

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM UNION COUNTY

Robin B. Stilwell, Circuit Court Judge

RECEIVED
APR 24 2013
SC COURT of Appeals

THE STATE,

RESPONDENT,

V.

LEAH FOREST

APPELLANT

APPELLATE CASE NO. 2012-211826

RECORD ON APPEAL

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

Attorneys for Respondent

INDEX

INDEX	i
TRIAL TRANSCRIPT (APRIL 10 – 13, 2012)	1
INDICTMENT	622
CERTIFICATE OF COUNSEL	624

Vicky Burris - Re-cross by Mr. Anthony

128

1 Q Okay. Okay. And she also could've gone back in that
2 bedroom and shut the door and locked it and let him leave,
3 couldn't she?

4 A She could have.

5 Q And I don't want to go too far back into what we've
6 already covered, but when you -- you say that -- when you
7 talk about the reconciliation process, just so we're
8 clear, she was the one really instigating the
9 reconciliation, not him.

10 A In the particular document that you showed me, yes.

11 Q Okay. Okay, well, I mean that would be the general
12 course between these two people after May 20th when she
13 threw his stuff out on the yard. Wouldn't that be fair to
14 say?

15 A That she was seeking to reconcile?

16 Q Yes.

17 A According to those text messages, yes.

18 Q Okay. And she reported to you this incident with her
19 second husband, Mr. Howard. Correct?

20 A Yes.

21 Q Okay. And you've reviewed that incident report now.
22 Correct?

23 A Yes.

24 Q And you know now that according to this incident
25 report, she had been assaulting Mr. Howard and that led to

Vicky Burris - Re-cross by Mr. Anthony

129

1 her stabbing him in the back with a ten inch butcher
2 knife.

3 A What is it -- I didn't recall that that was what was
4 reported in the -- that she was assaulting him and then
5 stabbed him? I want to be clear --

6 Q Yes, I'm going to -- if you want to read that part --

7 A Okay.

8 Q That's what it says. Correct?

9 A Yes.

10 Q Okay, that Mr. Howard reported that they'd gotten
11 involved -- had been drinking, they got involved in an
12 altercation, that she continually struck him, he
13 retaliated and then she stabbed him in the back with a
14 butcher knife.

15 A That's what the incident report says.

16 Q Okay. So basically what we have here is, her first -
17 - her second husband gets stabbed in the back and this man
18 gets shot in the back. That's what we have.

19 A Those two incidents has happened.

20 Mr. Anthony - All right, thank you. That's
21 everything.

22 The Court - All right, Ms. Burris, thank you for
23 being here, ma'am. You may step down. May this witness
24 be excused?

25 Ms. Inzerillo - Yes, Your Honor.

130

1 The Court - Okay. Good enough. You may be
2 excused. Yes, ma'am. All right, ladies and gentlemen,
3 let's take a lunch break. Please be back at 2:30. I Look
4 forward to seeing you again; please don't discuss the
5 case.

6 (Jury exits the courtroom)

7 The Court - Okay, does the defense intend to
8 call additional witnesses?

9 Mr. Inzerillo - We're not sure right now, Your
10 Honor, if we could inform the Court after lunch.

11 The Court - Sure, that'll be fine. That'll be
12 fine. And you've got five or six?

13 Mr. Anthony - I think five, Your Honor.

14 The Court - And you indicate fairly short?

15 Mr. Anthony - Yes, sir.

16 The Court - All right, good enough. I don't
17 want to put two fine a point on it, but there was an
18 evidentiary rule that I made in the cross examination of
19 Ms. Forrest and I didn't want to say too much on the
20 record, or excuse me, not on the record, but in the
21 presence of the jury, but there was an objection to the
22 authentication of the text ledger, and I actually thought
23 that as to authentication it was appropriate on the
24 surface, but I do know that in chambers yesterday we had
25 had a joint discussion about -- I believe it was

1 Investigator Cave from SLED -- and it was my understanding
2 as a consequence of that discussion that there would be no
3 objection to authentication and he was then released from
4 his subpoena and excused, so given that I thought that on
5 the basis of authentication that it was appropriate that
6 she be allowed to testify as to that material. Also, she
7 subsequently testified -- and I don't know if she did
8 right before she had -- she started to talk about it, she
9 did subsequently testify that she had reviewed all of
10 those text messages during the conduct of her
11 investigation and in forming her opinion, therefore, on
12 that basis, I think that it was appropriately
13 authenticated and allow them into the record, and I just
14 wanted to put that on the record so that it would be very
15 clear from an evidentiary perspective why exactly I
16 admitted that into evidence. Okay? All right. Okay,
17 good enough. Well, anything else we need to put on the
18 record before we break for lunch? No?

19 Ms. Inzerillo - No, Your Honor.

20 The Court - Okay, I'll see y'all at 2:30.

21 (Lunch recess)

22 The Court - All right, we're going on the
23 record. Defense have any additional witnesses you'd
24 intend to offer into the record?

25 Ms. Inzerillo - No, Your Honor, we would just

132

1 ask the Court to voir dire Ms. Forrest.

2 The Court - Okay. Ms. Forrest, it's my
3 understanding that you will elect to exercise your
4 constitutional right under the Fifth Amendment and not
5 testify in this case. Is that correct, ma'am?

6 Ms. Forrest - Yes.

7 The Court - Okay. Will you raise your right
8 hand, please, ma'am? Right hand, the other right.

9 (Whereupon, Leah Forrest, is duly sworn by the
10 Court.)

11 The Court - Okay, you can lower your hand. You
12 recognize that you do have a right to remain silent, a
13 right against self-incrimination guaranteed under the
14 constitution which means that you do not have to say, do
15 or prove anything. The State has the burden of proof. As
16 you know, I've said that a number of times in open Court
17 to the jury. And that means that you don't have to take
18 the stand; you don't have to testify. And if you elect to
19 exercise that constitutional right, the jury cannot hold
20 that against you, and I will charge them that they cannot
21 hold that against you. Simply the fact that you are
22 exercising or choosing to exercise a constitutional right
23 that is afforded to everyone in our nation cannot be held
24 against you in their deliberations. I will even go so far
25 as to tell them that not only can they not hold it against

1 you, they can't even discuss it in the jury room in their
2 deliberations. However, know that you could take the
3 stand if you wanted to. You can take the stand and you
4 can go under oath and tell the jury your side of the
5 story, tell them everything that you think is important in
6 this case, explain yourself, but understand that if you do
7 take the stand, then you would be subject to cross
8 examination, and the solicitor would have the opportunity
9 to ask you questions and to attempt to throw your
10 credibility into question and to attempt to impeach you
11 based on your testimony, perhaps prior statements and
12 based on, if applicable, any prior record that you may
13 have. Now, do you understand your right to remain silent?

14 Ms. Forrest - Yes, sir.

15 The Court - You also recognize your
16 corresponding right to take the stand and testify in this
17 case. And have you made a decision as to what you want to
18 do?

19 Ms. Forrest - I haven't decided yet.

20 The Court - You haven't decided yet?

21 Ms. Forrest - (No response)

22 The Court - Okay, just about testifying.

23 Court Reporter - She needs to speak up, too,
24 Judge. I'm having trouble -- I can't hear her.

25 The Court - Me or her?

1 Court Reporter - Her.

2 Ms. Inzerillo - May we have one moment, Your
3 Honor?

4 The Court - Sure. That's all right.

5 (Discussion is held between Ms. Forrest and her
6 counsel which was not reported.)

7 Ms. Inzerillo - Thank you, Your Honor.

8 The Court - Okay. All right, Ms. Forrest, have
9 you made a decision?

10 Ms. Forrest - Yes, sir.

11 The Court - Okay, are you going to testify in
12 this case?

13 Ms. Forrest - No, sir.

14 The Court - Okay. Good enough. All right,
15 well, thank you, then we'll bring the jury in. Anything
16 further from the defense?

17 Ms. Inzerillo - No, Your Honor.

18 The Court - Okay. I'll bring the jury in and
19 you can rest in front of the jury, but if there are any
20 motions to be made at this time at the close of the
21 defense case, if I could hear them now before we bring
22 them in, if there are any.

23 Mr. Delaney - Judge, we would just renew any
24 objections we have made throughout this trial.

25 The Court - All right, good enough. All right,

1 and the ruling stands, of course.

2 Mr. Delaney - Thank you.

3 The Court - Okay. All right, we're ready for
4 the jury. Oh, and by the way, I want to go ahead and
5 appoint --

6 (Jury enters the courtroom)

7 The Court - -- put Ms. Kinard in the foreperson
8 seat. All right, now is it Kinard or Kinard?

9 Ms. Kinard - Kinard.

10 The Court - Kinard. Ms. Kinard,
11 congratulations. I have appointed you foreperson of the
12 jury. You can put that on your resume for the remainder
13 of your life. The foreperson of the jury is responsible
14 for insuring that everyone has the opportunity to have a
15 voice in the jury room when you begin your deliberations.
16 You make sure that everyone has the ability to be heard.
17 Now, over and beyond that I can't tell you necessarily
18 what your additional roles and responsibilities are,
19 because when y'all go into the jury room, that's your sole
20 province and I can't tell you how to deliberate; I can't
21 tell you what to do or how to go about it, but what I will
22 tell you is, you will make sure that everyone has the
23 opportunity to be heard. If at any time during your
24 deliberations you have a question, then Ms. Kinard, you
25 can write it down, and -- did I pronounce it right?

1 Ms. Kinard - That's fine.

2 The Court - Kinard? See, I know it both ways,
3 so I'm going to go back and forth. You can write it down
4 and give it to the bailiff and then he can present it to
5 me to answer any of those questions. Now, I hope that you
6 don't have any questions, but you might. You might. So
7 that's your responsibility. Now, until you go into
8 deliberations, you don't have to change anything about
9 what you're doing, except you'll sit in that seat and
10 everybody else doesn't have an assigned seat. All right,
11 so at this point in time, does defense have any additional
12 witnesses?

13 Mr. Delaney - Your Honor, at this time the
14 defense rest.

15 The Court - Okay, good enough. Ladies and
16 gentlemen, defense has put into the record all of the
17 evidence which it intends to present in its case in chief.
18 Now, we will see if the State has anything in reply. Mr.
19 Anthony, you have reply witnesses?

20 Mr. Anthony - Yes, sir, we do.

21 The Court - Okay, good enough. Then you may
22 call your first reply witness.

23 Mr. Anthony - Our first witness is Mr. Gault,
24 Chad Gault.

25 Chad Gault, after being first duly sworn.

Chad Gault - Direct by Mr. Anthony

137

1 testifies as follows -

2 Direct Examination

3 by Mr. Anthony -

4 Q Would you state your name, please?

5 A Chadwick Richard Gault.

6 Q All right. And, Mr. Gault, where do you live?

7 A Pauline.

8 Q And how are you employed?

9 A Salesman.

10 Q And what's the name of your business?

11 A Renntech Graphics.

12 Q What kind of work do you do?

13 A We do graphic design.

14 Q Okay. And where are you located? Where's the
15 business located?

16 A Jonesville.

17 Q All right. And you say you do graphic design. What
18 exactly does that mean? What kind of things do you do
19 graphics on or for?

20 A We do car lettering, we do signs, pretty much any
21 form of advertising.

22 Q Okay. And do you know Mr. Dipietro?

23 A Yes, I do.

24 Q All right. And how do you know him?

25 A He worked for me.

Chad Gault - Direct by Mr. Anthony

138

- 1 Q All right, and when did he work for you?
- 2 A From '09 til I guess til the incident happened.
- 3 Q Okay. What -- roughly -- you don't have to give me
- 4 exact date, but roughly what part of '09?
- 5 A The beginning.
- 6 Q The start of 2009?
- 7 A Yes, sir.
- 8 Q Okay. So it's about 18 months?
- 9 A Right.
- 10 Q And what did he do for you?
- 11 A He was a graphic designer.
- 12 Q Okay, and what does that -- what does that mean he
- 13 did?
- 14 A He drew computerized designs for signs and cars.
- 15 Q Okay. And did you know Ms. Forrest?
- 16 A Yes, I did.
- 17 Q And how did you come to know her?
- 18 A Through Ron.
- 19 Q All right. I want to ask you about a incident back
- 20 in late May of 2010. Did you have occasion to go and seek
- 21 out the Jonesville police with Ron?
- 22 A Yes, I did.
- 23 Q Okay. And how did that come to occur?
- 24 A Ron come to the shop early -- I don't know what that
- 25 particular day was -- that morning and said that he needed

Chad Gault - Direct by Mr. Anthony

139

1 to get his stuff --

2 Mr. Delaney - Judge, I'd object to hearsay at
3 this time.

4 The Court - Okay. All right. I sustain as to
5 any hearsay.

6 Q All right. Well, when Ron came to your shop that
7 morning, did you talk to him?

8 A Did I -- I talked to Ron, yes, I did.

9 Q You had a conversation with him?

10 A Yes.

11 Q Okay. And what -- where was the first place you went
12 after you had that conversation?

13 A We went to the house.

14 Q To Street?

15 A Yes, sir.

16 Q And what was the purpose of going to the house?

17 A To get Ron's clothes and belongings.

18 Q And when you went to the house the first time, what -
19 - what happened?

20 A I sat in the truck, but -- he didn't get inside the
21 house and he come back to the truck and said that she
22 wouldn't let him in.

23 Mr. Delaney - Judge, again, object to hearsay.

24 Mr. Anthony - Well, that's a sense impression.

25 The Court - Okay. All right. As to that

Chad Gault - Direct by Mr. Anthony

140

1 comment, it's not offered to prove the fact of the matter
2 asserted, so I'll overrule that objection.

3 Q So after he comes back to the truck, where did y'all
4 go then?

5 A We went to the town hall which is the old high
6 school.

7 Q And when you got to the -- well, what was the purpose
8 of going to the town hall?

9 A To get a officer or official who could instruct him
10 on what he needed to do.

11 Q Okay. And were you able to -- or was -- was Ron able
12 to make contact with somebody at the Jonesville Police
13 Department?

14 A Yes, he was, Jimmy Wilkins.

15 Q Okay. And so what happened after he contacted Jimmy
16 Wilkins?

17 A We actually followed Jimmy back to Street. Him
18 and Jimmy got out of the truck and walked up to the door
19 and talked to Leah. I don't know exactly what was said,
20 but Ron got back in the truck --

21 Q Was he able -- were they able to go into the house?

22 A No.

23 Q Okay. All right. And what happened after that?

24 A Ron got back in the truck and we went back to the
25 shop.

Chad Gault - Direct by Mr. Anthony

141

1 Q Okay. All right. And so did you do anything else
2 for Ron that day as far as trying to assist him in getting
3 stuff out of the Street residence?

4 A No, not anything that day.

5 Q Okay. During the course of Ron working for you, did
6 you ever see any violence between him and Ms. Forrest?

7 A No, I didn't.

8 Q Okay. Were you ever aware of Ron ever using any
9 drugs while he worked for you?

10 A No, sir.

11 Q All right.

12 Mr. Anthony - All right, thank you. That's
13 everything on direct.

14 Mr. Delaney - Judge, may I approach briefly?

15 The Court - Yes, sir.

16 (Bench conference was held in the presence of
17 the jury but out of the hearing of the jury which was not
18 reported.)

19 The Court - All right, ladies and gentlemen,
20 we're going to take a very, very short break. Something -
21 - just an administrative thing we've got to work through.
22 It'll take a second. Go back to your jury room, but don't
23 discuss the case; you'll be right back in.

24 (Jury exits the courtroom)

25 Mr. Anthony - I apologize, Your Honor.

142

1 The Court - That's all right.

2 Mr. Anthony - While Mr. Gault is on the stand --
3 well, I'll just ask him.

4 Mr. Anthony - Mr. Gault, can you give me your
5 birthday again?

6 Mr. Gault - 11-12-75.

7 Mr. Anthony - Okay. All right. Thank you.
8 I'll be right back..

9 The Court - Okay.

10 (Brief pause)

11 Mr. Anthony - There y'all go.

12 (Discussion is held between Mr. Anthony and Mr.
13 Delaney which was not reported.)

14 Mr. Delaney - All right, we're good, Judge.

15 The Court - All right, you ready?

16 Mr. Delaney - Yes, sir.

17 The Court - All right, good enough. Would you
18 bring the jury back in, please.

19 (Jury returns to the courtroom)

20 The Court - All right, Mr. Delaney, I believe
21 it's your witness, sir.

22 Mr. Delaney - Thank you, Judge.

23 The Court - Yes, sir.

24 Cross Examination

25 by Mr. Delaney -

Chad Gault - Cross by Mr. Delaney

143

- 1 Q Chad, you said that Ron started working for you, I
2 think you said beginning of 2009?
- 3 A Correct.
- 4 Q Okay. And he worked for you every day?
- 5 A Yes, Monday through Friday.
- 6 Q So he worked at your place Monday through Friday in
7 Jonesville?
- 8 A Correct.
- 9 Q Okay. And do you all do a lot of work for the police
10 department?
- 11 A Yes, we do.
- 12 Q And in late May when Ron came and got you at work you
13 testified, you weren't at the house prior to that. Right?
14 That day?
- 15 A Re -- I don't understand what you're asking me.
- 16 Q I'm sorry. You testified that Ron in late May came
17 and got you when you were at work. Is that right?
- 18 A Yes, Ron had showed up for work that morning.
- 19 Q Showed up for work. Okay.
- 20 A Right.
- 21 Q And you weren't at the house earlier that morning.
22 Right?
- 23 A No, sir.
- 24 Q Okay. And you weren't at the house the evening of
25 June the 6th, 2010. Right?

Chad Gault - Cross by Mr. Delaney

144

1 A Not that I recall. I don't know what June th 6th
2 was.

3 Q Okay. And the best that you can recall, you were not
4 at the house the morning of June the 7th, 2010. Is that
5 right?

6 A Correct.

7 Q OKay. And, Chad, you seen Ron get violent before,
8 haven't you?

9 A No, I haven't.

10 Q You didn't have to break up a fight?

11 A No, I didn't break up a fight.

12 Q Did you -- did you have a guy that works for you --
13 I think his name is Wormy. He went by Wormy. Did you
14 have a guy that --

15 A Yes, his name was Jason.

16 Q Jason? Okay. And you saw Ron beat on Jason pretty
17 good in the parking lot of your work, didn't you?

18 A No, Ron never touched Jason.

19 Q Ron never touched Jason?

20 A No. They had a verbal dispute, no licks, no blows,
21 no nothing.

22 Q And you testified that you didn't -- never seen Ron
23 use drugs. Is that right?

24 A Correct.

25 Q Okay. Now, you weren't with Ron twenty-four hours a

Chad Gault - Re-direct by Mr. Anthony

145

1 day, seven days a week either, were you?

2 A Correct.

3 Mr. Delaney - No further questions.

4 The Court - All right, any re-direct?

5 Mr. Anthony - Just briefly.

6 Re-direct Examination

7 by Mr. Anthony -

8 Q When Ron worked for you, where was he coming from to
9 work?

10 A When he first started he was coming from
11 Hendersonville. I don't know exactly when the day (sic)
12 of the house that they was renting, but from that point on
13 he drove from the house to the shop.

14 Q Okay. After this incident with the clothes, did
15 things change as far as where he was staying?

16 A Yes, he was driving from Hendersonville.

17 The Court - All right, thank you.

18 The Court - Any questions?

19 Mr. Delaney - No, Judge.

20 The Court - All right, any objections to this
21 witness being excused?

22 Mr. Anthony - No, sir. We'd ask that he be
23 excused.

24 The Court - Thanks for being here, sir. Have a
25 great day. Your next witness?

Jimmy Wilkins - Direct by Mr. Anthony

146

1 Mr. Anthony - Next witness is Chief Wilkins.

2 Mr. Gault, could you ask that Chief Wilkins come in as you
3 leave?

4 Mr. Gault - Yes, sir.

5 Jimmy Wilkins, after being first duly sworn,
6 testifies as follows -

7 Direct Examination

8 By Mr. Anthony -

9 Q Can you state your name, please?

10 A James Wilkins.

11 Q All right, and Mr. Wilkins, what's your permanent
12 job?

13 A I'm the fire chief for the Jonesville Fire District.

14 Q And back in June of 2010 what was your job?

15 A I was the police chief for the Town of Jonesville.

16 Q Did you know Ron Dipietro at that time back in June
17 of 2010?

18 A Yes, sir, I knew him through Mr. Gault where he
19 worked. We had trucks at the time we were doing lettering
20 on, and I met him over there.

21 Q And do you recall a day in May of 2010 where Mr.
22 Dipietro came to the new town hall?

23 A Yes, sir.

24 Q All right. And what was -- what was the purpose of
25 him coming to the town hall?

Jimmy Wilkins - Direct by Mr. Anthony

147

1 A He wanted to go to the residence and get --

2 Mr. Delaney - Judge, I object at this time.

3 The Court - On the basis of?

4 Mr. Delaney - Judge, it'd just be hearsay again.

5 The Court - Okay. I'm going to overrule that
6 objection. I believe he's just testifying to what he
7 wanted, not what he said.

8 Q What did he want to do?

9 A He wanted to get some articles from the residence.

10 Q Okay. And so what did you do when he came and made
11 this request?

12 A We all went to the residence and I went to the door
13 and knocked on the door and when she came -- the defendant
14 came, I asked her could Ron get something out of the house
15 and she said, no, he wasn't coming back in the house, it
16 wasn't okay and Ron and Mr. Gault were out at the street.
17 I went back out there and told him that she said you
18 couldn't come back in the house, so --

19 Mr. Delaney - Judge, again, I'd object to
20 hearsay.

21 Mr. Anthony - Well, but this is what he told
22 them.

23 The Court - He said -- he was commenting on what
24 somebody else said. Correct?

25 Mr. Anthony - No, he -- he was just -- he stated

Jimmy Wilkins - Direct by Mr. Anthony

148

1 that he advised them what she said and saying what he told
2 them.

3 The Court - Okay. All right. But you're not
4 going -- it's fairly convoluted, but inasmuch as it's not
5 offered to prove the fact asserted, I'm going to allow him
6 to testify to it. Go ahead.

7 A I forgot where I --

8 Q Well, when you went back out -- after -- you spoke to
9 Ms. Forrest. Is that correct?

10 A Yes, sir.

11 Q And Ms. Forrest said that Mr. Dipietro wasn't going
12 in the house.

13 A She stated he was not coming back in the house, so I
14 went and told Ron that the best thing he could do is go
15 see the Magistrate if he had something in there he needed
16 to get.

17 Q Did you notice any -- where it looked like anybody
18 had set anybody's stuff out when you went to the house?

19 A I believe there was some stuff under the carport but
20 I didn't -- didn't pay that much attention at the time.

21 Q When you went to the house, did you notice any
22 injuries on Ms. Forrest?

23 A No, sir, I didn't see her that good.

24 Q All right. Did you know Ms. Forrest from before you
25 went to the house that day?

Jimmy Wilkins - Direct by Mr. Anthony

149

1 A The only thing I knew was she worked at the local
2 convenience store there at the Kangaroo. I didn't --
3 really didn't know her.

4 Q Okay. And after that day did you have any other
5 involvement with the two of them before the shooting
6 occurred?

7 A No, sir.

8 Mr. Anthony - Thank you. That's everything on
9 direct.

10 The Court - Cross examination, sir?

11 Mr. Delaney - No questions, Judge.

12 The Court - All right, any objection to this
13 gentlemen being excused?

14 Mr. Anthony - We'd ask that he be excused.

15 The Court - Okay. Thank you very much, sir. I
16 appreciate your coming.

17 Mr. Anthony - Chief, can you ask Richard Gault
18 to come in if you will.

19 Mr. Wilkins - Yes, sir.

20 Mr. Anthony - Thank you.

21 Richard Gault, after being duly sworn, testifies
22 as follows -

23 Direct Examination

24 by Mr. Anthony -

25 Q Would you state your name, please sir?

Richard Gault - Direct by Mr. Anthony

150

1 A Pardon?

2 Q Would you state your name, please?

3 A Richard Stanley Gault.

4 Q All right. And, Mr. Gault, where do you live?

5 A I live on 170 Oak Ridge Drive, Jonesville.

6 Q And do you have an employment or occupation right
7 now?

8 A Well, I look after my son's truck wash.

9 Q Okay. And who's your son?

10 A Chad Gault.

11 Q Okay. Where's the truck wash located?

12 A It's on 295 By-Pass there in Spartanburg.

13 Q Okay. Now, you say your son's Chad Gault?

14 A That's correct.

15 Q And what -- what does Chad do for a living?

16 A He's a graphic designer. He designs graphic and make
17 where you have signs and everything.

18 Q Okay. And where is his business located?

19 A It's right beside my house. I have a big shop there
20 that he uses.

21 Q Okay. Do you know Mr. Dipietro?

22 A Yes, sir.

23 Q And how do you know him?

24 A Well, I -- be and Chad raced and runs a racer and we
25 knew him -- one day he came to work for Chad and I went

Richard Gault - Direct by Mr. Anthony

151

1 home and he was down there.

2 Q All right. And did you know Leah Forrest?

3 A Yes, I do.

4 Q And how'd you come to know her?

5 A Through Ron.

6 Q Okay. And did you do anything to assist them when
7 they moved to get a place together in Jonesville?

8 A Yes, I have a friend that had a house that he was
9 building a new home and I told him that I knew somebody
10 that might be interested in renting it, and he let them
11 move in.

12 Q Okay. Well, I want to take you now to the incident
13 that occurred at the shop. Was there -- did you ever hear
14 a conversation at the shop about Ms. Forrest chasing Mr.
15 Dipietro with a knife?

16 A Yes. One day we was there at my son's --

17 Mr. Delaney - Judge, object. He's going to be
18 testifying to a conversation that he heard at the shop.
19 I would object to hearsay at this point.

20 Mr. Anthony - Well, I'll -- I'll -- Well, I'll
21 clear it up.

22 The Court - Okay, well, as to the way that was
23 just couched, I sustain that objection.

24 Q You heard a conversation. Correct?

25 A Correct.

Richard Gault - Direct by Mr. Anthony

152

1 Q All right. And who was -- who was at the shop the
2 day this conversation occurred?

3 A Myself, Leah, Ron and her daughter.

4 Q Okay. And what -- what did Ron do while y'all were
5 at the shop together that day that sort of drew
6 everybody's attention?

7 A He -- my son had brought a bicycle there; he bought
8 his son a new one and he left it there and Leah's daughter
9 was riding it, and she got off and Ron told me, said I can
10 ride that bicycle backwards, and I said, what; he said, I
11 can ride that bicycle backwards, and I said I don't
12 believe it, no man like you can ride no bicycle. He got
13 on that bicycle and he surprised me. And Leah looked at
14 me and said, that ain't all he can do.

15 Q What -- what did you say -- what did you say to him
16 when he was riding the bicycle like that?

17 A Well, I told him I couldn't believe he was riding one
18 like that.

19 Q All right. And what did Ms. Forrest say when you
20 told Ron you couldn't believe it?

21 A She -- she said that ain't all he can do, said he can
22 fly. Said, if I'd have caught him, I was going to cut his
23 head off, but I couldn't catch him.

24 Q All right.

25 Mr. Delaney - Judge, I object again to the

Richard Gault - Direct by Mr. Anthony

153

1 hearsay.

2 The Court - Okay. It's the Defendant's
3 statement --

4 Mr. Anthony - Yes, this is what --

5 The Court - All right, overruled.

6 Q And this is what Ms. Forrest said about Mr. Dipietro
7 --

8 A That's correct.

9 Q -- about cutting his head off.

10 A Yes.

11 Q All right. How often would you see Ms. Forrest?
12 While Ron worked there at the shop, how often would you
13 see Ms. Forrest?

14 A Well, they only had one vehicle and she'd pick Ron up
15 sometimes, or he'd leave the vehicle and she'd bring him,
16 come to pick him up, just -- and sometimes I would work
17 and they'd be gone when I got out of there, but if it
18 rained or something like that, sometimes she'd come over,
19 they'd eat dinner there sometimes.

20 Q Okay. And did you ever see any bruises on Ms.
21 Forrest or --

22 A No.

23 Q -- any sign that she was being abused?

24 A No. I did not see any.

25 Q And this statement she made, you say her daughter was

Richard Gault - Cross by Mr. Delaney

154

1 there when she made it?

2 A Yes, sir.

3 Q Okay.

4 A But she wasn't there with us. She was out in the
5 yard. That was me and her standing there. She made the
6 statement to me.

7 Q Okay. All right. And approximately how -- how --
8 when she said that, how much time was there from the time
9 she said that to the time the shooting occurred?

10 A I would say within a month, a month and a half.

11 Q Okay.

12 Mr. Anthony - All right, thank you. That's
13 everything on direct.

14 The Court - Cross examination?

15 Cross Examination

16 by Mr. Delaney -

17 Q Were you at the house with Ron and Leah ever?

18 A Was I over at their house?

19 Q Yes.

20 A Yes, sir.

21 Q You were?

22 A Yes, sir.

23 Q How often were you over at their house?

24 A Well, I think -- let's see. One time I went over
25 there and helped him crank the car; one time I went over

Richard Gault - Cross by Mr. Delaney

155

1 there and helped them something about the plumbing being
2 stopped up. And I guess that's the onliest (sic) time I
3 was over there.

4 Q So two times? You were at the house two times?

5 A Yes.

6 Q So --

7 A In their house.

8 Q In their house.

9 A Yes.

10 Q Okay. And the other -- how long did you know Ron
11 for?

12 A Probably -- he'd been working there about three
13 years.

14 Q Okay. Three years?

15 A (No response)

16 Q And -- so for the other nine hundred days or so,
17 other than those two days, you were never inside this
18 house with Ron and Leah.

19 A No.

20 Q You don't know what was going (sic) inside that
21 house.

22 A No, I didn't.

23 Q Okay.

24 Mr. Delaney - No further questions.

25 The Court - Re-direct, sir?

Ron Bishop - Direct by Mr. Anthony

156

1 Mr. Anthony - No, re-direct.

2 The Court - All right, may this gentleman be
3 excused?

4 (No Response)

5 The Court - Hearing nothing, have a great day,
6 sir. Thank you.

7 Mr. Anthony - Mr. Gault, thank you. When you
8 walk out, would you ask Officer Bishop to come in, please,
9 sir?

10 Ron Bishop, after being first duly sworn,
11 testifies as follows -

12 Direct Examination

13 by Mr. Anthony -

14 Q Would you state your name, please.

15 A Ronald Bishop.

16 Q And, Mr. Bishop, how are you employed?

17 A Pacolet Police Department.

18 Q How long have you been in law enforcement all
19 together?

20 A Since '91, little over 21 years.

21 Q Back in 2009, how were you in employed?

22 A Town of Pacolet, Town of Jonesville.

23 Q Okay. What was your job there?

24 A Police officer.

25 Q All right. How long did you work for the Jonesville

Ron Bishop - Direct by Mr. Anthony

157

1 Police Department?

2 A From '03 to 2010 minus when I was gone for military.

3 Q Okay. And when -- what occurred in your career to
4 sort of mark leaving Jonesville and going to Pacolet?

5 A My last mobilization when I got back, I was actually
6 going to stay out of law enforcement, but I ended up going
7 up there, because the chief up there I'd known for a long
8 time.

9 Q All right. I want to take you now to August 9th of
10 2009. Did you receive a call early that morning to
11 Street in Jonesville?

12 A Yes, sir.

13 Q And this is while you were a Jonesville officer. Is
14 that correct?

15 A Yes, sir.

16 Q Okay. And what was the nature of that call?

17 A I believe it was the lady that lived there called
18 wanting a vehicle back.

19 Q Okay. And that would've been Ms. Forrest?

20 A Yes.

21 Q And she would've been calling wanting a vehicle back
22 from Mr. Dipietro?

23 A Yes, sir.

24 Q Okay. And how -- how did you respond to that?

25 A When I arrived I talked to her briefly about what was

Ron Bishop - Direct by Mr. Anthony

158

1 going on and different things and it occurred to me that
2 he might have phone. I asked her if he had a phone; she
3 said he did. I got his phone number and called him up on
4 the phone.

5 Q And what did he do when she called -- what did you
6 ask him to do when you called him?

7 A To try to figure out what was going on, I asked him
8 if he would return back to the house.

9 Q Okay. And did he come back to the house?

10 A Yes, sir.

11 Q All right. And what happened when he got back there
12 with the vehicle?

13 A We were talking with -- I was talking to both of them
14 and from what I got is that he bought the car, put it in
15 her name but was making the payments on it and it was --

16 Q That both -- basically both of them were using it?

17 A Yes, sir.

18 Q All right. And so what did you advise them once you
19 got all that resolved?

20 A It seemed like she more wanted to have him back at
21 the residence than the vehicle back. They were talking
22 about and she wanted him to stay and once everything was
23 pretty calm there, he was real cooperative with coming
24 back, there was nothing -- I mean he was polite on the
25 phone, didn't -- didn't hesitate to come back. I think

Ron Bishop - Direct by Mr. Anthony

159

1 from the time I arrived to the time I left was about an
2 hour long.

3 Q Okay. All right, and what did you advise the two of
4 them in regards to the vehicle?

5 A I don't remember exactly what I advised, but under
6 the circumstances, you know, it was -- like I said, he was
7 real cooperative and nothing was really up, that need to
8 just work it out. She was wanting him to stay at the
9 residence, and like I said, it seemed more than that, um -
10 -

11 Q All right, and what -- what were you able to observe
12 about her while you were talking to her?

13 A I could smell an odor of alcoholic beverage. It was
14 something I could -- but I didn't know her that well to
15 know exactly why she was so upset about it, and, you know,
16 why she was calling, but she was -- I didn't know if it
17 was the alcohol or what.

18 Q Did she make any complaint at that time of any kind
19 of physical abuse by Mr. Dipietro?

20 A No, sir.

21 Q Did you see any signs of abuse on Ms. Forrest?

22 A No, sir.

23 Q So how did you kind of leave things with them, to the
24 best of your recollection?

25 A The -- under the circumstances and as long as I've

Ron Bishop - Direct by Mr. Anthony

160

1 been doing law enforcement, if there was any signs
2 whatsoever of -- of any kind of abuse or anything like
3 that I would have -- one way or another -- I believe I
4 even offered to take him to his employee -- where he was
5 employed at to get him away. She wanted him to stay, but
6 I would not have left anybody there that was in any way,
7 shape or form acting like they were in fear for their
8 safety, and I left and I can't recall exactly whether he
9 stayed or left or what happened with that.

10 Q All right. Did you know either Ms. Forrest or Mr.
11 Dipietro from before this occurrence?

12 A No, sir.

13 Q And did you ever see one of them after it?

14 A No, sir.

15 Q Okay. So this was your only time having any contact
16 with them or any kind of call to Street?

17 A I was advised that she worked at a convenience store,
18 but I don't re -- I didn't -- when I get the call, I
19 didn't recognize her from that and I don't remember seeing
20 her really after that.

21 Q Okay.

22 Mr. Anthony - All right, thank you. That's
23 everything on direct.

24 The Court - Cross examination?

25 Mr. Delaney - No questions.

Robbie Hines - Direct by Mr. Anthony

161

1 The Court - Thank you. Any objections to him
2 being excused?

3 Mr. Anthony - No, sir. We'd ask that he be
4 excused.

5 The Court - Have a great day. Thank you. Any
6 additional witnesses?

7 Mr. Anthony - Yes, sir, we would briefly recall
8 Captain Hines.

9 Robbie Hines, being first duly sworn, testifies
10 as follows -

11 Direct Examination

12 by Mr. Anthony -

13 Q All right, Captain Hines, you testified earlier that
14 part of your responsibility is being the head of EMS? Is
15 that correct? Or not -- the head of 9-1-1?

16 A Yes, sir.

17 Q The County?

18 A I'm Director over -- of Emergency 9-1-1.

19 Q All right. I'm sorry. Been a long day. Okay. And
20 9-1-1 -- I think you even testified about this earlier
21 when we were doing the 9-1-1 tape yesterday. 9-1-1 has a
22 record-keeping procedure. Is that correct?

23 A That's correct.

24 Q And when -- when a call comes in from a particular
25 address in the county, what is done to that call?

Robbie Hines - Direct by Mr. Anthony

162

1 A When someone calls 9-1-1 from anywhere in our county,
2 specifically a land-line or a house phone, we have that
3 address already pre-set into our CAD. Our CAD is short
4 for computer aided dispatch. We have a lady that
5 basically her sole responsibility is going around the
6 County of Union and any home that is built or brought in
7 and has a land-line, she's responsibility for coming
8 technically to your house or your front door and shooting
9 a laser or a beam and placing it on what's called GEO
10 spread or a map, and that information is logged into a
11 computer, it's logged into the CAD, computer aided
12 dispatch, C-A-D, CAD and once you dial 9-1-1 then it comes
13 up with your coordinates, your lat. and long. and we input
14 the information such as my name, my address, my phone
15 number and all that's pegged through the CAD system in
16 conjunction with AT&T.

17 Q And so there's a record kept of all the 9-1-1 calls.

18 A That's correct.

19 Q And it includes where it comes from and who made it.

20 A That's correct.

21 Q All right. And did you -- as the head of 9-1-1 you
22 have access and basically supervision of the keeping of
23 those records.

24 A Yes, sir.

25 Q Okay. Have you searched or done anything in regards

Robbie Hines - Direct by Mr. Anthony

163

1 to trying to determine what calls were made before June
2 7th of 2010 from Street by either Ms. Forrest or
3 Mr. Dipietro?

4 A Yes, sir. Actually --

5 Q What did you do?

6 A Yes, sir. Actually I was -- had a scheduled meeting
7 with public defenders and at their request they wanted any
8 records that we had on file from Street in
9 Jonesville. So I led them to a computer and accessed it
10 to security code that I have and printed any calls that we
11 had for Street in Jonesville.

12 Q And other than before June 7th, 2010, what calls did
13 you bring up that involved Ms. Forrest or Mr. Dipietro to
14 that address?

15 A There were numerous calls at Street in
16 Jonesville. After I went into each single call and
17 brought it up and if it had anything to do with Ms. Leah
18 Forrest and Ron Dipietro, then I selected or highlighted
19 that particular call.

20 Q All right, and how many were there?

21 A I would need to see the actual file.

22 Q This what you talking about?

23 A (No response)

24 Q Okay, I'm -- I have a call made on a sheet here
25 showing a call on August the 8th of 2009. Is that one of

Robbie Hines - Direct by Mr. Anthony

164

1 the calls?

2 A Yes, sir.

3 Q Were there any more calls before June the 7th of 2010
4 other than that call?

5 A No, sir. No, sir.

6 Q Okay, so there was one call. Right?

7 A Two calls. It was the shooting incident --

8 Q Okay, well, I'm not -- we're not counting the
9 shooting.

10 A I understand.

11 Q Before the shooting, there was one call.

12 A Yes, what I turned over was the two calls, which was
13 the June 7th, 2010 as well as this one.

14 Q All right, and the one I just handed you, that -- who
15 responded to it?

16 A That was the officer that just left, Ron Bishop.

17 Q Okay. So that was the call that was just testified
18 about.

19 A That's correct.

20 Q And other than that call, there aren't any other
21 calls on the 9-1-1 system.

22 A No, sir.

23 Q Mr. Anthony - Okay, thank you. That's
24 everything on direct.

25 Mr. Delaney - No questions, Judge.

1 The Court - All right, good enough. Thank you,
2 Captain. You may step down. All right, anything further
3 from the State?

4 Mr. Anthony - If I could just inquire a moment
5 with the Court Reporter?

6 The Court - Sure.

7 (Discussion is held between Mr. Anthony and the
8 Court Reporter which was not reported.)

9 Mr. Anthony - Your Honor, the Court Reporter's
10 records do not reflect that I moved in Exhibit 26. So I
11 would move in 26 at this time. I thought I had.

12 The Court - Any objection?

13 Mr. Delaney - No objection, Judge.

14 The Court - All right, without objection,
15 State's Exhibit 26 is moved into the record.

16 (Document is marked into evidence as State's
17 Exhibit Number 26.)

18 Mr. Anthony - All right, I believe that would be
19 our reply case, Your Honor.

20 The Court - Okay, good enough. All right,
21 counsel, anything addition for this jury today?

22 Mr. Delaney - No, Your Honor.

23 Mr. Anthony - No.

24 The Court - Good enough. All right, ladies and
25 gentlemen, what we're going to do is we're going to

166

1 adjourn for the afternoon, because it's going to take us
2 a little bit of time to argue and charge and if we charged
3 now, you probably wouldn't even get the case until after
4 5:00 o'clock, so let's start fresh tomorrow morning.
5 Y'all can get a good night's sleep and come in and
6 recharged and fresh and ready to go, so if you'll be back
7 again tomorrow at 9:30, we'll go directly into closing
8 argument and then I'll give you charge on the law and
9 hopefully about mid-morning or so you can begin
10 deliberations on this case. Please have a great evening
11 and don't discuss the case.

12 (Jury exits the courtroom)

13 The Court - All right, counsel, anything
14 additional we need to put on the record this afternoon?

15 Mr. Delaney - Nothing from defense, Your Honor.

16 The Court - Okay, y'all come on back in chambers
17 and we'll talk briefly about the charge tomorrow and I'll
18 go over with you what I have and what I intend to charge.
19 Okay?

20 (Court in recess for the day at 3:43 p.m.)

21

22

23

24

25

STATE OF SOUTH CAROLINA)
)
 COUNTY OF UNION) IN THE COURT OF GENERAL SESSIONS
 SIXTEENTH JUDICIAL CIRCUIT
 11-GS-44-932

State of South Carolina)
)
)
 vs.) Transcript of Record
)
 Leah Forrest) (Pages 167 - 244)
 Day 4

April 13, 2012 (Friday)
 Union, South Carolina

B E F O R E:

The Honorable Robin B. Stilwell

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

John Anthony, Deputy Solicitor
 Union, South Carolina

Attorney for the Plaintiff

Erik Delaney, Assistant Public Defender
 Union, South Carolina

Melissa Inzerillo, Esquire
 Rock Hill, South Carolina

Attorneys for the Defendant

SHIRLEY G. BROOM
 CIRCUIT COURT REPORTER
 SIXTEENTH JUDICIAL CIRCUIT

I N D E X

WITNESS	DIRECT	CROSS	RE-DIRECT	RE-CROSS
Closing arguments	336			
Jury Charge	366			

EXHIBITS

EXHIBIT NO.	DESCRIPTION	ID	EV
C-3	Note from jury	387	

167

1 (Court resumes April 13, 2012 at 9:40 a.m.)

2 The Court -- Counsel, if y'all will come on up,
3 I just want to show you the verdict form.

4 (Bench conference is held which was not
5 reported.)

6 The Court - All right, we're back on the record.
7 Pursuant to a charge conference that the attorneys and I
8 had in chambers yesterday, I will be charging attempted
9 murder and will be charging the lesser included offense of
10 assault and battery of a high and aggravated nature
11 pursuant to the statute. There was a request by counsel
12 for a charge of assault and battery first degree as a
13 lesser included offense and assault and battery of a third
14 degree and/or simple assault and battery and I declined to
15 charge that as I don't think that's it's appropriate under
16 this specific statute and I don't think the facts support
17 those charge -- the evidence, excuse me -- supports those
18 two charges. I also am going to charge self defense
19 pursuant to request from defense counsel and I'm going to
20 charge the battered person syndrome. Now, Ms. Inzerillo,
21 Mr. Delaney, anything else you would like to say to make
22 the record fully with request to the charges you have
23 made?

24 Ms. Inzerillo - No, Your Honor.

25 The Court - Okay, good enough. Anything, Mr.

1 Anthony?

2 Mr. Anthony - No, sir.

3 The Court - Okay. And you did, Mr. Delaney and
4 Ms. Inzerillo, you received the short request for charge
5 that the State had handed up to me?

6 Ms. Inzerillo - Yes, Your Honor, we did.

7 The Court - Okay. Do you have any objections to
8 those simple charges?

9 Ms. Inzerillo - I don't, Your Honor. I would
10 just inquire as to whether the State's request to charge
11 number one is already incorporated in what the Court would
12 generally charge in relation to an expert or that defense?

13 The Court - It is -- and it is -- both of those
14 essentially are included in the charge and substance as
15 well.

16 Ms. Inzerillo - And, Your Honor, I mean I think
17 Your Honor is already covering it in the Court's standard
18 charges.

19 The Court - Okay. It may be that during the
20 course of the charge after I charge self defense I charge
21 those very brief comments. You can listen and tell me in
22 context whether you have an objection to it after the
23 fact. Okay?

24 Ms. Inzerillo - Thank you, Your Honor.

25 The Court - I find those to be accurate and in

169

1 the broad scope of things fairly innocuous. All right,
2 anything further?

3 Mr. Anthony - Not from the State.

4 The Court - No? Okay. All right --

5 Mr. Anthony - Your Honor, just for the record I
6 would waive opening on the law in the case.

7 The Court - Good enough. Does defense require
8 opening?

9 Mr. Inzerillo - No, Your Honor.

10 The Court - Okay. Good enough. All right,
11 well, let's bring them in.

12 (Jury returns to the courtroom)

13 The Court - All right, good morning, ladies and
14 gentlemen. Welcome back. Hope y'all had a good evening.
15 We are going to move to closing statements, arguments from
16 counsel and then charge on the law. As I told you at the
17 beginning of the trial, arguments from counsel are not to
18 be considered evidence. You have already received all of
19 the evidence that you will receive in this case, and the
20 attorneys now will essentially argue based on the evidence
21 that was introduced into the record, and they are
22 essentially advocating for their respective side. It is
23 not evidence to be considered by you. After having heard
24 from the closing arguments from counsel, then I will give
25 you a charge on the law. Defense counsel will argue first

1 and then the State will argue last because they have the
2 burden of proof as I have instructed you earlier, then I
3 will give you a short charge on the law. Insofar as
4 timing is concerned, I'm hoping that collectively argument
5 and charge will be less than two hours. I talked to the
6 attorneys yesterday and they believe that they can deliver
7 their closing arguments in forty-five minutes or less and
8 then I think I can give you a charge in about twenty
9 minutes. So that's the kind of time-frame that we're
10 looking at right now, less than two hours. Hopefully
11 we'll be closer to an hour and a half. Probably what
12 we'll do is we'll listen to arguments, take a short break
13 and then come back and charge. If at any time during any
14 of this you need to take a break, let me know, because as
15 I had indicated to you earlier, interested mainly in y'all
16 paying attention being fully focused as I said as opposed
17 to needing to do something else. All right, having said
18 that, Ms. Inzerillo?

19 Ms. Inzerillo - May it please the Court, Your
20 Honor.

21 The Court - Yes, ma'am.

22 Ms. Inzerillo - On June 7th, Leah Forrest was
23 asleep. She got up, tried to go to the ladies room, tried
24 to find the door knob on the door, found it and went to
25 the ladies room. While she was in the bathroom that

171

1 morning, Ron Dipietro, her live-in boyfriend came in,
2 cussing at her, yelling at her. They got in an argument.
3 He slammed her to the ground. Slammed her to the ground.
4 The next thing Leah Forrest knows, she's in the living
5 room. The fight continues and for a second time she gets
6 slammed to the ground. She gets up and goes outside. She
7 comes back in. The argument continues and for a third
8 time she is slammed again on the ground. She goes, she
9 gets a gun, she comes back into the living room, because
10 she thinks Ron Dipietro is coming at her again. So she
11 pulls the trigger. She pulls the trigger to stop him from
12 coming at her again. Ladies and gentlemen, Leah Forrest
13 explained that to the first officer she talked to on June
14 7th, 2010. She told that to Captain Hines five hours
15 later at the Union County jail. She told that to the
16 expert who evaluated her for battered spouse two years
17 later. When she called 9-1-1 this morning -- that morning
18 -- what was the first thing she said. My old man has
19 beaten me so I shot him. That's the very first thing she
20 says, and you can hear in her voice, the tears, my old
21 man's been beating me and so I shot him. She's not hiding
22 the fact that she shot Ron Dipietro. She's told almost
23 everybody that's asked her, I shot him. She might not
24 remember how many times she shot him or where. She didn't
25 hide that. She didn't hide that she shot him. Every

1 single person who asked her, she tried to make them
2 understand why she shot him. In the police car there's a
3 mark on her nose. In the police car there's a mark on her
4 elbow. In the police car there are marks on her back. In
5 the police car more marks on her back. Marks on her upper
6 back. At the jail, same marks. And where she showed the
7 victim advocate the back of her head. The back of her
8 head that hit the ground so hard she told 9-1-1 she
9 thought she had a seizure. And she told the officers she
10 blacked out, she lost consciousness. She ends up --
11 starts in one room of the house and ends up in the second
12 one, she doesn't know how she gets there. Pictures,
13 ladies and gentlemen, that are consistent with being
14 slammed down on the ground in the way as you saw described
15 by her son, being picked up and slammed down, marks on the
16 back of her arm that would hit the ground. She complained
17 of injury to the back of the head, marks on her back,
18 consistent, ladies and gentlemen with the story that she
19 has always told. As you've heard the testimony, there
20 were two people in the room that day. There was Leah
21 Forrest and there was Ron Dipietro, two people who could
22 tell you what happened. Leah's consistent, slammed on the
23 floor, this five nine, two hundred and ninety pound male
24 picked her up and slammed her on the floor; Leah was a
25 hundred and fifty pounds and five one on June 10th (sic)

173

1 2010. So let's look at the other side of the story. Ron
2 is interviewed at the hospital in Spartanburg, sufficient
3 enough to give a statement that Captain Hines felt
4 comfortable taking a statement as part of his
5 investigation. He says, well, I woke up that morning
6 because there was some -- I thought she was texting
7 someone, I thought she was texting. And then I got up,
8 went to the lady -- she went to the ladies room and it was
9 dark. August 25th when he interviews Ron again, his story
10 somewhat differs. Well, I was awoken by slight noise, but
11 actually I saw Leah in the living room on the computer and
12 I thought she was playing on the computer and texting.
13 Now, you may be thinking to yourself, what does it matter.
14 What does it matter where he was, where she was. It
15 matters because the devil is in the details. Anybody can
16 remember broad strokes about what happened. The devil's
17 in the details. In Leah's details it's consistent. I got
18 up, I needed to use the ladies room, couldn't find the
19 door knob, I went to the bathroom, he got up, he slammed
20 her on the ground. Insignificant details, consistent. Mr.
21 Dipietro can't keep his details consistent. Why? When he
22 talks to -- well, actually let me back up. Why? Because
23 what do we know from the text messages? You heard the
24 SLED agent testify there were text messages sent after
25 10:45 the night before. She couldn't have been texting.

1 No text activity. We have objective forensic evidence
2 that there's no texting that morning. So then what's
3 another thing that Mr. Dipietro tells Captain Hines.
4 Well, we got in a slight battle. We got in a slight
5 battle that went from one room to another, a slight battle
6 between a two hundred and ninety pound five foot nine man
7 and a five foot one woman who weighed a hundred and fifty
8 pounds, a slight battle, slight battle. The only mark he
9 can explain on Leah is the mark that you can see, the mark
10 on her face, on her nose. Everybody she sees -- talks to
11 -- they're going to see this mark. That's the one he
12 explains. What does he explain? Well, I accidentally
13 scratched her when she was -- she was coming at me, she
14 went ballistic. It was like World War II. He had to
15 restrain her, and yet, no evidence of defensive wounds on
16 Mr. Dipietro, not a scratch, not even red marks, nothing.
17 The only injuries that came out of that house that day
18 were carried on Leah Forrest body, from this slight battle
19 that happened that morning. She's the only one that's
20 carrying injuries from that. Now, Mr. Dipietro, although
21 he denied it on the stand, told Captain Hines on August
22 25th that he had broken some phones the night before. He
23 admitted it. He'd broken some phones. And what do we
24 have? Broken phones. A house phone that he says, all I
25 did was backhand off the table. But if you look at the

175

1 pictures that have been submitted into evidence in the
2 house, the table is all the way outside the kitchen and if
3 he backhanded this, it would have to go off the table into
4 the kitchen, over the bar and behind the bar onto the
5 floor. He backhanded it to get it off the table or did he
6 throw it? Batteries out of the phones. Broken phone.
7 Broken phone, that he now says that she used this to
8 break on me, but again, no cuts on his face, bruises on
9 his face, broken phones, ladies and gentlemen. I point
10 this out to you because it's important to the
11 investigation. When we're dealing with assessing the
12 case, you have to look at the credibility. You have two
13 people in a house who are telling you very different
14 stories. Very different stories. So the investigation
15 becomes critical because you need to see what holds water
16 and what doesn't. He says I thought she was texting.
17 There's no text. He says, I broke phones the night
18 before. We have broken phones. Leah says he picked me up
19 off the floor and slammed me down. We have marks. But
20 what don't we have? We have not one person who ever came
21 in contact with Leah Forrest, ever checking out her story.
22 We have not one person who called someone from a domestic
23 violent shelter to see is she really -- is this battering.
24 She's saying she is. Wouldn't you want to know if that's
25 what happened? If you're the officer in the case,

1 wouldn't you want to know? If you're trying to decide
2 what happened, wouldn't you want to know? The only
3 investigation that was done took place on Street and
4 that's it. The bulk of it took place in the first twenty-
5 four hours. Why? They had a confession. She shot him.
6 What's the point? Well, what is she trying to tell them?
7 What has she told every single person? Not just that she
8 shot him, but she shot him because he beat her. Because
9 he's beaten her before, because he beat her that morning.
10 And Captain Hines said, well, I looked at her marks, but
11 I thought some of them were fresh and some of them were
12 old. Marks on her back, thought they were fresh. Okay.
13 Let's take him at his word. Let's do that. You're face
14 to face with a woman who's telling you he beat me that
15 morning, 9-1-1 he'd beaten me before, she's got old
16 bruises and fresh marks. Did he not stop and look at her
17 story? Did he not take a second and say, well, we're
18 going to ask somebody where these marks came from? Is
19 this consistent with what she's telling me happened? No.
20 The only follow-up investigation that's done is Leah's
21 phone is taken to SLED. They want to know what's in
22 Leah's phone. Now, we've got -- I don't know -- three
23 phones here, four -- three phone here, at least a picture
24 of a house phones. That SLED guy seemed pretty smart. He
25 seemed like, you gave him a phone, he's going to pull

177

1 stuff off of it. Captain Hines was the one drove all the
2 way to Columbia, took that one little phone. Why not take
3 all of them? Why not say you only have this version of
4 events. I need to know if it's rights. He didn't do it.
5 What's the next thing that happens? They look into the
6 second phone, the phone that Leah used to call 9-1-1.
7 That's the only other thing they did. Didn't submit to
8 SLED. We don't know if there was anything on the phone
9 that's been erased. We don't know that. They just want
10 to know, verify if anything Ron says is true. I would
11 submit to you, ladies and gentlemen, that on a different
12 track the investigation didn't -- they continued on March
13 16th this year when Vicky Burris talked to Leah Forrest,
14 when Vicky Burris asked the question, Leah, tell me what
15 happened, and Leah told her the same story with one
16 difference, he threatened her daughter. She's talking to
17 a woman who is trained to talk to domestic violence
18 victims, who's trained to assess if they have PTSD or
19 battered spouse. She didn't materially change her story.
20 She didn't come up with a wack-a-doodle new kinds of
21 outrageous things. No. She said the same story. Vicky
22 Burris is trained. She's trained to eyeball and talk to
23 not only women but men to see if they are victims of
24 domestic violence, if they are battered spouse. She did
25 that with Leah. She talked with Leah. She reviewed the

1 file. And she just didn't review good parts of the file.
2 She just didn't read over all the happy parts. She looked
3 over the file. She looked over the incident reports where
4 Captain Hines was meticulous in documenting statements of
5 both Mr. Dipietro and Leah. She looked over the pictures.
6 She looked over text messages. The text messages that she
7 spent a lot of time yesterday being questioned about. She
8 knew all that. She knew that when she assessed Leah. And
9 she told you, look, I had to freedom to say Leah wasn't a
10 battered spouse, she doesn't suffer from PTSD. She
11 didn't. She took all this, warts and all, the entire case
12 and her diagnosis was the same. Leah suffers from
13 battered women syndrome subject to severe trauma, she has
14 PTSD. And the expert was cross examined, oh, well, Leah
15 could've looked it up on the internet; she could've made
16 it up. The expert found her credible. Didn't think she
17 made anything up, found her credible. The expert also
18 explained to you that in her expert opinion Leah was in
19 fear for her life that morning of June 7th, 2010. She was
20 afraid. She had that gun and she was afraid. And why is
21 that important, ladies and gentlemen? Because the issue
22 in this case is self-defense. At the point when Leah had
23 that gun, you're going to be asked to determine what was
24 in her heart. The State's arguing that what was in her
25 heart was malice and wickedness and meanness. And you'll

179

1 hear the Judge define malice for you, but that's pretty
2 much what it is, wickedness and meanness, that she held
3 that gun on Ron Dipietro because she was so mad that she
4 got busted cheating that she shot him. Well, first of all
5 it doesn't make sense. Does that story even make sense to
6 you, that she's the one that gets busted cheating so she
7 gets mad enough to shoot him? No. Isn't it more likely
8 that he thinks she's cheating and he gets mad enough to
9 rough her up about it? Isn't that more likely? But
10 that's what the State wants you to believe, that at that
11 instant, some time before then she was that mad that she
12 shot him. That wasn't the case, ladies and gentlemen,
13 because when the cops found that gun sitting in the closet
14 at Street, it still had bullets in it. And for
15 however long you believe Ron Dipietro laid on that floor
16 before EMS got to the house, if she really wanted to kill
17 him, wouldn't she have fired that bullet. She didn't run
18 out of bullets. She stopped shooting. She stopped
19 shooting because he'd stopped. He was on the floor. He
20 wasn't hurting her anymore, so she stopped shooting. She
21 showed restraint. That's not malice and wickedness,
22 intent to kill. That's self-defense. It's self-defense,
23 because Leah Forrest was enduring a battle that she needed
24 to stop. Several days ago when we started this case my
25 co-counsel asked you to consider what kind of man would

1 pick Leah Forrest up and slam her down and what kind of
2 man would pick Leah Forrest up and do it again. Ladies
3 and gentlemen of the jury, I ask you to consider today
4 what kind of woman would pick up that gun and shoot Ron
5 Dipietro. The kind of woman who had been beaten so
6 severely that morning she thought she had seizures, the
7 kind of woman whose own son had been choked out by Ron
8 Dipietro in front of her and only could be stopped when
9 she slammed a knife (sic) into a kitchen knife (sic), the
10 kind of woman, ladies and gentlemen, who just wanted it to
11 stop.

12 Mr. Anthony - May it please the Court.

13 The Court - Yes, sir.

14 Mr. Anthony - You know, practically what y'all
15 are about to go back to the jury room to decide is whether
16 what she did to him was okay. If you find her not guilty,
17 you're saying that it was all right for her to shoot him
18 in the back, to shoot him when he was on the floor, to ram
19 his face into a keyboard, to assault him, not get him help
20 for two hours, you're saying all those things were okay,
21 all those things were justified. Now, you probably know -
22 - you probably feel in your heart right now that this just
23 wasn't okay, what she did to him just wasn't all right,
24 because it just wasn't necessary. This wasn't something
25 she had to do. What I'm going to try to do here in the

181

1 next few minutes is explain to you why what I expect you
2 feel in your heart already, what you know in your mind.
3 Self-defense has four -- what are called elements, four
4 aspects of self-defense, and legally for self-defense to
5 exist, all four aspects have to be present, but in this
6 case, really only three apply, because this happened in
7 the residence where Ms. Forrest lived, but if any of the
8 three in this case that apply -- if you find any of the
9 three have been disproved, any of the three don't apply,
10 then self-defense doesn't apply and that means Ms. Forrest
11 is guilty. The Judge is going to tell you what these
12 elements of self-defense are, what has to be present for
13 there to be self-defense, and I'm going to take you
14 through them myself and try to explain why this just isn't
15 something that's legal. Okay. The first element of self-
16 defense is that the defendant has to be without fault in
17 causing the difficulty. Now, the most important thing to
18 remember when you assess fault here, is that Ms. Forrest
19 by everybody's agreement had gotten out of the house, so
20 she had a number of options. You know, she could -- she
21 just worked right down the street from where she lived.
22 She could've gone to the Kangaroo and called this in. She
23 could've gone back in the house, gone into the bedroom and
24 just stayed there, because she knew -- she even admitted
25 to Ms. Burris that she knew he was leaving. When you walk

1 in that house, you see his clothes sitting on the card
2 table. You know, but she walked back in there by her own
3 admission. He was at the computer. He didn't come back
4 at her, so she knew he was leaving that house. So why
5 didn't she just go back in the bedroom; the clothes were
6 already on the card table. Why didn't she just go back in
7 the bedroom, shut the door and let him go. If she'd just
8 done that, none of this would've happened, but she didn't
9 do that. She broke that door to get back into that house.
10 She didn't go through the side door. She broke the front
11 door. Remember her girl even said, we -- there wasn't
12 anything wrong with our front door; it was locked. But
13 she breaks through that front door causing that damage.
14 The police saw that morning when they tried to go get the
15 search warrant, they couldn't lock her door back. She
16 breaks in on him and then she goes, she gets her rifle and
17 she comes in and she confronts him with a rifle. Well,
18 ladies and gentlemen, that's -- that's putting you at
19 fault. You know, this fight, whatever happened before she
20 went back in the house, however much violence was
21 committed, however bad she assaulted Ron or however bad
22 Ron assaulted her, this fight was over, and she's the one
23 that took it to the new level. She's the one that went
24 back in that house, armed herself and came out and
25 confronted him. So that's an element. Okay, that's an

1 element that has to be present for her to be entitled to
2 shoot him. She can't be at fault for causing this. Well,
3 she is at fault for causing this. So there goes self-
4 defense. Okay? Now, the other two things you have to
5 believe or the second thing you have to find is that the
6 defendant had to actually be in danger or thought that she
7 was in danger of imminent death -- of death or serious
8 bodily harm. You have to think you're in danger of being
9 killed or being seriously hurt. Now, basically what this
10 does is it requires you -- sort of like Ms. Inzerillo says
11 -- actually it requires you to take a look at this case,
12 look at the circumstances and think about, well, what was
13 on her mind, what was going through her head when all this
14 was going on. So I think you've got some -- some really
15 good clues in this case to give you an idea of whether she
16 was thinking about protecting herself or whether she was
17 thinking about getting in there to shoot Ron Dipietro.
18 And then you just have to think, well, which is more
19 likely, you know, based on what we know, based on this
20 evidence we've heard. It's kind of like -- like -- you
21 know, kind of like giving a diagnosis. You know, you just
22 kind of look at the -- look at the facts and think, well,
23 which is more likely. So these are all things -- we got
24 this little list of things I want to go through with you -
25 - and these are all things that I think either both

1 parties agree on or -- they're pretty well established in
2 this case. I don't think there's a whole lot of
3 disagreement about most of this stuff. The first thing is
4 she got caught cheating. Okay? I mean -- you know, we
5 can argue about the -- when that was discovered, but
6 there's no question that there's text messages on her
7 phone from that day or the day before, for the 6th, from
8 two other men and she's responded and they're flirty, so
9 she's been caught cheating. That's the first thing.
10 Pretty clear. Second thing, just like we talk about, she
11 breaks in the door to get into him. She doesn't -- she
12 doesn't go peacefully back into that bedroom or kitchen;
13 she breaks through the front door to get back in that
14 house. Third thing, undisputed, she went back in the
15 bedroom, but she didn't stay there. Fourth thing, she
16 knew Ron was leaving; she admitted -- she told Ms. Burris
17 that. It's obvious from his clothes being on the table,
18 he told her he was leaving. She knew he was going. Not
19 a lot of dispute there. Fifth thing, he's standing at the
20 computer. You'll have the pictures back there. You can
21 see. You saw on Tuesday exactly where he -- he fell.
22 Well, he's not coming back into the bedroom. You know,
23 she didn't shoot him in the bedroom after he came back to
24 the bedroom and came in on her. She didn't shoot him
25 there at the entrance to the hall here, like he's coming

185

1 back on her. She shot him in the corner of that living
2 room there at the computer, exactly where he said he was.
3 And you know how you know that? You know that because Dr.
4 Morrow said that he dropped right where he got shot,
5 because he didn't have a spine that worked anymore. And
6 when your spine doesn't work, you can't move, so you know
7 basically where he was lying on the ground in that living
8 room is where she shot him. So he's not in a place to
9 threaten her. She's in the bedroom; he's in the living
10 room. Next thing you've got -- no controversy about that.
11 She shot him in the back. You've seen the wound. You
12 know, you -- you can see where she shot him. His back's
13 turned to her. Okay? That's not -- not in dispute. The
14 next thing. She shot at the floor. She shot him and then
15 by her own statement, she goes and shoots at the floor.
16 As she shoots him -- so she shoots him twice. No -- you
17 know, that's not something that's in dispute. He's got
18 two holes in him, one in his back, one in his abdomen and
19 she said she shot him first in the shoulder, so he drops
20 after she shoots him in the shoulder, so she walks over --
21 she admits shooting at the floor. Well, he's down there
22 on the floor; she puts another one in him. What does that
23 have to do with being in fear? You know. If you got --
24 got to be in danger. You've got to have fear of being in
25 danger of being killed or seriously injured to claim self-

1 defense? How -- what -- why do you need -- why do you
2 need to be scared of a man who's laying on the floor
3 paralyzed? Because that's essentially what you have to
4 find. You have to find, oh, she was scared of this guy
5 that was just laying on the floor who'll never be able to
6 walk again for the rest of his life. Another thing that's
7 not in question. She assaults him for two hours after she
8 shoots him. You know, she's -- you can see those pictures
9 to that keyboard and that notebook lying there on the
10 floor where his face was. I mean, you know, that -- that
11 blood got on that keyboard because she's picked his face
12 up and rammed it into the keyboard. You saw -- you've
13 seen the pictures in evidence of this cracked phone.
14 She's taken this phone and beaten his head with it.
15 What's the reasonable fear that -- or what's the fear that
16 causes you to do something like that to somebody? Once
17 again, it's not really any dispute that she did this. You
18 saw the pictures where he got the bruises on his back.
19 The next thing that's very clearly established in this
20 case, is after she shoots him and after she beats on him
21 for a while, she gets this phone and she makes three
22 calls, and her first call is not to get help for him. Her
23 first call as Captain Hines testified, is at 5:42 a.m. to
24 a 633-1849 number and Ron told you that that's the area
25 code and the prefix for the woman that she thought he was

187

1 fooling around with. So is that -- is that something
2 that's a symptom of a reasonable fear, you know, you're
3 reasonably scared of somebody, but after you shoot them,
4 you beat on them for a couple hours and then you go pick -
5 - get your phone and you try to call and you miss -- you
6 dial an extra digit but you try to call the number where
7 you think his other girlfriends live? That's what
8 somebody does out of fear? Once again, you just have to
9 kind of decide what's driving -- but it's pretty clear
10 it's not fear, and it's pretty obvious this stuff
11 happened. And then she calls 9-1-1 and you heard the 9-1-
12 1 tape and you'll be able to listen to that in the jury
13 room if you want to. You just tell the jury (sic) you
14 want a cd player and we'll arrange for you to hear it
15 again, but she calls 9-1-1 and she lies. You know, she
16 lies about where the rifle is. She says she's thrown it
17 out in the field. She hadn't thrown it out in the field.
18 It's right there in the house. She says she waited two
19 hours to call because she wanted him to suffer. Well,
20 that's not fear. She tells 9-1-1 -- they try to ask her
21 if she -- if she'll help him, and she says I don't want to
22 help him. You know, well, that's not -- that's not the
23 way you'll act if you just shot somebody out of fear. She
24 makes these calls; she goes outside to make -- to make
25 these calls. You can tell that on the 9-1-1 tape. She

1 may have gone outside other times. There's a witness who
2 sees her going outside, but that's -- that's -- there's no
3 reason why she might not have gone outside a couple of
4 times after she shot him, but she -- she knows -- and they
5 -- the defense -- Ms. Burris talks about -- she wants to
6 call this lying association, but it's not -- you know,
7 it's not like there's anything wrong with her. You can
8 tell from that tape she knows just what she did. She shot
9 him. She knows -- talk about what's happening with the
10 blood in the wound. She knows -- you know, she knows
11 she's supposed to be at work in a couple of hours. She
12 says that on the 9-1-1 call. She has complete perception
13 of what went on. She's got complete perception of time;
14 she's got complete perception of what she did. The only
15 thing that's bothering her is she knows she committed a
16 crime and she needs to start trying to figure out some way
17 to explain it away, so that's what she's doing. So just
18 knowing all these things, just going through all these
19 facts that are really not in dispute, do you really think
20 that she did this because she was in fear for her life?
21 You know, do you really think she did this because she was
22 going to suffer some serious -- she thought she was going
23 to suffer some serious bodily injury if she didn't get
24 that done and go in there and shoot them (sic)? You know,
25 that's -- that's not the behavior of somebody who thinks

189

1 they're in danger. That is not fear. That's the behavior
2 of somebody who is mad and somebody who is jealous,
3 somebody who's mad because they'd been caught cheating and
4 they're jealous because they think they've been cheated
5 on. So that's the second thing, and that's not
6 established. There's no reason why you should think that
7 she was in fear for her life when she shot him, and if she
8 wasn't in fear for her life when she shot him, it's not
9 self-defense. Now, the third thing is that a reasonable
10 person -- you know, the second thing was, wasn't just
11 shooting him. The third thing is what would a reasonable
12 person think. Would a reasonable person have acted as the
13 defendant did in order to save herself. Well, just ask
14 yourself, would a reasonable person have broken through
15 that door? And you don't break through a door to defend
16 yourself; you break through a door to attack. So, no, a
17 reasonable person wouldn't have acted like Leah Forrest,
18 because a reasonable person, you would not have been
19 looking to shoot Ron Dipietro. A reasonable person
20 wouldn't have come out of the bedroom with a gun knowing
21 that Ron was leaving. A reasonable person wouldn't have
22 shot Ron twice. You know, a reasonable person who'd been
23 caught cheating would -- would be upset, but if the spouse
24 or the boyfriend or the girlfriend or whoever was going to
25 leave, the other person would let them go. That's what a

1 reasonable person would do. You'd be upset, but you'd let
2 them go. A reasonable person who thought that their
3 spouse or boyfriend or girlfriend or significant other was
4 cheating on them might be jealous, they might be mad, but
5 they wouldn't shoot the other person, and even a
6 reasonable person who had been in a fight -- okay -- and -
7 - you know -- there's no question, there was -- there was
8 some physical contact here that night. There's no -- no
9 doubt about that, but even a reasonable person who had
10 been in a fight -- once the fight's over and you're out of
11 the house or the fight's over and you're back in the
12 bedroom, it's over, you don't go arm yourself and shoot
13 somebody. That's not behaving like a reasonable person
14 who's got a legal right to exercise self-defense. That is
15 behaving like a murderer, and that's how she behaved. She
16 behaved like a murderer, and she did that not because she
17 was driven by fear, but she did that because she was
18 driven by anger and jealousy, and anger and jealousy
19 basically translates into malice and that's what motivated
20 this shooting was malice. Now, I want to just talk to you
21 for a couple minutes about the battered woman syndrome
22 testimony. Now, I want to tell you first of all, and the
23 Judge is going to tell you this, you don't have to believe
24 everything Ms. Burris says. You know, just because Ms.
25 Burris gets paid a hundred dollars an hour to drive to

191

1 Union and say what she gets paid to say doesn't mean you
2 just have to take it as the gospel and believe it. You
3 evaluate what she says just like you evaluate the
4 truthfulness and the credibility and the accuracy of any
5 other witness. So when you have a witness like that who
6 gets up and says things that any reasonable person with
7 any degree of common sense would know not to be true, you
8 don't have to believe those. And, you know, things like
9 a woman who's being battered would throw a boyfriend's
10 stuff out, things like a woman who's being battered who's
11 living in fear will pursue a man, send a man twenty text
12 messages in a row after they've broken up, a woman who is
13 living in fear of a batterer is going to be likely to
14 cheat and do things that are going to make battering more
15 likely, a woman who loves her batterer is going to
16 basically torture him after she shoots him. I mean she
17 said that Mr. Dipietro and Ms. Forrest had all these
18 things going on in their relationship that are completely
19 contrary to what battered woman syndrome really is. You
20 know, when you heard the words that really get associated
21 with battered woman syndrome, the two words you hear are
22 fear and helplessness. I mean that's -- that's what sort
23 of the core of it is, is a woman being driven to a state
24 of fear and a state of helplessness, and you know, just go
25 back to the jury room and think about the evidence you

1 heard in this case to see if there are any two words that
2 are less accurate to a description of Ms. Forrest than
3 fearful and helpless. You know, think about those text
4 messages and the text messages she's sending and think
5 about the testimony you heard yesterday afternoon from Jim
6 Wilkins and Chad Gault. You know, she kicked him out and
7 the police came to her house to try to see if they can
8 supervise him getting his things out and she wouldn't let
9 the police in. I mean who does that? But she wouldn't
10 let the police in her house; that's how strong-willed she
11 is. Ron Bishop testified that when he got called -- and
12 that was -- that's the only call the whole time they were
13 living at Street -- the only time the police ever
14 got called to Street, it was because essentially she
15 wanted him home, not he was beating on her, you know, it's
16 I want him back. Well, that's -- that's controlling
17 behavior. That's not the way a battered person acts.
18 That's the way a batterer acts. So that characterization
19 of being a battered woman -- if it -- you know, just does
20 not apply at all to Leah Forrest. Now, there was violence
21 in the relationship, but it was violence both ways. You
22 know, he testified that she chased him with a knife, and
23 then Mr. Gault testified that, you know, yes, she talked
24 about that; she said that if she caught him with that
25 knife, she would've cut his head off that day. So, you

193

1 know, that's violence. That's violence perpetrated by
2 her, not by him. And even her own witnesses -- you know,
3 when her daughter testified -- and remember her daughter
4 was living with them right up to the time of the assault.
5 She'd just gone to the beach that weekend, so she wasn't
6 there the night of the shooting, but the daughter was
7 living with them. And when -- when the daughter who had
8 all these chances -- got asked repeatedly, you know, well,
9 what did you see Ron do to your mom, well, the most she
10 would say is he'd grab her wrist and he would grab her by
11 the collar and spin her around, and that's -- that's
12 pretty much it. Well, I'm not saying that's okay. Okay?
13 You know, I'm not saying that that kind of behavior is
14 appropriate, but that kind of -- that kind of violence is
15 not the kind of violence that makes somebody a battered
16 woman. Now her son, he wanted to give more of a story
17 than that, but what you have to remember about her son is
18 she just -- he just didn't like Mr. Dipietro, because Mr.
19 Dipietro kicked him out of the house, because he -- he got
20 caught with marijuana, so can't really attach anything to
21 her son. So, you know, yes, there was some violence, but
22 the violence went both ways. And you can tell -- you can
23 read those text messages and get a very good idea of the
24 dynamic in this relationship that these were two very
25 strong-willed people, but she was the one who really

1 wanted him. And she is not somebody who was living in
2 fear of him and she is not somebody by any stretch of
3 imagination who anybody would attach the labels fearful
4 and helpless to. And even -- even if you were to think by
5 some -- some reason or evidence that she was battered,
6 just because you're a battered woman, that does not just
7 make it open season. You know, that just doesn't make it
8 all right to go arm yourself and shoot somebody in the
9 back. I mean it's bad if it's happening to you, but it
10 doesn't negate the law. It doesn't negate your
11 responsibility to only act in self-defense. And I just
12 want to say to you, you know, I know there are battered
13 women in this world. Okay? I've dealt with battered
14 women. I've had battered women testify, but what you see
15 in this case where you have a defense that comes in and
16 tries to label Ms. Forrest as a battered woman, that does
17 a disservice to all the real battered women out there,
18 because it just turns the whole concept into a joke,
19 because if you can take Ms. Forrest and Mr. Dipietro's
20 relationship and twist it around and say, oh, yes, she's
21 a battered woman, well, then really anybody can be a
22 battered woman, and if anybody can be a battered woman,
23 then the whole -- it has no significance. You see what I
24 mean? It just doesn't -- it doesn't matter. There won't
25 be a battered woman syndrome anymore because everybody

195

1 will just fit into it. All you'll have to do is just go
2 see the person that your lawyer hires and tell that person
3 what they need to hear, which is really easy to find out,
4 tell them that you can't sleep, tell them that your
5 stomach hurts, tell them that you're depressed, tell them
6 that you think about what -- what you did a lot, and,
7 voila, you know, you tell them a lot of stuff that you
8 didn't tell the police the day that it happened, you
9 forget or don't tell them some stuff that you did tell the
10 police what had happened, and then just right -- you know,
11 right out of the oven comes a battered woman. You know,
12 all of a sudden you got somebody that'll come to Court and
13 say Ms. Forrest over here, she's a battered woman, and
14 that's what you do, that's just the way this works,
15 because when you're charged with attempted murder and you
16 shot a man twice and you shot him in the back and you beat
17 on him after you shot him, you got to do something. You
18 know, you got to come to Court and say something. So this
19 is what you get. You get Vicky Burris and what y'all have
20 heard yesterday -- yesterday morning. I will tell you
21 though that Ms. Burris was right about one thing. She
22 said based on her interview with Ms. Forrest that that
23 night that she was convinced that Ms. Forrest was going to
24 stop -- that's the word she used -- she used it a couple -
25 - that she had just decided she was going to stop Mr.

1 Dipietro, and she said it didn't matter what he did. She
2 said I don't think it mattered to her if he was leaving
3 the house. I think she had just decided that she was
4 going to stop -- now, the thing is, she's wrong about the
5 why, because she says that she decided she was going to
6 stop him because she had -- or he had threatened her
7 daughter. Well, of course, you know that's not true,
8 because she gave three statements and never said a word
9 about her daughter. Okay, that's just something she made
10 up two years later. So she didn't decide that she was
11 going to stop him because he threatened her daughter, and
12 it sure wasn't because she was scared of him. She had
13 decided she was going to stop him because she was mad. He
14 caught her cheating; she thought he was cheating, so even
15 though he wasn't a threat to her anymore, she was going to
16 put him down. She was acting out of fear; she was acting
17 out of malice, or she wasn't acting out of fear; she was
18 acting out of malice, and the decision to stop him, which
19 I agree, she made the decision. She went back there; she
20 busted in that house; she went back there in that bedroom
21 and she made a decision. She probably made the decision
22 before she busted in the house, but she made the decision,
23 I'm going to stop him. But that decision to stop him was
24 not self-defense. That decision to stop him was a crime.
25 Okay? And once you get through to that, that this is not

197

1 self-defense, the only other thing that you have to decide
2 is what crime this is, and you'll have two crimes to
3 choose from back there in the jury room. The first one is
4 the crime she's charged with, and that crime is attempted
5 murder, and that requires intent to kill. It requires a
6 malicious intent to kill on the part of Ms. Forrest, and
7 the Judge will instruct you that if you find that she
8 decided in her mind and in her heart that she was going to
9 kill Mr. Dipietro, that she was going to inflict injury on
10 him, great injury on him with a wicked intent, then that
11 is attempted murder, and I would submit to you that's what
12 she did. But if for some reason you don't think that that
13 was her intent, if you think she just had an intent to
14 assault him and that great bodily injury resulted, which
15 you can't really have much more injury than Mr. Dipietro
16 did, if you find that, then she's guilty of what's called
17 a lesser included charge, and that charge is called
18 assault and battery of a high and aggravated nature, so
19 you would have a charge that convicted her of one of those
20 two crimes, either attempted murder or assault and battery
21 of a high and aggravated nature. Now, the Judge is going
22 to tell you that your verdict has to be unanimous, but
23 don't get hung up on that. If you go back in the jury
24 room and some of you think that this is attempted murder
25 and some of you think that this is assault and battery of

1 a high and aggravated nature, well, that doesn't mean that
2 y'all just throw up your hands and find her not guilty.
3 Okay? That's not the way it works. If there's a
4 disagreement in the jury room about the charge that she
5 should be convicted of, just send a note to the Judge and
6 the Judge will give you some more instructions, but you
7 don't -- you don't have to find a person not guilty just
8 because you have a disagreement as to the crime she is
9 guilty of. That night or early that morning Ron Dipietro
10 tried to walk out. You know, he tried to walk out on Leah
11 Forrest, and Leah Forrest decided there wasn't going to be
12 any walking out, just like that old song says, there
13 wasn't going to be no getting over her, and tragically
14 there wasn't and tragically there won't be, because for
15 the rest of his life, Ron Dipietro will not be walking
16 anywhere because of what Leah Forrest did to him. You
17 know, we can't do anything that's going to allow Ron
18 Dipietro to get over Leah Forrest, but I would beg of you,
19 when you go back there to that jury room, you make sure
20 that Leah Forrest doesn't get over on you. Do not leave
21 this courthouse today and be walking around some time next
22 week and get to thinking, boy, we sure went back there and
23 talked about a bunch a stuff that really didn't make any
24 difference. You know, boy, we sure got hung up on some
25 little details that just don't matter. Don't do that.

199

1 When you go back there and you start talking about this
2 case, I'm asking you to start with that list of things you
3 know to be true, and the basic thing, the heart of this
4 case is, ladies and gentlemen, there is no good reason, no
5 justification for shooting a man in the back.
6 Leah Forrest did not have any right to stop Ron Dipietro,
7 but you -- you've got to stop her, because she has been
8 proven guilty in a Court of law. Leah Forrest has put a
9 knife in a man's back; she's put a bullet in a man's back;
10 there doesn't need to be a number three. Two is enough.
11 Do not turn your back on justice in this case. Do not
12 turn your back on Leah Forrest. You go back to that jury
13 room and you come back in here and you stand up to Leah
14 Forrest. You face Leah Forrest. Y'all know the right
15 thing to do in this case. Y'all -- Y'all know what's
16 right. Go back to that jury room and find her guilty of
17 attempted murder.

18 The Court - All right, ladies and gentlemen,
19 let's take a brief break. We'll come back in and I'll
20 give you the closing charge on the law. Please don't
21 discuss the case yet.

22 (Jury exits the courtroom)

23 The Court - All right, ladies and gentlemen,
24 we'll be in recess for about five or ten minutes.

25 (Recess taken)

1 The Court - All right, we ready for the jury?

2 Mr. Anthony - The's State's ready, Your Honor.

3 Ms. Inzerillo - Yes, Your Honor.

4 The Court - Good enough. Would you bring them
5 in, please?

6 (Jury returns to the courtroom)

7 The Court - All right, ladies and gentlemen, the
8 time has come for me to give you the charge on the law.
9 Now, I told you at the beginning of the case it is your
10 role as jurors in this case is to be the Judge of the
11 facts, and I will not encroach upon your authority and
12 your responsibility in that role. My role in this case is
13 to be the Judge of the law. Now, under your oath you've
14 promised to try this case truly and fairly in accordance
15 with the law and I'm going to provide to you the law now.
16 You have to under your oath accept the law as I give it to
17 you. Now, I understand that from time to time people come
18 into Court and they have notions as what they think the
19 law is or notions about what they think the law should be.
20 But I tell you now to ignore that and accept the law as I
21 give it to you, because under your oath you, in fact, have
22 promised to do just that. Now, as I go through this
23 charge I'm going to read some of it; some of it I'm not
24 going to read. I don't like to read because it suggest to
25 you one of two things or maybe both and that is that I'm

1 not smart enough to know the law or I'm too lazy to
2 memorize it, and there are a lot of lawyers in the State
3 who might claim that both of those are true, but the fact
4 of the matter is that we've invested a lot of time in this
5 trial, and sometimes I have to read for you very, very
6 precise definitions and some of the words, the ands, the
7 ors, the little minutia of the charge are very important
8 and it's out of respect for the parties in this case and
9 out of respect for you and the time that you've spent in
10 this trial, I'm going to read some of it. So it'll be
11 obvious when I revert to reading, and I apologize to you
12 in advance because I know when I read -- to read it,
13 sometimes it could get a little dry, but I hope that I can
14 avoid that. Now, as I told you at the beginning of the
15 trial, Ms. Forrest is presumed innocent until proven
16 guilty beyond a reasonable doubt by the State. The State
17 has a burden of proving each and every element of the
18 offense beyond a reasonable doubt. Now, that's not just
19 a mere legal theory that lawyers talk about, that Judges
20 talk about. It's indeed the cornerstone of our criminal
21 justice system, so when you are considering this case,
22 remember, it is very important the defendant is presumed
23 innocent until proven guilty beyond a reasonable doubt by
24 the State. Now, saying that is easy, but it does beg the
25 question, what is a reasonable doubt, and a reasonable

1 doubt is proof beyond a reasonable doubt that that type of
2 doubt which -- which leaves you firmly convinced of the
3 defendant's guilt. Now, there are very few things in this
4 world that we can be absolutely certain about, and the law
5 does not -- does not require proof beyond any possible
6 doubt. If after your evaluation of the evidence in this
7 case you are firmly convinced of the defendant's guilt,
8 then you must -- then you must find her guilty. However,
9 understand that if you think after your review of the
10 evidence if there is a real possibility that she is not
11 guilty, then under your oath you would find her not
12 guilty. Now, you'll determine whether the State has met
13 that burden of proof by reviewing, analyzing the evidence
14 that's been presented in this courtroom. You will make a
15 determination as to what is valuable and what is not
16 valuable. You will decide what has weight and what may
17 not have weight. You can put a substantial amount of
18 weight on one witness's testimony and you may decide that
19 you will put no or very little weight on another witness's
20 testimony. You will decide who was a credible witness in
21 the case and who may not have been very credible. Nobody
22 can tell you what value, what weight, what credibility to
23 impute to a piece of evidence. That is your sole and
24 exclusive province. You can take a piece or a part of a
25 witness's testimony and determine whether it is credible

1 or not, and then you can take the remainder of that
2 person's testimony and decide that it wasn't -- that it
3 wasn't credible and it didn't have much weight. It's all
4 up to you. You and your own common sense can determine
5 who you believe is credible. You can look and see what a
6 witness had to say. You can judge by his or her body
7 language, by his or her posture, by what they had to say,
8 by how they had to say it, by their facial motions and any
9 body language whether they are credible or not. You can
10 also take into consideration whether somebody had
11 something to gain or whether somebody had something to
12 lose as a consequence of his or testimony. You take all
13 that into consideration and you determine what -- who was
14 credible and what -- what evidence is credible and should
15 be given weight. Now, you receive evidence in two forms.
16 Those two forms are direct evidence and circumstantial
17 evidence. Direct evidence is that evidence which
18 immediately establishes the fact to be proven. Now,
19 circumstantial evidence is a proof of collateral facts
20 which then prove the main fact to be proven, that is a
21 chain of facts which then prove the main fact to be
22 proven. Those are nice definitions, but it's always
23 easier conceptually for me to give you an example which
24 you can perhaps understand a little bit better. It's
25 always easier for me to listen to examples. So, let's say

1 -- I'll give a scenario -- one January evening you go to
2 bed, and as you're going to bed -- to your bedroom and you
3 look out at your front lawn or your driveway or your
4 parking lot of your apartment complex and you see that
5 there's no precipitation on the ground, and you go to bed
6 and you wake up the next morning and you walk past that
7 very same window that you had gone past the evening before
8 and you see that there's a blanket of snow on the ground,
9 not only do you see the blanket of snow, but you also see
10 footsteps that lead to your door and then lead away. So
11 you've got direct evidence that it snowed last night or
12 early morning. You've got that direct evidence because
13 you see the snow and you pick it up and touch it and feel
14 it and taste it and you've got it right there. It's
15 immediately established. But you also have circumstantial
16 evidence that some time last night or in the early morning
17 someone walked to your front door and went away. Now, you
18 don't see that person and you can't touch and feel them,
19 smell them, taste them, but you know that because of those
20 footsteps in the snow and because of the time-frame of
21 that snow, that somebody must've come to your door and
22 left, either last night or in the early morning. That's
23 circumstantial evidence. The collateral facts proves the
24 main fact. Now, there is no preference given to either
25 direct or circumstantial evidence under the law. They are

1 both equal in the eyes of the law. You will decide which
2 evidence has value and what weight to put upon that
3 evidence. Now, ladies and gentlemen, in this case you did
4 hear expert witnesses. I charged you when the expert
5 witnesses began to testify. They're experts because of
6 their education and their experience and their expertise,
7 and they give you evidence which will assist you in your
8 analysis of the evidence, but understand that that's just
9 like any other piece of evidence, and you determine what
10 weight to put on that evidence and you determine the
11 credibility of the witnesses as well. Also, you heard
12 some questions of witnesses as to prior records that they
13 may have had, prior adjudications in Courts of law.
14 Understand, that evidence does not disqualify a witness
15 from testifying. That witness -- that evidence is to be
16 considered by you, if at all, in determining the witness's
17 credibility. Now, in this instance, the defendant, Ms.
18 Forrest, elected not to testify. Now, each and every one
19 of us in the United States of America has a right to
20 remain silent. That's guaranteed under the constitution.
21 In this instance, Ms. Forrest elected not to testify. She
22 elected to exercise that constitutional right. That is her
23 right. That cannot be held against her. It's very
24 important that that not be held against her, as it is her
25 constitutional right, she chose to exercise it. As a

1 matter of fact, those constitutional rights -- the
2 constitutional right to remain silent is so sacred, that
3 not only can you not consider it in your deliberations,
4 it's inappropriate for you to even discuss the fact that
5 she elected to exercise her constitutional right to remain
6 silent. Now, ladies and gentlemen, in this case there was
7 also a statement that was introduced into evidence wherein
8 the State alleged that the defendant made a statement.
9 Now, I've made a threshold determination that it was
10 admissible. Now, you will make a determination based on
11 your evaluation of all the attendant evidence, all of the
12 circumstances, whether that statement was freely and
13 voluntarily given and given of her own free will. That
14 means that the statement was not the result of any
15 pressure, of any force, fear, threats, coercion,
16 intimidation or the hope or promise of any leniency or any
17 reward. In determining whether a statement was voluntary,
18 you should consider the characteristics of the defendant
19 and the details of the question. Some factors that you
20 can consider in determining whether that statement was
21 freely and voluntarily given are as follows: the age of
22 the defendant, the defendant's education or lack of
23 education, the defendant's mental ability or capacity, the
24 defendant's IQ or intelligence, the defendant's background
25 and environment, the place and length of the detention,

207

1 the nature of the questioning and the advice or lack
2 thereof to the defendant of his constitutional rights
3 which include the right to remain silent, that any
4 statement could be used against her in a Court of law,
5 that the right -- that she had a right to have a lawyer
6 present and that if she could not afford an attorney,
7 counsel could be appointed to represent her and that she
8 could stop making statement at any time. You must
9 carefully consider all of the attendant and surrounding
10 circumstances to give any weight to an alleged statement.
11 The State has the burden of proving beyond a reasonable
12 doubt that the statement was voluntary. If you determine
13 that it was, then you -- if you determine that it was
14 voluntary, you may give the statement any further
15 consideration you deem appropriate from your analysis of
16 the facts. If you decide on the other hand that the
17 statement was not freely and voluntarily given by the
18 defendant, then you wouldn't give it any weight at all.
19 All right, now, I read to you when we first began this
20 case the indictment. The indictment is attempted murder.
21 So I am going to define for you attempt and murder. And
22 then I am going to also charge you the lesser included
23 offense of assault and battery of a high and aggravated
24 nature, and then I am going to tell you the elements of
25 self-defense. All right? So, first, attempt. An attempt

1 is an effort to accomplish a crime which is not to
2 succeed. An attempt includes a specific intent to do a
3 particular criminal act, along with an act falling short
4 of the actual act intended. The State must show more than
5 mere preparation of intent. There must be some overt act
6 committed in the effort to commit the crime. Intent means
7 intending the result which actually occurs, not
8 accidentally or involuntarily. Intent may be shown by
9 acts and conduct of the defendant and other circumstances
10 from which you may naturally and reasonably infer intent.
11 Now, as to murder. The State must prove beyond a
12 reasonable doubt that the defendant attempted to kill
13 another person with malice aforethought. The State must
14 prove beyond a reasonable doubt that the defendant
15 attempted to kill another person with malice aforethought.
16 Malice is hatred, ill-will or hostility towards another
17 person. It is the intentional doing of a wrongful act
18 without just cause or excuse and with an intent to inflict
19 an injury or under circumstances that the law will not --
20 will infer the evil intent. Now, I'll read that again,
21 because I may -- mealy-mouthed it a little bit and I want
22 to be precise about it. Malice is hatred, ill-will or
23 hostility towards another person. It is the intentional
24 doing of a wrongful act without just cause or excuse and
25 with an intent to inflict an injury or under circumstances

1 that the law would infer an evil intent. Now, malice
2 aforethought. It is not required that malice exist for
3 any particular time before the act is committed, but
4 malice must exist in the mind of the defendant just before
5 and at the time the act is committed. Therefore, there
6 must be a combination of a previous evil intent in the
7 act. Malice aforethought may be express or inferred.
8 Express malice is shown when a person speaks words which
9 express hatred or ill-will for another per -- for another
10 -- or when a person prepared beforehand to do the act
11 which was later accomplished. Malice may be inferred from
12 conduct showing a total disregard for human life. Now,
13 that's attempted murder. Now, let's move on to assault
14 and battery of a high and aggravated nature. And first
15 before I explain it all, let me define for you assault and
16 battery. An assault occurs when a person unlawfully
17 attempts or offers to commit a violent injury on another
18 person, an assault with the intentional creation of a
19 reasonable fear of immediate bodily harm. A battery is
20 the unlawful touching of another person by a person who
21 has committed the assault. Unlawful touching can be
22 caused by a part of the accused body or by any object the
23 accused puts in motion. A battery essentially is the
24 completion of the assault. So let me give you another
25 example. Let's say that I am -- I'm standing over whom --

1 I'm standing over someone, and I cock my hand back and I
2 offer to commit an injury against someone. I'm here; I've
3 made the offer; I've prepared; I have the present ability
4 to actually commit the battery. So at this posture I have
5 committed the assault. If I then complete the blow, that
6 is the battery. That in a nutshell is assault and
7 battery. Now, in this case you will be asked to determine
8 whether the State has met its burden of proving that there
9 was an assault and battery of a high and aggravated
10 nature. The legislature has defined assault and battery
11 of a high and aggravated nature as follows: A person
12 commits the offense of assault and battery of a high and
13 aggravated nature if the person unlawfully injures another
14 person and great bodily injury to another person results,
15 or the act is accomplished by means likely to produce
16 death or great bodily injury. Say that again. A person
17 commits the offense of assault and battery of a high and
18 aggravated nature if the person unlawfully injures another
19 person and either great bodily injury to another person
20 results or the act is accomplished by means likely to
21 produce death or great bodily injury. Now, that's assault
22 and battery of a high and aggravated nature. You hear in
23 there there is a reference to great bodily injury, so I'm
24 going to read to you the definition of great bodily
25 injury. Great bodily injury means bodily injury which

211

1 causes a substantial risk of death or which causes serious
2 permanent disfigurement or protracted loss or impairment
3 of the function of a bodily member or organ. All right.
4 One more time. Great bodily injury means bodily injury
5 which causes a substantial risk of death or which causes
6 serious permanent disfigurement or protracted loss or
7 impairment of the function of a bodily member or organ.
8 Okay, ladies and gentlemen, in this instance the defendant
9 has presented the defense of self-defense, and self-
10 defense is a complete defense, meaning if it is
11 established, you must find the defendant not guilty. The
12 State has the burden of proving self- -- of disproving
13 self-defense beyond a reasonable doubt. Say that again.
14 The State has the burden of disproving self-defense beyond
15 a reasonable doubt. Self-defense has not been established
16 if any one element of self-defense is disproved beyond a
17 reasonable doubt. If you have -- have a reasonable doubt
18 as to the defendant's guilt after considering all the
19 evidence including the evidence of self-defense, then you
20 must find the defendant not guilty. On the other hand, if
21 you have no reasonable doubt as to the defendant's guilt
22 after considering all the evidence, including the evidence
23 of self-defense, then you must find the defendant guilty.
24 Now, I'm going to go over this in a little bit greater
25 detail, but I did want to on the front-end tell you the

1 elements of self-defense, and those are -- and I'm just
2 going to give you the captions, and then I'm going to go
3 back and I'm going to define them for you in a little bit
4 greater detail, that the defendant must've been without
5 fault in bringing about the difficulty, that the defendant
6 must demonstrate that she was in imminent danger, that the
7 defendant must demonstrate that she was in imminent danger
8 and that it was -- that that danger or that sensation and
9 feeling and that impression of imminent danger was what a
10 reasonably prudent person of ordinary firmness and courage
11 would have had the same sense or impression. And then, or
12 there was no other way to avoid danger. All right, and
13 I'm going to go through those in a little bit more detail.
14 First, the defendant must be without fault in bringing on
15 the difficulty. If the defendant's conduct was the type
16 that was reasonably calculated to and did provoke a deadly
17 assault, the defendant would be at fault in bringing on
18 the difficulty and not be entitled to an acquittal based
19 on self-defense. Self-defense is not available to a
20 person who uses language which is so contemptuous that a
21 reasonable person would have expected to bring on the
22 physical encounter in which did actually contribute to the
23 physical encounter. Now, as an element of self-defense,
24 the defendant has had -- claimed that she was suffering
25 from a battered person syndrome. If the defendant killed

1 her abuser during a confrontation and the abuser clearly
2 is the aggressor, the element is satisfied, that is, the
3 element of without -- of being without fault. However,
4 under the battered person syndrome, it may be possible to
5 characterize the battered person as the victim of a
6 continuing assault at the hands of the batterer. When
7 this is the case, the first element of self-defense may be
8 satisfied even though the battered person acts at a time
9 when the batterer is not being physically abusive. Now,
10 let's turn to imminent danger. The second element of
11 self-defense is that the defendant was actually in
12 imminent danger of death or serious bodily injury or that
13 the defendant actually believed she was in imminent danger
14 of death or serious bodily injury. If the defendant was
15 actually in imminent danger, it must be shown that the
16 circumstances would warranted a person of ordinary
17 firmness and courage to strike a blow to prevent death or
18 serious bodily injury. If the defendant believed that she
19 was in imminent danger of death or serious bodily injury,
20 it must be shown that a reasonably prudent person of
21 ordinary firmness and courage would've had the same
22 belief. In deciding whether the defendant actually was or
23 believed she was in imminent danger of death or serious
24 bodily injury, you should consider all the facts and
25 circumstances surrounding the crime including the physical

1 condition and characteristics of the defendant and the
2 victim. The defendant does not have to show that she was
3 actually in danger. It is enough that the defendant
4 believed she was in imminent danger and a reasonably
5 prudent person of ordinary firmness and courage would have
6 had the same belief. The defendant has the right to act
7 on appearances even though the defendant's beliefs may
8 have been mistaken. It is for you to decide whether the
9 defendant's fear of immediate danger of death or serious
10 bodily injury was reasonable and would've been felt by an
11 ordinary person in the same situation. Now, as to the
12 battered person syndrome, at times a battered person
13 actually is in imminent danger or violence when she acts.
14 Depending on the facts of the case, a defendant may act in
15 self-defense if she believes she is in -- or was in
16 imminent danger of death or seriously bodily harm, even
17 though the batterer is not being physically abusive when
18 the defendant acts. This is because battered persons can
19 experience a heightened sense of imminent danger arising
20 from perpetual terror of physical and mental abuse. Often
21 the terror does not decrease even when the batterer is
22 absent or asleep. For torture to appear as interminable
23 and escape impossible, the belief that only the death of
24 the batterer can provide relief may be reasonable in the
25 mind of a person of ordinary firmness. Words accompanied

1 by hostile acts may, depending on circumstances establish
2 self-defense. Evidence of prior difficulties between the
3 defendant and the victim may be considered in deciding
4 whether a threat existed, whether defendant had reason to
5 believe a threat existed and how serious that threat was.
6 The relative size, ages and weights of the defendant and
7 the victim may be considered in deciding the apparent or
8 actual need for force in self-defense and the amount of
9 force needed. Prior instances of violence by the victim
10 may be considered in deciding whether the defendant
11 actually believed she was in imminent danger or fear or
12 serious bodily injury or was actually in imminent danger.
13 Threats made by the victim may be considered in
14 determining whether the defendant actually was or believed
15 she was in imminent danger. All right, ladies and
16 gentlemen, the next element and the next thing I will talk
17 to you about is whether the defendant had any other
18 probable way to avoid the danger of death. The final
19 element of self-defense is that the defendant had no other
20 probable way to avoid the danger of death or serious
21 bodily injury than to act as the defendant did in this
22 particular instance. If the defendant was on her own
23 premises, then the defendant had no duty to retreat before
24 acting in self-defense. A battered person under the
25 battered person syndrome who is held hostage by the

1 batterer may have no other means of avoiding the batterer
2 than to kill the batterer in self-defense. A battered
3 person who acts while on her own premises has no duty to
4 retreat. Now, a person cannot be required to make an
5 exact calculation as to the degree or amount of force
6 which may be needed to avoid death or serious bodily harm.
7 Therefore, in self-defense, the defendant has the right to
8 use the force needed to avoid death or serious bodily
9 harm. The force used in self-defense does not have to be
10 limited to the degree or amount of force used by the
11 victim. The defendant has the right to use so much force
12 as appear to be necessary for complete self-protection in
13 which a person of ordinary reason and firmness would have
14 believed to be needed to prevent death or serious bodily
15 harm. The determination as to whether the defendant was
16 a battered person and the weight to be given to that
17 status in assessing her claim of self-defense is left to
18 you based on your evaluation of the evidence put forth in
19 this case. All right, that's all the reading I'm going to
20 do. I'm sorry I had to do that. I know that gets kind of
21 dry when I do that. There are three possible verdicts
22 that you can come to in this case and I'm about to send
23 you back to your jury room to begin your deliberations.
24 I'm going to show you the verdict form just so you'll have
25 an idea of what it is and I'm going to explain it before

217

1 you actually begin your deliberations. It's very simple.
2 It is very simple. You see it has the caption on it and
3 then it starts with the line, as to the charge of
4 attempted murder, we the jury unanimously find the
5 defendant -- Now, unanimously is an important word,
6 because your jury verdict must be unanimous. It must be
7 twelve to zero. It can't be eleven to one or ten to two
8 or any other combination of numbers which add up to
9 twelve. It must be a unanimous verdict. Your verdict
10 must also be the product of the evidence that was
11 presented in this case, and it cannot be the product of
12 any passion, bias or prejudice. It must be a reasonably
13 calculated decision based on the evidence that was
14 presented in this courtroom and the law as I have given it
15 to you. You have three choices. They appear in no
16 particular order. I prepare these verdict forms, and as
17 I told you, I have no stake in this case, and I have no
18 interest in what you may decide in this case. So the
19 order in which the possible verdicts appear are completely
20 arbitrary, so don't try to take anything away from the way
21 I presented it, but your first choice is not guilty. Your
22 second choice is guilty of attempted murder, and your
23 third choice is guilty of assault and battery of a high
24 and aggravated nature. You will elect one of those, and
25 what will happen is, Ms. Kinard, you will initial beside

1 the choice that the jury has unanimously elected, then you
2 will execute as foreman of the jury, date it and then let
3 the bailiff know that you have come to a unanimous
4 verdict. Now, I'm going to send you back to your jury
5 room now and I'm going to ask you please don't start to
6 discuss the case yet. What's going to happen now is I'm
7 going to give the attorneys the opportunity to tell me
8 what I may have missed or to tell me what I may have said
9 that was either inappropriate or what I may have misspoke
10 on. So give us the opportunity to make sure that
11 everything I told you was accurate and complete. If I
12 have made a mistake in some way, shape or form, then I
13 will bring you back out here and recharge and correct
14 something that I have said or if I find that I haven't,
15 then I'll send the evidence back to you with the bailiff
16 who will instruct you to begin your deliberations. So
17 please don't begin your deliberations yet and I'll be back
18 with you in just a few seconds.

19 (Jury exits the courtroom)

20 The Court - All right, counsel, any exceptions
21 to charge?

22 Mr. Anthony - The only thing that I would
23 inquire of is I don't -- I didn't have any objection to
24 the way you charged attempted murder, but I do think maybe
25 to cover the record it would be a good idea if you didn't

1 read the statute to the jury, to do that.

2 The Court - You think that's necessary?

3 Mr. Anthony - I think it would -- I don't know
4 that it's necessary unless -- I mean I --

5 The Court - Well, it's necessary if one of you
6 perhaps makes an objection to it. Are you lodging an
7 objection to the charge --

8 Mr. Anthony - I am not. I -- I will not lodge
9 an objection to the charge.

10 The Court - Okay. Good enough. Anything from
11 the defense?

12 Ms. Inzerillo - No, Your Honor.

13 The Court - Okay. All right, good enough. Then
14 what I'm going to do is I'm going to send the evidence
15 back to the jury. If y'all want to do an inventory to
16 make sure that the evidence is there and that it's
17 complete, and then once you have done that, let the
18 bailiff know and I've put the verdict form on the evidence
19 table. You can take that back to them as well. So thank
20 you. The two alternates I'm going to release from
21 chambers. I'm going to ask them to come back and then I'm
22 going to release them -- okay -- before you give them the
23 evidence -- so while they're inventorying, you might send
24 the two alternates back to chambers. You can take them
25 back to my office. Thank you. Counsel, y'all did an

1 excellent job. Each of you prepared and tried an
2 excellent case. All of your objections were reasonable
3 and well calculated and that makes it easy on me and I do
4 appreciate it. I don't know what the verdict's going to
5 be, but I can tell you that whoever comes out on bottom or
6 whoever does not get the verdict that he or she is looking
7 for will not be a reflection of the type of case you
8 tried, because each of you tried excellent cases.

9 Mr. Anthony - Thank you, Your Honor.

10 Ms. Inzerillo - Thank you, Your Honor.

11 (Jury deliberates at 11:30 a.m.)

12 The Court - All right, I have received two notes
13 from the jury. The first note was a note which said I
14 would like to see the law, and I responded indicating that
15 I wanted to know specifically what they were talking
16 about. They sent in another note that said the law as to
17 attempted murder, assault and battery of a high and
18 aggravated nature and self-defense. So I have taken the
19 charge that I read specifically and verbatim to the jury
20 during the charge to the jury and I have taken off all
21 notes and any extraneous information and I intend to send
22 the same back to the jury for their consideration. And I
23 know that the defense has an objection you'd like to put
24 on the record.

25 Ms. Inzerillo - Yes, Your Honor, we would just

221

1 ask the Court to bring the jury back in and read the
2 charge back into the record and not send it back.

3 The Court - Okay. All right, good enough. All
4 right, given that this was not the longest charge ever and
5 not the most esoterical difficult charge ever, there was
6 a substantial amount of information conveyed to them and
7 I believe that it is appropriate and it is fair to send
8 them back a written copy of the charges. This is an
9 objective recitation of the law and this is what was
10 charged without objection to the jury orally in Court,
11 therefore, I'm going to send it back to them. I think
12 that is what would be most helpful to them in their
13 deliberations. Also recognize that it is not giving any
14 particular weight to any particular portion of the law
15 over the other, because it is all of the charges -- excuse
16 me -- all of the offenses which they can consider together
17 with also the defense of self-defense. All right. If
18 you'll mark this as Court's Exhibit --

19 Court Reporter - 3. This will be 3.

20 The Court - And if you will send that back.

21 (Jury continues to deliberate at 11:35 a.m.)

22 (Documents marked as Court's Exhibit Number 3.)

23 (Note sent out - not on record - at 12:25 p.m.)

24 (Note sent out - not on record - at 1:40 p.m.)

25 The Court - All right, sir.

1 Mr. Anthony - Your Honor, we're back on the
2 record in the Leah Forrest case, 2010-44-932. It's an
3 indictment for attempted murder. It was true billed by
4 the grand jury. We've had a few developments since the
5 jury came out. The State has offered Ms. Forrest a plea
6 to the lesser included charge of assault and battery of a
7 high and aggravated nature, and it is my understanding
8 that she is entering a plea of guilty on that charge under
9 Alford and she is making -- it's my understanding she's
10 making an Alford plea under that charge. There is no
11 consideration given for the plea. Mr. Dipietro, the
12 victim in the case, would like to address the Court at the
13 appropriate time and the State would as well.

14 The Court - Okay. Ms. Forrest, would you raise
15 your right hand.

16 (Ms. Leah Forrest is duly sworn by the Court)

17 The Court - All right. Mr. Delaney and Ms.
18 Inzerillo, each of you had the opportunity to discuss this
19 matter in detail with your client?

20 Ms. Inzerillo - Yes, sir.

21 The Court - Is it each of your respective
22 beliefs and understanding that she understands her rights,
23 understands the ramifications of her plea and wants to
24 waive her rights and plead guilty today?

25 Ms. Inzerillo - Yes, Your Honor.

1 The Court - Do each of you agree with that
2 decision?

3 Ms. Inzerillo - Yes, Your Honor.

4 Mr. Delaney - Yes, Your Honor.

5 The Court - Ms. Forrest, you recognize, of
6 course, that you have valuable and important
7 constitutional rights and you have elected to exercise
8 several of them to include your right to a trial by a
9 jury. Correct?

10 Ms. Forrest - Yes, sir.

11 The Court - And I note for the record that the
12 jury is out deliberating. We have conducted the entire
13 trial. Now, do you wish to waive proceeding any further
14 and waiting -- awaiting a jury verdict in this case?

15 Ms. Forrest - Yes, sir.

16 The Court - Now, you also have a right to remain
17 silent which you know and we have already discussed, but
18 by pleading guilty or no contest you have to waive that
19 right, because if you want to plead guilty or no contest
20 then you have to make representations to the Court. Do
21 you understand that?

22 Ms. Forrest - Yes, sir.

23 The Court - Do you want to waive that right?

24 Ms. Forrest - Yes.

25 Court Reporter - She needs to speak up.

1 The Court - Okay. You also have several other
2 constitutional rights to include your right to confront
3 your accusers, your right to go to trial and present
4 defenses, your right to make motions to the Court to
5 protect your constitutional and legal interest.
6 Therefore, you have exercised all of those rights, but by
7 pleading guilty you are waiving the same. You understand?

8 Ms. Forrest - Yes, sir.

9 The Court - Now, do you want to waive all of
10 your rights and proceed with a plea at this time?

11 Ms. Forrest - Yes, sir.

12 The Court - All right. Do you understand that
13 for assault and battery of a high and aggravated nature
14 you can receive up to twenty years incarceration?

15 Ms. Forrest - Yes, sir.

16 The Court - You also understand that it is
17 classified as a violent and a serious offense?

18 Ms. Forrest - Yes, sir.

19 The Court - And you realize that because it is
20 classified as a violent offense that it affects the manner
21 and the method by which you do any active jail sentence.
22 That is, it affects the calculation of your sentence and
23 it affects the calculation of the max-out date. Do you
24 understand?

25 Ms. Forrest - Yes, sir.

1 The Court - It also, because it is classified as
2 serious, it is a strike under the State's two
3 strikes/three strikes law, which means that if you were to
4 receive two more strikes, that is, either two serious
5 offense convictions at a time -- at a later date and time
6 in your life or a most serious conviction, you could
7 potentially be subject to a sentence of life without the
8 possibility of parole.

9 Ms. Forrest - Yes, sir.

10 The Court - Okay. Now, knowing all of that, how
11 do you wish to plead to assault and battery of a high and
12 aggravated nature?

13 Ms. Forrest - No contest.

14 The Court - All right. Are you pleading guilty
15 because you feel like the State could meet its burden of
16 proving each and every element of the offense beyond a
17 reasonable doubt?

18 (Discussion is held between Ms. Forrest and Ms.
19 Inzerillo which is not reported.)

20 Ms. Forrest - Yes, sir.

21 The Court - Okay, I'm going to restate the
22 question -- okay -- so that we make sure that we're all on
23 the same sheet music. Do you believe that the State could
24 meet its burden of providing evidence to a jury upon which
25 they could determine that they have met their burden of

1 proving you guilty beyond a reasonable doubt?

2 Ms. Forrest - Yes, sir, in the State -- or in
3 the County of Union.

4 The Court - Okay. Fair enough. And do you feel
5 like that you are by pleading guilty deriving some
6 benefit?

7 (Discussion is held between Ms. Forrest and Ms.
8 Inzerillo which was not reported.)

9 Ms. Forrest - Yes, sir.

10 The Court - Okay. Are you under the influence
11 of any drugs or alcohol today?

12 Ms. Forrest - No, sir.

13 The Court - Do you suffer from any mental
14 sickness that would affect your ability to understand and
15 appreciate what's happening here today?

16 Ms. Forrest - No, sir.

17 The Court - Have you had the opportunity to
18 discuss this matter with your attorneys as much as you
19 needed to?

20 Ms. Forrest - Yes, sir.

21 The Court - Have they answered all your
22 questions and done everything you've asked them to do?

23 Ms. Forrest - Yes, sir.

24 The Court - Are you satisfied with their
25 services?

1 Ms. Forrest - Very much so.

2 The Court - Has anyone forced or threatened or
3 made you plead guilty?

4 Ms. Forrest - No, sir.

5 The Court - Pleading guilty of your own free
6 will.

7 Ms. Forrest - Yes, sir.

8 The Court - Have you understood all of my
9 questions and explanations to you?

10 Ms. Forrest - Yes, sir.

11 The Court - Do you have any questions that you'd
12 like to ask me or your attorneys regarding your rights to
13 this proceeding before we move on?

14 Ms. Forrest - No, sir.

15 The Court - All right, you have ten days to
16 appeal the sentence and then you do recognize that by
17 pleading guilty you waive your rights to appeal anything
18 that may have happened during the trial. Do you
19 understand?

20 Ms. Forrest - Yes, sir.

21 The Court - You want to proceed, ma'am?

22 Ms. Forrest - Yes, sir.

23 The Court - All right. Okay, Mr. Anthony, I've
24 heard the facts. I know the factual recitation as alleged
25 by the State. Is there anything additional that you need

1 to put on the record?

2 Mr. Anthony - Yes, sir. Ms. Forrest, she has a
3 2001 DUI conviction, a 1998 fraudulent check and a
4 criminal domestic violence from 1993. That's the extent
5 of her criminal history going back twenty years. Also,
6 Your Honor, the victim in this case, Mr. Dipietro, I
7 believe would like to address the Court, and the State
8 would also like to address the Court.

9 The Court - Good enough. Mr. Dipietro, I'll be
10 happy to hear from you, sir.

11 Mr. Dipietro - Your Honor, sir, it's been
12 probably the hardest thing a lot of people have been
13 through with everybody involved. It's a very sad
14 situation. It's been hard on two families. I know it's
15 been hard on me. Unfortunately, the injuries that I have
16 received, I can never go back to being the person I once
17 was in any way shape or form. I am serving a life
18 sentence as we all know. If there was any remorse at all
19 on Leah's behalf, might've been things differently, but as
20 I laid there on the floor begging for my life, I was
21 tortured merciously (sic) and I think because of that
22 perhaps you or the State need to seek as much time as
23 possible. As we know, I'm not the first person that this
24 was done to. I'm the unluckiest one for my injuries. I'm
25 also the luckiest one to be able to survive such injuries.

229

1 Who knows what would happen to somebody else. So I'm
2 asking you to please see the way that the State would want
3 to see or needs to be to give the maximum time with the
4 lesser charge that she's pleading to.

5 The Court - Thank you, Mr. Dipietro. I
6 appreciate your being here. I'm sorry this has happened
7 to you. All right.

8 Mr. Anthony - Your Honor, I'd just like to say,
9 I've worked with a lot of victims in my career. I don't
10 know that I've ever worked with one who's incurred the
11 physical kind of injuries that Mr. Dipietro has. I think
12 Mr. Dipietro for somebody who's been through what he's
13 been through has a remarkably good -- you know some would
14 even say sort of inspiring attitude about the injuries
15 that he's suffered. I do feel like and I do believe the
16 State has extended a considerable benefit to Ms. Forrest
17 even at this stage in the trial by allowing her to enter
18 this plea to ABHAN. We've reduced her exposure from
19 thirty years to twenty years, but as Mr. Dipietro said,
20 he's serving a life sentence. He'll spend the rest of his
21 life in a wheelchair, and the State does believe that the
22 consideration we extended by reducing this charge is
23 enough, and we would ask the Court to impose the full
24 twenty year sentence. Thank you, Your Honor.

25 The Court - Okay. Good enough. Ms. Inzerillo,

1 Mr. Delaney?

2 Ms. Inzerillo - Thank you, Your Honor. May it
3 please the Court. Your Honor, I just want to start by
4 letting the Court know a little bit about Leah herself.
5 I know the Court's familiar with the facts as presented by
6 the State and really the facts as presented by the defense
7 and the defense's position that Ms. Forrest was a -- and
8 still is a battered spouse and suffered abuse at the hands
9 of Mr. Dipietro. Your Honor, Ms. Forrest is a high school
10 graduate. She graduated in 1987. At the time of the
11 incident, she was working for Kangaroo, but over the last
12 year had actually gotten another job for Crossmark. She
13 does retail rep where she'll be -- make sure vendor's
14 products are on the shelves, that type of thing. She made
15 nine fifty-eight an hour doing that job. She is also a
16 graduate of a beautician school, so she has that
17 additional skill, Your Honor. Your Honor, not to put too
18 fine of a point on it, but I will say in the times that
19 I've met Leah, talked with her about this case, she has
20 been extremely involved in this case. She's probably been
21 as much a part of the team as anyone else that has worked
22 on this case. In all of our discussions with her about
23 pleading, going to trial, she has understood everything
24 along the way. To be frank with the Court, Leah does feel
25 justified in what happened that day, and I know the Court

231

1 is aware as well as everyone who presented this case, that
2 really the only two people who know what happened are Ms.
3 Forrest and Mr. Dipietro, but I will convey on behalf of
4 Leah that that has really been consistently what she
5 wanted us to know, and I think what she wants the Court to
6 know, that there were some allegations of cheating back
7 and forth, but Leah has always maintained to us as she has
8 maintained to everyone, that there was -- that -- abuse
9 that happened in the home, not only this date but the day
10 open (sic), so she did feel justified. We did not want
11 the Court to believe that she just wasted the Court's time
12 and resources and drag this out unnecessarily, but that
13 she has been consistent with us on that and that is why
14 she did want to go forward with the trial. Your Honor,
15 initially when I met with the Court and Mr. Anthony about
16 this case, I had indicated our intent if she were
17 convicted at the end of the trial to do a 16-25-90
18 hearing. Pursuant to that conversation I've released all
19 the witnesses from their subpoenas to essentially -- if
20 the Court would still allow me just to incorporate that --
21 their testimony into the record and address that
22 separately, I can do it now or I can I do it --

23 The Court - Yes, ma'am. Sure. I'll be happy to
24 hear from you.

25 Ms. Inzerillo - Your Honor, as the Court is

1 aware, the State of South Carolina under 16-25-90 has
2 allowed for parole eligibility in cases of domestic
3 violence when the abused person essentially acts out or
4 does violence to her abuser. As I have advised Ms.
5 Forrest in this case, ABHAN in addition to being violent
6 and histrionic also is a no parole offense and so now
7 she's looking at serving at least eighty to eighty-five
8 percent of her -- or eighty-five percent of her sentence.
9 Your Honor, at this time we would ask the Court to
10 consider granting parole eligibility under 16-25-90. As
11 outlined in the statute the Court must find that there is
12 credible evidence of the history of criminal domestic
13 violence suffered at the hands of a household member.
14 Your Honor, it's the position of the defense at this time
15 that the household member in question is Mr. Dipietro.
16 Throughout the case we believe we have put forth credible
17 evidence as to abuse in the household. I would refer to
18 some things, specifically, Your Honor. Number one, the
19 testimony of Brandon Howard who was the son of Leah
20 Forrest. He testified during the case that he did see Mr.
21 Dipietro flip Ms. Forrest over in a chair, saw him pick
22 her up and throw her down, slam her down and that he also
23 indicated abuse to himself in front of Ms. Forrest, which
24 we would contend with the Court is a form of emotional
25 and, you know -- emotional abuse and threats even if it's

233

1 not physically done to her but was done to him in her
2 presence. Your Honor, we did also put Haley Forrest on
3 the stand. I believe because of her age it wasn't -- her
4 position wasn't conveyed as well and I know under cross
5 examination I believe she did answer Mr. Anthony's
6 questions truthfully, but she did indicate that Mr. -- she
7 did see Mr. Dipietro put his hands on Ms. Forrest, grab
8 her by the shoulder, grab her by the wrist. We would ask
9 the Court to find that credible evidence as well. I would
10 point the Court also to the testimony of the expert Ms.
11 Vicky Burris in this case who did assess Ms. Forrest, did
12 find that she does suffer from PTSD with a sub-set of
13 battered spouse due to the trauma -- the trauma that she
14 endured being battered at the hands of Mr. Dipietro. I
15 won't go into her testimony as much. I know it was a very
16 long direct and cross of that witness and I'm sure the
17 Court remembers what she testified to of the abuse that
18 Leah did describe, that she did review all of the
19 allegations in the case as well, but I'd ask the Court to
20 keep that -- the fact that she did assess Ms. Forrest and
21 that she did as a licensed social worker in the State of
22 South Carolina did diagnose Ms. Forrest with PTSD. Your
23 Honor, I would also ask the Court to take into
24 consideration the contents of the 9-1-1 call that was
25 entered into evidence by the State, during which Ms.

1 Forrest -- she immediately tells 9-1-1 that she's been
2 battered, she recounts sever -- at least six times during
3 that 9-1-1 call that she had been battered that day, had
4 been battered prior to that, that she thought she had
5 passed out, had suffered or gone unconscious, had suffered
6 from seizures, that the beatings were so badly -- so bad,
7 Your Honor. I would also ask the Court to take into
8 consideration the pictures that were entered by both the
9 State and the defense of Ms. Forrest's injuries has she
10 manifested on the day of June -- June 7th, 2010, both the
11 pictures of the injuries as they were photographed when
12 she sat in the back of the car, as well as injuries that
13 were photographed when she was at the jail. It is our
14 contention, Your Honor, that is further credible evidence
15 that there was some battering going on. I would put forth
16 to the Court I didn't hear any -- any other explanation
17 except for the mark on her nose for those -- those
18 injuries, Your Honor. I would also ask the Court to take
19 into consideration as credible evidence the disparity in
20 the height and weight of both Mr. Dipietro and Ms.
21 Forrest. Mr. Dipietro it was testified was at the time
22 two hundred -- I believe two hundred and ninety pounds,
23 five nine. I may be wrong on the weight, but it was
24 around there. And at the time of the incident Ms. Forrest
25 was five one, a hundred and fifty pounds, that certainly

1 that disparity in height and weight could be taken into
2 consideration by the Court. Your Honor, the 16-25-90, ask
3 the Court to determine if there is a history of criminal
4 domestic violence. We believe that the instances that
5 have been described would qualify the State of South
6 Carolina as criminal domestic violence, that Ms. Forrest
7 did suffer them at the hands of Mr. Dipietro. We would
8 ask the Court to make the finding as finding that that is
9 credible evidence and grant her parole eligibility under
10 16-25-90. Your Honor, if I may -- I'm sorry to jump
11 around, but I did neglect to say one other thing if I
12 could in mitigation of Ms. Forrest. There was testimony
13 about a prior stabbing incident with Ms. Forrest.
14 Obviously, Ms. Forrest not taking the stand, we could not
15 elicit the details surrounding that, but I did want the
16 Court to know that in our conversations with Ms. Forrest
17 she did relate to us that her husband at the time, Mr.
18 Howard, was abusive to her, that during the course of that
19 stabbing incident, that he -- they had gotten into an
20 argument and he had come after her with a chair, and she
21 tried to get away from him and grabbed a knife and ended
22 up stabbing him in the back. They were both arrested for
23 that. It was Ms. Forrest's understanding that they both
24 had to undergo CDV counseling and as a result, the charges
25 were I believe dismissed. I believe that's why there's no

1 disposition for that, but that was the context in which
2 that battering occurred. I know that it could be the
3 position of the State that that could indicate future
4 dangerousness and we did not want the Court -- we disagree
5 with that assessment, that unfortunately as Ms. Burris
6 testified, it is common for a battered woman to move from
7 one battering relationship to another, and it is our
8 position that that is what happened in this case, that it
9 is not result of her getting more violent, stabbing him
10 and shooting him. And as you can see from her records,
11 Your Honor, other than the fraudulent check, the DUI and
12 then the one CDV arrest, she has no violence on her
13 record, in fact, no serious charges at all. We would ask
14 the Court to take that into consideration. Your Honor,
15 understanding that this is a straight-up plea, Ms. Forrest
16 does understand she's exposed to the maximum in this case.
17 We would ask the Court to consider a range of eight to ten
18 years in this case with a finding of parole eligibility
19 under 16-25-90. Again, it is our position that she did
20 suffer abuse the day of the shooting, that she was in fear
21 for her life, for her safety, and that is why she did
22 shoot Mr. Dipietro. I would agree with the statements of
23 the Court and Mr. Anthony that this is a tragic case and
24 certainly Mr. Dipietro will bear the brunt of this for the
25 rest of his life, but we would ask the Court to keep in

1 mind the other facts that we have elicited and the case
2 the defense put up in coming to a sentence in this case,
3 Your Honor.

4 The Court - Thank you, Ms. Inzerillo. I
5 appreciate that, ma'am.

6 Mr. Anthony - And I'd like to be heard on the
7 parole issue.

8 The Court - Okay. Ms. Forrest, is there
9 anything you like to tell me, ma'am?

10 Ms. Forrest - I was not even offered any medical
11 attention at all. I asked for a tylenol at the detention
12 center. I asked to see the doctor.

13 Court Reporter - I'm having trouble hearing her,
14 Judge. If she could speak up, please.

15 Ms. Forrest - I was denied any medical attention
16 at the detention center. I was also denied at the scene.
17 They didn't ask me anything about medical attention. They
18 thought I was drunk. I had a head injury. I was not
19 drunk. One of the female officers opened by cell door and
20 thought I was dead, because she saw the knot on my head.
21 It went from the top of my head down to the center of my
22 shoulder blade. The detention center apparently could not
23 find me a tylenol anywhere, never. I would have liked to
24 have gotten some medical attention that I asked for three
25 times in the detention center.

1 The Court - Thank you, ma'am. All right, Mr.
2 Anthony?

3 Mr. Anthony - Your Honor, 16-25-90 requires the
4 presentation of evidence of credible evidence of a history
5 of criminal domestic violence before the parole
6 eligibility provision would apply. I would just point out
7 to the Court that Mr. Dipietro has never been convicted of
8 CDV against Ms. Forrest. He has never been charged with
9 CDV against Ms. Forrest. There's never been a call to
10 that Street residence where he was ever reported to
11 have in any way harmed Ms. Forrest. There is evidence of
12 bruising from the fight on the night in question, does not
13 amount to credible evidence of a history of CDV. It is
14 evidence that there was a fight, but it's not evidence of
15 history of a CDV, so by any objective means of
16 ascertaining, if there's any evidence that Mr. Dipietro
17 ever engaged in criminal domestic violence against Ms.
18 Forrest, it's just not there. The Court can make an
19 evaluation of the witnesses that were presented during the
20 trial. Brandon Howard was presented. The State would
21 argue he was not a credible witness. He had an extreme
22 bias against Mr. Dipietro. Haley Forrest reported what I
23 would characterize as basically minimal acts of violence,
24 if that. And as to Ms. Burris, Your Honor, the State
25 elected as a tactical matter in the trial not to call its

1 own expert to try and challenge the -- some of the
2 assertions Ms. Burris was making as to battered woman and
3 PTSD, however, I do believe that there's expert testimony
4 that the State could present that would definitely
5 challenge some of the opinions and findings and statements
6 she was making about battered woman and how battered woman
7 would apply to Ms. Forrest and if the Court is of a mind
8 to seriously entertain a motion that there is some
9 credible evidence of domestic violence in this case, I
10 would ask the Court to hold its ruling in abeyance,
11 because I think the State would be able to present some
12 testimony that if the Court's going to give credence to
13 Ms. Burris's testimony, I think we might be able to
14 present some testimony that we think would seriously call
15 her testimony into questions. I would argue just on the
16 record that's been presented though, that there is not
17 credible evidence of a history of domestic violence. I
18 think that statute was written with something in mind, you
19 know, some conviction on the victim, some call, some
20 report, some evidence of the defendant actually having
21 gone to a hospital with injuries in the past. I mean
22 there's got to be more than just bring your children in
23 and let them say that the live-in boyfriend was a bad man,
24 and so, you know, our position is that that motion should
25 not be granted, and if the Court is of a mind or seriously

1 think that it should entertain that motion, I would like
2 an opportunity to possibly present some additional
3 testimony for the Court to consider.

4 Ms. Inzerillo - May I briefly respond to it? I
5 really don't want to want belabor the point.

6 The Court - Yes, ma'am.

7 Ms. Inzerillo - In speaking to the charge
8 itself, Your Honor, I believe with the state of criminal
9 defense -- I'm sorry -- criminal domestic violence in this
10 state, I heard Ms. Burris testify, the majority of cases
11 actually there is no prior medical or no prior law
12 enforcement intervention in cases, and so I don't think
13 the lack of that would negate any parole eligibility.
14 Secondly, Your Honor, in researching this Section 16-
15 25-90, I came across one case to try to find out what
16 credible evidence could be construed as. There was one
17 case that I could find where they found that it was not
18 credible evidence because the witness took the stand and
19 comment on hearsay, had not seen anything, no -- didn't
20 eye-witness -- or, you know, witness any abuse between the
21 case (sic) and understandably the Court ruled in that case
22 that that is not credible because it was based -- the
23 person's testimony was based on hearsay. I believe the
24 case that we have here, Your Honor, and the evidence that
25 the defense has presented through the course of the trial

1 differs from that greatly. We actually have the son who
2 did witness violence between the two of them in the past.
3 I mean we're looking at history of criminal domestic
4 violence. He -- this wasn't the day of; this wasn't even
5 the month before; this was almost -- well, several months
6 before this incident that over a course of six months he
7 saw four to five instances of Mr. Dipietro picking up Ms.
8 Forrest and slamming her down, flipping her over in the
9 chair and even in once instance, you know, putting his
10 hands on Mr. Howard himself. Your Honor, we believe that
11 that is credible evidence, and again I won't belabor the
12 point. I certainly understand Mr. Anthony's contention
13 I'm sure with the defense expert, but we would say, Your
14 Honor, that that recitation of eye-witness events of
15 events that he witnessed coupled with what Haley Forrest
16 testified to and what the expert diagnosed Ms. Forrest as,
17 that there is more than enough credible evidence of a
18 history of domestic violence and we'd ask for that
19 finding.

20 The Court - Okay. Very good. All right.

21 Ms. Inzerillo - It's a long day, Your Honor.
22 I'm a little tired. So I just want to make sure that I
23 specifically stated for purposes of this hearing I'm
24 asking for all that testimony that I've referenced to be
25 incorporated into the record for purposes of this hearing.

1 The Court - I understand.

2 Ms. Inzerillo - Okay. I just wanted to make
3 sure I was clear about that.

4 Mr. Anthony - And I would -- I would do the
5 same.

6 The Court - I understand. Okay. This is, in
7 fact, an unfortunate set of circumstances and really at
8 the end of the day it's tragic for everyone involved.
9 It's tragic for the families; it's tragic for Mr.
10 Dipietro, and I'm sorry that it happened. Would that I
11 were more than a mere mortal man, I'd go back in time and
12 wave a magic wand and make it go away, but I can't do
13 that. Ms. Forrest, there are circumstances under which it
14 is justified to shoot someone and kill them, but this is
15 not one of those circumstances. You've entered a plea of
16 guilty or you've entered a plea of no contest, and
17 frankly, based on the facts that are outstanding I think
18 that was the appropriate thing to do, and I say that
19 without referencing the notes from the jury where they
20 were hung up between assault and battery of a high and
21 aggravated nature and attempted murder, notwithstanding
22 the benefit of that knowledge, I still think that this is
23 one of those instances where it just was not justified and
24 the hand that has been dealt to Mr. Dipietro is not
25 justified and measured in light of the set of

243

1 circumstances as I heard the evidence presented. The
2 sentence of the Court, Ms. Forrest, is you be committed to
3 the Department of Corrections for a period of eighteen
4 years. With respect to the motion under Section 16-25-90,
5 at this time I'm going to respectfully deny the same, but
6 that is without prejudice to seeking a relief at a post
7 conviction relief hearing. I'm making no evidentiary
8 determinations with respect to the credibility of
9 witnesses. I do think that it is fair that if a Court is
10 going to make a determination as to a prior evidence of
11 domestic abuse, that both sides should have the
12 opportunity to present the same in full. And what I mean
13 is that it would be fair, Ms. Forrest, to you to have the
14 opportunity to testify without having to waive a
15 constitutional right to remain silent. And I also think
16 to Mr. Anthony's point, it's fair to the State to have the
17 opportunity to rebut that by way of additional testimony,
18 therefore, I will leave that outstanding and am denying it
19 without prejudice at this time.

20 Mr. Anthony - And is the Court -- you referenced
21 a PCR hearing. Is the Court saying that that is -- would
22 be the -- that --

23 The Court - If I am not mistaken, it says that
24 motion can be made during -- pertaining to a plea or
25 conviction -- where it is -- that it can be made motion or

1 a post conviction -- post conviction proceedings
2 pertaining to the plea or conviction.

3 Mr. Anthony - I understand.

4 The Court - I don't think that it's for -- that
5 option is foreclosed at the trial. I think there's an
6 opportunity to bring it at the post conviction relief. I
7 could be wrong and I'm not -- I'm not suggesting that
8 anyone should rely on my reading of that code section.
9 That's my reading of it, and inasmuch as I didn't make any
10 evidentiary findings regarding credible -- as -- testimony
11 -- that's so that there wouldn't be law of the case as it
12 were for a subsequent proceeding. My reading is that you
13 can bring it at a post conviction relief. I could be
14 wrong. I'm not -- I'm not saying that so anyone would
15 necessarily rely on it. Okay?

16 Ms. Inzerillo - Thank you, Your honor.

17 The Court - Good luck to you.

18 Bailiff - You want to bring the jury in?

19 The Court - I'll go talk to them back there.

20 (Whereupon, the Judge releases the jury from the
21 jury room which was not on record)

22 (End of transcript)

23

24

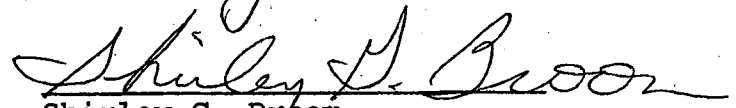
25

Certificate

I, Shirley G. Broom, the undersigned Court Reporter, hereby certify that the foregoing 411 pages consisting of Volumes I and III & IV constitute a true record of proceedings taken in the case of State of South Carolina vs. Leah Forrest, as taken by me at the time and place stated.

I do further certify that the persons were present as stated, that I am not of Counsel for, related to, or in the employ of any of the parties to this action and that I have no interest whatsoever in the outcome of this case.

This the 14th day of February, 2013.


Shirley G. Broom
Circuit Court Reporter
Sixteenth Judicial Circuit

Note: Volume II - April 11th, 2012 was taken by Pamela Faucette, Circuit Court Reporter.

WITNESSES

es/UCSO

DOCKET NO. 2010-GS-44-0932
Direct Indictment

The State of South Carolina
County of Union

COURT OF GENERAL SESSIONS

OCTOBER 11, TERM 2010

ARREST WARRANT NUMBER

Direct Indictment – RE: K393843

ACTION OF GRAND JURY

TRUE BILL

THE STATE

VS.

LEAH JUNE FORREST

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

Defendant

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

Defendan

Witness:

C.C.C. PLS. AND G.S.

VERDICT

**Indictment for
ATTEMPTED MURDER**

SC Code: 16-03-0029
CDR Code: 3410

person of Grand Jury
ate: Oct. 7 2016

one person of Petit Jury
ate:

STATE OF SOUTH CAROLINA)
COUNTY OF UNION)

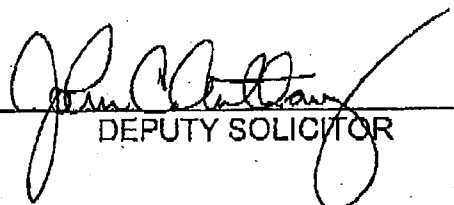
INDICTMENT

At a Court of General Sessions, convened on October 07, 2010, the Grand Jurors of Union County present upon their oath:

ATTEMPTED MURDER

That in Union County, South Carolina on or about June 07, 2010, Leah June Forrest did, with intent to kill, attempt to kill with malice aforethought Ronald C. Dipetrio by shooting the victim with a rifle, in violation of Section 16-03-0029, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

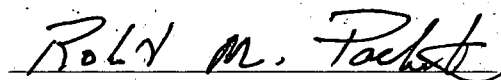

DEPUTY SOLICITOR

**THIS PAGE INTENTIONALLY
LEFT BLANK**

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."

April 22, 2013



Robert M. Pachak
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

