of the residence. I'm sorry. Am I
10 not speaking loud enough?

11 MR. ALEXANDER: Thank you.

12 Q. Do you recognize -- I guess is the same person you
13 encountered when you got there sitting in the courtroom
14 today?

15 A. Yes, sir, he is.

16 Q. Is that the front door of the residence where you
17 encountered the Defendant?

18 A. Yes, sir..

19 Q. Describe your initial encounter and conversation with
20 the Defendant. Where did you park? Where were you? Where
21 was he, if you don't mind? Actually, if you look right in
22 front of you there's a remote control looking contraption.
23 It has a button for a laser. Feel free to use the laser to
24 point, if you need to.

25 A. I'm sorry. It's out of field of sight where I parked.

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1 It would be further down this way. What I did is I pulled
2 my car kind of at this angle right here towards the front
3 door, just so that I would have a little bit of cover if I
4 needed it. I didn't want anything blocking my vehicle.
5 And I initially exited the vehicle. Of course, Mr. Cobb
6 was standing in the doorway right here, you know, at the
7 top, standing right there just in between the interior and
8 exterior of the home.

9 Q. Well, that's okay. Was he standing actually on the
10 stoop or was he inside the house?

11 A. It would have been above the stoop. It would have
12 been right there in the doorway.

13 Q. Okay. How close did you come to him initially?

14 A. Probably ten feet away from him basically, the cement
15 steps there.

16 Q. Okay. Did you talk to him?

17 A. I did.

18 Q. What did you say to him at first? Tell me about your
19 conversation, what you said to him?

20 A. The first thing I said to Timothy was, what seems to
21 be going on tonight or what the problem is. I was just
22 trying to get a feel for what was happening.

23 Q. Did he respond?

24 A. At that time he did not. Initially, when I -- do you
25 want me to proceed?

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1 Q. Go ahead.

2 A. , Initially, whenever I pulled up, he really didn't
3 acknowledge me. He was talking over his shoulder back into
4 the residence.

5 Q. Okay. Did you hear what he said back into the
6 residence?

7 A. I did.

8 Q. What did he say back into the residence?

9 A. Do you want a verbatim or just -- it was colorful
10 language.

11 Q. You can -- if you can clean it up a little bit, that
12 would be great, but just as close to verbatim as you can.

13 A. Yes, sir. He was talking over his shoulder to someone
14 in the residence. At this time I did not know who. And he
15 was basically saying, I can't believe you called these
16 guys, you know, repeated himself. I can't believe you up
17 and called these guys.

18 Q. Guys or what was the colorful language?

19 A. Referencing, in reference to myself, law enforcement.

20 Q. Just -- I mean, you said it was colorful language.

21 A. Oh, MF'ers.

22 Q. He directed that inside the residence, correct?

23 A. Yes, sir.

24 Q. At what point in time -- or did he ever acknowledge
25 your presence?

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1 A. He did.

2 Q. Okay. When did he do that?

3 A. After I asked him if he had any weapons on him.

4 Q. Was that immediately after this I can't believe
5 comment or ---

6 A. There was a little bit of a lag in the conversation,
7 or the attempted conversation, but it was pretty much the
8 next thing.

9 Q. Okay. What did you -- how did he respond when you
10 said -- you asked him about if he had any weapons?

11 A. Colorful, I mean, if you ---

12 Q. For the jury's sake, just go ahead and be verbatim.
13 We can clean it up later.

14 A. He turned to me and said, Fuck yes, man, I got
15 weapons. Fuck yeah.

16 Q. Is that in the type voice that you, I guess, heard him
17 say it?

18 A. Yes, sir.

19 Q. Did you see the weapons on him?

20 A. I did. Yeah. He initially had them laying against
21 his arms and he produced them, like in this manner.

22 Q. What were they?

23 A. Kitchen knives.

24 Q. How big?

25 A. Eight to twelve inches.

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1 Q. Okay. Did he retreat in the house and retrieve those
2 weapons after you'd gotten there or did he have those
3 weapons on him when he was there -- when you arrived?

4 A. He never retreated back in the home. At this point he
5 just produced them. He had them on him.

6 Q. What happened after he brandished his knives?

7 A. I pulled out my taser.

8 Q. Were you in the same location you were when you
9 initially arrived or had you moved in closer?

10 A. I stayed about the same distance. You've only got
11 twenty feet on the taser. I may have stepped a couple of
12 feet back just as a reactionary gap.

13 Q. During this conversation, if you can call it that,
14 could you tell if anybody else was inside, if there was
15 anything going on? Were there any other voices present at
16 the scene?

17 A. There was an inaudible voice coming from inside the
18 home.

19 Q. Could you tell if it was a female or a male's voice?

20 A. No, sir. I just knew that someone was inside the
21 home.

22 Q. Did you hear anything they said?

23 A. It was muted.

24 Q. Did you hear a manner of vocalizing, for lack of
25 better term?

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1 A. Loud and frantic.

2 Q. Okay. What did you do -- you testified you drew your
3 taser. Were you still alone at this point in time?

4 A. I was.

5 Q. Did the Defendant say anything in response to that?

6 A. Whenever I pulled the taser out, I requested that he
7 drop the weapons on several occasions. And his response to
8 me was, again, there is language but it was, go ahead and
9 shoot me. You're going to have to shoot my F'ing ass. You
10 know, you're going to have to kill me basically, is along
11 the lines of what he said.

12 Q. Did he ever put the knives down?

13 A. Not at this point, no, sir. And not that I witnessed.

14 Q. Did you try to tase him?

15 A. I did.

16 Q. What happened?

17 A. Whether it by fault of my own or a misfire, one prong
18 did hit Mr. Cobb and the other prong did not. It struck
19 the foot plate there.

20 Q. I tell you what, we're probably getting a little ahead
21 of ourselves. Describe the method, the function that this
22 taser device uses? I mean, what is the purpose of it and
23 how does it work, just for the jury in the case?

24 A. It's an intermediate ---

25 MR. ALEXANDER: Your Honor, I'm going to object

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1 to the relevance to that. I don't know why that's even
2 relevant.

3 THE COURT: I'll overrule your objection. I'll
4 allow him to ask about the workings.

5 A. It's a means of intermediate force that we use in law
6 enforcement. It's to prevent us from having to use lethal
7 force. It operates off of electrical current. And on them
8 we have a cartridge that gives us twenty-one feet of leads
9 and there's a nitrogen cannister inside the cartridge that
10 when you initiate the use of the taser, it propels the
11 leads out and makes contact with the subject. And it
12 basically incapacitates them for a few seconds.

13 Q. This isn't some kind of stun gun that you have to put
14 up to them. This is a projectile, correct?

15 A. Yes, sir. But there's limitations.

16 Q. Okay. As you were about to testify to, I believe, was
17 the taser effective in neutralizing Mr. Cobb at that time?

18 A. No, sir, it was not.

19 Q. What happened?

20 A. The current wasn't completed. He was able to
21 disengage back into the residence. Whether he removed the
22 barb or not, he disengaged and was able to shut the door.

23 Q. Okay. At this point in time, the initial remarks back
24 into the house, all of this conversation, all of this
25 happening with Mr. Cobb standing in the doorway?

1 A. Yes, sir.

2 Q. During all of this time, did you -- or at points
3 during this time, did you hear voices inside the house?

4 A. I did.

5 Q. Were the voices inside the house moving around or were
6 they isolated, best you could tell from your vantage point?

7 A. From where I was, the best I could tell is in that
8 home, the closest section was the kitchen. And it appeared
9 or sounded as if they were coming from that area.

10 Q. Okay. Once Mr. Cobb disengaged, as you said and went
11 in the house, did you attempt to follow him in there?

12 A. I did.

13 Q. Tell me about that?

14 A. I attempted to kick the door in. Of course, first, I
15 tried to push on the door and then I attempted to kick it
16 in and was unsuccessful.

17 Q. Okay.

18 A. I did, however, go in around the back and attempt to
19 kick through that door as well and wasn't successful
20 either.

21 Q. Were there still voices emanating from inside the
22 house at that point in time?

23 A. There were. And then the lights went out.

24 Q. Now, what happened next that you recall?

25 A. Officer Holcombe responded.

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1 Q. But this is after Mr. Cobb had already retreated
2 inside the house, correct?

3 A. That's correct.

4 Q. Did you ever encounter the victim in this case?

5 A. I did.

6 Q. Okay. Tell me about that encounter?

7 A. Well, after Officer Holcombe arrived on the scene, I
8 gave him a quick debriefing as to what I was -- what had
9 gone on. And while still trying to keep an eye on the
10 residence, Ms. Brown exited from around the rear of the
11 trailer and was running towards us. That was the first
12 contact with her.

13 Q. When you encountered Ms. Brown, how did she appear?
14 How was she? Describe that, I guess, initial contact with
15 her?

16 A. Frazzled, upset.

17 Q. What was she wearing, do you recall?

18 A. Almost like lounge wear, around-the-house wear and no
19 shoes.

20 Q. Okay. Do you recall what the weather was like that
21 night?

22 A. Cold.

23 Q. Was there snow on the ground that you recall?

24 A. There was. I don't think that it snowed that night,
25 but I do think there was residual snow on the ground.

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1 Q. What did you do with the victim at that point in time?

2 A. Just for safety purposes, we Terry frisked her and
3 make sure she didn't have any weapons or anything. We've
4 had instances in the past where officers have been hurt by
5 people that you wouldn't expect to have weapons. And at
6 that point in time, we placed her in the rear seat of one
7 of the patrol cars and just wanted to get an idea as to
8 what was going on. And I asked her several questions along
9 the lines of are there any further weapons in the home.

10 Q. At this point in time, though, with Ms. Brown outside
11 the house, was Mr. Cobb still inside?

12 A. He was.

13 Q. Where did you take Ms. Brown? Where did she go when
14 she was out? Where did you put her?

15 A. In the rear of the patrol vehicle.

16 Q. Did she indicate to you that Mr. Cobb had become
17 hostile?

18 A. She did.

19 Q. Did she tell you that Mr. Cobb said he was going to
20 burn them both up?

21 A. She did.

22 Q. Did she tell you that during the evening Mr. Cobb had
23 refused to let her leave the residence?

24 A. Yes.

25 Q. Did she ever re-enter the residence to retrieve her

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1 belongings?

2 A. After Mr. Cobb was placed under arrest and did come
3 out of the residence, she was allowed to go back in and
4 retrieve the items, assisted or escorted by me.

5 Q. Did she go inside the -- did she ever come out of the
6 house and go back in prior to Mr. Cobb retreating back in
7 the residence?

8 A. Actually not.

9 Q. Did you smell any gasoline about her person?

10 A. I did.

11 Q. Was it overwhelming or was it ...

12 A. It was an odor consistent with gasoline.

13 Q. Do you know gasoline to have a pungent odor?

14 A. I do.

15 Q. Did you have another encounter with the Defendant that
16 night? Did you encounter the Defendant again?

17 A. I did.

18 Q. At what point in time did you encounter the Defendant?

19 A. Ms. Brown had come out and was sitting with myself and
20 Officer Holcombe and Pickens County Deputies arrived
21 shortly thereafter and it was at this point that Mr. Cobb
22 came out of the home.

23 Q. How long was it between the time that Ms. Brown came
24 out of the house and Mr. Cobb came out of the house?

25 A. I'm not positive on that. I know that it felt like an

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1 eternity, but I know in actuality it wasn't very long.

2 Q. I mean, if you had to guess, would you say fifty
3 minutes, five minutes, what are you talking about?

4 A. Five to ten, possibly.

5 Q. More than just a brief moment?

6 A. Yes, sir.

7 Q. When you deployed your taser on him, I guess what I'm
8 getting at is ten minutes or so between the time you
9 deployed your taser and the time he actually gave up?

10 A. Yes, sir.

11 Q. Gave himself up. Did he have the -- did he come out
12 with the knives on him?

13 A. No, he did not.

14 Q. How long after you deployed your taser and it was
15 ineffective and he retreated back in the house, did Ms.
16 Brown come out the back door?

17 A. It was moments. I mean, it wasn't very long.

18 Q. Okay. Did you ever ---

19 A. Then, again, it's one of those things that, you know,
20 time, you almost -- it does go longer.

21 Q. Did you place him under arrest when he came out of the
22 house or did somebody else?

23 A. I was assisted by other deputies.

24 Q. Okay. Did you enter the house after the, I guess --
25 after Mr. Cobb was arrested, did you enter the house?

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1 A. I did.

2 Q. Describe the interior of that house, just briefly. I
3 know you hit on that the end room there is the kitchen.
4 What else is in that house?

5 A. Like you said, the end room is the kitchen. It's not
6 a wall. It's more of an island, like a counter top,
7 counter partition that's relatively close to the front
8 door, kind of makes a small walkway there. And then you
9 have a living room.

10 Q. When you say it's a small walkway, are you talking
11 about -- is it a narrow -- what you're saying, is it a
12 narrow means of egress from the kitchen to the rest of the
13 house?

14 A. Yes.

15 Q. And what proximity is that narrow egress? Is it close
16 to the front door?

17 A. It is. It was just on the inside of it.

18 Q. Okay. What about the rest of the house?

19 A. There's a great room and then there's a rear exit door
20 and a bathroom in the middle, and bedrooms, possibly two.

21 Q. Yeah, I was going to say -- did you see a gas can
22 inside the house when you went inside?

23 A. I did.

24 Q. Describe the gas can?

25 A. Very small, red, plastic gas container.

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1 Q. Did it have any gas in it?

2 A. It had fluid contents.

3 Q. All right. Did you notice an odor of gasoline inside
4 the house?

5 A. Yes, sir.

6 Q. Did you see any gas spilled anywhere?

7 A. Not that I recall.

8 Q. Describe kind of the -- I guess the -- what was the
9 overall condition of the house inside? Were there any
10 other odors, other than gasoline?

11 A. There was household odors, strong household odor.

12 Q. Good or bad?

13 A. Not pleasant.

14 (WHEREUPON, State Exhibit Number 8 was marked for
15 identification.)

16 Q. I'm going to show you what I've marked as State's
17 Exhibit Number 8. Do you recognize those items?

18 A. I do.

19 Q. What are they?

20 A. They're the knives recovered from the scene.

21 Q. Do you recognize those knives as the same knives that
22 Mr. Cobb had?

23 A. I do.

24 Q. What else is in that bag?

25 A. My taser cartridge.

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1 Q. Is that the one that, I guess, was ineffective?

2 A. Yes, sir.

3 MR. CLEVELAND: Your Honor, at this time, the
4 State would move State's Exhibit Number 8, a bag containing
5 two knives and a taser cartridge, into evidence?

6 THE COURT: Any objection?

7 MR. ALEXANDER: I don't think he's laid a proper
8 foundation as to chain of custody, Your Honor.

9 THE COURT: Okay. Do you have any other
10 questions to ask him about the chain of custody?

11 Q. When you encountered those knives, what did you do
12 with them?

13 A. I seized them as evidence.

14 Q. Did you place them in that bag that they're in now?

15 A. I did.

16 Q. What did you do with them? When did you do that? Did
17 you do that back at the police station or did you do that
18 prior?

19 A. Back at the police station.

20 Q. Were they in your custody and control up until, I
21 guess, you put them in that bag?

22 A. Yes, sir, they were. And then they were placed into
23 temporary evidence.

24 Q. Who was the evidence custodian at Central Police
25 Department?

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1 A. I was currently. At this date and time, it was myself
2 as well.

3 Q. All right. Did you reflect the case number and
4 information on the outside of that bag as to where those
5 knives came from?

6 A. I did.

7 Q. Does that bag bear those same markings you did when
8 you placed those knives on the bag?

9 A. Yes, sir, they do.

10 Q. Does it appear to have been tampered with, other than
11 an obvious tear in the top of the bag as a result of the
12 knife, does it appear to have been tampered with in any way
13 or altered in any way since you seized them on January the
14 8th, 2010?

15 A. No, sir.

16 MR. CLEVELAND: At this time, Judge, the State
17 would like to move State's Exhibit Number 8 into evidence.

18 MR. ALEXANDER: No objection.

19 THE COURT: Without objection. Exhibit Number 8
20 is admitted into evidence.

21 MR. CLEVELAND: Thank you, Your Honor.

22 (WHEREUPON, State Exhibit Number 8 was admitted into
23 evidence.)

24 Q. Did you take the gas can into custody?

25 A. I did not.

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1 Q. Why not? Any particular reason?

2 A. No particular reason, sir.

3 Q. During your conversation with -- I guess after your
4 conversation with Ms. Brown indicating that Tim said he
5 wouldn't let her -- Tim wouldn't let her leave. Tim said
6 he was going to burn them both up, Tim was hostile, just to
7 refresh my memory, was Tim outside the trailer at that
8 point in time or was he still inside?

9 A. He was still inside.

10 Q. When you encountered Tim, did he have any gas on him?
11 Did he smell like gas?

12 A. There was an odor consistent with gasoline, but not
13 overwhelming.

14 Q. Was he -- could you tell if he had any dampness or was
15 he wet with gas at all?

16 A. Not that I recall.

17 Q. Who transported Mr. Cobb to the police -- I guess --
18 was Mr. Cobb arrested and taken to jail that night?

19 A. He was.

20 Q. Who transported him to -- did you have any more
21 conversations or did Ms. Brown give any more statements,
22 other than those three statements that you just testified a
23 little while ago?

24 A. She did.

25 Q. In what form were the statements?

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1 A. She gave a written statement.

2 Q. Did you observe her giving that written statement?

3 A. I did.

4 Q. Where did you she give that written statement?

5 A. At the Central Police Department.

6 Q. How did she get to the Central Police Department?

7 A. She drove her personal vehicle.

8 Q. Okay. Did you tell her she had to go to the Central
9 Police Department?

10 A. I had requested that she come up and give a statement
11 and then she requested to use her personal vehicle.

12 Q. Okay. Did she cooperate with you when you asked her
13 to give you a statement?

14 A. Absolutely.

15 Q. As you testified earlier, I believe, that she was, I
16 don't remember the exact words, when she'd exited the
17 house. What did you say?

18 A. Frantic?

19 Q. Yeah. And about what time was it when she gave that
20 statement, do you remember? The written statement.

21 A. I don't remember the time.

22 Q. Minutes later, hours later?

23 A. It was shortly following the arrest and after we'd
24 finished up at the scene and she'd gathered her
25 possessions. This was after, of course, we'd cleared the

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1 home and made sure there was no one else in it. She come
2 and gave me a statement while Officer Holcombe transported
3 Mr. Cobb.

4 Q. Did you sign -- let me show you what's already been
5 entered into evidence as State's Exhibit Number 7. Is that
6 your signature on the bottom of that statement?

7 A. It is.

8 Q. I don't know if it contains it or not, but does that
9 tell you what time the statement was taken or ---

10 A. It does. It says -- it was stamped one-thirty a.m. on
11 the same day.

12 Q. Approximately an hour and a half after this incident
13 began, correct?

14 A. Correct.

15 Q. During the course of that statement did you threaten
16 her in any way, shape or form?

17 A. I didn't.

18 Q. Did you tell her you were going to lock her up if she
19 didn't give you a statement?

20 A. No, I did not.

21 Q. Once she got to the police station, was she always
22 free to leave at any point in time?

23 A. At any time.

24 Q. Did she, I guess, leave on her own free will after
25 she'd completed the statement?

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1 A. She did.

2 Q. Was she ever considered to be charged in any way,
3 shape or form in this case?

4 A. Not at all.

5 Q. Well, based on your training as a law enforcement
6 officer, what role did she play in this incident?

7 A. She was a victim.

8 Q. Did you generate a report based on this incident?

9 A. I did.

10 Q. Did you put anywhere in that report that it smelled
11 like -- that the Defendant or the victim smelled like gas?
12 If you need a chance to refresh your memory with your
13 report, take your time. Feel free to do so.

14 A. I never made any reference to an odor of gasoline.

15 Q. Did you document the existence of gasoline on the
16 scene?

17 A. I documented the existence of a container.

18 Q. Did you document the statements of the witnesses,
19 victims, admitting to being threatened to have gas poured
20 on them?

21 A. I did do that.

22 Q. Thank you, Deputy.

23 MR. CLEVELAND: No further questions from the
24 State at this time.

25 Please answer any questions Mr. Alexander may have.

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1 WITNESS: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. ALEXANDER:

4 Q. There actually wasn't any statements about gas being
5 poured on somebody, actually poured on somebody. There
6 were statements about going to be poured. Is that a fair
7 ...

8 A. It is.

9 Q. Okay. And as far as the smell of gas inside the
10 house, that's where you found the gas can, right?

11 A. Yes, sir.

12 Q. Is it fair to say if you have any size gas can in an
13 enclosed area, it's going to smell like gas?

14 A. Yes, sir.

15 Q. Even if it hasn't been poured out anywhere?

16 A. That's correct.

17 Q. Okay. And is it fair to say that if somebody handles
18 a gas can, there's going to be some smell of gas on them?

19 A. That's fair too.

20 Q. All right. So, to make sure I understand your time
21 line of events here, you arrived on scene sometime after
22 midnight?

23 A. That's correct.

24 Q. Okay. And when you got there, the front door was open
25 and Mr. Cobb was in the archway of the door?

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1 A. Yes, sir.

2 Q. And that's where you made or attempted to have this
3 conversation with him?

4 A. Yes, sir.

5 Q. And he had the knives at that point?

6 A. It wasn't until after I asked about the weapons that
7 he showed me the knives.

8 Q. Did you see his hands when you first arrived?

9 A. No, I didn't. He was standing -- do you want me to
10 show you?

11 Q. Yeah. Show me how he was standing.

12 A. Like this.

13 Q. But he didn't have the knives in his hands?

14 A. They were laying against his arms.

15 Q. Okay. So he's holdings both of them?

16 A. Yes, sir.

17 Q. Okay. I understand. And then when you asked him
18 about weapons, that's when he showed them to you. Is that
19 right?

20 A. Yes, sir.

21 Q. Okay. And he goes -- all right. You attempt to tase
22 him, misfires or whatever happened, and he shuts the door
23 and locks it, right?

24 A. Yes, sir.

25 Q. You tried to kick the door in, but I guess because it

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1 was locked, you couldn't kick it in?

2 A. I was unable to kick it in.

3 Q. And I think you said moments, not long after, is when
4 Ms. Brown left the rear of the residence and came out. Is
5 that right?

6 A. Yes, sir.

7 Q. And you talked to her and that's when she gave you
8 these statements?

9 A. The verbal statements, yes, sir.

10 Q. And then five to ten minutes later, Mr. Cobb came out
11 and surrendered?

12 A. To the best of my recollection that was the time
13 frame.

14 Q. And you said Ms. Brown was wearing lounge wear?

15 A. I don't know a better term for it. It was just house
16 wear, comfortable clothes.

17 Q. What you would wear like when you're about to go to
18 bed?

19 A. Right. Yes, sir.

20 Q. And this was after midnight?

21 A. It was.

22 Q. And the gas can, was it like a one or two gallon size
23 gas can?

24 A. Yes, sir. It was small.

25 Q. And is it fair to say it had, you know, a quarter or

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1 less full?

2 A. I don't recall the exact fluid contents, but I know
3 for a fact it was not full.

4 Q. Was not full?

5 A. Was not full.

6 Q. Did it have a regular spout on it?

7 A. I don't recall if it had that or just -- I don't know,
8 you know the ones now that have a single spout?

9 Q. Right.

10 A. I don't recall the spout.

11 Q. Okay. But it had some kind of spout on it? It wasn't
12 like open?

13 A. I don't recall if it had a spout on it.

14 Q. You don't recall whether it had a spout on it at all?

15 A. Whether it had a spout on it or whether or not, you
16 know, some people just have no spout, have a rag or
17 something.

18 Q. Okay. Maybe I'm -- maybe that was a bad question. As
19 far as where the gas would come out, was there some kind of
20 cylinder coming off the red part?

21 A. What I'm trying to get at is I don't recall that
22 portion of the container. I know that it was a red
23 container. You know, the smell of gasoline was there, but
24 I don't recall what type of spout or whether it had one.

25 Q. Okay. All right. I got you. Did you find a lighter

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1 inside the house?

2 A. Not that I recall, no, sir.

3 Q. And did you find a lighter on Mr. Cobb?

4 A. No, sir.

5 Q. Did you find any device, any lighting device where
6 someone could light gas?

7 A. I did not search for one.

8 Q. So you didn't find one then?

9 A. Correct.

10 Q. And you took, or were present, anyway, when Ms. Brown
11 gave this written statement. That is correct?

12 A. Yes, sir, I was.

13 Q. Okay. And any reason -- well, that was the only
14 written statement given by Ms. Brown. Is that correct?

15 A. To me, yes, sir.

16 Q. So when you first arrived on the scene and was talking
17 with Mr. Cobb, he made these statements where he basically
18 wanted you to shoot him?

19 A. After I -- well, I didn't deploy the taser, but pulled
20 the taser out ---

21 Q. Yeah.

22 A. --- and requested that he drop the weapons. This was
23 after he presented or showed them to me.

24 Q. So instead of complying and dropping the weapons, he
25 said that you were going to have to shoot him?

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1 A. Yes, sir.

2 Q. Something to that effect? So as far as -- you heard a
3 voice coming from inside the house. Is that right?

4 A. That's correct.

5 Q. But you don't really know where in the house that the
6 person that voice belonged to was standing, do you?

7 A. I never had a visual.

8 Q. Okay.

9 A. Audibly it sounded as if it was coming from the
10 kitchen area.

11 Q. It ain't a very big trailer, is it?

12 A. No, sir.

13 Q. It could have been coming from anywhere in that
14 trailer?

15 A. That's reasonable. But in all honesty, it did sound
16 like it was coming from the front end of the trailer.

17 Q. All right.

18 A. Or at least that front area.

19 Q. So the front room, which is directly in that front
20 door. Is that correct?

21 A. Right.

22 Q. Like the living room?

23 A. Directly in the front door was a counter top area for
24 the kitchen. The kitchen is right here and then the great
25 room is right here.

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1 Q. So it sound like it was coming from that end of the
2 trailer, either the front room or the kitchen. Is that
3 fair to say?

4 A. Correct.

5 MR. ALEXANDER: One moment, Your Honor.

6 THE COURT: Yes, sir.

7 MR. ALEXANDER: That's all the questions I have,
8 Your Honor.

9 THE COURT: Anything on redirect?

10 MR. CLEVELAND: Just briefly, Your Honor.

11 **REDIRECT EXAMINATION**

12 **BY MR. CLEVELAND:**

13 Q. Describe for the defense the lounge wear that Ms.
14 Brown was wearing. Did she have on a jacket?

15 A. No, sir.

16 Q. In addition to no shoes, did the lounge wear look warm
17 to you? Did it seem like ---

18 A. No, not at all.

19 Q. If you allowed her to go back inside, did she retrieve
20 a jacket and shoes, stuff like that?

21 A. If I'm not mistaken, she may have had a jacket in her
22 car, but she did retrieve additional clothing.

23 Q. Tell me about the cleanliness or the order inside of
24 that home. Was it in disarray or was it straight ---

25 MR. ALEXANDER: Your Honor, I'm going to object.

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1 That's beyond the scope of cross-examination.

2 MR. CLEVELAND: If you'll allow me a little
3 leeway, Your Honor, I'll get to it.

4 THE COURT: I sustain the objection.

5 Q. How hard did you look for a lighter inside the
6 trailer?

7 A. Not very.

8 Q. Was there lots of open space or was it messy inside?

9 A. Well, it was cluttered.

10 Q. Okay.

11 MR. CLEVELAND: I don't have anything else for
12 Deputy Roper. Thank you.

13 THE COURT: Thank you, Officer Roper. You may
14 step down.

15 WITNESS: Yes, sir.

16 THE COURT: Mr. Foreman, ladies and gentlemen,
17 you got a break earlier. We haven't had one. I'll ask you
18 if you would go back to your jury room just briefly and
19 we'll call you back in about ten minutes. We'll take a
20 short break. Don't discuss the case while you're out.

21 (WHEREUPON, the jury exited the open court at
22 approximately 4:17 p.m.)

23 THE BAILIFF: The jury's secure, Your Honor.

24 THE COURT: All right. Let's take a short break.
25 Have you got any more witnesses?

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1 MR. CLEVELAND: One witness and it shouldn't be a
2 long one, Judge.

3 THE COURT: Okay. We'll do that and then we'll
4 give Mr. Cobb his rights about testifying after we do that.
5 Who's your last witness?

6 MR. CLEVELAND: Who is? As of right now, pending
7 anything crazy happening in the next ten minutes, it will
8 be Jason Holcombe.

9 THE COURT: Okay. All right. Let's take a
10 short, five-minute break.

11 (WHEREUPON, the court stood at recess for a short
12 break.)

13 (WHEREUPON, the jury entered the open court at
14 approximately 4:23 p.m.)

15 THE COURT: Solicitor, you may call your next
16 witness.

17 MR. CLEVELAND: Thank you, Your Honor. The State
18 calls Jason Holcombe.

19 THE CLERK: Place your left hand on the bible and
20 raise your right.

21 Do you solemnly swear or affirm the testimony you're
22 about to give will be the truth, the whole truth and
23 nothing but the truth, so help you God?

24 THE WITNESS: I do.

25 THE CLERK: If you would, take a seat and state

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1 your name for the record.

2 THE WITNESS: Jason Holcombe.

3 JASON HOLCOMBE,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. CLEVELAND:

7 Q. Officer Holcombe, who do you work for?

8 A. Pickens Police Department.

9 Q. And how long have you been with the Pickens Police
10 Department?

11 A. I've been with them about a year and a half.

12 Q. Okay. Prior to your working with Pickens Police
13 Department do you have any law enforcement experience?

14 A. Yes, sir. I worked at Central Police Department.

15 Q. For how long?

16 A. I was there about three years.

17 Q. Okay. Were you working for Central Police Department
18 on January 8, 2010?

19 A. Yes, sir.

20 Q. And were you dispatched out to 132 Raymond Circle that
21 night?

22 A. I believe Officer Roper was, and I was just going to
23 back him up.

24 Q. Okay. Did you participate in the events that we're
25 here on trial today?

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1 A. Yes, sir.

2 Q. At what point in time -- well, what was the nature of
3 the call that you were dispatched on?

4 A. I believe it was a disturbance, a ten seventy-six,
5 which is an assault.

6 Q. What was going on when you arrived on the scene?

7 A. When I arrived on the scene, Officer Roper was
8 standing in the front yard. I asked him what was going on.
9 He advised that Mr. Cobb was outside brandishing knives.
10 And Officer Roper tried to deploy the taser and it was
11 ineffective and he went inside and he had to barricade the
12 subject.

13 Q. Okay. Did you try to enter the residence at all?

14 A. No, sir.

15 Q. Okay. Did you encounter the victim, Ms. Brown, at any
16 point in time that night?

17 A. Yes, sir, I did.

18 Q. Well, how long after you arrived on scene did you
19 encounter Ms. Brown?

20 A. I guess it was about five minutes, I guess.

21 Q. Okay. Tell me about that encounter.

22 A. We were standing outside. We had gone through Pickens
23 County for backup.

24 Q. Let me flip this up. Pardon me. Is that the
25 residence you were at?

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1 A. Yes, sir.

2 Q. All right. About where were you standing outside?

3 A. About where the gravel driveway starts at the bottom
4 of the slide there.

5 Q. Okay. Tell me about that encounter.

6 A. We were standing there. We was contacting dispatch
7 and the victim come around the back side, towards myself
8 and Officer Roper.

9 Q. All right. I'm going to flip this real quick and
10 show you State's Exhibit 2. Is that where she came from?

11 A. Yes, sir.

12 Q. And how did she come towards y'all? Was she walking?
13 Was she running?

14 A. She was running.

15 Q. Did she come right up to y'all or what did she do?

16 A. Come right to us.

17 Q. What was she wearing, do you recall?

18 A. No shoes. She had like a -- almost like pajama like
19 pants and like a blue t-shirt.

20 Q. Okay. Do you remember the weather that night?

21 A. It was cold.

22 Q. How cold?

23 A. There was some snow on the ground. I'm guess it was
24 probably either twenty, thirty degrees.

25 Q. Okay. So somewhere around freezing, safe to say. Is

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1 that correct?

2 A. Yes, sir.

3 Q. So when she came running up to y'all, what condition
4 did you observe her to be in?

5 A. Seemed excited, a little agitated.

6 Q. A little agitated?

7 A. Yes, sir.

8 Q. Okay. Did she speak to y'all?

9 A. I believe she spoke to Officer Roper.

10 Q. Okay. How was her ---

11 A. Definitely frantic, just more are less excited, no
12 shoes, cold.

13 Q. Is it safe to say that she appeared scared to you?

14 A. Yes, sir.

15 Q. Where did she go after your encounter with her?

16 A. To the back of the patrol car, Officer Roper's patrol
17 car.

18 Q. Okay. All right. Were you around when she was
19 talking to Officer Roper?

20 A. No, sir.

21 Q. Okay. Where did you stay the rest of the night?

22 A. I stepped over and was kind of in the driveway there
23 with the County Deputy that was there, kind of watching the
24 residence to make sure nobody came out.

25 Q. All right. When she ran around -- I just want to

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1 clarify. She seemed frantic. Was she saying anything or
2 was she quiet?

3 A. She really wasn't saying anything.

4 Q. Okay. So you didn't have the -- I guess you weren't
5 part of the conversation that followed after she exited the
6 residence?

7 A. Correct.

8 Q. How long -- and she was placed in the patrol car,
9 correct?

10 A. That's correct.

11 Q. How long after, would you estimate, after she came
12 out, did you encounter the defendant? Did you encounter
13 the Defendant?

14 A. Yes, sir. It was probably eight to twelve minutes.

15 Q. Tell me about that encounter with the Defendant.

16 A. We were standing in the driveway. When the front door
17 opened, we kind of turned and looked and he had stepped
18 down off the patio and had his hands up in the air and
19 said, don't shoot, don't shoot. At the time we told him to
20 lay down on the ground.

21 Q. Okay. Had y'all made any attempt to get him out of
22 there before that?

23 A. Yes, sir.

24 Q. What attempt?

25 A. Verbal, Mr. Cobb, go ahead and step out for us. Come

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1 out of the house. Don't make it worse than it is. Step

2 out of the house.

3 Q. Okay. A loud speaker ...

4 A. It was loud speaker and at the door. At this time

5 Detective Crawford had showed up on scene as well.

6 Q. Who does Detective Crawford work for?

7 A. Central Police Department.

8 Q. Who else had showed up on scene, do you recall?

9 A. Two county deputies.

10 Q. How many total police officers were on the scene that

11 you recall, basically?

12 A. It was five.

13 Q. When you encountered the Defendant, did you notice the

14 smell of gasoline about his person?

15 A. Yes, sir.

16 Q. Did you notice any actual -- did he actually have any

17 gas on him, was he damp with gasoline at all?

18 A. I didn't actually check to see if he was damp with

19 gas, but you could smell it.

20 Q. Did you help effectuate the arrest?

21 A. Yes, sir.

22 Q. Did you notice any wet clothing or any -- in any shape

23 or form?

24 A. No, sir.

25 Q. Who transported him to jail that night?

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1 A. I did.

2 Q. I guess did you see anything during your interaction
3 from the arrest when you took him to the City jail that he
4 was -- had saturated, poured gas on himself, other than the
5 odor?

6 A. No, sir.

7 Q. Did you smell any alcoholic beverage about his person?

8 A. You could tell, but it was hard to distinguish between
9 the gasoline and alcohol smell, because the gas was so
10 strong on his person.

11 Q. Very good. Did -- at any time during your estimated
12 eight to twelve minutes, did Ms. Brown ever exit that
13 patrol car?

14 A. No, sir.

15 Q. Did she ever go back in the residence while Tim Cobb
16 was inside?

17 A. No, sir.

18 Q. Did anybody go inside the residence before he, in
19 those eight to twelve minutes that you estimate, before he
20 came out?

21 A. No, sir.

22 Q. Was she allowed to go back in -- do you have knowledge
23 if she was allowed to go bak in afterwards, after he was
24 out?

25 A. I was advised that she was allowed to go back inside

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1 and get some belongings.

2 Q. But were you on the scene at that point in time?

3 A. No, sir. I was already on my way to Clemson Police
4 Department to transport Mr. Cobb.

5 Q. Thank you.

6 MR. CLEVELAND: No further questions, for Officer
7 Holcombe.

8 Please answer anything the Defense may have.

9 THE COURT: Mr. Alexander.

10 MR. ALEXANDER: Just briefly, Your Honor.

11 **CROSS-EXAMINATION**

12 **BY MR. ALEXANDER:**

13 Q. So you transported Mr. Cobb to the Clemson Police
14 Department?

15 A. Yes, sir.

16 Q. And Ms. Brown went to the Central Police Department to
17 give her written statement?

18 A. I believe so.

19 MR. ALEXANDER: One moment, Your Honor. I have
20 no more questions, Your Honor.

21 THE COURT: Anything on redirect?

22 MR. CLEVELAND: Nothing on redirect, Your Honor.

23 THE COURT: Thank you, officer. You may step
24 down.

25 MR. CLEVELAND: Your Honor, may this witness be

1 excused?

2 THE COURT: Without objection.

3 MR. ALEXANDER: I have no objection.

4 THE COURT: The witness may be excused.

5 Solicitor, you may call your next witness.

6 MR. CLEVELAND: The State rest, Your Honor.

7 THE COURT: Mr. Foreman, ladies and gentlemen, we
8 need to take care of a matter of law at this time. I don't
9 know how long that may take. I don't want to keep you
10 waiting. I don't know that we'll be able to continue with
11 the trial this afternoon anyhow, so I'm going to let you
12 leave for now. In the morning we normally would start at
13 nine o'clock. Tomorrow, we'll need to start at about nine-
14 thirty. I have an eye appoint, probably going to have my
15 eyes dilated. I'm not going to be able to see things for a
16 while. I tried to get it as early as I could. But to give
17 me time to get my eyes adjusted, we're not going to start
18 until nine-thirty in the morning. So if you'll be back in
19 your jury room at nine-thirty, we'll be ready to go then.

20 Let me remind you about not discussing the case.
21 You're obviously going to have some inquisitive loved ones
22 at your home tonight wanting to know about, did you get
23 picked and what's the case about. They're going to want to
24 give you information, they're going to perhaps want to tell
25 you about something they know about, a case such as this.

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1 That would be improper for you to be talking to them. As I
2 told you earlier, you're going to have a chance to share
3 with your loved ones the experience you have in this trial
4 and others that you may have, but while the case is going
5 on is not the time to do that. You've made a high
6 commitment to these parties to well and truly try the case
7 on the law and the evidence and only that. So it would be
8 improper for you to talk with anyone or let anyone talk
9 with you. I say this not to tempt you in any way, but our
10 Supreme Court Chief Justice has given instruction to all
11 Trial Judges that we must instruct jurors who are sitting
12 in a trial that they're not to do any kind of communication
13 or research or going to the library or checking archives or
14 getting on a social networking or internet or any other
15 means to try to find out or do some on-your-own
16 investigation, ride by the scene or anything such as that.
17 That would be highly improper and it would be against the
18 instructions of the Court for you to do that. These
19 attorneys are going to give you all the information that
20 you're going to need to make a good sound decision about
21 the facts of the case and it would be highly improper and
22 against the instructions of our Court for you to do any
23 kind of independent investigation whatsoever concerning
24 this.

25 We'll be ready to start back at nine-thirty in the

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1 morning if you'll be in your jury room then, we'll be ready
2 to use your services. Have a good evening, ladies and
3 gentlemen, you're dismissed at this time.

4 (WHEREUPON, the jury exited the open court at
5 approximately 4:45 p.m.)

6 THE BAILIFF: The door's closed, Your Honor.

7 THE COURT: All right. Any matters that we need
8 to take care of before I -- I need to certainly talk to Mr.
9 Cobb about his rights to testify and his right to put up a
10 defense. Any other matters we need to take care of?

11 MR. ALEXANDER: Yes, Your Honor. I would move
12 for a directed verdict at this time. The elements of this,
13 my understanding is common law unlawful attempt to commit a
14 violent injury to the person of another, malicious intent
15 accompanied by a present ability to complete the act.
16 There's case law cited, just one cited in here, it's a 1912
17 case. I'm sure there's some more recent cases, cites, that
18 the force or violence attempted or offered must be physical
19 and no words of themselves may constitute an assault.

20 Even if the -- taking the evidence that -- the
21 statement allegedly made by Ms. Brown that she said he was
22 going to burn them both up, there was no testimony about
23 any action, other than the fact that he had gas. There was
24 no statement about that gas had actually been poured on her
25 or anything of that nature. Therefore, I would move for a

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1 directed verdict on that basis, that the elements, at most
2 it amounts to the mere words of it. There's no physical
3 accompanying act to complete it, Your Honor.

4 THE COURT: All right. Solicitor, I'll be glad
5 to hear from you in response.

6 MR. CLEVELAND: Thank you, Your Honor. As you're
7 aware, the directed verdict at this stage of the case
8 that's to be moved by the defense, the evidence must be
9 viewed in the light most favorable to the State and that
10 it's not the -- the ruling is not based on the weight of
11 the evidence, it's merely the existence. The State has
12 presented evidence of every element of assault with intent
13 to kill. That assault is merely intentional creation of
14 reasonable fear of immediate bodily harm. This is not a
15 battery case. The fact that there was or was not gas
16 poured on either one, it is immaterial. The fact that the
17 assault was done, the testimony was from the victim,
18 herself, that the Defendant exited the home, he retrieved
19 the gas can and he came back inside the home. There was
20 testimony that she told two people that he was going to
21 burn her up and/or also about -- she told the dispatcher
22 that she was going to have gas poured on her. That
23 evidence is reinforced by the existence of a gas can
24 actually inside the house at the time.

25 Certainly, malice, be it hatred, ill will or hostility

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1 toward another person is the intentional doing of a
2 wrongful act without just cause or excuse. There has been
3 no evidence presented from the State's case that any
4 mitigation, any justification, any legal reason for the
5 escalation forced him to go get his gas can, has not even
6 been raised at this stage.

7 Therefore, having malice, being inferred from the
8 circumstances reasonably, the State believes it's certainly
9 met its burden for the purposes of the directed verdict
10 that the element -- that the crime has been proved and the
11 directed verdict should be denied.

12 THE COURT: I believe there is not a total
13 absence of evidence, that there is existence of some
14 evidence. My job is not to weigh the evidence at this
15 stage. I believe there is competent evidence tending to
16 prove the charge. I will deny your motion respectfully,
17 Mr. Alexander. Any other matters?

18 MR. ALEXANDER: No, Your Honor, other than just
19 ---

20 THE COURT: All right. Mr. Cobb, if you'll come
21 forward with your attorney, please, just come up here for a
22 moment.

23 If you would, please raise your right hand. Do you
24 swear or affirm the testimony you're about to give me will
25 be the truth, the whole truth and nothing but the truth, so

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1 help you God?

2 DEFENDANT: Yes, Your Honor.

3 (WHEREUPON, the Defendant was duly sworn.)

4 THE COURT: We've reached the stage in the trial
5 where I need to go over with you the certain rights that
6 you enjoy. I want to make sure you understand these. I'm
7 confident that you and your attorney have had a chance to
8 talk about these before, but I need to be satisfied in my
9 own mind that you understand the protections that you're
10 given under our Constitution. Both the State of South
11 Carolina and the United States Constitution says that no
12 person can be compelled in any criminal case to be a
13 witness against himself. That means you can't be required
14 to testify. You can exercise that right to testify, but
15 you can also exercise your right not to testify. Nobody
16 can make you testify. Only you can decide whether to waive
17 this right. Now, you may decide to testify and if you do,
18 you'd be subject to the same rules that govern every other
19 witness. You'd be examined, cross-examined on any relevant
20 issue in the case. If you have any prior convictions
21 involving dishonesty or false statements or crimes for
22 which punishment is imprisonment for more than one year and
23 the Court determines that the probative value of admitting
24 this evidence outweighs its prejudicial effect to you, then
25 the State would have a right to introduce your prior record

1 to attack your credibility.

2 Now, your decision to testify must be made by you
3 voluntarily and intelligently with the knowledge of the
4 protections that you have under the Constitution, under the
5 Fifth Amendment and also of the consequences of your
6 decision to testify. If you decide not to testify, I will
7 instruct the jury that they cannot give that fact that you
8 chose not to testify any consideration whatsoever, there
9 can be no prejudice to you, that you chose to exercise your
10 right. I'll tell the jury they can't even discuss that in
11 the jury room. Whether to testify or not is left entirely
12 up to you. You can talk with family, with friends, with
13 your attorney, anyone else, but ultimately that's going to
14 be a decision that you and you alone have to make. Do you
15 understand what I've explained to you?

16 MR. COBB: Yes, Your Honor.

17 THE COURT: Do you have any questions of me
18 concerning what I've discussed with you?

19 MR. COBB: No, sir.

20 THE COURT: All right. I will ask you if you
21 would go back to your table with your attorney.

22 Are there impeachable offenses which the State would
23 intend to use if the Defendant does testify, Solicitor?

24 MR. CLEVELAND: Your Honor, the -- his criminal
25 record is fairly short. There's an '89 ABHAN, malicious

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1 damage to property; '91, malicious damage to property; '94
2 a burglary second, voluntary manslaughter; 2004, grand
3 larceny and another ABHAN, another ABHAN. The State would
4 seek to use the malicious damages and the burglary second
5 as to the manslaughter and grand larceny. He would be
6 classified as a convicted felony for impeachment purposes,
7 Judge.

8 THE COURT: All right. The Defense have any
9 position on those as far as not being allowed under the
10 rules?

11 MR. ALEXANDER: No, Your Honor. Well, as far as
12 the manslaughter, it was a '94 conviction, it's my
13 understanding is the date of release, which was certainly
14 within the last ten years. But we would object to that
15 coming in at all, in addition to the assault and battery
16 high and aggravated nature 2004 as just being prejudicial
17 effect. It's the same or similar type charge is what he's
18 charged with in this incident, Your Honor, and we would ask
19 that those offenses be excluded.

20 THE COURT: All right. I believe the State's
21 position was that those offenses could be used as felony,
22 prior felony convictions?

23 MR. CLEVELAND: That's correct, Judge. And I
24 also want ---

25 THE COURT: Not naming the type of offense it

1 would be?

2 MR. CLEVELAND: That's correct. And, I also do
3 want to clarify that notice was given to the Defense of the
4 State's intention to use crimes over tens years of age, I
5 believe on October of last year was when that notice was
6 given. It's in our standard discovery responses. So for
7 the record if that's an issue, that notice was given as
8 required by the Court, convictions over ten years. But I
9 don't think he's got anything.

10 THE COURT: But the convictions over ten would be
11 with release dates under ten, correct?

12 MR. CLEVELAND: More or less for the malicious
13 damage to personal property in '89. It would only affect
14 two in '91, as well, which he paid a fine. But ---

15 THE COURT: So you've got a malicious damage to
16 personal property of '89?

17 MR. CLEVELAND: Yes, along with an ABHAN.
18 Malicious damage in '91, burglary second '94, along with
19 voluntary manslaughter in '94. I believe he served fifteen
20 years. I believe that comes with a release date within ten
21 years. And then an '04 grand larceny, for which he served
22 eighty months, along with an accompanying ABHAN charge.
23 The State would seek to use those.

24 THE COURT: So do you intend to impeach him on
25 the grand larceny?

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1 MR. CLEVELAND: Yes, Your Honor.

2 THE COURT: And prior felonies?

3 MR. CLEVELAND: Two prior felonies in '94.

4 THE COURT: Which would be the burglary and the
5 voluntary manslaughter?

6 MR. CLEVELAND: That's correct.

7 THE COURT: And that's all?

8 MR. CLEVELAND: I mean, if I could, I would like
9 to use the malicious damage.

10 THE COURT: I'm not going to allow the malicious
11 damage, I know, from '89.

12 MR. ALEXANDER: So that, Your Honor, I just -- so
13 it will be grand larceny and then other prior felonies. Is
14 that my understanding of it?

15 MR. CLEVELAND: Two prior felonies.

16 THE COURT: Two other prior felonies. Both of
17 those are within the ten years now.

18 MR. ALEXANDER: The release time.

19 THE COURT: The release time is within the ten
20 years.

21 MR. CLEVELAND: Well, I mean, I don't know how
22 SCDC calculated it, but the fifteen years from 1994. I
23 don't have his exact release date.

24 THE COURT: '94.

25 MR. CLEVELAND: I did, like I said, notify the

1 Defense of my intention to use the criminal charges in
2 excess of ten years for impeachment purposes.

3 MR. ALEXANDER: As far as the ten years, he did
4 get released in 2003 on the manslaughter and burglary
5 charge.

6 THE COURT: He got released in 2003?

7 MR. ALEXANDER: Yes, sir.

8 THE COURT: All right. So that's within the ten?

9 MR. ALEXANDER: Yes, sir, that would make -- I'm
10 assuming that's the burglary and manslaughter, that's the
11 two prior felonies the State is referring to.

12 THE COURT: And what was the date of the grand
13 larceny, 2005 you said?

14 MR. CLEVELAND: The exact date -- it was 2004,
15 Judge, the exact date is ---

16 MR. ALEXANDER: November 15th, 2004, Your Honor.

17 MR. CLEVELAND: November 15th.

18 THE COURT: So there will be no mention of any
19 prior crimes of violence?

20 MR. CLEVELAND: No, Your Honor.

21 THE COURT: All right. What's the State's
22 position on custody of the Defendant?

23 MR. CLEVELAND: Your Honor, it is the State's
24 default position that the bond has been removed and the
25 Defendant be taken into custody. However, I will indulge

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1 the Court that Mr. Cobb has appeared for Court each time
2 that's requested that I've sent him, for whatever that's
3 worth. Even though our position -- I would defer to your
4 judgement of the situation. He has been out on bond for
5 about two years now.

6 MR. ALEXANDER: And I've represented him since
7 October of 2010, I think, Your Honor, and I've never had
8 any problems with him. He's showed up for appointments and
9 court dates that I'm aware of. He's not missed a court
10 date, Your Honor.

11 THE COURT: Well, Mr. Cobb, once the trial starts
12 and the jury's sworn, your bond is no longer effective.
13 The State has not necessarily taken a position, but I want
14 you to know that if I release you from the State's custody
15 tonight, we're going to have a trial tomorrow. The trial's
16 going to continue, you understand that?

17 MR. COBB: Yes, sir.

18 THE COURT: You could put yourself in great
19 jeopardy for a jury not to see you here with your lawyer
20 tomorrow.

21 MR. COBB: I will show up, sir.

22 THE COURT: So you need to be here.

23 MR. COBB: Yes, sir.

24 THE COURT: If you're not here, the trial's going
25 to continue. You understand that, don't you?

1 MR. COBB: Yes, sir. Yes, sir.

2 THE COURT: All right. All right. I'll leave
3 him out then tonight and we'll be ready to start back at
4 nine-thirty in the morning. If you have any -- you can let
5 us know then about whether you intend to put up a defense,
6 Mr. Alexander.

7 MR. ALEXANDER: Yes, sir.

8 THE COURT: Also, if there's any particular
9 charges that either of you have, you can certainly get them
10 to Mr. Hinton, hopefully this evening. If not, first thing
11 in the morning.

12 MR. ALEXANDER: I mean, I would be asking for
13 some lesser included offenses. Would we submit those at
14 that time as well?

15 THE COURT: How many lesser included offenses
16 would you be ---

17 MR. ALEXANDER: Well, I would -- based on what
18 I've heard, I think from simple assault up to, I guess,
19 assault high and aggravated nature, not assault and
20 battery, but that common law offense. This case is under
21 the old laws, so I think those would be the only other two
22 available that I can think of off the top of my head. I'll
23 find another one.

24 THE COURT: All right. I'll be glad to hear the
25 State's position on those?

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1 MR. CLEVELAND: Judge, I'm not going to put up a
2 big stink about AHAN. But as far as the simple assault
3 goes, I think the crux of this case around pouring gas, I
4 think it's certainly within the jury's purview if they
5 found that there was no malice, but there was use of a
6 deadly weapon, that is the assault. I mean, it's kind of
7 the gas was there. I don't think there was any evidence
8 presented that it was a simple assault, that there wasn't
9 something aggravating it. There was the aggravation. I
10 think the real question is, is what's the substance of the
11 assault, not was the assault and then was there aggravation
12 with it. So I would oppose a simple assault charge. But
13 as far as AHAN, I would agree with the Defense on that one.
14 I think it's appropriate in this case.

15 MR. ALEXANDER: I would just counter, Your Honor,
16 that, I mean, it's -- certainly the jury could interpret
17 the facts that, you know, even if he had the gas can, that
18 gas itself is not a deadly weapon. I mean, they can
19 interpret that.

20 THE COURT: All right. I'll mull that over
21 tonight. We'll certainly give the AHAN as a lesser
22 included and I'll think about the simple assault.

23 All right. Y'all have a good evening. I'll see you
24 back at nine-thirty in the morning.

25 MR. ALEXANDER: Thank you very much, Judge.

1 (WHEREUPON, the court stood at recess in this case for
2 the day.)

3 October 25, 2011

4 (WHEREUPON, Mr. Cleveland and Mr. Alexander approached
5 the bar.)

6 THE COURT: All right. I've been presented some
7 requests to charge from both attorneys. I've reviewed
8 those and had a bench conference as to those. I think most
9 of the requests will be covered in my general charge. Each
10 of you can certainly make any exceptions to the charges
11 that I've made for not inclusion of your request.

12 Does the Defense have a position on the charging
13 voluntary intoxication, Mr. Alexander?

14 MR. ALEXANDER: No, Your Honor. I think there
15 was brief testimony about that he'd been drinking or
16 something to that effect.

17 THE COURT: All right. I'll be charging that.

18 Also, I need to point out to the attorneys, as I have
19 already, there has been a note from the foreperson that
20 states a juror has an appointment with a doctor this
21 afternoon at four p.m. Is asking if she would be able to
22 leave early. I discussed this with the attorneys as to, I
23 would expect the jury to certainly have the case by eleven
24 o'clock. I certainly don't want to put any time restraints
25 on the jury in any way in their deliberations of the case.

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1 I've proposed to, after the charge, is to discharge this
2 juror and let the alternate sit, but I'll certainly be
3 willing to listen to either of you as far as a different
4 alternative. Either of you oppose the intention I have to
5 have the alternate sit in the place of this juror?

6 MR. CLEVELAND: No opposition from the State,
7 Your Honor.

8 MR. ALEXANDER: No opposition. I discussed that
9 with my client, Your Honor. He does not object.

10 THE COURT: I don't want them to have time
11 restraints on their deliberation.

12 All right. We did have a conference, also, about the
13 verdict form. While I think it's a close call, I am going
14 to charge simple assault, along with assault with intent to
15 kill, and assault of a high and aggravated nature.
16 Certainly, the State's opposition to that is noted at the
17 bench conference. I'll be glad if Solicitor wishes to put
18 any other matters on the record, to do so.

19 MR. CLEVELAND: Your Honor, just briefly the
20 State would like to put an objection to the lesser included
21 charge of simple assault. I do not believe there was any
22 testimony involving an assault outside the use of the gas
23 can. And pursuant to the jurisprudence provided *Magazine*
24 *v. State*, that's 606 S.E.2d 512, a South Carolina Supreme
25 Court Case from 2004, says there must be -- it says it only

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1 may be charged, a lesser included, if there is evidence
2 which it could be inferred that the Defendant committed a
3 lesser rather than great offense. And I don't believe that
4 inference could be made in this case and that's the basis
5 for its objection.

6 THE COURT: All right.

7 MR. ALEXANDER: And, Your Honor, on the assault,
8 high and aggravated nature, Your Honor, I had requested
9 that yesterday. I had -- I'd request that that not be
10 charged. It's my understanding that these common law
11 offenses, that that carries the same sentence as, you know,
12 the jury isn't aware of that, but it carries the same
13 sentence as assault with intent to kill and it would be my
14 position that, therefore, assault high and aggravated is
15 not a lesser included, as it carries the same potential
16 prison sentence.

17 THE COURT: All right. Well, I -- whether or not
18 you had requested it, I believe this is an appropriate case
19 to charge that as lesser included, so I will be charging
20 high and aggravated on the assault as well.

21 I understand from the bench conference that, Mr.
22 Alexander, you're not going to put up a defense. Is that
23 correct?

24 MR. ALEXANDER: That's correct, Your Honor.

25 THE COURT: So when the jury comes back, I will

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1 call upon you for your case and you can rest on the record
2 in front of the jury, and then we'll go into our closing
3 arguments. I have a verdict form. I'd like for both of
4 you to look it over and see if it's ... Any objection to
5 the verdict form?

6 MR. CLEVELAND: None from the State, Your Honor.

7 THE COURT: All right. Thank you.

8 MR. ALEXANDER: None from the Defense, Your
9 Honor.

10 THE COURT: All right. If the jury's ready, Mr.
11 Teal, you can have them come in.

12 (WHEREUPON, the jury entered the open court at
13 approximately 10:15 a.m.)

14 (WHEREUPON, Court Exhibit Number 1 was marked for
15 identification.)

16 THE COURT: Good morning, ladies and gentlemen.
17 I apologize for keeping you waiting. Sometimes doctors'
18 appointments take longer than I thought they would and I
19 apologize that I didn't get out as soon as I thought.

20 We're now ready to proceed with the trial of the case,
21 however.

22 All right. Mr. Alexander, you may present your
23 defense at this time.

24 MR. ALEXANDER: Thank you, Your Honor. The
25 Defense rest at this time.

1 THE COURT: All right. Mr. Foreman, ladies and
2 gentlemen, that means you've heard all the evidence in the
3 case. We're now ready for the attorneys to make their
4 closing statements to you. I told you yesterday that what
5 the lawyers have to say to you in their opening and in
6 their closing is not evidence. Nevertheless, I urge you to
7 listen carefully as these attorneys address you in their
8 closing. I'm confident they'll each give you some valuable
9 insights to perhaps help you in your deliberations that'll
10 take place in a few moments, after I instruct you on the
11 law.

12 Mr. Cleveland, you may address the jury in your
13 closing statement.

14 MR. CLEVELAND: Thank you, Your Honor. May it
15 please the Court. Mr. Alexander.

16 CLOSING STATEMENT

17 BY MR. CLEVELAND:

18 Yesterday we talked about this case. Actions speak
19 louder than words. And the actions of Timothy Cobb on
20 January 8, 2010 is what makes this an assault with intent
21 to kill. When Timothy Cobb withdrew that gas can outside
22 his house, came back inside and put Rosetta Brown in
23 reasonable apprehension and fear for her bodily safety, he
24 assaulted her. By using that gas can with no legal
25 justification, using that wickedness, that malice

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1 associated with threatening somebody to burn them alive
2 with gas is why he's guilty of assault with intent to kill.

3 Now, we also spoke about who has the burden in this
4 case and who is prosecuting this case. I represent the
5 State of South Carolina. I do not represent Rosetta Brown.
6 I do not represent the Central Police Department. I
7 represent each and every citizen of the State of South
8 Carolina and their interests in prosecuting Timothy Cobb
9 for his actions on that day.

10 Now, while it may be difficult to grasp that when Ms.
11 Rosetta Brown obviously does not wish to pursue the action
12 on this case, it may be difficult, but that's not why we're
13 here, ladies and gentlemen. Y'all took an oath yesterday
14 to try this case based upon the facts and the evidence and
15 to make your decision based on that. We don't have any
16 friends to reward in this case. We don't have any enemies
17 to punish. Just the facts. The facts are that Timothy
18 Cobb assaulted with malice aforethought Rosetta Brown on
19 that day.

20 Now, very true, I guess the Defense presented a case
21 or Rosetta argued the case, this was about Timothy Cobb
22 wanting to kill himself. Ladies and gentlemen, that's
23 simply not true. The truth is, this case is all about
24 Rosetta Brown. Absolutely. She took the stand yesterday.
25 She sat right here and told you she was never scared. She

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1 said she was never threatened by Timothy Cobb. She said
2 Tim wouldn't hurt me. She could leave the house at any
3 time. Ladies and gentlemen, actions speak louder than
4 words and her actions on that night do not jive with her
5 story that she was never threatened or never felt harmed.
6 I remind you that she also took the stand and testified to
7 you that she reconciled with Mr. Cobb the next day, that
8 she is still together with Mr. Cobb, sitting on his side of
9 the courtroom and that she didn't want anything to happen
10 to Tim because of this case. Her actions, however, speak
11 so much louder than the words coming out of her mouth.

12 What did she do on that night in question? She called
13 9-1-1. Why did she call 9-1-1? She said she could take
14 care of herself. She said Tim wouldn't hurt her. She said
15 she wasn't worried. Why did she call 9-1-1? She even said
16 she got the gas away from him at some point in time. What
17 need was that? She called 9-1-1 because she was scared for
18 her life. What did she do? When 9-1-1 called back after
19 Tim had jerked the phone away from her hand, she answered
20 and told them that he was threatening to pour gas on her.
21 What did she do when she got an opportunity -- she said she
22 could leave the house at any time during her testimony.
23 What did she do during the middle of this altercation on a
24 cold January night, in the dark, in the snow? She ran, not
25 walked, ran out of that house, barefooted in her bedroom

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1 clothes.

2 Now, focusing back a little bit on her testimony. Not
3 only does her story, her reasoning, her explanation not
4 jive with her actions that night, there's also several,
5 several inconsistencies in her testimony that I think is
6 very important for you to recognize and consider. As the
7 jury, I told y'all, it's y'all's job to size up the
8 credibility of each and every witness as they testified in
9 this courtroom. And Rosetta Brown is biased because she's
10 still with the Defendant and she's simply not credible
11 because her story's all over the place.

12 Just a couple of notes that I made. She said she was
13 holding money for Tim. Tim asked her not to give it back
14 to him. Y'all will have her written statement back there.
15 She said that night that she didn't have any money at the
16 time. Inconsistent. She told y'all, she sat on this stand
17 under oath and said that Tim pulled the taser out of him
18 when they shot him, and that's when he laid down on the
19 ground. However, the two officers that responded to the
20 scene and her written statement as well, that's not what it
21 said. He went back in that house. He barricaded himself
22 in that house for eight to ten minutes after that. She
23 said, oh, he gave up. He realized he was -- that's not
24 what happened, ladies and gentlemen. The testimony is not
25 credible to that end. She said she could leave at any

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1 time. Well, when she came out of the house, when she ran
2 out barefooted, didn't grab a jacket, didn't slid her shoes
3 on. She ran out of that house barefooted. She got out of
4 that house before Tim wouldn't let her leave. She told the
5 police that as soon as she got out. She said Tim never
6 threatened her. But when she was inside that house, she
7 answered that call-back from that dispatcher that was
8 sitting alone in a dark room, had nothing to do -- had no
9 idea what was going on in that case, she told her Tim was
10 threatening to pour gas on her, something about pouring gas
11 on her, maybe had poured gas on her. She said she could
12 take care of herself. Her actions do not agree with the
13 statement that she gave.

14 Furthermore, what didn't she say that night? She said
15 she got the gas from Tim. She got the gas from him.
16 Where's that? She never told the police that. She never
17 put that in her statement. She said she was scared for
18 Tim. Tim was going to commit suicide. She said Tim said
19 he was going to kill himself. She never said she was
20 scared for Tim, that's why she called 9-1-1, not in her
21 statement, not to the police. As a matter of fact, if
22 that was true, wouldn't it be more reasonable when 9-1-1
23 called back and asked her what was going on that she would
24 say, my boyfriend is trying to kill himself. Get here
25 quick. Not, he's pouring gas on me, get here quick.

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1 Frantic, frantic.

2 Now, I'm not a psychiatrist, I don't pretend to be.

3 I'm not even going to fathom why she would change her

4 story, why she would go around him, that's not even

5 relevant to the case today, but it's what happened. It is

6 the truth. Why doesn't matter. The fact that it happened

7 is. Because the truth is that night, Tim Cobb was angry at

8 her, mad she wouldn't give him money. Don't know why he

9 needed the money. Ten dollars. Ten dollars. Went outside

10 the house, got a gas can -- not a gun, not a knife, not

11 something typically you would assault -- something -- a gas

12 can. He had knives. We've seen them. They're in

13 evidence. He went and got a gasoline can and came back in

14 the house and assaulted Rosetta Brown. Of course, to hear

15 her story, they were fighting, arguing and cussing and she

16 said, yeah, he just started talking about, you her comment

17 that he was tired. He was tired. Not believable, not

18 credible, ladies and gentlemen.

19 Now, it's, again, not about Tim Cobb wanting to kill

20 himself. This case is all about Rosetta Brown. Let's talk

21 a little bit while we're on actions, let's talk a little

22 bit about Timothy Cobb's actions in this case. Timothy

23 Cobb apparently, if you believe her story, want to commit

24 suicide. He was feeling suicidal, he needs help. Timothy

25 Cobb -- the whole thing started because he was angry at

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1 Rosetta Brown. He went outside and got the gas and came
2 back in, in the presence of Rosetta Brown. If he wanted to
3 kill himself with the gas, he could have lit himself on
4 fire outside of the house, if it didn't have anything to do
5 with Rosetta Brown. That's not what he did. When he
6 barricaded himself in the house, alone, with the gas can,
7 for eight to twelve minutes, he could have killed himself.
8 He could have lit himself on fire. If this was a suicide
9 attempt, there was no one impeding him from being
10 successful at that suicide attempt. This wasn't a suicide
11 attempt, ladies and gentlemen. This case is all about
12 Rosetta Brown and his assault on Rosetta Brown. As a
13 matter of fact, what did he do once she got out of the
14 house? He gave himself up.

15 Now, Rosetta's testimony is not credible. Let's talk
16 about the credible testimony in this case. And to find the
17 assault and the malice in this case, as far as you want to
18 look is the testimony of Dara Murray, the Clemson City
19 dispatcher whose voice appears on both of these tapes.
20 She, doing what she does in her job, she received a call,
21 an open line call, with very garbled information. In the
22 background you couldn't hear much. I suspect when she was
23 talking to the other dispatcher, she really wasn't
24 listening to the background, but she asked for name and
25 phone number so she could -- after she sent officers out

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1 there -- call and try to reassess the situation since it
2 was an open line. She was sitting alone in a dark room at
3 Clemson City Police Department. She had no idea of what
4 was going on in this case. She had no idea what it was
5 about, other than what came through her own mind. And
6 immediately she called back and during the altercation,
7 during the heat of this assault, during -- while completely
8 consumed with the excitement, danger and fear that she was
9 facing, Rosetta Brown told her that he was pouring gas on
10 her.

11 Now, I agree it's unfortunate and I hate it that we
12 don't have the tape of her saying that, but what we do have
13 a tape of is her relaying that information, again, while
14 this dispute is still going on, while Timothy Cobb is still
15 held up inside the house, we've got a tape of her telling
16 Pickens County that the suspect was armed with two knives,
17 and the suspect was threatening to pour gas on her. You
18 can't make that up, ladies and gentlemen. That's not
19 something that she had any outside information, other than
20 what came from the horse's mouth, from Rosetta Brown's
21 mouth herself. That's credible testimony. That, alone, I
22 feel, proves the assault with the intent to kill in this
23 case.

24 Now, furthermore, couple that with Timothy Cobb's
25 hostility towards himself, towards Rosetta and towards the

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1 police that night, the pieces fit. He assaulted her with
2 that gas.

3 Now, I want to talk a little bit about the charge in
4 this case. The charge is assault with intent to kill,
5 which is like I said, the intent to kill is a little bit of
6 a misnomer because it doesn't require a specific intent to
7 kill. It's a creature of old common law in South Carolina.
8 All it requires is assault, which is just the reasonable
9 apprehension of bodily harm, and malice aforethought.

10 Malice assault, obviously being in fear, fear for her
11 safety. Assault alone is a crime, and just on kind of side
12 note, is a crime in this State. Just the fear, just
13 without any type of outside circumstances, without any
14 malice, without any aggravation, just assault is a crime in
15 this State and that will be part of what you have to
16 decide, whether this was just a simple assault in this
17 case. I put to you that it is not. Simple assault
18 occurred in this case or the element of simple assault
19 during this case when Timothy Cobb put Rosetta Brown in
20 fear for her personal safety. How did he put her in fear
21 of this personal safety? He used a gasoline can. He
22 didn't use his fist. He didn't threaten to kick her or
23 throw something at her. He used a gasoline can, what could
24 quite possibly be the meanest threat to harm somebody that
25 anybody could imagine, burning someone you're supposed to

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1 love alive and threatening to do so. That makes this case
2 assault and battery with intent to kill.

3 Now that intent to kill, being that malice we spoke
4 about, can be inferred from the circumstances in this case,
5 including that use of a gasoline can. No one comes out and
6 says, I am doing this with malice. Nobody comes out and
7 says, I'm going to kill you or I intend to kill you. Your
8 common sense, your God-given ability to digest and assess
9 these facts is where that malice comes from. You can
10 extract that from the situation and that is what I'm going
11 to ask you to do in this case when I ask you find him
12 guilty of assault with intent to kill. There's another
13 crime that's going to be charged to you as well, which is
14 in the middle of those two. It's called assault of a high
15 and aggravated nature. The assault of a high and
16 aggravated nature is very similar to assault with intent to
17 kill; however, you remove the malice aspect from it. And
18 you put in the place of an aggravated factor. Again, a
19 simple assault, a slap, a threaten to slap or threaten to
20 kick, something of that nature. Assault of a high and
21 aggravated nature is when there's use of -- there's
22 aggravating factors such as a use of a deadly weapon. The
23 difference between or disparity in the genders, if that
24 causes an unfair fight, that is an aggravated fight.
25 That's another change you'll be face with. And in this

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1 case, one of the aggravating factors is use of a deadly
2 weapon. If you find that Timothy Cobb did in deed assault
3 Rosetta Brown with that gas can, but you don't feel like it
4 was with malice, then you can find him guilty of assault of
5 a high and aggravated nature. However, under the
6 circumstances, I cannot fathom and I submit to you that the
7 facts are not present, that there can be no malice in this
8 case, that there can be no willful, wanton, willingness to
9 do bad, willingness to do evil, completely devoid of social
10 duty with no legal justification whatsoever. Legal
11 justification is something like protecting somebody else or
12 being so enthralled in a legal passion or a legal fit of
13 rage, like catching your spouse with somebody else, that's
14 a legal justification. Your girlfriend not giving you ten
15 dollars is not legal justification, ladies and gentlemen.

16 Now, just to be clear, the three charges we've got,
17 simple assault, not present in this case because there was
18 always use of a gas can. There is no other evidence that
19 it was something else, other than assault with a gas can.
20 Assault of a high and aggravated nature is certainly
21 present in this case because of the assault on Rosetta
22 Brown, the assault with a deadly weapon, a gas can, assault
23 with intent to kill. That malice that Timothy Cobb
24 possessed that night is what makes him guilty of assault
25 with intent to kill. I'm going to ask you at this time to

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1 find him guilty of assault with intent to kill. Thank you.

2 THE COURT: Mr. Alexander, you may address the
3 jury in your closing.

4 MR. ALEXANDER: Thank you, Your Honor. Mr.
5 Cleveland.

6 CLOSING STATEMENT

7 BY MR. ALEXANDER:

8 Ladies and gentlemen, the testimony that I ask you to
9 remember -- all the testimony's important, but the key
10 testimony is, I never felt threatened, never felt at fear
11 for my safety. That's what Ms. Brown said on the witness
12 stand, uncontradicted testimony. There's no other
13 testimony from the police that she told them that she felt
14 in fear for her safety, nothing of that nature. And I'm
15 not going to cover everything that was said. I'm going to
16 just kind of hit what I think are some of the key points
17 and how I believe you should consider them. Before I get
18 to that, the Solicitor's going on about this case is about
19 Ms. Brown. This case is about Ms. Brown. That we don't
20 represent Ms. Brown, we represent the State. Well, the
21 case is actually about Mr. Cobb. He's the one on trial
22 here today. He's the one that you're determining whether
23 or not he's guilty of assault with intent to kill or
24 assault high and aggravated nature or simple assault.
25 That's who the case is about. And you hear the testimony

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1 to determine those facts and whether or not he's guilty of
2 those charges.

3 Actions speak louder than words. Well, let's go back
4 over some of those actions of Ms. Brown, first of all, who
5 said she called 9-1-1. Why would she call 9-1-1 if she
6 wasn't having some fear. Well, she said why she called. I
7 called because he was threatening to kill himself. He had
8 the gas. You know, the dispatcher said that she said
9 something about gas being poured out. She, herself, said
10 it wasn't clear, but that she remembers something about gas
11 being poured out on her. We don't have the tape of it so
12 we don't know exactly what was said. But what the
13 dispatcher didn't hear was nothing about, you know, fear
14 for my safety, you know, I actually think he's going to do
15 it. Nothing like that. We don't dispute Ms. Brown said he
16 had the gas can, you know, and he was threatening to pour
17 it out, going to kill himself, you know. And she left the
18 house. Why would she leave the house if there wasn't
19 something going on that she felt she had to get out of
20 there? Well, she explained that as well. The lights went
21 out. Well, I think she said that she went out, one,
22 because she was afraid the cops might shoot into the house.
23 But mainly she wanted to get Tim out of the house and she
24 left with the hope that he would follow her out and give
25 up.

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1 And, lo and behold, what happened? She left, he came
2 out of the house and surrendered. So what she wanted
3 worked. It resolved the situation. And he says that she's
4 not credible. Well, if she's not credible, she's the only
5 one that was -- the only other one that was in the house.
6 She's the alleged victim in this case. The police only
7 know what happened because of what she told them. If she's
8 not credible then how can you believe anything she said at
9 any point in time during this incident. And if you can't
10 believe anything she said, then we don't know what happened
11 and they haven't met their burden of proof and you must
12 return a verdict of not guilty.

13 But let's look at her testimony and her statements
14 from the night a little closer. Now, in her direct
15 examination, you know, she was a little bit all over the
16 place as to what happened. Understandable, happened a year
17 and a half ago. And she got her written statement and when
18 we had her read through the entire statement in its
19 entirety, she was able to put it back together in the time
20 line that it happened. She said my statement is accurate.
21 That's the basic way it happened. And that's consistent
22 with what the officer says when he arrived, what he
23 observed himself and his contact with her. So her
24 statement's consistent with what the officer says happened.
25 Of course, it doesn't include absolutely everything that

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1 happened. You're going to leave something out. You're
2 going to write down what you say happened. You know,
3 there's questions about, well, why didn't you write in
4 there that you weren't threatened? Well, that's not
5 something that you're typically going to write down.
6 You're going to write down what happened. They say, make a
7 statement as to what happened. You're going to write down
8 what happened. You're not going to say this is what
9 happened, but I was not in fear for my safety. Somebody --
10 that's a legal term. Somebody's not just going to write
11 that down in their statement. They don't know that that's
12 what the State has to prove in this or not prove. So I
13 submit to you that her statements -- her written statement
14 and her testimony are consistent. And there's obviously a
15 dispute about, you know, she says she didn't tell the cops,
16 Officer Roper certain things. You know, but look at what
17 the officer says she said, that he threatened to pour the
18 gas on me at some point, on him and her. And he said that
19 I'm going to burn us both up. Well, if you believe that,
20 then she's saying that he made a threat. That's all.
21 You've got to have more than just a threat. Somebody can
22 make a threat, but that doesn't mean you believe the threat
23 or you're put in fear for your safety. Just because a
24 threat is made, that is not enough to convict even for a
25 simple assault, much less assault with intent to kill. You

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1 have to have an accompanying act or an attempt.

2 An assault, I think the Solicitor talked a little bit
3 about the difference between assault and battery in his
4 opening. The battering is some kind of illegal touching,
5 somehow it's made contact. We don't have that here. And
6 there was questions about whether any gas actually got on
7 her. All the testimony, there was no gas poured out,
8 period. No gas on Mr. Cobb, no gas on Ms. Brown and that's
9 evident by the charge itself. If one drop of gas had got
10 on her, then he would be charged with assault and battery
11 with intent to kill because it would have been a touching.
12 So by the charge itself, this is simply an assault. There
13 was no alleged assault. There was no gas poured out.

14 So a couple of other key points and I'll close up
15 here. But you know, they talked about the smell of gas.
16 You know, if they didn't have gas on them, why the smell of
17 gas? Well, they had a gas can in a small trailer. Of
18 course the trailer's going to smell like gas. It's an
19 enclosed environment. And anybody that was in there for
20 any extended period of time is going to smell like gas,
21 whether they actually got any gas on them or not, or even
22 if they even handled the gas can. And Ms. Brown said they
23 both handled the gas can. So, of course, they smelled like
24 gas. Now, part of what you've got to decide and some of
25 these elements, malicious intent, things like that is --

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1 well, one of the things you can decide is whether or not
2 the gas in this instance was a deadly weapon. Gas can
3 certainly be a deadly weapon. I'm not going to stand here
4 and argue that point to you. But you've got to decide in
5 this factual situation was it a deadly weapon.

6 Well, let's look at what we have. I think it was a
7 one to two gallon gas can. Let's just say it was a two-
8 gallon gas can, with very little gas in it. The officer
9 couldn't remember how much gas was in it, but he said it
10 certainly wasn't full. Ms. Brown said it was not very much
11 in it. I don't remember her exact words, but -- so we have
12 a less than half full gas can with the normal spout on it,
13 is what Ms. Brown said. You know, a normal way to pour gas
14 out. Well, is gas -- that amount of gas by itself, in that
15 situation, a deadly weapon? You know, certainly if someone
16 has gas poured on them and it gets lit on fire, it would be
17 a deadly weapon. Well, you have no evidence of any ability
18 to light any gas in this incident. Not only do we not have
19 the actual gas on anybody, but we also have no ability to
20 even light the gas. No lighter was found on Mr. Cobb. Ms.
21 Brown said he never had a lighter. They didn't find a
22 lighter or any blow torch or anything like that in the
23 house. So there's no way to do that. So I submit to you
24 that in this factual situation that the testimony was
25 heard, the gas is not a deadly weapon. It's going to be

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1 hard to pour out. It's not like he had it in a cup and he
2 could just throw it at somebody. No, you'd have to try to
3 pour it out of that little can on somebody. And, you know,
4 it's not going to pour out very fast. You know, if it's a
5 full can of gas, it pours pretty fast. Everybody's filled
6 a lawnmower up or something at some point. The less gas in
7 there, the slower it pours out. It's just simple physics.
8 But the key in this is you have to have -- and the judge, I
9 think, will instruct you on this, you have to have -- one
10 of the elements is an unlawful attempt, not just a threat,
11 but an unlawful attempt. So if you believe, you know, the
12 officer's testimony that Ms. Brown said he made some kind
13 of threat about pouring the gas. Okay, well, that's a
14 threat, but does that meet the elements of unlawful
15 attempt? It doesn't. Because you have Mr. Cobb going
16 outside and getting the gas can, bringing it back in. You
17 have to have more than mere preparations to commit the act.
18 Going to get the gas can. You know, he might have been
19 preparing to commit some assault then. I certainly won't
20 concede that because Ms. Brown said he was aiming to hurt
21 himself not her, but that's a mere preparation. When he
22 gets in the house, there was no attempt. She said he just
23 had the gas can. He never made a move toward her to pour
24 it on her. He never actually poured any out. He never
25 lifted it up or anything. She actually got the gas can

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1 from him at some point and left it on the kitchen floor.
2 If she was in fear for her safety at some point, wouldn't
3 she do something else with, other than leaving it back out
4 where he could just go back and get it? That doesn't make
5 any sense.

6 And that's all that we ask in this case, ladies and
7 gentlemen, is use your common sense. And there's simply no
8 assault here. That's the bottom line. Mr. Cobb did not
9 commit an assault on Ms. Brown and, therefore, you don't
10 even get past the first few elements to decide whether it
11 was even assault with intent to kill. You're going to be
12 charged with a lesser included offenses of simple assault,
13 assault of high and aggravated nature, but I submit to you
14 that you don't even have an assault here. You have a
15 couple that got into an argument over money. It's probably
16 not that uncommon. Mr. Cobb, for some reason, got upset
17 and wanted to harm himself, went and got a gas can, came
18 back in the house and threatened to harm himself. Ms.
19 Brown was concerned. She couldn't talk him down, so she
20 called the police, hoping that they could resolve the
21 situation. And the police get there and the gas can is
22 already gone because he had knives at the door at that
23 point. But the key -- and I ask you to remember that -- is
24 that she said, I never felt threatened for my safety. And
25 if she never felt threatened -- she was the one in the

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1 house. The police weren't there. There wasn't anybody
2 else there to judge about that situation. Her and her
3 alone. She never felt threatened, there was no attempt
4 made by Mr. Cobb by her own testimony, and that's
5 uncontradicted by the other testimony. So I submit to you
6 that you must return the verdict of not guilty on all
7 charges. Thank you.

8 CHARGE

9 BY THE COURT:

10 Mr. Foreman, ladies and gentlemen, it is now my
11 responsibility to instruct you on the law of the case.
12 This indictment that I have that I announced to you,
13 charges the Defendant with assault with intent to kill.
14 Let me remind you that the fact that the Defendant has been
15 arrested, that he's been charged and indicted in this case,
16 it's not evidence and shouldn't be considered as evidence
17 of any guilt. It doesn't raise any inference of guilt.
18 It's simply the formal written document that brings this
19 case before us for disposition today.

20 Now, the Defendant has pled not guilty to this
21 indictment and that plea places on the State the burden of
22 proof of the Defendant's guilt. A person charged with
23 committing a criminal offense in South Carolina is never
24 required to prove himself innocent. I charge you that's an
25 important rule of law in our State and a criminal trial, no

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1 matter how serious the charge may be, that Defendant when
2 charged, will always be presumed innocent of the crime for
3 which that indictment was issued, unless guilt is
4 established by evidence satisfying you of that guilt beyond
5 a reasonable doubt. Presumption of innocence doesn't end
6 when you begin your deliberations, it accompanies a
7 Defendant throughout the trial until you've reached a
8 verdict of guilt based on the evidence, satisfying you of
9 that guilt beyond a reasonable doubt. Presumption of
10 innocence isn't a mere legal theory, it's not just a legal
11 phrase. It is a substantial right to which every Defendant
12 is entitled unless you, the jury, are satisfied from the
13 evidence of the Defendant's guilt beyond a reasonable
14 doubt.

15 You've heard beyond a reasonable doubt and you may ask
16 yourself, what is a reasonable doubt in the law. A
17 reasonable doubt is the kind of doubt that would cause a
18 reasonable person to hesitate to act. Now, some of you in
19 the past have, perhaps, had an opportunity to serve on a
20 jury before. It might have been in a civil case where the
21 Magistrate or the Judge told you that it was only necessary
22 to prove that a fact was more likely true than not true by
23 what was called the preponderance of the evidence or the
24 greater weight of the evidence. In criminal cases, the
25 State's proof is more powerful than that. It must be

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1 beyond a reasonable doubt. That would be proof that leaves
2 you firmly convinced of the Defendant's guilt.

3 Now, ladies and gentlemen, there are very few things
4 in this world that we know with absolutely certainty, and
5 in criminal cases the law doesn't require the State to
6 prove its evidence to such an extent that it would overcome
7 every possible doubt. If, based upon your consideration of
8 the evidence, you're firmly convinced the Defendant is
9 guilty of the crime charged, then you must find the
10 Defendant guilty. If, on the other hand, you think there's
11 a real possibility that the Defendant is not guilty, you
12 must then give the Defendant the benefit of the doubt and
13 find him not guilty.

14 Now, you and I have had certain duties to perform
15 during the trial of the case. As the Trial Judge, it's
16 been my responsibility to rule upon the admissibility of
17 evidence that's been offered during the trial. You're to
18 consider only the competent evidence before you, the
19 testimony, the exhibits that have been made a part of the
20 record and that alone.

21 My job also is to instruct you on the applicable law
22 of the case. I'm the sole Judge of the law. It's your
23 duty as jurors to accept the law and apply the law as I
24 state it to you now. Some of you may already have an idea
25 of what the law is or a notion of what the law ought to be

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1 in a case such as this. If you have such an idea and it's
2 in conflict with what I now tell you the law is, then, of
3 course, you must disregard that notion because under your
4 oath, you're sworn to accept the law and apply the law just
5 as I state it to you.

6 Every case that's tried in this courtroom before a
7 jury, that jury becomes the sole and exclusive judge of the
8 facts in a case. A Trial Judge cannot intimate or state,
9 comment on or make any statement whatsoever to a trial jury
10 about the facts in a case. Since you, the jury, are the
11 sole judge of the facts, you're not to infer from what I've
12 said in the course of the trial, any rulings I've made on
13 the admissibility of evidence or otherwise, anything I say
14 to you now in the course of this instruction to you, that I
15 have an opinion about the facts in the case. I don't have
16 an opinion. As I've stated to you, our Constitution in
17 South Carolina prohibits a Trial Judge from having or
18 expressing an opinion about the facts in a case. That's
19 totally and exclusively up to you, and you alone as the
20 jury. You're to determine the effect, the value, the
21 weight, and the truth of the evidence that has been offered
22 during the course of the trial.

23 Normally, there's two types of evidence. There's
24 direct evidence and there's circumstantial evidence.
25 Direct evidence, of course, is the testimony of a person

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1 who claims to have actual knowledge of a fact, such as an
2 eyewitness. It would be evidence which immediately
3 establishes the main fact to be proved. Circumstantial
4 evidence is proof of a chain of facts and circumstances
5 that would indicate the existence of a fact. In other
6 words, it's evidence which immediately establishes
7 collateral facts from which the main fact may be inferred.
8 It's based on inference and not on personal knowledge or
9 observation. The law makes absolutely no distinction
10 between the weight or the value to be given either direct
11 evidence or circumstantial evidence, nor is a greater
12 degree of certainty required of circumstantial evidence
13 than of direct evidence. Your job is to weigh all of the
14 evidence in the case, and after weighing that evidence, if
15 you're not convinced of the guilt of the Defendant beyond a
16 reasonable doubt, then, of course, you must find the
17 Defendant not guilty.

18 Necessarily, Mr. Foreman, ladies and gentlemen, you
19 must determine the credibility of witnesses who've
20 testified in the case. Credibility simply means
21 believability. It's your duty as jurors to analyze and
22 evaluate the evidence and determine which evidence
23 convinces you of its truth. In determining the
24 believability of witnesses who've testified in the case,
25 you could believe one witness over several witnesses. You

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1 can believe several witnesses over one witness. In your
2 discretion, you can believe part of the testimony of a
3 witness, and you can reject the remaining part of the
4 testimony of that very same witness. You can believe a
5 witness's testimony in its entirety, or you can reject the
6 testimony of a witness in its entirety. You can consider
7 whether a witness had any bias or prejudice or other motive
8 in the case. You can consider the appearance, the demeanor
9 of the witness while on the witness stand. Was that
10 witness straight forward or hesitant in answering? Was the
11 witness testimony consistent or inconsistent? How did that
12 witness come to know the information to which he or she
13 testified? Was the testimony of that witness strengthened
14 or weakened by other testimony or other evidence? It's up
15 to you, ladies and gentlemen, to determine the credibility
16 of the witnesses who have testified.

17 Now, a person who has a past criminal record is
18 competent to testify during the trial. A past record does
19 not affect the ability of that witness to testify, may only
20 be considered by you, if at all, to determine that
21 witness's believability. And, I again remind you, you're
22 the sole judge of the facts in the case and of the
23 believability of all the witnesses who have testified.

24 I instruct you and I emphasize to you, ladies and
25 gentlemen, the fact that the Defendant did not testify is

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1 not a factor to be considered by you in any way in your
2 deliberations and in your consideration of the question of
3 the guilt or innocence of the Defendant. It must not be
4 considered by you in any manner whatsoever. A Defendant
5 has a Constitutional right to remain silent and the
6 assertion of this right must not be considered by you in
7 your deliberations. I repeat, under your oath, you're to
8 draw no conclusions whatsoever from the fact that in this
9 case the Defendant did not testify. The fact that he chose
10 not to testify should not even be discussed by you in your
11 jury room. The burden of proof, as I've stated, is on the
12 State of South Carolina. The Defendant's not required to
13 prove his innocence. That burden of proof remains on the
14 State to prove guilt beyond a reasonable doubt.

15 In order to establish criminal liability, criminal
16 intent is required and it must be proven by the State
17 beyond a reasonable doubt. Criminal intent's always a
18 matter that must be determined by the jury from the
19 circumstances surrounding the situation. There's no way to
20 prove intent to a mathematical certainty. There's no way
21 that medical science can dissect a person's brain and
22 determine what that person had in mind, so the law says
23 that criminal intent may be inferred from the circumstances
24 shown to have existed. It's not necessary to establish
25 intent by direct and positive evidence, but it may be

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1 established by inference in the same manner as any other
2 fact taking into consideration the acts of the parties, all
3 the facts and circumstances of the case. Criminal intent's
4 a mental state, it's a conscious wrong-doing. It's up to
5 you to determine what the Defendant intended based upon the
6 circumstances shown to have existed.

7 Now, in this case, the Defendant is charged with
8 assault with intent to kill. In order to prove assault
9 with intent to kill, the State must prove beyond a
10 reasonable doubt that the Defendant, with malice
11 aforethought, unlawfully attempted or offered to commit a
12 violent injury upon another person and had the present
13 ability to complete that attempted injury.

14 Now, an assault is the intentional creation of a
15 reasonable fear of immediate bodily harm. It's not
16 necessary that the attempted injury or harm actually take
17 place. The example is often given if an individual, if I
18 were to walk up to you and when I was in arm's reach, I
19 drew back and made a fist as if to hit you, that would be
20 an assault.

21 Malice is hatred. It's ill-will or hostility towards
22 another person. It's the intentional doing of a wrongful
23 act without just cause or excuse and with an intent to
24 inflict an injury or, under circumstances that the law
25 would infer, an evil intent.

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1 Now, malice aforethought, ladies and gentlemen, does
2 not require that that malice exist for any particular time
3 before the act is committed. Malice must exist in the mind
4 of the Defendant just before and at the time of the act
5 being committed. Therefore, there must be a combination of
6 the previous evil intent and the act. Malice aforethought
7 can be expressed or inferred. These terms, expressed and
8 inferred do not mean different kinds of malice, but merely
9 the manner in which the malice may be shown to exist. That
10 is, either by direct evidence or by inference from the
11 facts and circumstances which are proved. Expressed malice
12 is shown when a person speaks words which express hatred or
13 ill will for another or when that person prepared
14 beforehand to do the act, which was later accomplished.
15 Malice may be inferred from the conduct, showing a total
16 disregard for human life. Inferred malice may also arise
17 when the deed is done with a deadly weapon. A deadly
18 weapon is any article or instrument or substance which is
19 likely to cause death or great bodily harm. Whether an
20 instrument has been used as a deadly weapon depends upon
21 the facts and the circumstances of each case.

22 Now, examples of instruments which may be deadly
23 weapons would include a pistol or a shotgun, a rifle, a
24 dirth, a dagger, a knife, a slingshot, metal knuckles, a
25 razor, gasoline, a fire bomb or Molotov cocktail. Again,

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1 ladies and gentlemen, these are merely examples of what
2 could be a deadly weapon.

3 Now, if facts are proved beyond a reasonable doubt
4 sufficient to raise an inference of malice to your
5 satisfaction, this inference would simply be an evidentiary
6 fact to be considered by you, the jury, along with other
7 evidence in the case. And you may give it the weight that
8 you decide it should receive.

9 Now, a specific intent to kill is not an element of an
10 assault with intent to kill. There must be a general
11 intent to commit serious bodily injury. And, again, intent
12 means intending the result which actually occurs, not
13 accidentally or involuntarily, may be shown by acts and
14 conducts of the Defendant and other circumstances from
15 which you may naturally and reasonably infer intent.

16 Evidence of the character of the assault and character
17 of the instrument used, the manner in which it was used,
18 the purpose to be accomplished, the possible resulting
19 wounds or injuries may be considered in determining the
20 intent with which the assault was committed. Intent may
21 also be inferred when it is demonstrated that the Defendant
22 voluntarily and willfully committed an act, the natural
23 tendency of which would be to harm another person.

24 Now, if you find, ladies and gentlemen, that the State
25 has failed to prove the Defendant is guilty of assault with

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1 intent to kill, you must then decide whether the State has
2 proved that the Defendant was guilty of assault of a high
3 and aggravated nature. Assault of a high and aggravated
4 nature contains all the elements of assault with intent to
5 kill, except malice aforethought. In addition, the State
6 must prove beyond a reasonable doubt a circumstance of
7 aggravation. A circumstance of aggravation would include
8 the use of a deadly weapon, the intent to commit a felony,
9 the affliction of serious bodily injury, a great disparity
10 between the ages or physical condition of the parties, a
11 difference in the genders of the parties, the resistance of
12 lawful authority. These are merely examples, again, ladies
13 and gentlemen, of the circumstances of aggravation.

14 Now, if you find the State has failed to prove the
15 Defendant is guilty of assault with intent to kill or the
16 State has failed to prove assault of a high and aggravated
17 nature, you must then decide whether the State has proved
18 the Defendant is guilty of simple assault. And simple
19 assault contains all the elements of assault and battery of
20 a high and aggravated nature, except the circumstance of
21 the aggravation.

22 Now, voluntary intoxication is not a defense to a
23 crime. A person who voluntarily becomes intoxicated is
24 just as responsible for the acts committed while
25 intoxicated as when a person is not intoxicated.

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1 Now, I've prepared a verdict form, Mr. Foreman. I
2 believe it will be self-explanatory. I've explained to you
3 the charge, the assault with intent to kill. There's also
4 lesser included offenses of assault of a high and
5 aggravated nature and simple assault and battery. You'll
6 make a determination as to whether or not the State has met
7 its burden of proof to establish beyond a reasonable doubt
8 the assault with intent to kill. If you find the State has
9 not done that, then you would decide whether or not the
10 State has met its burden on the aggravated or the assault
11 of a high and aggravated nature. If you find the State has
12 not met its burden there beyond a reasonable doubt, then
13 you'd determine whether or not the State's met its burden
14 of proof as to simple assault, beyond a reasonable doubt.
15 After you've determined which of the verdicts is
16 appropriate then, Mr. Foreman, you would sign your name as
17 foreperson, date it, let the bailiffs know that you have
18 reached a verdict and we will receive it back here in the
19 jury [sic] room.

20 Your verdict must be a unanimous one. All twelve of
21 you must agree upon a verdict. Your verdict cannot be
22 based upon sympathy or prejudice or passion or emotion or
23 any other consideration not in evidence in the case. I'll
24 remind you, ladies and gentlemen, that you're certainly
25 free to ask me any questions concerning the law, but that

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1 it's improper -- impermissible for me to answer any
2 questions you may have regarding the facts of the case.
3 The facts are part of the record. They've been introduced.
4 It's your duty to determine what those facts are as the
5 sole fact finder.

6 I'm going to ask, if you would, please, go back to
7 your jury room. Don't start your deliberations just yet.
8 There's a final matter of law I need to take care of with
9 the attorneys. If you'll just retire to your jury room.
10 Don't start your discussions and we'll give you further
11 instructions in a moment. You may retire to your jury
12 room.

13 (WHEREUPON, the jury exited the open court at
14 approximately 11:08 a.m.)

15 THE BAILIFF: The jury's secure, Your Honor.

16 THE COURT: Any exceptions to the charge?

17 MR. CLEVELAND: None from the State, Your Honor.

18 THE COURT: From the Defense?

19 MR. ALEXANDER: Your Honor, just the -- what we
20 discussed at the bench conference, Your Honor, the State --
21 I guess, on the form I handed you that first part, the
22 State v. Sanders, about the mere preparation to commit a
23 violent injury in it. You charged about having to have an
24 intent or an offer. And you may have said something to
25 that effect and I just missed it.

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1 THE COURT: I believe the charge adequately
2 covered that, but your objection is noted for the record.

3 MR. ALEXANDER: Thank you, Your Honor.

4 THE COURT: All right. The exhibits, if you'll
5 make sure all of those are in order. I have the verdict
6 form for the jury.

7 MR. CLEVELAND: Judge, I would request to send
8 the tape player back with the 9-1-1 tape if that's okay
9 with the Defense? There's nothing else on the tape at all.

10 THE COURT: Any objection? We can have them play
11 it out here or we can let them ask for it ---

12 MR. ALEXANDER: If they want to hear it, let them
13 request it, Your Honor.

14 THE COURT: Then you can decide whether you want
15 it here or back there. If you would find out who the juror
16 is that has the appointment this afternoon and send her out
17 and then tell the others -- tell the alternate that he's
18 part of the jury now and tell them they can begin their
19 deliberations after you send me the one juror out.

20 (WHEREUPON, the juror entered the open court.)

21 THE COURT: Thank you, ma'am, for sharing with us
22 that information. I understand you have an appointment
23 this afternoon. I'm going to let the alternate do the
24 deliberating rather than you so that you can make your
25 appointment. And if you would call back tonight after six

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1 o'clock, there'll be instructions for you on the answering
2 machine as to when you need to report back tomorrow, okay?
3 You're welcome to stay with us if you'd like; you're free
4 to go as well.

5 THE JUROR: All right.

6 THE COURT: Thank you very much.

7 THE JUROR: Thank you.

8 THE COURT: Did you have any personal belongings
9 back there?

10 THE JUROR: No.

11 THE COURT: All right. You can just go with Mr.
12 Teal out this way.

13 All right. We'll be at ease until we hear from our
14 jury.

15 MR. ALEXANDER: Thank you, Your Honor.

16 MR. CLEVELAND: Judge, did he instruct the
17 alternate to take the helm?

18 THE COURT: Excuse me?

19 MR. CLEVELAND: Did Mr. Teal instruct the
20 alternate to take the helm?

21 THE COURT: To take the helm?

22 MR. CLEVELAND: Did he instruct the alternate to
23 begin deliberations?

24 THE COURT: I told him to do that. I'm sure he
25 will. He's escorting her out. He'll tell them to start

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1 their deliberation.

2 (WHEREUPON, the verdict form and exhibits were
3 delivered to the jury after which court stood at
4 recess awaiting the verdict of the jury.)

5 (WHEREUPON, Court Exhibit Number 2 was marked for
6 identification.)

7 MR. ALEXANDER: Do I need to go retrieve my
8 client, Your Honor.

9 THE COURT: Well, let me see y'all just a minute
10 up here. I guess we will need him.

11 (WHEREUPON, Mr. Cleveland and Mr. Alexander approached
12 the bench.)

13 THE COURT: All right. If the jury's ready, you
14 can have them come in.

15 (WHEREUPON, the jury entered the open court at
16 approximately 12:17 p.m.)

17 THE COURT: Mr. Foreman, ladies and gentlemen, I
18 apologize for keeping you waiting. You had sent a message
19 that you would like for me to recharge you on the assault
20 with intent to kill and the assault of a high and
21 aggravated nature, which I will do. We also have a CD
22 player for you that you had requested, so we'll be able to
23 send that back with you.

24 Now, to prove assault with intent to kill, the State
25 must prove beyond a reasonable doubt that the Defendant,

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1 with malice aforethought, unlawfully attempted or offered
2 to commit a violent injury upon another person and had the
3 present ability to complete the attempted injury. An
4 assault is the intentional creation of a reasonable fear of
5 immediate bodily harm. It's not necessary that the
6 attempted injury or harm actually take place. I gave you
7 the example, if I drew my fist back within arm's reach as
8 if to hit you, that could be an assault.

9 Now, malice is hatred or ill will or hostility toward
10 another person. It's the intentional doing of a wrongful
11 act without just cause or excuse and with an intent to
12 inflict an injury or under circumstances that the law will
13 infer an evil intent. Malice aforethought does not require
14 that that malice exist for any particular time before the
15 act is committed, but malice must exist in the mind of the
16 Defendant just before and at the time of the act being
17 committed. Therefore, there must be a combination of the
18 previous evil intent and the act. Now malice aforethought
19 can be expressed or inferred. These terms, expressed or
20 inferred don't mean there are different kinds of malice,
21 but it's merely the manner in which that malice may be
22 shown to exist. That is, either by direct evidence or by
23 inference from the facts and circumstances which are
24 proved. Expressed malice is shown when a person speaks
25 words which express hatred or ill will for another or when

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1 that person prepared beforehand to do the act, which was
2 later accomplished.

3 Now, malice may be inferred from conduct showing a
4 total disregard for human life. Inferred malice may also
5 arise when the deed is done with a deadly weapon. A deadly
6 weapon is any article or instrument or substance which is
7 likely to cause death or great bodily harm. Now, whether
8 an instrument has been used as a deadly weapon depends on
9 the facts and the circumstances of each case. I gave you
10 examples of instruments that could be considered as deadly
11 weapons, including pistols and rifles, knives, sling shot,
12 brass knuckles, a razor blade, gasoline, a fire bomb. The
13 facts -- or if facts are proved beyond a reasonable doubt
14 sufficient to raise an inference of malice to your
15 satisfaction, this inference would simply be an evidentiary
16 fact to be considered by you, along with other evidence in
17 the case. And you can give it the weight that you think it
18 should receive. A specific intent to kill is not an
19 element of assault with intent to kill, but there must be a
20 general intent to commit serious bodily injury. I
21 mentioned to you that intent means intending the result
22 which actually occurs and not accidentally or
23 involuntarily. Intent may be shown by acts or conducts of
24 the Defendant and other circumstances from which you could
25 naturally and reasonably infer intent. Evidence of the

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1 character of the assault, the character of the instrument
2 used, the manner in which it was used, the purpose to be
3 accomplished, the possible resulting wounds or injuries may
4 be considered in determining the intent with which the
5 assault was committed. Intent may also be inferred when
6 it's demonstrated that the Defendant voluntarily and
7 willfully committed the act, the natural tendency of which
8 would be to harm another's person.

9 Now, included within the offense of assault with
10 intent to kill is the lesser offense of assault of a high
11 and aggravated nature. Assault of a high and aggravated
12 nature contains all the elements of assault with intent to
13 kill, except malice aforethought. In addition, the State
14 must prove beyond a reasonable doubt for this charge that
15 there be a circumstance of aggravation. Circumstances of
16 aggravation would include the use of a deadly weapon, the
17 intent to commit a felony, the infliction of serious bodily
18 injury, a great disparity between the ages or physical
19 condition of the parties, a difference in the gender of the
20 parties, the resistance of lawful authorities, those are
21 examples of circumstances of aggravation that you can
22 consider.

23 I hope that this is clarification. If there is other
24 matters of law that you need for me to instruct you on,
25 I'll be happy to do so. I have -- the Clerk has ordered

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1 lunch for you so lunch will hopefully be here soon. You'll
2 have the CD player to take back with you. I ask you to go
3 back now and continue your deliberation.

4 (WHEREUPON, the jury exited the open court at
5 approximately 12:26 p.m.)

6 THE BAILIFF: The jury's secure, Your Honor.

7 THE COURT: Any exceptions to the charge?

8 MR. CLEVELAND: None from the State, Your Honor.

9 THE COURT: From the Defense?

10 MR. ALEXANDER: None from the Defense, Your
11 Honor.

12 THE COURT: All right. We'll be at ease until we
13 hear from our jury.

14 If y'all want to get a bite to eat, just please leave
15 the Clerk a telephone number to get a hold of you.

16 MR. ALEXANDER: May my client also be excused,
17 Your Honor, to get lunch? I'll just tell him to stay on
18 Main Street.

19 THE COURT: Yeah. You need to make sure you're
20 in touch with your attorney, Mr. Cobb.

21 MR. COBB: Yes, sir.

22 (WHEREUPON, the court stood at recess in this case
23 awaiting the verdict of the jury.)

24 (WHEREUPON, Court Exhibit Number 3 was marked for
25 identification.)

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1 THE COURT: All right. If the jury's ready, you
2 can have them come in, Mr. Teal.

3 (WHEREUPON, the jury entered the open court at
4 approximately 2:51 p.m.)

5 THE COURT: Mr. Foreman, I understand the jury
6 has reached a verdict. Is that correct?

7 MR. FOREMAN: Yes, sir.

8 THE COURT: Is it a unanimous verdict?

9 MR. FOREMAN: Yes, sir.

10 THE COURT: If you would, please, hand the
11 verdict form to the bailiff.

12 (WHEREUPON, the verdict form was handed up to the
13 Court.)

14 THE COURT: All right. Madam Clerk, you may
15 publish the verdict.

16 THE CLERK: The State of South Carolina versus
17 Timothy Levern Cobb. We, the jury, by unanimous consent,
18 find the Defendant, Timothy Levern Cobb, as to the charge
19 of assault with intent to kill, guilty.

20 Is this your verdict and still your verdict, so say
21 you all by raising your right hand?

22 (WHEREUPON, all jurors' right hands were raised.)

23 THE COURT: Okay. Thank you. Anything else we
24 need from the jury before they're discharged in this case?
25 From the State? Anything from the State?

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1 MR. CLEVELAND: Oh, I apologize, Your Honor.

2 Nothing further.

3 THE COURT: From the Defense.

4 MR. ALEXANDER: No, Your Honor.

5 THE COURT: Thank you very much, ladies and
6 gentlemen, for serving on this jury. I need you to call
7 back tonight after six o'clock. There'll be instructions
8 for you. We have a small panel this week so we're going to
9 need the services of most of our jurors. If you'll call
10 back after six o'clock, there'll be a message on the
11 machine for you as to when you either need to call back or
12 when you need to report back tomorrow. Thank you very much
13 for your service in this trial. You've been a
14 conscientious group and a joy for me to work with. I
15 appreciate so much your attention, the effort you've placed
16 in this particular trial. You're excused at this time. If
17 you would, be sure to call back after six o'clock tonight.

18 Mr. Foreman, I do need you to stay in the hallway, if
19 you would, there's another document I need you to sign, the
20 Clerk will bring back for you.

21 You're excused at this time, ladies and gentlemen.

22 (WHEREUPON, the jury exited the open court at
23 approximately 2:54 p.m.)

24 THE BAILIFF: The door's closed, Your Honor.

25 THE COURT: We'll wait just a minute until the

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1 Clerk gets back.

2 All right. Any matters we need to take care of before
3 we sentence the Defendant?

4 MR. ALEXANDER: Yes, Your Honor, I would renew my
5 directed verdict motion, a motion for a new trial, in that
6 the facts presented that the jury considered could not lead
7 to the -- did not meet the burden to lead to the verdict
8 that they have produced, Your Honor.

9 THE COURT: All right. I respectfully deny your
10 motion. I think the jury had sufficient evidence to reach
11 the decision they did. I respectfully deny your motion.

12 If you'll come forward with your client. I'll be glad
13 to hear from you and your client, and certainly from the
14 State.

15 (WHEREUPON, the Defendant, Mr. Alexander and Mr.
16 Cleveland approached the Bar.)

17 THE COURT: All right. Anything from the State?

18 MR. CLEVELAND: Just briefly, Your Honor. I
19 believe you heard his prior record during the break. I'll
20 just reiterate that. It was an '88 ABHAN and a malicious
21 damage to personal property, for which he was sentenced to
22 ten years, suspended on ninety days, followed by five years
23 probation. In '91, he had a malicious damage to personal
24 property, for which he paid a fine. In '94, he was
25 convicted of burglary second degree and voluntary

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1 manslaughter and was incarcerated for fifteen years. Upon
2 being released in 2003, in 2004, he was convicted of grand
3 larceny over a thousand dollars and ABHAN, for which he was
4 sentenced to eighty months in the penitentiary.

5 You're very familiar with the facts of this case from
6 the trial, and while it may result from what, frankly, is a
7 domestic situation, the State cannot ignore his prior
8 history of violence. This will be his fourth assault
9 conviction, assault type conviction, if not higher. And
10 the fact that this whole incident arose out of a spat over
11 just a few dollars shows the Defendant's propensity to
12 react inappropriately in these type of situations. I think
13 in this case prison would be appropriate. However, I would
14 also not oppose a split sentence in this case. I think
15 some incentive for Mr. Cobb whenever he is released to stay
16 straight, know he's got a little something over his head in
17 the form of probation on the back-end would be appropriate,
18 as well. But I will defer to Your Honor for sentence in
19 this case, but that's the State's position. Thank you.

20 I will tell you, Judge, that his plea offer was seven
21 years in this case.

22 THE COURT: Mr. Alexander, be glad to hear from
23 you and certainly from your client.

24 MR. ALEXANDER: Thank you, Your Honor, may it
25 please the Court. I mean, you've obviously heard the facts

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1 in this case and I certainly respect the jury's verdict. I
2 may disagree with it, but I respect that, Your Honor. You
3 heard Ms. Brown's testimony and we would ask, not reiterate
4 all of that, but we would ask you to take that into strong
5 consideration, the fact that they've been together ever
6 since this incident happened, Your Honor, based on what she
7 testified to. He's on disability, Your Honor, has been
8 ever since he got out of prison this last time. No
9 children, lived in Central. That's where he's been living
10 at. We would respectfully ask your honor to consider some
11 kind of probationary house arrest type sentence, Your
12 Honor. He does draw disability. House arrest may be tight
13 for him, but I don't what Your Honor's considering on that
14 but -- or some kind of short, short active sentence
15 followed by probation, Your Honor. Based on the facts of
16 this case that the jury considered, I believe, a sentence
17 of that nature, despite his prior record, it is what it is,
18 but just given the facts in this case, I believe that that
19 would be an appropriate sentence, Your Honor.

20 Anything you want to tell the Judge, Mr. Cobb?

21 THE COURT: You want to tell me anything, Mr.
22 Cobb?

23 MR. COBB: Yes, sir. I don't want to lose
24 everything I have. That's the first time in my life I've
25 been trying to do good and have something. And I got my

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1 own place now and I got a good woman. The place I stay at,
2 I don't want to lose it because I've worked hard at getting
3 it. I'm on disability, but I try to do side odd-jobs and
4 everything. I've never had nothing in my life and now I
5 finally got something. I'm thirty-nine years old, about to
6 be forty. I'm getting too old for this. I mean, I don't
7 want to lose everything I have. Not the only -- I mean, I
8 never had my own place, none of that. The last four years,
9 I got on my feet, left the drugs alone and trying to do
10 better. But the incident that happened, didn't happen the
11 way they said it happened. Because if it did, she wouldn't
12 still be with me. I just don't want to lose nothing. I've
13 got my life going. That's the best I've done in my life
14 ever, my whole life. I know I got a bad record. I know I
15 done bad in the past, but this time here in my life, I'm
16 doing the best I ever, my whole life. I never had nothing,
17 now I got something. I don't want to lose it and start
18 back over. I mean, if I done wrong, which I know I didn't,
19 I apologize to you and the State, but I didn't try to hurt
20 her. I was doing something foolish for myself to try to
21 get attention, but it wasn't toward her and she told y'all
22 that. I don't -- I mean, I love her. I don't want to lose
23 her. And I don't want to lose everything I have behind
24 something foolish that was a bunch of bull because I didn't
25 do nothing wrong. This is the first time in my life I ever

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1 took a jury trial. Because every time I done something I
2 was guilty, I pleaded guilty to it. I've never had a jury
3 trial. This is my first time because I know I'm innocent.
4 In my heart, I know I'm innocent. I never took a jury
5 trial. And if I did something wrong, I automatically plead
6 guilty. You can look at my records and see that. I plead
7 guilty automatic. This time here, I know I'm innocent.
8 That's why I took a jury trial. And I thought I'd come out
9 on top. Like I say, I didn't. But I just don't want to
10 lose what I have. I don't want to lose nothing. I worked
11 hard to get what I got. Your Honor, I'm on disability. I
12 try to do little odd things to make more money for my
13 household, my pets and stuff. I mean, I don't what will
14 happen to my animals. I don't want to lose what I got. I
15 never had nothing, now I do.

16 THE COURT: Thank you, Mr. Cobb. How much did
17 you have to drink that night?

18 MR. COBB: I had about -- just some liquor, about
19 a twelve pack of beer. I mean, not quite a twelve-pack
20 because I just, about four cans still in there. It mostly
21 was a liquor thing, though. Because I can drink beer and
22 it don't bother me like that as much as that liquor thing.
23 But like I say, I used to be on drugs before in the past.
24 I'm clean now. Trying to get my life together. I done got
25 too old for this. I done spent too much of my time locked

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1 up, too much time. And I don't want to do this no more. I
2 can't do it no more.

3 THE COURT: What's the cause of your disability?

4 MR. COBB: I have a scoliosis. I have a
5 operation, a rod in my back for my, you know, what I mean?

6 THE COURT: Did you have it in prison?

7 MR. COBB: You want to see it?

8 THE COURT: No, sir. I believe you. Did you
9 have it in prison or did you have it when you got out?

10 MR. COBB: When I got out. I mean, it's from
11 basically my spine to my -- my whole back. They had to
12 take bones out of my hip and fuse my spine because my --
13 and you can tell this side pushing in. It started pushing
14 into my lungs. My spine was going like an "S" and it was
15 start pushing in my lungs and stuff. I mean, I been on
16 probation before. I went through that good. I never did
17 violate that or nothing. I just don't want to lose what I
18 have.

19 THE COURT: Does Ms. Brown work?

20 MS. BROWN: No, sir. I'm disabled.

21 THE COURT: How far did you go in school, Mr.
22 Cobb?

23 MR. COBB: I went and got my GED.

24 THE COURT: Did you get it while incarcerated or
25 did you get it before you went in?

State of South Carolina -vs- Timothy Levern Cobb (2010-GS-39-01804)
Charge

239

1 MR. COBB: At Greenville Tech. And I used to go
2 to open classes because I'm a history buff. I love World
3 History.

4 THE COURT: This is case 2010-GS-39-1804. The
5 sentence of the Court is the Defendant be committed to the
6 State Department of Corrections for a period of ten years,
7 provided, however, upon the service of thirty-three months.
8 The balance is suspended. And placed on probation for
9 forty-four months. A condition will be to complete an
10 anger management course and have substance abuse
11 counseling, random alcohol and drug testing, as needed, and
12 recommend ATU while incarcerated.

13 I hope they can help you get control of your drinking
14 problem. That seems to create the problems that you have
15 in life, Mr. Cobb. I hope you can get things together. I
16 sure hope that you can make a go of it this time, okay? I
17 wish you the best, sir.

18 MR. ALEXANDER: Thank you, Your Honor.

19 MR. CLEVELAND: Thank you, Your Honor.

20 THE COURT: All right. We'll be at ease for
21 about twenty minutes until we find out something about
22 tomorrow's trial.

23

24 (END OF REQUESTED TRANSCRIPT OF RECORD)

CERTIFICATE OF REPORTER

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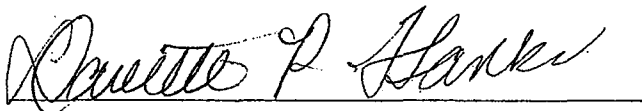
18

I, the undersigned Danette P. Hanks, Official Court Reporter for the Thirteenth 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/hearing of the captioned case, relative to appeal, in the Circuit Court for Pickens County, South Carolina, on the 24th day of October, 2011.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 9, 2012



Circuit Court Reporter

Chad Roper

Central Police Department

1/8/2010

ARREST WARRANT NUMBER

J465800

RUE BILL ACTION OF GRAND JURY
ate SEP 14 2010

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

WDR 1 000 T
The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

SEP 14 2010 TERM 2010

THE STATE

vs.

TIMOTHY LEVERN COBB

Indictment for

0768

ASSAULT WITH INTENT TO KILL

VIOLATION § C/L, 17-25-0030

INDICTED

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

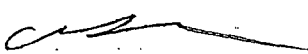
INDICTMENT FOR
ASSAULT WITH INTENT TO KILL

At a Court of General Sessions, convened on SEP 14 2010 the Grand Jurors of Pickens

County present upon their oath:

That TIMOTHY LEVERN COBB did in Pickens County, on or about the 8th day of January, 2010, with malice
aforethought commit an assault upon ROSETTA BROWN and the defendant had the apparent present ability to
complete the act. This is in violation of the Common Law of the State of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



STATE OF SOUTH CAROLINA

COUNTY OF Pickens
 STATE VS.
Timothy Levern Cobb

AKA:

Race: BLACK Sex: M Age: 39DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Assault / Assault with intent to kill (AWIK)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS3901804A/W#: J465800Date of Offense: 1/8/2010S.C. Code §: C/L, 17-25-0030CDR Code #: 0768

SENTENCE SHEET

0 - 10

☒ CONVICTED OF or ☐ PLEADSin violation of § C/L, 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0768

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: 78744 Timothy S. Cobb Defendant 71164 Steven Alexander Attorney for Defendant
Cleveland, Baker SC Bar# SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed 33 yearsand/or to pay a fine of \$ 44; provided that upon the service of 33 days/months/years and/or paymentof \$ 44; plus costs and assessments as applicable*; the balance is suspended with probation for 44

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 ☐ OrderedTotal: \$ PTUP plus 20% fee: \$ PTUP

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 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	\$ <u>500.00</u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 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	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>18.90</u>
TOTAL	\$	\$ <u>648.90</u>

PTUP days/hours Public Service EmploymentObtain GED ☒Attend Voc. Rehab. or Job Corp. PTUPMay serve W/E beginning PTUPSubstance Abuse Counseling ☒Random Drug/Alcohol testing ☒Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ PTUP beginning PTUP\$ PTUP paid to Public Defender Fund

Other:

Complete Anger mgmt course

☒ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

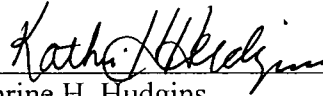
Harold P. Welborn Jr.Presiding Judge
Indec. Code:Q. Welborn

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 15th, 2012



Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT