

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

John C. Hayes, III, Circuit Court Judge

RECEIVED  
JUN 21 2013  
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DAWONE Q. DAVIS,

APPELLANT

APPELLATE CASE NO. 2012-212710

RECORD ON APPEAL

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INDEX

INDEX.....i

TRIAL TRANSCRIPT (AUGUST 6 – 7, 2012).....1

INDICTMENTS.....297

CERTIFICATE OF COUNSEL.....299

State of South Carolina., )  
 )  
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 County of York. )  
 )

In The General Sessions  
 Court of York

Case No.: 2012-GS-46-02284

State of South Carolina., )  
 )  
 )  
 Plaintiff., )  
 )  
 -vs- )  
 )  
 Dawone Quintal Davis., )  
 )  
Defendant.. )

Transcript of Record

August 6-7, 2012  
 York, South Carolina

B E F O R E:

Honorable John C. Hayes, III., and a jury.

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I-N-D-E-XE-X-A-M-I-N-A-T-I-O-N

<u>WITNESS</u>	<u>BY:</u>	<u>PAGE NO.</u>
1		
2		
3	Detective John Welch	Solicitor Valenzuela P.48-66
4		(In Camera) P.67-70
5		(In Camera) P.79
6		P.85-90
7		P.118-119
8		Ms. Anderson (In Camera) P.74-79
9		P.99-117
10	Sherika Robinson	Solicitor Valenzuela
11		(In Camera) P.70-73
12		P.180-204
13		Ms. Anderson (In Camera) P.73-74
14		P.205-215
15	Officer Justin Cook	Solicitor Valenzuela P.120-127
16		Ms. Anderson P.128-132
17	Officer Jonathan Moreno	Solicitor Valenzuela P.134-154
18		P.154-155
19	Ernestine Evans	Solicitor Valenzuela P.156-166
20		Ms. Anderson P.166-167
21	Angela Covington	Solicitor Valenzuela P.168-179
22		Ms. Anderson
23	Martha Parrish	Solicitor Valenzuela
24		(In Camera) P.222-226
25		

E-X-A-M-I-N-A-T-I-O-N - CON'T

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

WITNESS

BY:

PAGE NO.

Martha Parrish

Solicitor Valenzuela

(In Camera) P.229

P.235-238

Ms. Anderson (In Camera) P.226-228

P.238-241

Closing Arguments

Solicitor Valenzuela

P.247-258

Ms. Anderson

P.259-270

Charge to the Jury . . . . . P.270-287

Verdict . . . . . P.289

Sentencing . . . . . P.290-293

Court Reporter Certificate Page. . . . . P.294

Voir Dire/Batson Sheet . . . . . P.295

E-X-H-I-B-I-T-S

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1				
2				
3	ST.1	Photo		P.52
4	ST.2	Photo		P.52
5	ST.3	Photo		P.52
6	ST.4	Photo		P.52
7	ST.5	Aerial Photo		P.59
8	ST.6	Photo		P.65
9	ST.7	Photo		P.65
10	ST.8	Photo		P.65
11	ST.9	Photo		P.65
12	ST.10	CD/Jail phone calls		P.204
13	ST.11	Photo		P.127
14	ST.12	Photo		P.127
15	ST.13	CD, 911 Call		P.198
16	NOTE:	No Defense Exhibits were entered into the record.		
17	CT.1	'08 Conviction. CDV-Violence 2d offense		P.134
18	CT.2	'07 Conviction - CDV 1st offense		P.133
19	CT.3	Jury Note		P.179-180
20	CT.4	Stipulations as to being father;		
21		Convictions, '07, '08.		P.287-288
22				
23				
24				
25				

COURT REPORTER'S NOTE: ALL EXHIBITS WERE FILED WITH THE  
YORK COUNTY CLERK OF COURT'S OFFICE.

1 (COURT IN SESSION IN THE MATTER OF STATE VERSUS DAWONE  
2 DAVIS MONDAY, AUGUST 6, 2012 AT 02:08 P.M.)

3 THE COURT: Get the Defendant in.

4 (DEFENDANT DAWONE DAVIS, BLACK MALE, ENTERING  
5 COURTROOM.)

6 THE COURT: All right, we got some motions?

7 SOLICITOR VALENZUELA: Yes, Your Honor. You want me  
8 to call the case?

9 THE COURT: Please.

10 SOLICITOR VALENZUELA: Okay. Your Honor, this is the  
11 case of the State versus Dawone Quintal Davis. There are  
12 four charges here for possession of a handgun by a person  
13 convicted of a crime of violence Indictment No. 2012-GS-46-  
14 02287; for pointing or presenting a firearm Indictment  
15 2012-GS-46-02285. This is a two count indictment, criminal  
16 domestic violence of a high and aggravated nature 2012-GS-  
17 46-002284 and count two possession of a firearm during the  
18 commission of a violent crime 2012-GS-46-2284A.

19 THE COURT: All right. Any motions, anything from the  
20 State? We've got - I've got the witness list, I've got the  
21 State's Voir Dire, I've got Motion in Limine by the State  
22 until we get to that. And the Defendant's Voir Dire and  
23 Motions in Limine. Let's go to the State's first.

24 The State No. 1: Has the Defense complied with the  
25 reciprocal discovery?

1 MS. ANDERSON: Your Honor, to my knowledge there is no  
2 reciprocal discovery that we can turn over to the State.

3 THE COURT: Motion to preclude reference to potential  
4 sentence.

5 MS. ANDERSON: Your Honor, as an officer of the court  
6 I have no intention of arguments on that.

7 THE COURT: Motion to Amend two of the Indictments,  
8 2284 and 2284A, court two to read violent instead of  
9 crimes. Instead of crime violence.

10 Any objection?

11 MS. ANDERSON: No, Your Honor.

12 SOLICITOR VALENZUELA: Your Honor, that's in the body  
13 of court two. So it's a crime of criminal domestic  
14 violence of a high and aggravated nature comma a crime of  
15 violence.

16 THE COURT: All right. Change it to violent crime.

17 SOLICITOR VALENZUELA: Yes, Your Honor..

18 THE COURT: All right. Motion to determine if the  
19 defendant stipulates that the victim was a household  
20 member.

21 MS. ANDERSON: Your Honor, it's the defense's  
22 position, I'm not going to stipulate as to elements the  
23 State has to prove. I think some of these are not going to  
24 be particular issues, the largest issues in the case; but  
25 my position on as the defense would be that that is still

1 the State's burden to prove. I have issues with the I  
2 guess A and B Motion or the Subsections under Motions the  
3 State has as to that being the method they're going to try  
4 to prove it, but at this point my decision would be not to  
5 stipulate to an element of occupancy. I think the State  
6 can establish that element by testimony, essentially their  
7 main witness and the alleged victim in the case.

8 SOLICITOR VALENZUELA: Your Honor, it is not for the  
9 defense to establish how I can prove an element if they're  
10 not going to stipulate to it and the State has a right to  
11 present whatever evidence they feel like they need to prove  
12 to this jury. We would also point out for the Court's  
13 attention that just two weeks ago we had a very similar  
14 case with criminal domestic violence with one of the  
15 elements that became an issue at the closing argument  
16 presented by the defense was whether the defendant was a  
17 household member of the victim and in that case the State  
18 had elicited testimony from the victims stating that the  
19 defendant was a household member. So we feel like past  
20 cases have shown that we need to make sure and prove this  
21 element much more than with just eliciting testimony. So  
22 we think that A and B puts the defense on notice that this  
23 is how we intend to prove it and if they feel like they  
24 need to make a strategic decision to avoid some of this  
25 being presented to the jury then they might decide to

1 stipulate to it.

2 THE COURT: All right.. I'm not sure what this means,  
3 Motion to Establish that the State intends. I don't know  
4 what that means.

5 SOLICITOR VALENZUELA: Your Honor, it's just to give  
6 notice to defense that that's how we intend to present this  
7 element. And if there are any issues that we can address  
8 those at pretrial. Or we would - the defendant pled guilty  
9 to criminal domestic violence 2d offense where the victim  
10 in this case was also the victim in that case. The  
11 indictment reads household member Sherika Robinson for the  
12 indictment that he pled. We feel like we would present  
13 evidence of either that the indictment that he pled guilty  
14 showing that he has admitted in the past in a criminal  
15 court that he is a household member of the victims. If the  
16 Court opposes that we can also elicit testimony from the  
17 victim that in a court - in a courtroom the defendant has  
18 admitted to being a household member of the victim and to  
19 being the father to her children. Additionally we would  
20 want to present a certified copy of a public defender  
21 application from 2008 where the defendant listed as his  
22 children Minor 1 , Minor 1 being  
23 the son of the victim. And finally the defendant has  
24 tattoos on his body which are the images and the names and  
25 the dates of birth of the victim's children, his children.

1 And we wanted to go ahead and address that pretrial if we  
2 have to prove this element and then ask the defendant to  
3 present his tattoos to the jury by slowing walking up and  
4 down and showing the jury his tattoos. Or we would take  
5 photos of those tattoos at this moment and admit the  
6 photographs instead of making the defendant expose his body  
7 in front of the jury.

8 THE COURT: Ms. Anderson.

9 MS. ANDERSON: Your Honor, I can say to the Court I  
10 don't think this is going to be a big issue in terms of a  
11 issue contingent in the case. I don't think one jury  
12 verdict - we don't know what the jury's base - was in fact  
13 that it's being argued in one case and a jury decided in  
14 one case that way. Basically I guess my issue is I don't -  
15 I don't agree to these methods of doing, I don't think it's  
16 going to be a big issue with the case. I'm not exactly  
17 sure how to respond to this. I haven't dealt with this  
18 being this much of an issue before. I still think that the  
19 State can elicit testimony as to prove this element. I  
20 would certainly object to admitting a prior guilty plea.  
21 My position has been - I think our position has been on the  
22 public defender application as those are sworn statements  
23 as well, I would object to tattoos. I don't think those  
24 are conclusive proof of paternity or a household member  
25 status. Again I think that the State has a route by which

1 to elicit testimony to prove this element. I was presented  
2 just this past week with other documentation from the  
3 State, I think photographs and were I believe birth  
4 certificates. I think the State - I don't think I'm  
5 inhibiting the State's ability to prove their case as they  
6 are allowed to do so by not stipulating or by not agreeing  
7 to these methods. I can reiterate as well just in candor  
8 to the Court I do not believe this will be the main issue  
9 of contention in this trial.

10 THE COURT: Ms. Valenzuela, do you have a copy of the  
11 Pinkard Case?

12 SOLICITOR VALENZUELA: Yes.

13 (DOCUMENTS RECEIVED UP AND REVIEWED BY THE COURT.)

14 THE COURT: I'll get back to that. That will come up  
15 later.

16 Motion to establish that the defendant's conviction,  
17 strong armed robbery, is a crime of violence or a violent  
18 crime.

19 That appears to me to be something that the judge  
20 would charge. Usually we have issues about those sort of  
21 things. That's for the judge and not the defendant to  
22 convey to the jury as to what are violent offenses under  
23 that statute. Now the greater question I guess is whether  
24 or not he will stipulate that he has that conviction.

25 MS. ANDERSON: Your Honor, I believe one of my motions

1 was to address how basically - I think the motion to limit  
2 in terms of how that is presented so that may be sort of  
3 bundled in with that as base on Your Honor's ruling on that  
4 and probably will be a decision we will be making there.

5 THE COURT: The legislature has made this an offense  
6 and they've set up certain elements and the State is  
7 required to prove it. So one way or the other the State  
8 has got to prove that.

9 MS. ANDERSON: Yes, Your Honor. And - -

10 THE COURT: I guess since the defendant is I don't  
11 want to say in peril but it's the defendant's choice to  
12 have how much flogging they want to allow the State to do  
13 that on that.

14 MS. ANDERSON: Your Honor, in just going into a little  
15 bit in the motion I had, I think my motion would be to  
16 limit that to allow the State to elicit testimony regarding  
17 stating as a crime of violence versus the actual offense of  
18 the conviction itself which in this case would be a strong  
19 armed robbery. Your Honor, because the element just  
20 requiring the crime of violence my position would be to  
21 move to limit that to understanding the State's allowed to  
22 elicit testimony in that because they're required to prove  
23 a crime of violence we move to limit the extent of the  
24 testimony about that.

25 THE COURT: The State shouldn't have any problem with

1 that should it?

2 SOLICITOR VALENZUELA: No. We agree with Your Honor  
3 that we could ask for strong armed robbery but we don't  
4 have any problem limiting it - -

5 THE COURT: You're not agreeing with me, I didn't - -

6 SOLICITOR VALENZUELA: I'm sorry, in how I thought you  
7 were interpreting the law ---

8 THE COURT: No.

9 SOLICITOR VALENZUELA: --- of - the element.

10 THE COURT: No. You can prove - Well of course if  
11 they don't - Well here's the dilemma of this action. If  
12 it's not stipulated then she's got to put somebody on the  
13 stand or something into evidence and that to be realistic  
14 and practical the word strong armed robbery will have to be  
15 uttered or shown. So unless it's stipulated they got to  
16 prove it and I don't know how they can't put somebody on  
17 the stand - I don't think - just to testify that yes he was  
18 convicted of a violent crime. They've got to show the  
19 records or a transcript or something. It would be hard to  
20 parse out what it was. We'll deal with that when we get to  
21 it too.

22 I admit or I understand they're concerned about  
23 letting the jury know a strong armed robbery. We'll have  
24 to figure a way around either a direct hit or we'll figure  
25 a way to make it a lesser direct hit.

1 All right, Number 7: Motion to preclude the defense  
2 entering hearsay statements by the defendant.

3 Do you know what that's addressing?

4 MS. ANDERSON: Your Honor, I can't. Whatever I  
5 believe the statement this time I can't say blanket I'm not  
6 sure what it's pertaining to at this point.

7 THE COURT: Ms. Valenzuela.

8 SOLICITOR VALENZUELA: I've given defense counsel  
9 statements that the defendant made to police officers. I  
10 do not intend to elicit testimony on those statements. If  
11 the defense counsel were to try to ask questions to elicit  
12 statements that the defendant made I would object stating  
13 that that is hearsay in that the defendant does not have -  
14 is not his own party opponent so it's not admissible. So I  
15 just wanted to establish it from the get go so that we know  
16 going into it. If the defendant wants the statements to be  
17 presented to the jury he will need to take the stand  
18 otherwise the defense counsel will not be able to elicit  
19 testimony on what he said to the officers from the officers  
20 statement.

21 THE COURT: I see that - When that comes up we'll have  
22 to deal with it. Also a motion to establish defendant's  
23 statement to the victim.

24 What do you have to say about that, Ms. Anderson?  
25 That's certainly a voluntariness statement. He's not in

1 custody and not elicited by interrogation.

2 MS. ANDERSON: Yes, Your Honor, from what I understand  
3 the victim may testify as to statements and whether or not  
4 the credibility being an issue as to those. I think there  
5 probably will be testimony that Mr. Davis was arrested on  
6 the day and I think that is certainly going to be testified  
7 to so I don't anticipate a huge issue as to what statements  
8 the victim alleges were made.

9 THE COURT: All right, Number 8. Number 9: Stipulate  
10 to the trespass.

11 MS. ANDERSON: Your Honor, I question - I think my  
12 issue would be as to the relevance of the trespassing  
13 charge. It's not one of the charges at issue here today.  
14 I don't think it would be admissible for impeachment  
15 purposes. I received a printout of a conviction from Rock  
16 Hill City Court as to a trespassing but at this point I  
17 probably question as to relevance to how that factors into  
18 these charges.

19 THE COURT: Yes, ma'am.

20 SOLICITOR VALENZUELA: Your Honor, this is a related  
21 trespassing charge so that day he was charged with  
22 trespassing and simple assault at the Magistrate level and  
23 then these four charges that we're facing today. He  
24 entered a guilty plea to that trespassing charge. If  
25 defense counsel were to argue that the defendant was not

1 present at the scene we feel like that he's already  
2 established and admitted that he was present at the scene  
3 this day at this time. Of course he's not admitting that  
4 he did any of the other things, we're proving those. And  
5 so we're asking for a stipulation that would only be  
6 entered if defense counsel were to open the door by  
7 claiming that the defendant was not there, and at that  
8 point we want that stipulation to go back to the jury. And  
9 if defense counsel never opens that door and claims that he  
10 wasn't there that day then it will be a non issue.

11 MS. ANDERSON: Your Honor, the defense does not plan  
12 to go that route so at this point I don't think it should  
13 be an issue.

14 THE COURT: We'll deal with that when it comes up.

15 I hate to keep deferring but I'm afraid that's where  
16 we are. The other motion by the defense to determine  
17 whether the State's complied with discovery.

18 SOLICITOR VALENZUELA: We have, Your Honor.

19 THE COURT: Prior record of Mr. Davis if he testifies.

20 SOLICITOR VALENZUELA: Your Honor, he has a conviction  
21 for strong armed robbery; that's two convictions, one from  
22 2005 and one from 2008, two separate convictions. Criminal  
23 conspiracy, petit larceny from 2003.

24 THE COURT: When was the conspiracy?

25 SOLICITOR VALENZUELA: I'm sorry, Your Honor.

1 THE COURT: The conspiracy was what year and date?

2 SOLICITOR VALENZUELA: It's from 2005. And then  
3 assault and battery second from 2011. That's it, Your  
4 Honor.

5 THE COURT: Okay. Witness list with criminal  
6 information so they can obtain the criminal records.

7 SOLICITOR VALENZUELA: I gave the three rap sheets to  
8 Ms. Anderson right before you came in, Your Honor, so I  
9 think we've complied with that.

10 THE COURT: Motion to sequester. That will be  
11 reciprocal. Prior bad acts under Lyle and 404. We sort of  
12 touched on that. Anything other than the trespass and the  
13 prior - it's trespass and prior criminal domestic violence.

14 SOLICITOR VALENZUELA: The trespass and criminal  
15 domestic violence and just - it appeared that defense  
16 counsel was saying that they did not think that the  
17 statement that he made "I'm gonna go to jail anyway so I  
18 might as well go to jail for something" doesn't fit into it  
19 but we wanted to make sure that we, you know, alerted the  
20 Court to the fact that we were eliciting testimony that he  
21 said that that night. It indicates that he was already in  
22 trouble for something else separate and aside from the  
23 incidents of this night. That was in my pretrial motion.

24 THE COURT: Yeah, I understand.

25 MS. ANDERSON: Your Honor, if I can follow the last

1 statement, but I think my main concern is Ms. Robinson's  
2 written statement, her separate written statement to police  
3 does reference other allegations of prior abuse. I think  
4 my main concern was to be to determine whether the State is  
5 going to attempt to elicit any testimony about any other  
6 alleged incidents not pertaining to this, these  
7 allegations, so that's my main concern before that door was  
8 opened on the stand and sort of determining that there were  
9 no other allegations in terms of that coming in.

10 SOLICITOR VALENZUELA: The only one would be the -  
11 where he pled guilty and she was a household member as one  
12 of the elements for the 2008 CVD. But we weren't going to  
13 go into any of the facts or other times that he abused her  
14 in front of the jury.

15 THE COURT: All right. We talked about testimony  
16 regarding criminal common strong armed robbery.

17 MS. ANDERSON: And, Your Honor, if I could. At this  
18 point having this sort of being raised and spoken to Mr.  
19 Davis, the defense will stipulate to a prior conviction for  
20 that so we'll stipulate to that for the purposes of the  
21 charge of possession of a weapon by a person previously  
22 convicted of a crime of violence, that he does have a prior  
23 crime of violence.

24 THE COURT: All right. Statements: Any statement  
25 other than the one he supposedly made to the victim?

1 SOLICITOR VALENZUELA: Only the ones made to the  
2 victim. Your Honor, we don't intend to use any that were  
3 made to law enforcement or any other - Actually yes. There  
4 is a jail phone call and in that jail phone call he's  
5 discussing - he's having a conversation with his girlfriend  
6 who is not the victim, so it would be those statements as  
7 well. And then the defense counsel also has a summary of  
8 what the defendant said to a separate witness when he was  
9 running from police. He was attempting to get into a car  
10 and he said something to the effect of "Yo, yo, let me in."  
11 Something like that, very - statements indicating that he  
12 wanted a ride in order to leave the location.

13 THE COURT: Who is that? Who's going to testify to  
14 that?

15 SOLICITOR VALENZUELA: That's Angela Covington. That  
16 is the woman that he tried to get into the car with; and  
17 then the jail phone calls we have, the detective from Rock  
18 Hill P.D. and then the victim as well.

19 THE COURT: Any observations on any of that, Ms.  
20 Anderson?

21 MS. ANDERSON: Well, Your Honor, I think that  
22 statement sort of I guess right off the bat I'm gonna have  
23 an issue with the detective being a witness to simply  
24 enter jail phone calls into evidence. I don't know if it's  
25 more appropriately dealt with at the time the State intends

1 to --

2 THE COURT: Might as well go ahead.

3 How you gonna get it in through the objection?

4 SOLICITOR VALENZUELA: Your Honor, the detective is  
5 going to lay the basic foundation for the fact that - how  
6 the system works at Rock Hill P.D., that he's listened to  
7 the phone call on the system and has listened to the CD  
8 that we're admitting into evidence, and that that phone  
9 call has not been altered or amended in any way and that he  
10 does not have access to amend the phone call on the actual  
11 Rock Hill P.D. system. He's also going to testify that the  
12 defendant was in the jail at this date and time that the  
13 jail phone call was made.

14 THE COURT: How are you going to tie this defendant to  
15 that call?

16 SOLICITOR VALENZUELA: And then the victim has  
17 listened to the phone call and I played the phone call for  
18 her and ask her if she would just tell me if she recognized  
19 anybody's voice. She has known the defendant for nine  
20 years and she would testify that based on knowing the  
21 defendant for nine years, obviously talking to him various  
22 times throughout this nine years, she was able to identify  
23 that that was his voice. She was also able to identify the  
24 person he was calling as the defendant's girlfriend because  
25 she has known her and has had conversations with her and is

1 able to recognize the voice. And in addition, in the phone  
2 call the caller, the girlfriend, names the defendant. She  
3 calls him out by name and says "Dawone, what are you  
4 talking about, or Dawone, et cetera, et cetera." The  
5 detective would be able to testify that there were no other  
6 people in the Rock Hill city jail with either the first or  
7 last name that was Dawone.

8 THE COURT: Well you might want to do that on a  
9 proffer before we do it before the jury. Sounds like a  
10 pretty good foundation but we'll see.

11 MS. ANDERSON: Yes, Your Honor, we would request a  
12 proffer. I would have some issues with that motion.

13 THE COURT: All right.

14 MS. ANDERSON: But just to clarify completely because  
15 I was given a summary of an interview by Detective Welch  
16 with Mr. Davis and also in an email format of other  
17 statements toward a K 9 officer just to, I think my  
18 understanding is the State is indicating none of those are  
19 going to be elicited.

20 SOLICITOR VALENZUELA: Correct.

21 THE COURT: Does the Defense have any problem with the  
22 State's Voir Dire request?

23 MS. ANDERSON: No, Your Honor.

24 THE COURT: The Defense have any - State have any to  
25 the Defense?

1 SOLICITOR VALENZUELA: If I could just have a moment,  
2 Your Honor.

3 THE COURT: All right.

4 (PAUSE AT 2:34 P.M.)

5 SOLICITOR VALENZUELA: Your Honor, as to Question No.  
6 7, I think we can cover that by just cutting it out and  
7 using where Ms. Anderson starts for example "Is there any  
8 juror that has a family member of close personal friend who  
9 was involved in a domestic violence situation and would  
10 this prevent you from being fair and impartial?"

11 THE COURT: Okay. Anything else before we get the  
12 jury up?

13 SOLICITOR VALENZUELA: Your Honor, regarding the  
14 Motion to Sequester, we would ask that my case agent,  
15 Detective Josh Welch, be able to remain in the courtroom.

16 THE COURT: Yes.

17 SOLICITOR VALENZUELA: And the victim, Sherika  
18 Robinson.

19 THE COURT: Yes Both of them can stay.

20 All right let's get the jury up.

21 THE COURT: They're not here until 3:00? Okay.

22 MS. WEAVER: Your Honor, there is a plea with Steve  
23 Schusterman, if we can take it at this time?

24 THE COURT: All right. That will be fine.

25 SOLICITOR VALENZUELA: Your Honor, Mr. Springs will be

1 sitting in with me tomorrow. He ask me to request that you  
2 tell his name to the jury panel whenever you're - I have it  
3 on the witness list, I just wanted to make sure I brought  
4 that to your attention.

5 (COURT HEARS PLEA IN THE MATTER OF STATE VERSUS AMANDA  
6 FINLEY WITH ATTORNEY STEPHEN SCHUSTERMAN AND SOLICITOR  
7 WEAVER.)

8 THE COURT: Let me know when the jury is here.

9 (COURT AT EASE AT 02:46 P.M..)

10 (DEFENDANT DAWONE DAVIS REENTERS COURTROOM AT 03:12  
11 P.M..)

12 (JURY ENTERS COURTROOM AT 03:14 P.M..)

13 (COURT BACK IN SESSION AT 03:19 P.M..)

14 THE COURT: Members of the jury panel, I am John  
15 Hayes.. You of course met Judge Alford, along with Judge  
16 Alford I'm the judge here in York and Union counties. I'm  
17 now starting the first trial of the week in this courtroom  
18 and it is the case of the State versus DAWONE Quintet  
19 Davis.

20 Mr. Davies, will you please stand?

21 (DEFENDANT STOOD.)

22 THE COURT: This is Dawone Quintal Davis. He is  
23 represented by Ms. Anderson and Ms. Inzerillo.

24 (DEFENSE ATTORNEYS STOOD.)

25 THE COURT: You may be seated. The State will be

1 represented by Ms. Valenzuela and Ms. Weaver from the  
2 Solicitor's Office.

3 (SOLICITORS STOOD.)

4 THE COURT: You may be seated. Mr. Davis is charged  
5 with several charges. The fact that there are several  
6 charges does not mean he is guilty of any of them; it's  
7 just that the State based on their alleged facts believe  
8 those alleged facts which they have to prove beyond a  
9 reasonable doubt give rise to different criminal offenses  
10 and that's what they've charged him with.

11 One is criminal domestic violence of a high and  
12 aggravated nature. One is possession of a firearm during  
13 the commission of a violent crime. One is pointing or  
14 presenting a firearm. And one is possession of a handgun  
15 by a person convicted of a crime of violence.

16 All of these are alleged to have occurred here in York  
17 County on March 15th of this year, 2012. The alleged  
18 victim is Sherika Nicole Santana Robinson. It's alleged  
19 that at the time these occurred Ms. Robinson was a  
20 household member with the defendant and that he committed  
21 what is called criminal domestic violence of a high and  
22 aggravated nature with Ms. Robinson being the victim in  
23 that charge. And its alleged in the second count in that  
24 indictment that at the time he was in possession of a  
25 revolver, a handgun.

1           It's also alleged that at that time he pointed the  
2 handgun at Ms. Robinson and it's alleged that at that time  
3 he was not - he was not supposed to have a firearm because  
4 under Section 16-23-30 of South Carolina law he was not to  
5 be in possession of a firearm at all and he's charged with  
6 that.

7           Where was the location of this?

8           SOLICITOR VALENZUELA: It was in Rock Hill, Your  
9 Honor.

10          THE COURT: Well a little more specific. An address.

11          SOLICITOR VALENZUELA:                                 in Rock Hill.

12          THE COURT:           ?

13          SOLICITOR VALENZUELA: Kyger.

14          THE COURT:                                 is where this allegedly  
15 occurred. First: Are any of you related by blood or  
16 marriage to any of the five individuals to whom you've just  
17 been introduced; the four attorneys or Mr. Davis, if so,  
18 please stand?

19                 No one stands.

20          Do any of you know Mr. Davis? Have you had any  
21 dealings with him, or know him from any way whatsoever, if  
22 so, please stand?

23                 (NO ONE STANDS.)

24          THE COURT: Do any of you know anything about this  
25 case? Have you heard about it from any source whatsoever;

1 or have any of you formed or expressed any opinion about  
2 any matter or issue which would be involved in this type of  
3 case, if so, please stand?

4 No one stands.

5 Are any of you members of the Grand Jury which passed  
6 on this indictment - these indictments at an earlier time,  
7 if so, please stand?

8 No one stands.

9 Are any of you or have any of you in the past been  
10 represented by any of the four attorneys or their offices,  
11 office of the Solicitor Mr. Kevin Brackett; or the office  
12 of the Public Defender Mr. Harry Dest, if so, please stand?

13 No one stands.

14 Are any of you on the jury panel friends or  
15 acquaintances, go to church with, belong to clubs with,  
16 lives in your knowledge the neighborhood of anyone who is  
17 employed by Mr. Brackett our Solicitor or Mr. Dest our  
18 Public Defender, if so, please stand?]

19 No one stands.

20 Do any of you hold any type of philosophical or  
21 religious or any belief whatsoever that would prevent you  
22 from being fair and impartial in this particular trial?  
23 I've told you who the defendant is and I've told you those  
24 things of which he's charged. Do any of you have any  
25 religious, philosophical or any other reasons that would

1 prevent you from serving on this jury as a fair and  
2 impartial juror, if so, please stand?

3 No one stands.

4 Are any of you or a member of your immediate family  
5 involved in law enforcement at any level? Anything from  
6 MP's to local sheriff or police officer. Or are any of you  
7 or a member of your family involved in prosecuting criminal  
8 cases; anything such as a solicitor, a US attorney, Judge  
9 advocate General, anything like that, if so, please stand?

10 (JURORS STOOD.)

11 THE COURT: All right. Those that stand what we'll do  
12 is we'll try to work our way from the front to the back.

13 If you'll just give me your name and number and tell  
14 me how you're related or whatever and then remain standing  
15 and I'll go to the next person.

16 A. My name is Kelly Jordan, one of eight, and my brother  
17 is a state court judge and my husband is a police officer.

18 THE COURT: Where is he a police officer?

19 A. In - Outside of Atlanta, Fulton County.

20 THE COURT: Okay. Remain standing.

21 Yes, sir.

22 A. Daniel Hayes, Juror 85. My son is a police officer in  
23 Rock Hill.

24 THE COURT: All right. Is this a city case? It is  
25 not. All right.

1 SOLICITOR VALENZUELA: It is, Your Honor.

2 THE COURT: Well I'll excuse you from serving then  
3 since your son works for the agency that is involved in  
4 this case so if you'll just be seated.

5 Yes, ma'am, your name and number.

6 A. Stacy Whitman, 240. My brother is a captain in the  
7 Fort Mill Police Department.

8 THE COURT: That's a different entity.

9 Yes, sir.

10 No, you remain standing. No, ma'am.

11 Yes, sir.

12 A. Kevin Stricklin, Juror No. 209. My sister is a  
13 district - an assistant district attorney in Tennessee.

14 THE COURT: All right. The three of you standing, if  
15 this relationship to someone involved in the law  
16 enforcement arena, if that would prevent you from being  
17 fair and impartial, please raise your right hand?

18 None of them do.

19 Now you may be seated and thank you.

20 Are any of you or members of your immediate family  
21 contributors to, members of such organizations as Mother's  
22 Against Drunk Driver's, Student's Against Drunk Drivers,  
23 Citizens Against Violence, Trooper's Association, Sheriff's  
24 Association, Fraternal Order of Police, if so, please  
25 stand?

1 No one stands.

2 The next question has some sensitivity to it so I'm  
3 not going to ask you to get up and tell me out loud in  
4 front of everyone why you're standing. Anybody that has to  
5 stand we'll take care of that without you having to say too  
6 much about whatever makes you stand.

7 The question is: Have any of you or a member of your  
8 family been either the victim of or charged with criminal  
9 domestic violence, if so, please stand?

10 No one stands.

11 Have any of you worked with either the solicitor's  
12 office or the public defender's office, been a witness for,  
13 helped out with any sort of activities, counselor or  
14 assistant or anything like that, if so, please stand?

15 No one stands.

16 The following are possible witnesses in this case. I  
17 do not know that all will testify but these are the  
18 possible witnesses. If any of you know any of these  
19 individuals and of course if you are related by blood or  
20 marriage, please stand. Sherika Robinson, Ernestine Evans,  
21 Angela Covington. Rock Hill Police Department, Jonathan  
22 Moreno, Justin Cook, Joseph Cha - I'm sorry, Josh Welch.  
23 The Martha Parrish and Lydia Lender. Do any of you know  
24 any of those individuals, are related by blood or marriage,  
25 or a close personal friend or acquaintance with them, if

1 so, please stand?

2 No one stands.

3 Anything further from the State?

4 SOLICITOR VALENZUELA: No, Your Honor.

5 THE COURT: Anything further from the Defense?

6 MS. ANDERSON: Your Honor, just to - I think that the  
7 State had indicated Mr. Springs would be sitting on - -

8 THE COURT: Oh yes. That's right. I'm glad you  
9 reminded me. Ms. Weaver is sitting with Ms. Valenzuela  
10 today. Tomorrow another solicitor will be sitting with her  
11 instead of Ms. Weaver; that's Mr. E.B. Springs who is an  
12 associate of an assistant, I don't know the exact title of  
13 Mr. Springs but he is with the Solicitor's Office. Are any  
14 of you related by blood or marriage or a close personal  
15 friend or acquaintance with Mr. Springs, if so, please  
16 stand?

17 No one stands.

18 Finally, do any of you know of any reason whatsoever  
19 why you could not or should serve as a fair and impartial  
20 juror in the trial of this particular case, if so, please  
21 stand?

22 No one stands.

23 Now the way we draw jurors in this type of court is as  
24 follows: If you hear your name called please come forward  
25 and stand by the bailiff and turn back and face the way you

1 came. Face the table first where the solicitor's are  
2 seated. One of them will say either present the juror or  
3 excuse the juror. If she says excuse the juror, you return  
4 to your seat. If she says present the juror, turn and face  
5 the table where Mr. Davis and his attorneys are seated and  
6 one of those attorneys will say either swear the juror  
7 which means you will take a seat in the jury box and the  
8 bailiff will assist you in doing that. Or she will say  
9 excuse the juror which means you will return to your seat.  
10 When you come forward please bring with you, if you have a  
11 pocketbook or a book or umbrella or anything like that go  
12 ahead and bring it with you when you come up so that if you  
13 are seated you will not have to go back and retrieve it.  
14 The strikes are five and five and we'll draw an alternate  
15 and the strikes will be one and two.

16 Please come forward if you hear your name called.

17 MADAME CLERK: Number 228, Mary R. Von Ins.

18 (WHITE FEMALE COMING FORWARD.)

19 MADAME CLERK: What say you for the State?

20 SOLICITOR VALENZUELA: Please present this juror?

21 MADAME CLERK: Defense?

22 MS. ANDERSON: Please seat this juror.

23 MADAME CLERK: Have a seat in the jury box.

24 Number 231, Richard Warren.

25 (WHITE MALE COMING FORWARD.)

1 MADAME CLERK: What say you for the State?

2 SOLICITOR VALENZUELA: Please present this juror.

3 MADAME CLERK: Defense?

4 MS. ANDERSON: Please seat this juror.

5 MADAME CLERK: Sit in the jury box.

6 Number 204, Amy Spear.

7 (WHITE FEMALE COMING FORWARD.)

8 MADAME CLERK: What say you for the State?

9 SOLICITOR VALENZUELA: Please present this juror.

10 MADAME CLERK: Defense?

11 MS. ANDERSON: Please seat this juror.

12 MADAME CLERK: Have a seat in the jury box.

13 Number 225, Kellie Tucker.

14 (WHITE FEMALE COMING FORWARD.)

15 MADAME CLERK: What say you for the State?

16 SOLICITOR VALENZUELA: Please present this juror.

17 MADAME CLERK: Defense?

18 MS. ANDERSON: Please seat this juror.

19 MADAME CLERK: Number 32, Robert Campbell.

20 (WHITE MALE COMING FORWARD.)

21 MADAME CLERK: What say you for the State?

22 SOLICITOR VALENZUELA: Please present this juror.

23 MADAME CLERK: Defense?

24 MS. ANDERSON: Please seat this juror.

25 MADAME CLERK: Number 221, David Thompson.

1 (WHITE MALE COMING FORWARD.)

2 MADAME CLERK: What say you for the State?

3 SOLICITOR VALENZUELA: Please present this juror.

4 MADAME CLERK: Defense?

5 MS. ANDERSON: Please seat this juror.

6 MADAME CLERK: Have a seat in the jury box.

7 Number 31, Sonya Nunez.

8 (BLACK FEMALE COMING FORWARD.)

9 MADAME CLERK: What say you for the State?

10 SOLICITOR VALENZUELA: Please present this juror.

11 MADAME CLERK: Defense?

12 MS. ANDERSON: Please seat this juror.

13 MADAME CLERK: Number 33, Ronald Campbell.

14 (WHITE MALE COMING FORWARD.)

15 MADAME CLERK: What say you for the State?

16 SOLICITOR VALENZUELA: Please present this juror.

17 MADAME CLERK: Defense?

18 MS. ANDERSON: Please seat this juror.

19 MADAME CLERK: Have a seat in the jury box.

20 Number 140, Thomas Metz.

21 (WHITE MALE COMING FORWARD.)

22 MADAME CLERK: What say you for the State?

23 SOLICITOR VALENZUELA: Please present this juror.

24 MADAME CLERK: Defense?

25 MS. ANDERSON: Please excuse this juror.

1 MADAME CLERK: You are excused in this case.  
2 Number 209, Kevin Stricklin.

3 (WHITE MALE COMING FORWARD.)

4 MADAME CLERK: What say you for the State?

5 SOLICITOR VALENZUELA: Please present this juror.

6 MADAME CLERK: Defense?

7 MS. ANDERSON: Please excuse this juror.

8 MADAME CLERK: You're excused in this case.

9 Number 174, Dam Redden.

10 (WHITE MALE COMING FORWARD.)

11 MADAME CLERK: What say you for the State?

12 SOLICITOR VALENZUELA: Please present this juror.

13 MADAME CLERK: Defense?

14 MS. ANDERSON: Please seat this juror.

15 MADAME CLERK: Have a seat in the jury box.

16 Number 187, Kathleen Saunders.

17 (WHITE FEMALE COMING FORWARD.)

18 MADAME CLERK: What say you for the State?

19 SOLICITOR VALENZUELA: Please present this juror.

20 MADAME CLERK: Defense?

21 MS. ANDERSON: Please seat this juror.

22 MADAME CLERK: Have a seat in the jury box.

23 Number 65, Kris Fairchild.

24 (WHITE MALE COMING FORWARD.)

25 MADAME CLERK: What say you for the State?

1 SOLICITOR VALENZUELA: Please excuse this juror.

2 MADAME CLERK: You're excused in this case.

3 Number 120, Ashleigh Ledford.

4 (WHITE FEMALE COMING FORWARD.)

5 MADAME CLERK: What say you for the State?

6 SOLICITOR VALENZUELA: Please excuse this juror.

7 MADAME CLERK: You're excused in this case.

8 Number 5, Tavera Anthony-Smith.

9 (BLACK FEMALE COMING FORWARD.)

10 MADAME CLERK: What say you for the State?

11 SOLICITOR VALENZUELA: Please excuse this juror.

12 MADAME CLERK: You're excused in this case.

13 Number 27, Susan K. Bryant.

14 (WHITE FEMALE COMING FORWARD.)

15 MADAME CLERK: What say you for the State?

16 SOLICITOR VALENZUELA: Please present this juror.

17 MADAME CLERK: Defense?

18 MS. ANDERSON: Please seat this juror.

19 MADAME CLERK: Have a seat in the jury box.

20 Number 24, Linda Brown.

21 (WHITE FEMALE COMING FORWARD.)

22 MADAME CLERK: What say you for the State?

23 SOLICITOR VALENZUELA: Please present this juror.

24 MADAME CLERK: Defense?

25 MS. ANDERSON: Please seat this juror.

1 MADAME CLERK: Have a seat in the jury box.

2 THE COURT: The alternates strikes will be one and  
3 two.

4 MADAME CLERK: Number 34, Daniel Canfield.

5 MADAME CLERK: What say you for the State?

6 SOLICITOR VALENZUELA: Please present this juror.

7 MADAME CLERK: Defense?

8 MS. ANDERSON: Please excuse this juror.

9 MADAME CLERK: You're excused in this case.

10 Number 17, William Berry.

11 (WHITE MALE COMING FORWARD.)

12 MADAME CLERK: What say you for the State?

13 SOLICITOR VALENZUELA: Please present this juror.

14 MADAME CLERK: Defense?

15 MS. ANDERSON: Please seat this juror.

16 MADAME CLERK: Have a seat in the jury box.

17 THE COURT: Anything from the State involving the  
18 striking of the panel?

19 SOLICITOR VALENZUELA: No, Your Honor.

20 THE COURT: Anything from the Defense?

21 MS. ANDERSON: No, Your Honor.

22 THE COURT: All right those of you who were not chosen  
23 I'm going to allow you to leave. Please do quietly so I  
24 can start working with this panel. Call back tonight after  
25 7:00 and whatever instructions you receive whether to call

1 or to report please follow those. And I hope to see you  
2 more during this term, so have a pleasant evening. Again  
3 you may leave but please do so quietly.

4 (JURY POOL EXCUSED AT 03:44 P.M..)

5 THE COURT: Those of you who were chosen if you'll  
6 stand and raise your right hand, the Clerk will administer  
7 the oath.

8 (JURY PANEL SWORN AT 03:45 P.M..)

9 THE COURT: You may be seated.

10 Mr. Thompson, you've chosen a nice seat, you'll be the  
11 foreperson so that's where the foreperson sits.

12 And Mr. Berry, where you are seated is where the  
13 alternate always sits. There is no other assigned seating,  
14 just those two, the rest of you just when you come in just  
15 have a seat wherever - I mean go all the way to the end of  
16 course so the rest of you can follow - not the very end but  
17 there is no assigned seating for anybody but those two.

18 I'm going to chat with you just a minute and then I'll  
19 turn the case over to the attorneys. The attorneys have  
20 the right but no obligation to come before you at this time  
21 and make what are called opening statements. These are not  
22 testimonies by the lawyers, they are not witnesses so they  
23 cannot give you any testimony. And they are not at this  
24 time - the attorneys are not - arguing their case. That is  
25 they are not presenting you with an argument as to why your

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1 verdict should be a certain verdict. They at this time  
2 will be simply outlining the trial for you. They will tell  
3 you more about what this case entails than I have, kind of  
4 a blueprint or road map of the trial.

5 Mr. Davis has pled not guilty to these charges and to  
6 these charges he is presumed innocent as to these charges.  
7 Anyone charged with any offense in our system is presumed  
8 innocent and need not prove their innocence. The State has  
9 to prove Mr. Davis's guilt beyond a reasonable doubt as to  
10 one or more or any of these charges before you could  
11 convict him and find him guilty. As I said he is innocent  
12 and need not prove his innocence. And as I mentioned  
13 earlier, the fact that there are several - I think four  
14 separate charges and does not give the State any greater  
15 impact in their case. They just as I've already said  
16 determine from the facts as they see it and as they allege  
17 that they had charged - and that's all it is is a charge -  
18 Mr. Davis with several separate incidences.

19 You are the sole judges of the facts in this case. I  
20 am the sole judge of the law. You must take accept and  
21 apply the law as I charge it even if you think I charge the  
22 law in error or you think the law should be different. I  
23 have three primary jobs. One is to be the logistics  
24 person, make sure we appoint a foreperson, make sure we  
25 take breaks, make sure that only one person is talking at

1 the time. Those kind of logistical things. I also have  
2 the task of ruling on evidence. If one side believes one  
3 certain matter should be allowed to come into the record  
4 for your consideration and the other based on some legal  
5 rule or principle believes that evidence should not be  
6 allowed it is up to me to make a determination.

7 My third job is that I am the sole judge of the law as  
8 I've already mentioned. I am giving you some legal  
9 principles now, during the trial I may give you some legal  
10 principles and at the end of the trial I will give you a  
11 concise and comprehensive charge on the law that you are to  
12 apply to the facts as you determine them to be. You are  
13 not to infer from anything I say or do at any time during  
14 this trial as indicating an opinion of mine on the facts.  
15 Our law does not allow a trial judge to formulate or  
16 express to a jury any opinion on the facts. It is solely  
17 your job to examine the evidence, give to the evidence the  
18 effect the value the weight and the truth you believe it  
19 should have. In doing this use your common sense, your  
20 sense of logic, your sense of reason; use your experiences  
21 in life.

22 In determining the true facts you necessarily must  
23 judge the credibility, that is, the believability of the  
24 witnesses who testify. In assessing believability use  
25 those things I just talked to you about. Use those things

1 that you in your day to day life find as being indicators  
2 of truthfulness in an individual. And you can use certain  
3 evaluators, a witness's demeanor, how they act on the  
4 stand. Are they hesitant or straightforward? Is their  
5 testimony consistent or inconsistent? Consider whether  
6 they have any bias or prejudice, that is, do they have any  
7 reason to help or hurt one side or the other? And you can  
8 consider the opportunity a witness had to know those things  
9 to which they testified. All these things you consider,  
10 determine the true facts, apply the law, and you will be in  
11 a position to return a verdict that speaks the truth.

12 You are not to discuss the case or try to make up your  
13 own mind until we reach the point in the trial where I  
14 instruct you to jointly deliberate and return a unanimous  
15 verdict. Prior to that time you are not equipped with the  
16 tools you need to make a fair and reasonable decision.

17 While you are outside the courtroom do not let any one  
18 discuss this case with you. If anyone tries to discuss the  
19 case with you, tell them you cannot do so as you are a  
20 juror. And if anyone tries to discuss this case with you,  
21 report that back to me, hopefully giving me that person's  
22 identity as I will have to take action against someone  
23 talking - trying to talk to a seated juror.

24 Do not let yourself be exposed to any news coverage if  
25 there is any. I don't know that there will be. Do not

1 read anything, listen to anything, or watch anything that  
2 could remotely deal with this trial. Your verdict must be  
3 based solely on the evidence and the law delivered to you  
4 here in the courtroom. Do not go on line or do any kind of  
5 research whatsoever. There is no need for you to do any  
6 research and it would be improper for you to go to any  
7 social media or anything like Google or Cloud or anything  
8 to find out any information anything that could remotely  
9 deal with this trial. You don't need to look up and you  
10 are not to look and you cannot look up or you will be  
11 violating your oath anything about court procedure,  
12 anything about Mr. Davis, anything about the charges,  
13 anything about me, anything about the attorneys. Your  
14 verdict must be - -

15 (COUGHING COMING FROM JURY BOX.)

16 THE COURT: Do you need a cup of water?

17 MADAME FOREPERSON: Please.

18 THE COURT: Your verdict must be based on what you  
19 hear and see as far as evidence in the courtroom and my  
20 charge on the law. You don't need to take any notes.  
21 Please pay attention. If you can't see or you can't hear  
22 let me know. Cup your ear, give me a voice raising gesture  
23 or a nudging gesture and I'll try to make sure that that's  
24 corrected whatever is interfering with your ability to see  
25 and hear. We take breaks about every hour and a half. I

OPENING STATEMENT: BY SOLICITOR VALENZUELA

-41-

1 find that is a comfortable time to take breaks. But if any  
2 of you need a break at any time, just raise your right hand  
3 and with no questions ask we'll take a break.

4 You cannot pay attention if you are not comfortable so  
5 if you need a break, just let me know and we'll take a  
6 break.

7 And I extend that to counsel and to Mr. Davis. While  
8 we want to move the case along, we're not in such a hurry  
9 we don't want anyone to not be able to pay attention or be  
10 in a discomfort and we'll take a break if that needs to be  
11 done. Now, I told you a minute ago that the attorneys have  
12 a right to make these opening statements and I'm now going  
13 to turn it over to them to do that.

14 SOLICITOR VALENZUELA: It starts with a heart beat  
15 picking up speed and then the hair on the back of the neck  
16 standing up; the palms getting sweaty, the skin getting hot  
17 and that feeling in the pit of the stomach, punching; what  
18 over whelming fear looks like. And that's the kind of fear  
19 that Sherika Robinson was feeling when the father of her  
20 children, this man, the defendant Dawone Davis beat her and  
21 strangled her and held a gun up to her telling her things  
22 like the devil told me to come here and dress my family.  
23 Telling her things like I'm gonna do you like my homey did  
24 his baby's mom; threatening to kill her.

25 (SOLICITOR PATTING CHEST.)

OPENING STATEMENT: BY SOLICITOR VALENZUELA

-42-

1 SOLICITOR VALENZUELA: And in the early morning hours  
2 of March 15th of this year when Sherika Robinson was  
3 finally able to get away from the man and she called the  
4 police and police pulled up to her house the defendant ran  
5 out that back door. And you'll hear testimony today about  
6 the different places that he went to trying to get away  
7 from the police. And about how eventually a K 9 Unit was  
8 called out to the victim's apartment - to the victim's  
9 home, to track down the defendant. And how that K 9 and  
10 the officers with that dog - K 9 Molly - tracked the  
11 defendant from the victim's home across York Tech campus,  
12 across Anderson Road, and finally, over to some corporate  
13 buildings where K 9 Molly identified the defendant as the  
14 same scent that she had tracked from the victim's home.

15 And yes, after fleeing from the defendant's - from the  
16 victim's home across York Tech campus and Anderson Road and  
17 wooded areas around these corporate buildings, when the  
18 officers finally apprehended the defendant he no longer had  
19 that gun on him at that time.

20 You're here today because it is illegal to point a  
21 firearm at another person. You're here today because it is  
22 illegal to threaten, to cause bodily harm to a household  
23 member with a weapon. Or to assault someone in a manner  
24 that would reasonably cause that person to fear imminent  
25 serious bodily injury and harm. I came here to dress my

OPENING STATEMENT: BY SOLICITOR VALENZUELA  
BY MS. ANDERSON

-43-

1 family in black.

2 (SOLICITOR PATTING ON CHEST.)

3 SOLICITOR VALENZUELA: Now there's two weapons charges  
4 that the defendant is facing that the State has charged him  
5 with. One is that while committing a violent crime he used  
6 a weapon, or what appeared to be a weapon; a handgun in  
7 this case. Separately he is also charged with having in  
8 his possession a weapon after having been convicted of a  
9 crime of violence. I want to make sure that I explain  
10 those so there is four charges here. Pointing and  
11 presenting, criminal domestic violence of a high and  
12 aggravated nature, use of a weapon during the commission of  
13 a violent crime. That would be the criminal domestic  
14 violence of a high and aggravated nature. And possession  
15 of a weapon after having been convicted of a crime of  
16 violence.

17 I thank you for your attention this afternoon and  
18 throughout the trial. Thank you.

19 MS. ANDERSON: May it please the Court.

20 THE COURT: Yes, ma'am.

21 MS. ANDERSON: Ladies and gentlemen, I'm going to  
22 stand up in front of you right now and tell you that yes,  
23 on March 15th, something did happen. What did happen was a  
24 simple criminal domestic violence. What did not happen was  
25 a criminal domestic violence of a high and aggravated

OPENING STATEMENT: BY MS. ANDERSON

-44-

1 nature, or pointing or presenting, or any gun possession  
2 charge. Yes, ladies and gentlemen, we are before you to  
3 concede that criminal domestic violence did happen. Ms.  
4 Robinson did suffer an injury. The observations of the  
5 police officers corroborate that and I anticipate that  
6 you'll hear testimony about that. But what didn't happen  
7 and what ultimately the State cannot prove beyond a  
8 reasonable doubt are the other charges. Because as you  
9 heard the State reference no gun was found. The gun that  
10 was alleged by Ms. Robinson never located despite police  
11 being on the scene, despite K 9 being on the scene. I  
12 submit to you that there is no witness that the State calls  
13 to walk through those doors, walk up to the stand carrying  
14 in their hands any gun because no gun was ever found.

15 You've already heard reference and if you've had any  
16 exposure to any sort of television, movies, any dealings  
17 with the court system, you hear the term beyond a  
18 reasonable doubt talked about. It's one of those things  
19 everybody knows the phrase. And it's because it's  
20 mentioned so often because its such a critical - incredible  
21 important part of our system. And the judge has already  
22 referenced on it a little and he will charge you the law  
23 and then the judge's law is what you follow. I give this  
24 explanation to you just as sort of an illustration that  
25 might be something that helps you to think about as you

1 think through this case, as you listen to the testimony.

2 The State has the burden of proof of each and every  
3 element of each and every charge beyond a reasonable doubt.  
4 And the law has defined that for us as the kind of doubt  
5 that would cause a person to hesitate to act. Perhaps the  
6 kind of law - doubt which causes a person to hesitate to  
7 take a single step forward. And there are various  
8 illustrations we use to sort of explain this without using  
9 legal terms or something that sounds like just lawyers talk  
10 about in the office. And some of them might seem quite  
11 silly but I do think they illustrate what that concept  
12 really is about. And I thought one that made sense was to  
13 use an illustration I heard about before is about pole  
14 vaulting which may again say how does that relate? But  
15 it's the Olympics and I don't know about you I end up  
16 watching the Olympics the whole time their on. And one of  
17 the sports that you see in the Olympics that you might not  
18 see otherwise is pole vaulting. And essentially I note the  
19 finer points of pole vaulting but you have a bar set up and  
20 it's a very high bar. And you have a runner or the pole  
21 vaulter running toward the bar with their pole, planting  
22 their pole and attempting to clear the bar. And what I do  
23 understand about that is you have to clear the bar  
24 completely. It doesn't matter if you're an inch below it,  
25 doesn't matter if you touch it but knock it off as you go

OPENING STATEMENT: BY MS. ANDERSON

-46-

1 past it doesn't count. In order for it to count you have  
2 to clear the bar completely.

3 And, ladies and gentlemen, in our justice system the  
4 State is the pole vaulter. They have to clear a very high  
5 bar, a very high standard of proof completely, cleanly. It  
6 doesn't matter how close they get, if they do not clear the  
7 bar completely it is your duty as jurors to find not  
8 guilty. Because as the judge told you Mr. Davis is  
9 presumed innocent and the burden is on the State to bring  
10 in the evidence, to bring in the testimony, to bring in the  
11 witnesses to prove their case. And it doesn't matter how  
12 far they come, how close they come, if they don't clear the  
13 bar then they haven't met their burden of proof and your  
14 verdict is not guilty.

15 You will hear various testimony, you will hear  
16 arguments made, things presented, closing arguments  
17 presented to you. What I would urge you to do is what I  
18 would say is to focus your attention on this case what I  
19 think is the key issue in this case and that is the State's  
20 allegation of a gun. Listen to what witnesses say about  
21 it. But listen to what witnesses don't say about that  
22 allegation. Listen to what isn't presented to you because  
23 that is just as important as what is presented to you.  
24 Think about as you listen to witnesses what is  
25 corroborated. In other words, what is supported. Maybe

OPENING STATEMENT: BY MS. ANDERSON

-47-

1 from multiple sources what's consistent. What isn't  
2 corroborated. What is based solely on one person's  
3 statement unsupported by any other evidence.

4 Now I ask you, ladies and gentlemen, to think  
5 carefully about that and focus your attention on that  
6 because it is I submit to you that the State cannot prove  
7 any allegation involving a gun beyond a reasonable doubt.  
8 And that is why at the end of this trial I will stand up in  
9 front of you and again concede yes a simple criminal  
10 domestic violence occurred. The pointing and presenting  
11 has not been proven beyond a reasonable doubt. A high and  
12 aggravated criminal domestic violence has not been proven  
13 beyond a reasonable doubt. And any gun possession charge  
14 has not been proven beyond a reasonable doubt. And on  
15 those charges I ask you to find a verdict finding Dawone  
16 Davis not guilty. Thank you.

17 THE COURT: All right. You may call your first  
18 witness.

19 SOLICITOR VALENZUELA: The State calls Detective Josh  
20 Welch.

21 (WHEREUPON: JOSH WELCH, BEING  
22 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

23 DIRECT EXAMINATION

24 DETECTIVE JOSH WELCH BY SOLICITOR VALENZUELA:

25 Q. Good afternoon, Detective Welch. Can you state your

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full name for the record please?

A. Yes. My name is Josh Welch.

Q. Now where do you work, Detective?

A. I work for the Rock Hill Police Department.

Q. And how long have you been a police officer?

A. I been a police officer for sixteen years.

Q. How long have you - Have all sixteen years been spent at the Rock Hill Police Department?

A. No. My first two years were in Mount Holly, North Carolina and my last fourteen have been with the Rock Hill Police Department.

Q. And what do you do with the Rock Hill Police Department now?

A. I am assigned to the Detective Division investigating crimes.

Q. How long have you been a detective?

A. I have been assigned to the Detective Division since January of this year.

Q. And what did you do before you were a detective in the property crime area?

A. Prior to that I spent seven years on the York County Multi-Jurisdictional Drug Enforcement Unit. And before that I was just a patrol officer patrolling the city of Rock Hill.

Q. Now are you required to go through any training in

1 order to become an officer with the Rock Hill Police  
2 Department?

3 A. Yes. You have to complete - It's a twelve week basic  
4 training in Columbia, South Carolina the South Carolina  
5 Justice Academy.

6 Q. Did you complete a training before you came - and when  
7 you mentioned that you were at Mount Holly, North Carolina  
8 did you have to go through any law enforcement training  
9 there?

10 A. Yes I did. I attended North Carolina Basic Law  
11 Enforcement Training at Gaston College.

12 Q. And how long was that training?

13 A. And that was twelve weeks.

14 Q. And then when you came to South Carolina how long was  
15 your training here?

16 A. Since I was previously certified in North Carolina I  
17 had to complete a three week course here in South Carolina  
18 to - for legals and - for my legals and driving.

19 Q. Detective Welch, were you working the morning of March  
20 15th, 2012?

21 A. I was paged in that morning.

22 Q. So you were actually off?

23 A. I was actually off yes.

24 Q. And can you explain to the jury why you were paged in  
25 that morning?

1 A. Also with the Rock Hill Police Department we have  
2 what's called the K 9 Tracking Team. Whenever a K 9 is  
3 called out to track a suspect, they also page out  
4 assistance which we call runners, they page out runners. I  
5 am one of those runners. It's kind of like a - It's an  
6 extra duty, it's kind of like a volunteer like thing kind  
7 of like the SWAT Team. If you don't have a full time SWAT  
8 Team then, you know, it's like an extra volunteer thing  
9 that you work on and that's what I'm on. I'm on that K 9  
10 tracking team and that's why I was paged out that morning  
11 to run with the tracking team.

12 Q. And were you paged out to go to Place in  
13 Rock Hill?

14 A. Yes I was.

15 Q. Okay. Now does in the city of Rock Hill?

16 A. Yes it is.

17 Q. Is that also considered York County?

18 A. It is.

19 Q. Now you mentioned that you were actually paged out as  
20 part of the K 9 response team. Did you have any other  
21 information when you were paged out to that address?

22 A. Yes. Our pager said respond to in  
23 reference to a domestic violence, suspect fled - armed  
24 suspect fled the scene.

25 Q. Now about what time did you respond out there?

1 A. I responded roughly around 5:30.

2 Q. And was that in the morning or the afternoon?

3 A. That was a.m., in the morning.

4 SOLICITOR VALENZUELA: I beg the Court's indulgence.

5 (PAUSE AT 04:07 P.M..)

6 SOLICITOR VALENZUELA: Can you lower the screen for  
7 me?

8 (COURTROOM OVER HEAD SCREEN LOWERED.)

9 BY SOLICITOR VALENZUELA:

10 Q. Detective Welch, will you look through those. I'm  
11 handing you what's been labeled State's Exhibit One through  
12 Four.

13 (WITNESS COMPLIED.)

14 Q. Let me take those back for just a moment.

15 Do you recognize what's in those photos?

16 A. Yes I do.

17 Q. And is that a fair - Or what is in those - What's  
18 reflected in those photos?

19 A. This is the apartments on Tyger Street or Tyger Place  
20 and this is actually where we responded to  
21 that morning to work the K 9.

22 Q. Do those photographs fairly and accurately represent  
23 and the surrounding property?

24 A. Yes.

25 SOLICITOR VALENZUELA: Your Honor, the State moves to

DETECTIVE JOSH WELCH: BY SOLICITOR VALENZUELA

-52-

1 admit Exhibits One through Four into evidence.

2 MS. ANDERSON: No objection.

3 THE COURT: In without objection.

4 (WHEREUPON: STATE'S EXHIBIT NUMBERS ONE THROUGH FOUR,  
5 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

6 SOLICITOR VALENZUELA: And, Your Honor, may we publish  
7 to the jury?

8 THE COURT: You may.

9 SOLICITOR VALENZUELA: You can hold them.

10 (STATE'S EXHIBITS ONE THROUGH FOUR PUBLISHED TO THE  
11 JURY.)

12 BY SOLICITOR VALENZUELA:

13 Q. Detective Welch, what are we looking at here?

14 A. This is and this is the victim's  
15 apartment.

16 Q. Okay. What does that, what does that red star at the  
17 top standing - Excuse me. What does that red star reflect,  
18 what door way is that?

19 A. That is

20 Q. Is that the victim's home?

21 A. Yes it is.

22 Q. And then there looks like to be another door next to  
23 it. Is that belong to the same home?

24 A. That's a separate home. That would be A.

25 Q. So they're divided by a common lawn in the middle

1 there?

2 A. Yes. It's a duplex.

3 Q. What are we looking at here?

4 A. Okay. This is an angle from the side 330B where the  
5 white chairs are and you've looking back toward between the  
6 tree lines, between the two apartments and the tree lines  
7 there. You can see the wooded area and that's actually  
8 York Tech Campus.

9 Q. When you say that's York Tech Campus, do you mean  
10 that's York Tech Campus behind that wooded area or behind

11 --

12 A. Yes behind the wooded area where looks like you can  
13 almost see the parking lot maybe.

14 Q. So right here; is this correct?

15 (SOLICITOR INDICATING TO EXHIBIT.)

16 A. Yes that area there that would be the York Tech  
17 Campus.

18 Q. Is that where the red star reflect where the victim's  
19 doorway is ---

20 A. Yes.

21 Q. --- in relation just to give some reference to where  
22 we were looking at before?

23 A. Yes it does.

24 Q. And this is State's Exhibit Two.

25 What are we looking at here? Is that State's Exhibit

1 Three?

2 A. Yes.

3 Q. Okay. Give us a little bit of context. What is over  
4 to our right? Of course if we're looking at this photo and  
5 standing where the jury is, what's over to my right?

6 A. To the right would be the victim's apartment, the back  
7 side.

8 Q. So it's the back door of the victim's apartment?

9 A. The back door of the victim's apartment yes.

10 Q. Okay. And what's - I know we can see the fence line  
11 here, what's to the left of that fence line?

12 A. To the left of the fence line is York Tech Campus.

13 Q. And what is this? Is this State's Exhibit Four that  
14 you are holding in your hand?

15 A. It looks like Four is a different angle. I could be  
16 wrong. I mean that's it, it's just showing the windows of  
17 the...

18 Q. What is the building, the brick building that we see  
19 over here to the right?

20 A. To the right that's another duplex. That would be the  
21 victim's if you were at the front side of the victim's  
22 duplex and then that would be the, I guess, neighbors  
23 duplex there. It's like a cul-de-sac or a circle there and  
24 you got a duplex here, the victim's duplex. And that's the  
25 way it's lined in Tyger place.

1 Q. So if we're looking at it from the jury's perspective,  
2 is it correct to state that the victim's apartment, her  
3 duplex is right over here? And then there's another  
4 cul-de-sac over here to the left in which there's another  
5 whole series of homes and that's what we're looking at?

6 A. That's correct.

7 Q. Okay. And then over here all the way to my left would  
8 be that fence that we were looking at earlier where York  
9 Tech is?

10 A. Yes.

11 Q. Now when you responded out - You were telling us  
12 earlier that you're a helper with the K 9 Unit. What's  
13 your actual - What's your title with the K 9 Unit when you  
14 help out?

15 A. I would be what we refer to as a K 9 runner.  
16 Basically you're support for the dog handler. The dog  
17 handler has to focus on working his dog, holding the leash,  
18 you know, making sure - reading the dog's body language,  
19 things like that. The runners are there for support as a  
20 team to, you know, to check for - to look for suspects, to  
21 check in vacant buildings, look behind trash cans, look in  
22 cars to make sure the person is not hiding there because  
23 you know it could be bad for the handler. It's a safety  
24 issue for the handler and that's why a support team runs  
25 with the handler.

1 Q. What's the common make up when you get called out?

2 One dog handler and how many runners?

3 A. The normal make up for one suspect if you're tracking  
4 one suspect is normally one dog handler and two runners,  
5 two support guys.

6 Q. Did you have one dog handler and two runners this time  
7 when you were looking for the defendant?

8 A. No we had one handler and we actually had four  
9 runners.

10 Q. What was the reason that you had extra runners that  
11 day?

12 A. The reason we had extra runners is because we had just  
13 added some new guys to our K 9 team and before they can go  
14 out on tracks by themselves they have like a little  
15 probationary period to have to run two or three tracks with  
16 more experienced team members so we had two guys that were  
17 probation - on probation running with two experienced guys.

18 Q. Were you considered one of the experienced runners?

19 A. Yes.

20 Q. And where did you and the K 9 Unit start out? Where  
21 did you all start out when you all first started tracking  
22 the defendant?

23 A. We started out when we got there they said that he had  
24 run out the back door. We knew there was no other foot  
25 traffic back there so that's where we started out dogs at

1 the back door of the apartment.

2 Q. Referring to the photographs I handed you, what  
3 exhibits?

4 A. That would be basically Exhibit Three, right here on -  
5 just on the other side of the clothesline.

6 Q. And so you started behind the victim's home where the  
7 clothesline, right around where the clothesline is. And  
8 where did you tell us earlier the back door to the victim's  
9 home was in relation to this photograph? Would it be  
10 pretty much directly to the right at this point?

11 A. Yes. Yes just to the right there.

12 Q. Okay. And so you all started here. And where did you  
13 go from there?

14 A. From there we go - We went down - The dog tracked - In  
15 Exhibit Four it's easier to see. The dog tracked in a  
16 diagonal toward the other set of - Would it be easier for  
17 me to get up or is this fine?

18 Q. You can if you want to if you think it will make it  
19 easier.

20 (WITNESS LEFT WITNESS STAND.)

21 MADAME COURT REPORTER: Madame Solicitor, have him  
22 keep his voice up. He's going to have his back to me.

23 SOLICITOR VALENZUELA: Will do.

24 A. Basically this would be the corner of her building.  
25 We came this way tracking into this wooded area in behind

DETECTIVE JOSH WELCH: BY SOLICITOR VALENZUELA

-58-

1 these. As we went behind these, we came around and circled  
2 back into this parking area here. Just want me to keep  
3 going through these?

4 Q. Yes.

5 A. Circled back through the parking area, the dog starts  
6 tracking into the parking lot tracking up and checking a  
7 couple of doors here. The dog tracks down and around and  
8 there's a dumpster out here in the parking lot, the dog  
9 tracks down to that dumpster. Just as soon as we get on  
10 the other side of the dumpster and start down the sidewalk,  
11 one of the team members looks back and said "there's the  
12 guy running right there." So we start giving commands at  
13 that point, you know, stop, police, stop, put your hands  
14 up, police. The dog handler actually stopped at that point  
15 because the tracking team members gave chase, tracking  
16 chasing, chased him back toward York Tech Campus.

17 Q. Let me stop you there ---

18 A. Okay.

19 Q. --- Detective Welch, and we'll pick up with --

20 A. Okay..

21 Q. Can you turn on the lights for us?

22 (COURTROOM LIGHTS TURNED BACK UP.)

23 (WITNESS RETURNED TO WITNESS STAND.)

24 Q. Now I'm showing you what's been labeled State's  
25 Exhibit Five.

1           What am I showing you?

2           A.    This is an aerial view of the area where this incident  
3           occurred and where we actually tracked to.

4           Q.    Does this map fairly and accurately represent the  
5           entire area to include the victim's home and then the area  
6           where the K 9 pursuit went on?

7           A.    There is some - Right here; maybe this map is a little  
8           older, I'm not sure but there is some more trees and  
9           foliage right here in this area.

10          Q.    Okay.

11          A.    But other than that yes it's accurate.

12                SOLICITOR VALENZUELA: Your Honor, the State moves to  
13           admit Exhibit Five into evidence and to publish to the  
14           jury.

15           MS. ANDERSON: No objection.

16           THE COURT: In without objection.

17                (WHEREUPON: STATE'S EXHIBIT NUMBER FIVE IDENTIFIED  
18           AND MARKED, RECEIVED INTO EVIDENCE.)

19           SOLICITOR VALENZUELA: Teasa, will you hit W please?

20           Q.    Okay, Detective Welch, why don't you step down like  
21           the last time.

22                (WITNESS LEFT WITNESS STAND.)

23           SOLICITOR VALENZUELA: And, Your Honor, may I just - -

24           THE COURT: Yes.

25                (STATE'S EXHIBIT NUMBER FIVE PUBLISHED TO THE JURY.)

DETECTIVE JOSH WELCH: BY SOLICITOR VALENZUELA

-60-

1 Q. And now you were explaining that there was a little  
2 bit of extra foliage and that isn't reflected on this map.  
3 Can you show the jury what you were talking about before?

4 A. Yes. In this area here this would be Tech Park and  
5 Lakeshore Parkway, the big business center there off  
6 Anderson Road. Right in this area right here there's more  
7 trees and foliage in this area and in this area too.

8 Q. Now what is this big set of buildings that we're  
9 looking at right here?

10 A. This is the York Tech Campus.

11 Q. And where's the victim's home in relation?

12 A. The victim's home is here.

13 (WITNESS INDICATING ON EXHIBIT.)

14 Q. At ?

15 A. At yes.

16 Q. Now you were explaining to the jury earlier using the  
17 photographs how K 9 Molly once you all saw one of the - you  
18 saw someone running. You then took K 9 Molly or the dog  
19 handler took K 9 Molly and you pursued as a runner  
20 somewhere else. Can you tell the jury where you all  
21 pursued the defendant from there?

22 A. Yes. Basically this is where we tracked through to -  
23 This was what I was showing on the board we tracked through  
24 to in here and this is the dumpster that the dog goes by  
25 just as we get right here that's where we see him standing

1 in the corner and he runs this direction. We gave chase.  
2 When we get to here we no longer see him. At that point  
3 the K 9 handler - I told the K 9 handler to come on up and  
4 let's start the track here where we last saw him so we  
5 could gain a little bit of ground. We came up, we started  
6 the K 9 track here again. We go around the edge of the  
7 fence here and we cut back across the campus here and go in  
8 between these two buildings. We come up around this  
9 retaining wall, go between these two buildings and then we  
10 cut right across the campus here. And then we come  
11 straight across, the dog is still tracking right across  
12 here between the bushes.

13 Q. And when you say here, what road do you cross over?

14 A. I'm sorry. Yes. I'm sorry. We cross over South  
15 Anderson Road at this point. Once we cross over South  
16 Anderson Road, the parking lot of a bank, Arrow Point  
17 Credit Union I believe is the name of that bank - cross  
18 over into the bank parking lot and we eventually work our  
19 way up. We track here, plum up here, and at this point the  
20 dog's working in here and when we come out here we see him  
21 right here. We at that time run across Lakeshore Parkway  
22 give orders and take him into custody at that point.

23 Q. Okay. Thank you, Detective Welch. Did you have a  
24 description of the defendant before you all began your  
25 pursuit?

1 (WITNESS RETURNED TO WITNESS STAND.)

2 A. The K 9 handler did. A black male wearing white tank  
3 top armed with a revolver, chrome revolver with a wooden  
4 handle.

5 Q. And you said that you just pointed out to the jury  
6 where you located the defendant. Did - Do you know that K  
7 9 Molly also indicated at that point that she found the  
8 defendant and that this was the same scent she had been  
9 tracking from the victim's home?

10 A. Yes she did.

11 Q. Okay. And when you located the defendant did he have  
12 - did he still have that handgun on him?

13 A. He did not.

14 Q. Were you able to go back and search every place where  
15 someone running along that track from the victim's home  
16 around into the next cul-de-sac all the way through York  
17 Tech Campus across Anderson Road into the areas over where  
18 the corporate buildings are? Were you able to locate -  
19 search every single place where a person may have disposed  
20 of a gun that they didn't want to be found with?

21 A. There is no way to search all that area. We did the  
22 best we could.

23 Q. Did you find the gun?

24 A. We did not.

25 Q. Now what's the approximate distance that we're talking

1 about from the victim's home to where you all located the  
2 defendant?

3 A. If you're going by the way the crow flies, just a  
4 straight line, it's probably a half mile. If you're going  
5 by the actual track that we ran, it would definitely be a  
6 mile.

7 SOLICITOR VALENZUELA: Beg the Court's indulgence.

8 (PAUSE AT 04:25 P.M..)

9 Q. Now, Detective Welch, there was another officer who  
10 was a first responding officer, Officer Cook; correct?

11 A. That's correct.

12 Q. And Officer Cook got warrants for criminal domestic  
13 violence high and aggravated, pointing and presenting; is  
14 that correct?

15 A. That is correct.

16 Q. And did you end up swearing out other additional  
17 warrants on the defendant?

18 A. Yes I did.

19 Q. And what warrants were those?

20 A. A warrant for possession of a pistol by a person  
21 convicted of a violent crime. Possession of a weapon  
22 during the commission of a violent crime and that was it.

23 Q. So the two. So it's possession of a weapon during the  
24 commission of a violent crime.

25 A. During the commission of a violent crime.

1 Q. And then possession of a weapon after having been  
2 convicted of a crime of violence?

3 A. That's correct

4 Q. Now when did you get this second warrant?

5 A. I got the second warrants later on after we had -  
6 after I had interviewed the victim.

7 Q. So after you had had an opportunity to sit down and  
8 discuss with the victim everything that had happened you  
9 then got those second warrants?

10 A. That's correct.

11 Q. Now you mentioned that you met with the victim Sherika  
12 Robinson. When did you meet with her?

13 A. I actually went out and met with her the next day. I  
14 was ask to assist with the case. I went out and met with  
15 her the next day, had her come to the police department  
16 where I took photographs and took a statement from her.

17 Q. Was there anything distinctive about her appearance  
18 when you saw her the next day?

19 A. Yes. Her eye was swollen shut. She was having to  
20 keep a rag on it to try to keep the swelling down.

21 Q. Now, Detective Welch, I'm handing you what's been  
22 labeled State's Exhibit Six, Seven, Eight and Nine. Will  
23 you look through those please?

24 A. Yes.

25 (WITNESS COMPLIED.)

1 Q. And what do those photographs show?

2 A. They show Ms. Robinson's injury to her left eye which  
3 is the - and these are the photographs that I took.

4 Q. Do those photographs fairly and accurately represent  
5 how Ms. Robinson looked the day after this incident  
6 occurred?

7 A. Yes they do.

8 SOLICITOR VALENZUELA: Your Honor, the State moves to  
9 admit Exhibit's Six- Six through Nine.

10 MS. ANDERSON: No objection, Your Honor.

11 THE COURT: In without objection.

12 (WHEREUPON: STATE'S EXHIBIT NUMBER'S SIX THROUGH NINE  
13 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

14 SOLICITOR VALENZUELA: Your Honor, may we publish to  
15 the jury?

16 THE COURT: You may.

17 (STATE'S EXHIBIT NUMBERS SIX THROUGH NINE PUBLISHED TO  
18 THE JURY AT 04:42 P.M..)

19 (COURTROOM LIGHTS TURNED DOWN.)

20 BY SOLICITOR VALENZUELA:

21 Q. Detective Welch, thank you for being so patient with  
22 me as I dealt with technical difficulties.

23 What exhibit are we looking at here?

24 A. That would be Exhibit Six.

25 Q. Okay. And who is this in the photograph?

DETECTIVE JOSH WELCH: BY SOLICITOR VALENZUELA

-66-

1 A. This is Ms. Robinson the victim.

2 Q. And then - I don't know if it's apparent for the jury  
3 but for purposes of the record, what does the photograph  
4 show on the left side of her face?

5 A. Swelling under her right eye. Also bleeding in behind  
6 the eye.

7 Q. And you said the right eye. Did you mean left eye?

8 A. I'm sorry. Left eye.

9 Q. What exhibit are we looking at here?

10 A. That would be Number Seven.

11 Q. And is that a closer photograph of the same eye you  
12 were looking at before?

13 A. Yes.

14 Q. And what photograph are we looking at here? That's  
15 State Exhibit Eight?

16 A. That would be Exhibit Nine.

17 Q. Nine. And what are we - see here?

18 A. That is a side view of the left eye and it just shows  
19 how it's swollen shut.

20 Q. The State Exhibit, State's Exhibit Eight?

21 A. It is. And that is the same - same eye, just a close  
22 shot.

23 SOLICITOR VALENZUELA: Your Honor, may defense counsel  
24 and I approach briefly?

25 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF

DETECTIVE JOSH WELCH: BY SOLICITOR VALENZUELA - IN CAMERA

-67-

1 THE JURY AT 04:35 P.M..)

2 THE COURT: Members of the jury panel, I'm going to  
3 let you go to the jury room for a break while we take up  
4 some legal matters.

5 (JURY EXITS COURTROOM AT 04:37 P.M..)

6 THE COURT: All right.

7 SOLICITOR VALENZUELA: Your Honor, at this moment the  
8 State would do it's proffer that was discussed in pretrial  
9 regarding the jail phone calls of the defendant.

10 DIRECT EXAMINATION - IN CAMERA

11 DETECTIVE JOSH WELCH BY SOLICITOR VALENZUELA:

12 Q. Now, Detective Welch, does your police station have a  
13 jail?

14 A. Yes they do.

15 Q. And was the defendant placed in that jail on March  
16 15th?

17 A. He was.

18 Q. And do you remember what time he was placed in there?

19 A. I don't remember the exact time.

20 Q. Was it in the morning?

21 A. It was in the morning. It was around seven o'clock I  
22 would say.

23 Q. So somewhere around 7:00 A. M.?

24 A. Somewhere around between 7:00 and 7:30 A. M., I would  
25 say yes.

1 Q. And how long did the defendant remain in your jail?

2 A. He remained there until around 9:30 that evening.

3 Q. So he was just there for the day?

4 A. Yes.

5 Q. Now does the defendant have the ability to use the  
6 telephone when he's placed in your jail?

7 A. Yes they do.

8 Q. Are those phone calls monitored and recorded?

9 A. Yes they are.

10 Q. Are the defendant's notified that their calls are  
11 monitored then recorded?

12 A. Yes they are. When they pick up the phone it actually  
13 tells them it's being recorded.

14 Q. Would a recording - If those - Once those jail phone  
15 calls are recorded, does that actual recording happen, that  
16 warning, that very first part of it saying your phone calls  
17 are subject to monitoring and recording?

18 A. Yes it does.

19 Q. Are you able to manipulate or alter the record - the  
20 recording of those calls in any way on the system?

21 A. No.

22 Q. Now did the defendant have access to use that phone on  
23 the jail on March 15th between the hours of 7:00 and 9:00 -  
24 7:00 A. M., and 9:00 p.m.?

25 A. Yes.

1 Q. To your knowledge was there in the Rock Hill City jail  
2 on the day of March 15th was there another defendant who  
3 either had the first, middle or last name that was Dawone?

4 A. No.

5 Q. Detective Welch, I'm showing you what's been labeled  
6 State's Exhibit Ten. Do you recognize that?

7 A. I do.

8 Q. What is it?

9 A. This is a disc that I downloaded from the actual jail  
10 call off the computer system that records the jail call.

11 Q. How do you know that that disc has the recorded phone  
12 call that we're discussing?

13 A. I listened to it.

14 Q. And then what did you do to mark the disc?

15 A. And I dated and initialed it.

16 Q. And does the recording on that disc reflect the entire  
17 phone call as it was captured on your system?

18 A. Yes it does.

19 Q. Are there any alterations or omissions from what was  
20 recorded on the system?

21 A. No there's not.

22 Q. And earlier you mentioned that you do not have the  
23 capability to on the system itself alter or omit any  
24 portion of the phone calls?

25 A. The only thing you can do is just download it to a

DETECTIVE JOSH WELCH: BY SOLICITOR VALENZUELA - IN CAMERA  
SHERIKA ROBINSON: BY SOLICITOR VALENZUELA - IN CAMERA

-70-

1 disc.

2 Q. Okay. Detective Welch, can you step down for a minute  
3 please?

4 A. Yes.

5 (WITNESS LEFT WITNESS STAND.)

6 SOLICITOR VALENZUELA: Your Honor, the State calls Ms.  
7 Sherika Robinson to the stand.

8 THE COURT: All right. Ms. Robinson, please come up  
9 and be sworn.

10 Just stop there and place your left hand on the Bible  
11 and raise your right.

12 (WHEREUPON: SHERIKA ROBINSON,  
13 BEING FIRST CALLED AND DULY SWORN:)

14 MADAME CLERK: Thank you. Please have a seat.

15 DIRECT EXAMINATION - IN CAMERA

16 SHERIKA ROBINSON BY SOLICITOR VALENZUELA:

17 Q. Ms. Robinson, will you please state your full name for  
18 the record?

19 A. Sherika Nicole Santana Robinson.

20 Q. I'm handing you what's been labeled State's Exhibit  
21 Ten. Do you recognize that?

22 A. Yes, ma'am.

23 Q. What is it?

24 A. A CD of a jail call that I identified the two - -

25 Q. Okay. Let's slow down just a minute. Let me ask the

1 questions and then you can answer it. Okay.

2 So it's - How do you know that that - Is that a  
3 recorded phone call between two people?

4 A. Yes, ma'am.

5 Q. How do you know that that's the phone call that I  
6 played for you?

7 A. I listened to it.

8 Q. And then what did you do? Did you mark the CD in any  
9 way?

10 A. Yes, ma'am.

11 Q. Does that CD reflect the markings that you had?

12 A. Yes, ma'am. And my initials.

13 Q. The date and your initials? Okay.

14 When I played the CD for you, did you recognize the  
15 voices?

16 A. Yes, ma'am.

17 Q. And were there two people talking on this?

18 A. Yes, ma'am.

19 Q. And was there - Can you tell me who you heard on this  
20 phone call?

21 A. Dawone Davis and Tabitha Castleberry.

22 Q. Okay. Now starting with Dawone Davis, how long have  
23 you known Mr. Davis?

24 A. Eight and a half years about.

25 Q. What's your relationship with Mr. Davis?

1 A. He's my kids father.

2 Q. Did you call come in contact often during those eight  
3 and a half years?

4 A. I'm not understanding the question.

5 Q. How often did you come in contact with Mr. Davis  
6 throughout those eight and half years?

7 A. Often.

8 Q. Did you talk to him a lot?

9 A. Yes, ma'am.

10 Q. Did you talk to him on the phone?

11 A. Yes, ma'am.

12 Q. Did you talk to him in person?

13 A. Yes, ma'am.

14 Q. Do you think you're familiar with his voice?

15 A. Yes, ma'am.

16 Q. And how sure are you that that's his voice on this  
17 phone call?

18 A. I'm very sure.

19 Q. Okay. And now you mentioned another voice that you  
20 heard on this phone call. Who is that?

21 A. Tabitha Castleberry.

22 Q. Who is Tabitha Castleberry to the defendant?

23 A. His girlfriend.

24 Q. And how do you know Ms. Castleberry?

25 A. I have spoken with her several times in person.

SHERIKA ROBINSON: BY SOLICITOR VALENZUELA - IN CAMERA  
BY MS. ANDERSON - IN CAMERA

-73-

1 Q. How long have you known her?

2 A. For like four or five months.

3 Q. Okay. And how sure are you that it's her voice on  
4 this phone call?

5 A. Because I have talked to her.

6 Q. How sure are you?

7 A. Very sure.

8 SOLICITOR VALENZUELA: Your Honor, at this point the  
9 State would move to admit State's Exhibit Ten into  
10 evidence.

11 THE COURT: Any voir dire? I mean not voir dire, any  
12 questions?

13 MS. ANDERSON: Yes, Your Honor. Your Honor, briefly  
14 as to this but I have more as to the - -

15 SOLICITOR VALENZUELA: I apologize for having him step  
16 down.

17 THE COURT: Let's go ahead and - -

18 CROSS-EXAMINATION - IN CAMERA

19 SHERIKA ROBINSON BY MS. ANDERSON:

20 Q. Ms. Robinson, just briefly. You didn't have anything  
21 to do with pulling this phone call - jail phone call;  
22 correct? The downloading that; correct?

23 A. No, ma'am.

24 Q. Okay. You just listened to what the Solicitor played  
25 for you on that?

SHERIKA ROBINSON: BY MS. ANDERSON - IN CAMERA  
DETECTIVE JOSH WELCH: BY MS. ANDERSON - IN CAMERA

-74-

1 A. Correct.

2 Q. Okay.

3 Your Honor, then that's all the questions I have for  
4 this witness.

5 SOLICITOR VALENZUELA: Sherika, you can step down now.

6 (WITNESS LEAVING WITNESS STAND.)

7 THE COURT: Detective Welch, come back up.

8 (WITNESS DETECTIVE WELCH RETURNS TO WITNESS STAND.)

9 CROSS-EXAMINATION - IN CAMERA

10 DETECTIVE JOSH WELCH BY MS. ANDERSON:

11 Q. Okay, Detective, to go into a little bit, you  
12 referenced that Mr. Davis was placed in custody sometime  
13 around 7:00 to 7:30 that morning and he was there until  
14 9:00 p.m.; correct?

15 A. That's right.

16 Q. And sometime in the meantime of that he would have  
17 been taken before a judge for a bond hearing?

18 A. That's correct.

19 Q. And then his bond was denied and he was subsequently  
20 transported to Moss Justice Center?

21 A. That would be correct yes.

22 Q. So at this point he is I guess just in a temporary  
23 Rock Hill city jail until he can be taken for a bond  
24 hearing and determined whether he's going to find out or go  
25 to Rock Hill - Excuse me, Moss Justice Center?

1 A. Yeah he's be held at the Rock Hill jail until he's  
2 taken to Moss Justice; that's right.

3 Q. And so it's not a situation where he is booked in that  
4 he would remain at the Rock Hill city jail?

5 A. No.

6 Q. And the phone that has the ability to access that is a  
7 phone that is in that I, guess initial holding area; is that  
8 correct?

9 A. That would be correct.

10 Q. Okay. And the phone calls on that that the phone  
11 calls references the free call; in other words this is not  
12 a call set up with a pin system or a - where Mr. Davis was  
13 booked in, given a pin to make those calls?

14 A. No it was not.

15 Q. Okay. So prior to making any phone calls on that  
16 phone he wasn't given any written form designating these  
17 are the numbers I wish to dial?

18 A. Right. No.

19 Q. So no written documentation is from these phone calls?

20 A. No, ma'am.

21 Q. And what is the purpose of phone calls being recorded  
22 there?

23 A. The purpose of phone calls being recorded would be I  
24 imagine for any kind of thing that - any kind of issue that  
25 would arise. That's just one more way you know we could

DETECTIVE JOSH WELCH: BY MS. ANDERSON - IN CAMERA

-76-

1 listen and find out what's being said, investigative  
2 purposes.

3 Q. And there is no option for an unrecorded phone call;  
4 correct?

5 A. No. Not that I'm aware of.

6 Q. Okay. And the phone calls are actually recorded or  
7 actually the actual administrator of those is a company  
8 named Securis; correct?

9 A. That I don't know.

10 Q. Okay. Are you familiar with how the phone calls are -  
11 or how that's set up with Rock Hill?

12 A. I'm not. I know that we have a data room that we go  
13 into and we can pull up the calls and listen to the calls.  
14 And I know how to download the calls from that to a disc.

15 Q. Okay.

16 A. I'm not sure who its set up through or anything like  
17 that.

18 Q. Okay. And I come up with Securis because I think at  
19 the end of the call it indicates this is a call from  
20 Securis or by Securis.

21 A. Okay.

22 Q. But you're not familiar basically if they contract or  
23 if they're paid to record those calls?

24 A. I have no idea.

25 Q. Okay. And what terms of the contract would be?

1 A. Yeah I have no idea.

2 Q. Okay. Any familiarity that Securis is a company  
3 headquartered in Texas?

4 A. Didn't know that.

5 Q. Okay. That the data is stored at one of their  
6 facilities?

7 A. Did not know that.

8 Q. And you didn't have any call basically with - would  
9 said that of it in other words?

10 A. No.

11 Q. Now you referenced there is a room where someone can  
12 download. Explain to me how you can access a phone call.

13 A. How I can access a phone call?

14 Q. Yes.

15 A. We have a key that's in the Detective Division;  
16 detectives are only allowed to it. You take that key into  
17 the hallway of the - back hallway of the police department,  
18 there is a locked room with several computer monitors,  
19 things for watching video surveillance, things of that  
20 nature. You access the room with the key and you're able  
21 to listen and record the actual phone call that was made.  
22 Or excuse me, it's already recorded onto the computer,  
23 actually download the phone call that's made.

24 Q. So what you would be doing is downloading something  
25 that had been already recorded?

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A. That's correct

Q. And it's access is through a computer there or is there a server that the call is stored? Do you know anything about where the calls are stored?

A. I don't know where the calls are stored.

Q. Did you actually - You're probably familiar and you're the case agent on this case, that there were I think three disc of phone calls ultimately the State received; correct?

A. Yes.

Q. Okay. Did you download those calls on the copy that was given to the Solicitor's office?

A. Yes I did.

Q. Okay. All of the calls?

A. Yes.

Q. Okay. And you've listened to all the calls?

A. I listened to all of the calls initially yes.

Q. How did - And how is that handled? Is it each detective pulls his own on calls or is there one person in Rock Hill who pulls those calls? What would be the normal...

A. The normal process is each detective listens to the calls pertaining to their case.

Q. Okay. How is that information provided to the Solicitor's office? Basically is it upon request, is it --

A. Basically in this case I advised the Solicitor's

DETECTIVE JOSH WELCH: BY MS. ANDERSON - IN CAMERA  
BY SOLICITOR VALENZUELA - IN CAMERA

-79-

1 office that there were phone calls that were made by Mr.  
2 Davis.

3 MS. ANDERSON: I beg the Court's indulgence.

4 (PAUSE.)

5 Q. Detective, who in Rock Hill Police Department has  
6 access to the phone calls?

7 A. The Detective Division.

8 Q. The entire - Basically the Detective Division would be  
9 the only one who could access - -

10 A. That's correct

11 MS. ANDERSON: Your Honor, those are all the questions  
12 I have.

13 REDIRECT EXAMINATION - IN CAMERA

14 DETECTIVE JOSH WELCH BY SOLICITOR VALENZUELA:

15 Q. There are also maintenance technicians that also have  
16 access too like your IT guys?

17 A. Yes. Yes the IT guys would have access to the  
18 computer room.

19 THE COURT: You can step down. Thank you.

20 DETECTIVE WELCH: Yes, sir.

21 THE COURT: The Defense's position.

22 MS. ANDERSON: Your Honor, the Defense's position  
23 would be that this detective would not be laying the proper  
24 foundation for this. This is something that is handled  
25 through a third party situated in another state. Detective

1 - This detective has no information as to how these are  
2 recorded, where they're stored, where the data is stored,  
3 how it's stored. They've been provided access to basically  
4 digital access them but not in terms of the basis or being  
5 the standardized or the standard of the assigned record  
6 keeper on this, that's not his duty in order to maintain  
7 these records, this digital data, the storage of this  
8 digital data so my position would be that it is not - this  
9 witness cannot testify as to the foundation of that. He  
10 has not knowledge nor control over the maintenance and  
11 storage of this data.

12 SOLICITOR VALENZUELA: Your Honor, I mean our argument  
13 is that he does, he explains exactly where the phone calls  
14 are stored, how he goes in there and accesses those phone  
15 calls; how he cannot alter or amend those phone calls in  
16 any way. All he does is simply go into where the system is  
17 and download the phone calls that indicate, you know, when  
18 those phone calls are made and that's what he's testified  
19 and that's what he's telling the jury is, I'm just here to  
20 tell you that I downloaded these phone calls, that our  
21 system downloads these phone calls, the date and time that  
22 I downloaded these phone calls and that the defendant was  
23 present that day. And then the victim herself listening to  
24 that phone call combines the information to show that she  
25 listens to it and she's able to identify that that's the

1 defendant's voice and that she's known the defendant for  
2 eight and a half years and knows his voice well enough to  
3 be able to be very certain that that is his voice on the  
4 phone call.

5 MS. ANDERSON: Your Honor, I would say that regardless  
6 of his statement I think that he can state he is not  
7 altered them but he is not the sole person in custody of  
8 the records. He's testified that there are a number of  
9 other people who have access to them and has no knowledge  
10 of the storage so I don't think he can - I don't think even  
11 he can testify as he is only downloaded them but I don't  
12 think that establishes well that no other person has had  
13 access them or how they're stored and secured that way as  
14 well.

15 THE COURT: That would be my concern also. He can  
16 testify how he got it and she can testify that it's his  
17 voice, but how do we - What about the issue of whether or  
18 not that's a hundred percent of the call?

19 SOLICITOR VALENZUELA: Well, Your Honor, in this case  
20 we can play the phone call if you think it's necessary.  
21 The phone call starts off with the ringing dial tone and  
22 someone answering a phone so the beginning of the phone  
23 call is clearly indicated on the actual recording. And  
24 then you are only allowed to speak for ten minutes before  
25 it basically times out.

1 THE COURT: There has been no testimony about that.

2 SOLICITOR VALENZUELA: Yes that is correct. The phone  
3 call does capture that but I did not - I didn't go into  
4 what was in the phone call because of thinking how I would  
5 present it to the jury I don't actually go into what was in  
6 the phone call until I played it.

7 THE COURT: Yeah but I mean there wasn't no testimony  
8 that it was only ten minutes.

9 SOLICITOR VALENZUELA: Yes, Your Honor. I would ask  
10 to open testimony so I can put the detective on there to  
11 explain what the beginning and the ending of the phone call  
12 sounded like. Or I can play - -

13 THE COURT: What about the middle? That's what --  
14 We're concerned not about the start and the finish but the  
15 middle.

16 SOLICITOR VALENZUELA: I understood your question to  
17 say was it the complete phone call.

18 THE COURT: Yes that's right. There is no start and  
19 finish but what --

20 SOLICITOR VALENZUELA: You know if Detective Welch  
21 testimony was that there is no way that they can actually  
22 modify that phone call on the system and so...

23 THE COURT: What about the people that store it for  
24 them?

25 SOLICITOR VALENZUELA: The people in Texas whether

1. they can alter --

2. THE COURT: Wherever they are.

3. SOLICITOR VALENZUELA: It seems like that question  
4. would come up regardless whatever phone call we had even if  
5. it was York County and they were here testifying as to the  
6. maintenance of the system. I guess it could always be a  
7. speculative that someone had gone in and altered the phone  
8. call but here I think that we've established that Detective  
9. Welch says that there is no way that they can modify the  
10. phone call; that there is a start and finishes the phone  
11. call.

12. You can hear from the phone conversation that it  
13. doesn't appear that anything is left out. And certainly  
14. you know so our argument would be that there has been  
15. sufficient foundation for this phone call. We cannot  
16. answer every speculative concern about what might be  
17. missing from this but we do think that establishing when  
18. the phone call was made, who made that phone call and that  
19. that phone call is identified as the defendant is what we  
20. need to be able to get this evidence in. And if the  
21. defense wanted to challenge, you know, the phone call they  
22. can certainly do that through cross examination and let the  
23. jury determine whether someone altered that phone call or  
24. there was another reason why.

25. THE COURT: Anything else?

1 MS. ANDERSON: I think I'd have the same argument,  
2 Your Honor.

3 THE COURT: Well I think the foundation is sufficient.  
4 I think points were raised by the defense and echos to some  
5 degree because there are legitimate concerns I believe. I  
6 think they go more to the weight as opposed to the  
7 admissibility. Fortunately or unfortunately we use a lot  
8 of mechanical things now and there is no way that I'm aware  
9 of that we can be a hundred percent sure that somebody  
10 hasn't tampered with something that's audio or even visual.  
11 I've been to a photo shop, a seven year old kid can  
12 probably alter a photograph, I couldn't. But anyway I'm  
13 going to allow it in. Let's take about a five minute  
14 refresher break and then we would get the jury back in.  
15 This will probably be the last witness for the day.

16 (COURT IN RECESS AT 04:59 P.M..)

17 (COURT BACK IN SESSION AT 05:14 P.M..)

18 THE COURT: Thank you. Take your seats.

19 Is the State ready?

20 SOLICITOR VALENZUELA: Yes, Your Honor.

21 THE COURT: Defense ready?

22 MS. ANDERSON: Yes, Your Honor.

23 THE COURT: Bring in the jury.

24 (JURY REENTERS COURTROOM AT 05:15 P.M..)

25 THE COURT: You may proceed.

1 SOLICITOR VALENZUELA: May it please the Court.

2 THE COURT: Yes, ma'am.

3 DIRECT EXAMINATION - CON'T

4 DETECTIVE JOSH WELCH BY SOLICITOR VALENZUELA:

5 Q. Now, Detective Welch, picking up where we left off.

6 When we were talking about the fact that you all looked for  
7 the gun after you were able to apprehend the defendant,  
8 what areas did you all look in for the gun?

9 A. We actually worked - walked back the same path that the  
10 dog tracked. We walked back the same way that we came  
11 checking bushes, checking trees, checking a couple of  
12 dumpsters and stuff there on York Tech Campus; basically  
13 back tracked the way we came looking in the immediate areas  
14 that we were.

15 Q. So you took the path basically in reverse that you had  
16 tracked the defendant trying to find that gun?

17 A: That's correct

18 Q. Now you all arrested the defendant that day; correct?

19 A. Yes we did.

20 Q. And does your police station have a jail?

21 A. Yes they do.

22 Q. And was the defendant placed in that jail on March  
23 15th?

24 A. He was.

25 Q. And about what time was he placed in that jail?

1 A. Between 7:00 and 7:30.

2 Q. And how long did the defendant remain in that jail?

3 A. He remained there until around 9:00, 9:30 that  
4 evening.

5 Q. Do defendant's have the ability to use the telephone  
6 when placed in your jail?

7 A. Yes they do.

8 Q. Are those phone calls monitored and recorded?

9 A. Yes they are.

10 Q. Are the defendant's notified that their calls are  
11 being monitored and recorded?

12 A. Yes they are notified that their phone calls are being  
13 recorded.

14 Q. How are they notified of that?

15 A. When you pick up the phone to make the call it  
16 notifies you then that this phone call is being monitored  
17 and recorded.

18 Q. Now are you able to manipulate or alter the recordings  
19 of that phone call in any way?

20 A. No I'm not.

21 Q. Let's go back a second. How would you - Are you able  
22 to listen to that phone call after it's recording?

23 A. Yes we're able to listen to all jail phone calls.

24 Q. So you're able to listen to it but not modify it in  
25 any way?

1 A. That's right.

2 Q. Now did the defendant Dawone Davis have access to use  
3 the phone while he was in the jail on March 15th between  
4 the hours of 7:00 and 7:30 a.m., and 9:00 p.m., that night?

5 A. Yes he was.

6 Q. To your knowledge on that date March 15th that he was  
7 - Well actually let me go back one time. You said that he  
8 was there until 9:00 p.m. Where did he go after that?

9 A. After that he was sent over here to the Moss Justice  
10 Center placed in their jail.

11 Q. Okay. So he was at the Rock Hill city jail for one  
12 day; is that true?

13 A. That's correct

14 Q. That day on March 15th were there any other defendants  
15 who were booked into your jail cell who either have the  
16 first name, middle name, or last name of Dawone?

17 A. No there was not.

18 Q. Detective Welch, I'm handing you what's been labeled  
19 State's Exhibit Ten.

20 A. Yes.

21 Q. Do you recognize what that is?

22 A. Yes. This is a disc with the recorded phone call from  
23 Mr. Davis.

24 Q. Okay. How do you know - Where - How did - Where was  
25 that phone call downloaded from?

1 A. It was downloaded from our police department. There  
2 is a computer room that the detectives have access to.  
3 When you go in there to the computer you can pull and  
4 listen to all the phone calls made on a particular day.  
5 And you can insert a disc and just copy the actual whole  
6 phone call to a disc.

7 Q. And then is that what you did in this case, you  
8 downloaded a recording of that phone call?

9 A. I did.

10 Q. Have you listened to the recording on that disc?

11 A. I did listen to this recording.

12 Q. And how do you know that that's the recording, that's  
13 - We're talking about the same one you listened to earlier?

14 A. I listened to it and dated here today I listened to it  
15 before this and initialed it.

16 Q. And then have you listened to that - this full call on  
17 the actual system itself as well?

18 A. Yes I listened to the phone call on the system before  
19 copying it; before I ever copied it to a disc.

20 Q. And then does the recording of the phone call on this  
21 disc fully and accurately reflect how that phone call  
22 sounds on the actual original system at the jail?

23 A. Yes it does.

24 Q. Let's talk about this system a little bit more. You  
25 said that the system is in the police station. This is

1 something that records the phone calls?

2 A. Yes.

3 Q. Okay. I think that you were telling us that. So who  
4 has access to the system?

5 A. The Detective Division and the people who work on our  
6 computers.

7 Q. And then how do you - Tell me exactly how you go in  
8 and access these phone calls.

9 A. There is a key placed in our detective division that  
10 only the detectives have access to. Take the key, it's in  
11 the back hall way of the police department that key unlocks  
12 the door that all the computer systems are in. We have  
13 actually two or three computer units in that room, several  
14 to monitor for surveillance, videos and things like that we  
15 can watch and download those. And also the one computer  
16 that's designated for the jail phone calls.

17 Q. Okay. And so you - This is a secure room that on the  
18 defense or your IT guys have access to?

19 A. Its only the Detectives and the IT guys yes.

20 Q. And so when you go in and you go to the system how  
21 exactly do you pull up the phone calls?

22 A. When you go to the system it has a computer screen  
23 there and of course it has the icon that you click on. It  
24 brings up your jail calls and you put in the date and the  
25 times that you want to listen to.

1 Q. Did you do that this time, go in there and put in the  
2 date and time that you want to listen to?

3 A. Yes I did.

4 Q. And what date was that?

5 A. That was March the 15th on the day of the incident  
6 when Mr. Davis after we put him in the jail.

7 Q. And so you requested phone calls for the day that he  
8 was actually in the Rock Hill city jail?

9 A. Yes.

10 SOLICITOR VALENZUELA: Detective Welch, please answer  
11 any questions counsel may have for you.

12 A. Okay.

13 MS. ANDERSON: Your Honor, may we approach briefly?

14 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF  
15 THE JURY AT 05:23 P.M..)

16 THE COURT: It's almost 5:30 and we're just planning.  
17 We'll just stop for the day before we do cross examination  
18 - allow cross examination by counsel for Mr. Davis. And  
19 we'll start back at 9:30 in the morning.

20 The bailiff will tell you how you are to get in and  
21 out of the building while you are serving as a juror. Keep  
22 in mind my admonitions about not making up your own mind,  
23 not discussing the case, not letting anyone discuss the  
24 case with you, no news coverage and no independent research  
25 electronic or otherwise. So have a pleasant evening and

1 we'll see you back at 9:30 in the morning.

2 (JURY EXITS COURTROOM AT 05:24 P.M.)

3 THE COURT: Detective Welch, since you're subject to  
4 cross examination do not discuss your testimony with  
5 anyone.

6 Anything else before we stop for the day?

7 SOLICITOR VALENZUELA: No, Your Honor.

8 MS. ANDERSON: No, Your Honor.

9 THE COURT: All right. We'll see you at 9:30 in the  
10 morning. Thank you.

11 MS. ANDERSON: Yes, Your Honor. Thank you, Your  
12 Honor.

13 (COURT IN EVENING RECESS AT 05:30 P.M..)

14 (COURT BACK IN SESSION ON TUESDAY, AUGUST 7, 2012, AT  
15 09:32 A.M..)

16 THE COURT: Good morning. Thank you. Take your  
17 seats.

18 Lets get Mr. Davis in.

19 SOLICITOR VALENZUELA: Your Honor, I just have a  
20 couple of things that we'd like to take care of.

21 THE COURT: Let's get Mr. Davis in first.

22 (DEFENDANT DAWONE DAVIS REENTERS COURTROOM.)

23 THE COURT: Ms. Valenzuela.

24 SOLICITOR VALENZUELA: Yes, Your Honor. Yesterday  
25 when we took a five minute break during when the detective

1 was testifying, we then did the proffer and then you gave  
2 us a five minute break. He came up and ask to speak to me  
3 about something and I spoke to him about it, and I was not  
4 thinking at all that I was doing anything improper. I'd  
5 like to let defense counsel know. And I'd be more than  
6 happy to tell the Court what that discussion was and I can  
7 go ahead and say that he had a concern that when he had  
8 testified that he got the warrants the next day that he was  
9 wrong. And so we came back and then pulled out the warrant  
10 and the warrant said at the bottom March 16th and he looked  
11 at it and he was like okay. And I'm like so it looks like  
12 your testimony was correct and he was like yes, I was  
13 worried about that. And I was like well thank you for  
14 bringing it up because we do need to correct that on the  
15 stand if you were wrong. And then when I went to say, you  
16 know, now you need to go sit on the stand, that's my  
17 thought. I probably shouldn't have been talking to him  
18 about any of this during this time so I just wanted to  
19 bring that to the Court's attention.

20 THE COURT: Well, Ms. Anderson.

21 MS. ANDERSON: Your Honor, based on that that the  
22 discussion while the detective was on the stand did concern  
23 his testimony and the contents of his testimony, I would  
24 move for a mistrial at this point given that the detective  
25 was still under oath, was still, I believe at that point,

1 still in his direct examination and that had not been  
2 concluded at the State - and the discussion between the  
3 State and the detective was about some of the content of  
4 his testimony.

5 THE COURT: Well I deny the motion. I don't see any  
6 manifest necessity to - he actually was trying to make sure  
7 his testimony was correct. He shouldn't have been coached,  
8 but you didn't mean to coach him, but that's what it  
9 amounts to and I admonish counsel not to - to be very  
10 cautious about that, but it's almost a no harm or no foul  
11 sort of situation concerning - subject to being cross  
12 examined I think it would be fair game to even ask if he  
13 has talked while - since he was put under oath has talked  
14 to the Solicitor; and if so, the content of the  
15 conversation. I think that that door is opened but I'm not  
16 going to grant any mistrial. No reason to give an in-  
17 curative instruction because the jury is not aware that it  
18 happened. So the motion for a mistrial is denied.

19 All right.

20 SOLICITOR VALENZUELA: Your Honor, also we're gonna -  
21 we plan on putting the victim on the stand today and elicit  
22 testimony as to the relationship with the defendant. And I  
23 know that that was something that you left open for  
24 pretrial but at this point we need to make the decision if  
25 the defendant is going to present his tattoos to the jury

1 or if he prefers for us just to take a photograph, and have  
2 a printed photograph to admit through that victim.

3 SOLICITOR SPRINGS: Well we usually just have one at a  
4 time on - per issue. Let me ask Ms. Anderson.

5 Do you object to them double teaming you?

6 MS. ANDERSON: Your Honor, under the circumstances I  
7 will --

8 THE COURT: Under the circumstances, Mr. Springs,  
9 you've been granted leave to participate in this motion.

10 SOLICITOR SPRINGS: I just - Ms. Valenzuela has let me  
11 know that yesterday it was understood that if he's gonna  
12 physically display them, he needs to get up here close to  
13 the jury box so that they can see them and not just stand  
14 back here. We'd rather take pictures.

15 THE COURT: What's the defense's position on that?

16 MS. ANDERSON: Your Honor, I would - my position would  
17 be based on the opening the defense has presented to the  
18 jury I think it's not going to be a issue of contention. I  
19 don't understand the necessity of having him display  
20 tattoos which I don't necessarily think are even conclusive  
21 as to what the State is trying to present but I think under  
22 the circumstances the State can more than meet the element  
23 based particularly on what the defense has presented to the  
24 jury by testimony of the victim in this case so we would  
25 not be in agreement with having him display tattoos. I

1 don't think it's necessary under the circumstances to  
2 present that element.

3 SOLICITOR VALENZUELA: Your Honor, that was basically  
4 our whole point of bringing it up pretrial and then after  
5 hearing the defendant's opening statement I'm still  
6 confused. I have a stipulation prepared, he can stipulate  
7 that he's a household member and then it really wouldn't be  
8 an issue. But until there is a stipulation the burden is  
9 on the State to prove every single element and I still have  
10 to prove this element and so I feel like because the burden  
11 is on the State then I need to make sure I present all  
12 possible avenues. This would be one piece additional to  
13 that would be the victim's testimony and the prior CDV that  
14 he admitted to - that he was a household member of the  
15 victims.

16 MS. ANDERSON: Your Honor, I mean the State has  
17 presented me with copies of birth certificates. I think  
18 state counsel in her opening indicated they had children in  
19 common. Certainly Ms. Robinson can testify to that. I  
20 don't understand the State's necessity of having this proof  
21 by the tattoos someone chose to have. And I don't  
22 necessarily see how that is even dispositive of an issue on  
23 - and I question why that is the route the State is sort of  
24 insisting upon doing it. I think as defense counsel I made  
25 it clear that that's - the elements even of a civil

1 criminal domestic violence are not particularly the issue  
2 in this case. I've not presented anything that would put  
3 the State on notice that this would be - a issue of  
4 contention. I think they have plenty of routes to present  
5 testimony, present even evidence regarding things that were  
6 provided me pretrial; birth certificates, family photos  
7 that would more than meet the burden without resorting to a  
8 situation where Mr. Davis would be required to basically  
9 roll up his sleeves and display tattoos to the jury.

10 THE COURT: Well I'm gonna allow the State to require  
11 the defendant under State versus Hart 806 S.C. 244, 1991  
12 case, I don't have the ability to shepardize it up here but  
13 actually - wait a minute. That's the defendant. Give me  
14 one second.

15 I'm still ruling - I'm gonna rule this way. I was  
16 looking - reading my notes wrong. I do find under  
17 Schwermer that the State would have the right to photograph  
18 the tattoos. I believe that they have shown at this point  
19 probable cause to believe that a crime was committed and it  
20 was committed by Mr. Davis.

21 That I find despite your arguments and they are well  
22 taken, Ms. Anderson, that material evidence relevant to the  
23 question of his guilt will be found by the use of taking of  
24 photographs; that taking photographs is safe and reliable.  
25 I find that based on the seriousness of the crime, the

1 importance of the evidence, the availability of - there are  
2 no less intrusive ways other than having him roll up his  
3 sleeve and there is no bodily intrusion. This is sort of  
4 on the fringe of Schmermer that usually has to do with  
5 taking blood, hair or other samples. But I think the  
6 analogy is appropriate so I'll allow the - I'll require the  
7 defendant to allow his tattoos to be photographed and then  
8 the State can use them however they feel is proper under  
9 the rules of evidence.

10 Anything else before we get the jury in?

11 SOLICITOR VALENZUELA: Yes, Your Honor. Yesterday we  
12 discussed the defendant had a prior CDV with the victim.  
13 We would like to be able to elicit testimony from the  
14 victim that he has admitted - admitted in a prior court  
15 proceeding that he is the father of her children. I can't  
16 think of --

17 THE COURT: Well let's see the indictment from the -  
18 that.

19 SOLICITOR SPRINGS: Just to let the Court know what  
20 we're getting ready to ask. We have a photographer. The  
21 tattoos on his arm and his chest he would have to take his  
22 shirt off, we're going to ask if he can just step back in  
23 the holding cell long enough for the two pictures to snap;  
24 put his shirt back on and come back out.

25 THE COURT: All right. So we'll do that. We'll take

1 a break and do that in just a minute.

2 MS. ANDERSON: Your Honor, if I may, after discussing  
3 with Mr. Davis who I think has some concern about the  
4 photograph. My discussion with him, we'll just stipulate  
5 that the children are his biological children and a  
6 household member versus the route of - he would feel more  
7 comfortable that way.

8 THE COURT: All right.

9 SOLICITOR VALENZUELA: Your Honor, so we'll have that  
10 stipulation prepared and then I've given defense counsel a  
11 stipulation about the strong armed robbery being a crime of  
12 violence. I gave that to her a little while ago.

13 THE COURT: You've already agreed to stipulate to  
14 that?

15 MS. ANDERSON: Yes, Your Honor.

16 SOLICITOR VALENZUELA: Are we now ready for the jury?

17 SOLICITOR VALENZUELA: We are, Your Honor.

18 MS. ANDERSON: Yes, Your Honor.

19 THE COURT: Bring in the jury.

20 (JURY REENTERS COURTROOM AT 09:45 A.M..)

21 THE COURT: Good morning.

22 (JURY RESPONDED.)

23 THE COURT: The detective will take the stand and  
24 subject to cross examination.

25 (WHEREUPON: DETECTIVE JOSH WELCH RETURNED TO THE

1 WITNESS STAND.)

2 CROSS EXAMINATION

3 DETECTIVE JOSH WELCH BY MS. ANDERSON:

4 Q. Detective Welch, you've been designated by the State  
5 as the case agent in this case; correct?

6 A. That's correct

7 Q. And in talking a little bit about what a case agent  
8 is, that generally is gonna note the main officer  
9 overseeing the case; is that accurate?

10 A. Yes.

11 Q. Okay. Certainly to be the case agent would sort of be  
12 familiar with all the aspects of the case.

13 A. Yes.

14 Q. Okay. And all of the evidence that's been collected  
15 in the case.

16 A. I'm familiar with - Yes the parts that I did in the  
17 case.

18 Q. Okay. And so you're familiar because you actually  
19 were involved in the investigation on this case on March  
20 15th as you testified to; correct?

21 A. Yes that's correct.

22 Q. And as a case agent you'd also be familiar with  
23 whether the other officers involved in the case would have  
24 done as well?

25 A. That's correct

DETECTIVE JOSH WELCH: BY MS. ANDERSON

-100-

1 Q. Okay. And I think you testified yesterday that you  
2 were sort of brought in to investigate this case further.

3 A. Yes.

4 Q. And I think you testified yesterday as well that  
5 actually you ended up taking additional warrants out after  
6 you became involved in the case.

7 A. That's right.

8 Q. And the actual first responding officer on March 15th  
9 I think was Officer Cook; correct?

10 A. That's correct

11 Q. And I think Officer - or there were a couple of other  
12 officers on duty who responded initially.

13 A. Yes.

14 Q. And Officer Cook was the officer who drafted the  
15 Incident Report in this case.

16 A. That would be correct.

17 Q. Okay. And when you became involved in the case, you  
18 testified about you spoke with the - Sherika Robinson ---

19 A. Yes.

20 Q. --- on the 16th.

21 A. Yes.

22 Q. And took a written statement from her.

23 A. Yes I did.

24 Q. And also photographed her injury.

25 A. That's right.

1 Q. And subsequently went and sought - either you or I  
2 think Officer Canty was involved in - or Detective Canty  
3 was involved as well.

4 A. That's correct. I did the investigation, decided to  
5 draw up other warrants. Officer Canty was there with me  
6 and actually he was the actual affiant on the warrants that  
7 went to the judge. He knew the facts of the case, you  
8 know, with everything but it was my decision to go ahead  
9 with further warrants yes.

10 Q. Okay. And when you made that decision, you reviewed  
11 the information you had so far in the case; correct?

12 A. That's right.

13 Q. Okay. Reviewed Officer Cook's Incident Report?

14 A. Officer Cook's initial statement and then the  
15 statement that I received from Ms. Robinson was what I  
16 based that on.

17 Q. Okay. Did you review as well Ms. Robinson's statement  
18 on the 15th to officers on the scene?

19 A. I did review it yes.

20 Q. Okay. And that there were also photographs taken on  
21 the 15th as well by a responding officer?

22 A. Yes by Officer Cook; took initial photos at the scene.

23 Q. Okay. And how about the K 9 Report that Officer  
24 Marino who was the dog handler drafted up?

25 A. Yes.

DETECTIVE JOSH WELCH: BY MS. ANDERSON

-102-

1 Q. So basically your familiarity with all of these  
2 documents, all of the evidence that other officers  
3 gathered, you had that at your disposal?

4 A. I had some familiarity with it yes.

5 Q. And to talk a little bit in general terms about an  
6 incident report, you testified that you've got extensive  
7 background with law enforcement, had been doing this for a  
8 number of years. An incident report is basically a form by  
9 the Rock Hill Police Department that the information of the  
10 case is laid out on or preserved on; correct?

11 A. That's right.

12 Q. And that's essentially to prevent officers from having  
13 to rely solely on memory.

14 A. That yeah among many other things but yes.

15 Q. Yes. And essentially you need to draft the  
16 information shortly after an investigation to avoid  
17 forgetting it later?

18 A. Yes.

19 Q. And ultimately one of the things that serve as an  
20 incident report is that is forwarded essentially to a  
21 solicitor's office if the case is going to go forward for  
22 prosecution?

23 A. Yes.

24 Q. So that's essentially some of the main information  
25 that's also related to the state in terms of the

1 allegations of the case?

2 A. That's right.

3 Q. And an officer who are with the Rock Hill Police  
4 Department are basically trained or explained how to fill  
5 the forms out?

6 A. That's right.

7 Q. And it's a form they have to use considering the  
8 number of calls they receive on a pretty frequent basis?

9 A. Correct.

10 Q. And the way the form is set out is that there are  
11 certain sort of boxes or sections with directions; certain  
12 information is filled out in those such as victim  
13 information is one box?

14 A. That's correct

15 Q. And there is a box for example suspect information?

16 A. Yes.

17 Q. And this is basis for any witnesses that may need to  
18 be their information to be added?

19 A. That's correct

20 Q. And there is also essentially a sort of narrative  
21 section where an officer can sort of in a story or  
22 paragraph format would write out what he's found on the  
23 case?

24 A. Yes.

25 Q. And you indicated that you have reviewed Officer

DETECTIVE JOSH WELCH; BY MS. ANDERSON

-104-

1 Cook's incident report in this case?

2 A. The actual incident report to be honest with you I did  
3 not review that. I reviewed the statements. The statement  
4 that was written and the statement that I took from Ms.  
5 Robinson.

6 Q. Okay.

7 A. And the - along with the phone calls and stuff is what  
8 I based my - to get more warrants on.

9 Q. Okay. So you did not - You do not - scratch that.

10 So you did not review the actual incident report that  
11 Officer Cook drafted?

12 A. I cannot say positively yes.

13 Q. Okay. All right. Are you aware that on Officer  
14 Cook's Incident Report it indicated that when he responded  
15 he believed Ms. Robinson had been using alcohol on the  
16 15th?

17 A. Okay. That I'm not aware of.

18 Q. Okay. Are you aware that on the Incident Report next  
19 to a question about whether Ms. Robinson complained of any  
20 non-visible injuries that Officer Cook indicated no?

21 A. I'm not aware of that no, ma'am. I can look at it and  
22 say that but I didn't prepare that report.

23 Q. Okay. And I'm not trying to get you to say anything  
24 you don't --

25 A. Okay.

1 Q. I'm just gauging how much you knew about Officer  
2 Cook's report.

3 A. Right. Okay.

4 Q. And you testified yesterday about taking some  
5 photographs of Ms. Robinson's on the 16th.

6 A. The day following yes.

7 Q. And the Solicitor displayed those photographs and  
8 those show the injury you noted to her eye which we did see  
9 the swollen eye.

10 A. Yes that's correct.

11 Q. And that was basically the visible injury you saw on  
12 Ms. Robinson when you came on the 16th?

13 A. Yes. When I talked to her yes. The day I talked to  
14 her on the 16th that's the injury that I saw that's  
15 correct. And I did see the initial photographs taken ---

16 Q. Okay.

17 A. --- also.

18 Q. And you testified yesterday that you responded  
19 somewhere around 5:30 in the morning on the 15th, somewhere  
20 approximately?

21 A. That's right. Approximately yes.

22 Q. Okay. And so when you were actually on scene you were  
23 aware that when you were on scene EMS had gotten a call;  
24 correct?

25 A. I can't remember if EMS was there or not when I

DETECTIVE JOSH WELCH: BY MS. ANDERSON

-106-

1 actually showed up. I can't remember.

2 Q. Okay. You're aware that Ms. Robinson wasn't  
3 hospitalized basically on the 15th?

4 A. I don't believe she was no.

5 Q. And you're aware that on the 15th when officers were  
6 at Tyger Place that Ms. Robinson wasn't the only individual  
7 there that officers spoke to; correct?

8 A. Yes that's correct.

9 Q. There was a Willie Watson who was also there at the  
10 time; correct?

11 A. I don't remember his name. I know it was the  
12 defendant's dad.

13 Q. Okay. And this individual, the defendant's father,  
14 was there at the time the incident happened?

15 A. That's correct

16 Q. And officers did speak to him on the 15th?

17 A. Yes and I also spoke to him on the 16th.

18 Q. Okay. And the information he gave officers were that  
19 he did not see a gun?

20 A. Yes that's correct.

21 Q. Okay. And that information about what his statement  
22 was of not seeing a gun was not included in any of the  
23 reports filed in the case?

24 A. He - Can I explain further?

25 Q. Well. --

1 A. Go into what he told me?

2 THE COURT: Just answer the question.

3 Q. The question is that information that you even spoke  
4 to him was not included on the report?

5 A. No and I can tell you why.

6 Q. Okay.

7 A. Can I explain?

8 Q. Well my question is basically just that that wasn't  
9 included. That was subsequently told to the solicitor.

10 A. Right. But can I explain why I didn't include it?

11 THE COURT: You can give an explanation.

12 A. Okay. The reason that I didn't include anything that  
13 he told me is because he told me that he did not want to  
14 get involved. His son was already in enough trouble, and  
15 he didn't want to give any statements to hurt his son any  
16 further. That's what was told to me and that's why I  
17 didn't document anything he told me.

18 Q. But clearly you or Officer Cook did document that;  
19 correct?

20 A. Do what now?

21 Q. Clearly neither you nor Officer Cook documented that?

22 A. And I'm not sure if Officer Cook spoke to him or not.  
23 I know I spoke to him definitely the next day.

24 Q. Okay. And there was also on the 15th another  
25 individual I think he might have been named or nicknamed

DETECTIVE JOSH WELCH: BY MS. ANDERSON

-108-

1 Lanny at ?

2 A. That I'm not aware of.

3 Q. You're not aware that Ms. --

4 A. I know there were - there were - her kids were there  
5 in the house but I'm not sure about Lanny.

6 Q. Okay.

7 MS. ANDERSON: I beg the Court's indulgence.

8 A. Okay.

9 (PAUSE.)

10 Q. Okay. Moving on a little bit. You testified  
11 basically Mr. Davis was taken into custody and arrested  
12 sometime in the morning of March 15th?

13 A. That's correct

14 Q. I think its booking on - or booking documentation  
15 sometime around 7:30 or somewhere to that effect?

16 A. That's right.

17 Q. And when he was transported to Rock Hill City Police  
18 Department, he was transported in a marked police car;  
19 correct?

20 A. Yes.

21 Q. One of the patrol officers or one of the officers on  
22 scene transported him to jail in their car; correct?

23 A. Yes that's right.

24 Q. And that Rock Hill patrol car was equipped with an in-  
25 car-camera system?

1 A. In car camera yes, video.

2 Q. And the in-car-camera system essentially will - can  
3 record both video and audio?

4 A. That's right.

5 Q. And no video from the vehicle that transported Mr.  
6 Davis on the 15th was ever put into evidence?

7 A. No, ma'am, it was not.

8 Q. And in fact I think you talked to the Solicitor  
9 subsequently that the video was actually purged at some  
10 point in time?

11 A. It was.

12 Q. Meaning the video was actually destroyed at some point  
13 in time?

14 A. It's all digital, it records to a data base and after  
15 a certain amount of time it goes out of the system.

16 Q. Okay.

17 A. That's correct.

18 Q. So basically the video is not - I guess a copy made --

19 A. If its not a copy made in the evidence yes it purges  
20 itself out.

21 Q. Okay.

22 A. After a certain amount of time.

23 Q. And basically none of the officers involved in this  
24 did ever put that video into evidence so it ended up  
25 purging?

DETECTIVE JOSH WELCH: BY MS. ANDERSON

-110-

1 A. No, that's right.

2 Q. Now the Solicitor ask you yesterday about some phone  
3 calls made from the Rock Hill city jail that you listened  
4 to.

5 A. That's right.

6 Q. And basically just asking if you had pulled or  
7 listened to phone calls made from the facility on that  
8 date?

9 A. Yes.

10 Q. And she ask you about whether you had listened or ask  
11 you to identify one phone call; correct?

12 A. Uh-huh.

13 Q. As a phone call you had listened to?

14 A. That's right.

15 Q. And I believe you testified you actually pulled that  
16 sort of digitally from the system yourself?

17 A. Uh-huh.

18 Q. And there were actually a number of other phone calls  
19 that you ultimately pulled and provided to the State;  
20 correct?

21 A. That's correct

22 Q. That there were some multiple discs of phone calls?

23 A. There was multiple phone calls yes.

24 Q. And you listened to all of those phone calls prior to  
25 coming to court; correct?

DETECTIVE JOSH WELCH: BY MS. ANDERSON

-111-

1 A. Uh-huh. I listened to the one phone call like prior.  
2 I listened to all of them and downloaded all of them. I've  
3 listened to the first phone call that was made prior to  
4 coming here yes.

5 Q. Okay. But I guess some point previously you've  
6 listened to all of the phone calls ---

7 A. Yes.

8 Q. --- provided the State? Basically - Didn't want to  
9 cut you off.

10 A. Yes.

11 Q. You didn't give them a disc of anything you haven't  
12 listened to?

13 A. No. No.

14 Q. And you recall that on some of those phone calls the  
15 caller of the phone call denies a gun being involved?

16 SOLICITOR VALENZUELA: Objection, Your Honor. That's  
17 solely hearsay. Initially there's been no foundation for  
18 the other phone calls. There's only been foundation for  
19 the one phone call.

20 THE COURT: I sustain the objection.

21 BY MS. ANDERSON:

22 Q. Officer, if we can talk a little about the detective,  
23 about the K 9 track that you referenced yesterday and you  
24 referenced that you were actually sort of - you were  
25 actually sort of one of the support officers working with

DETECTIVE JOSH WELCH: BY MS. ANDERSON

-112-

1 the K 9.

2 A. Yes.

3 Q. So in addition to just having that information  
4 available, you were actually present during the entire - -

5 A. That's correct

6 Q. And with your work with the K 9 Unit you also have  
7 some sort of familiarity with how the K 9 tracking works?

8 A. Yes.

9 Q. And correct me if I'm wrong, but essentially what it  
10 is is the K 9, and I think the correct name in this case is  
11 Molly?

12 A. Molly that's right.

13 Q. Molly. So it may be easier to call Molly. Molly is  
14 essentially trained to pick up a certain scent?

15 A. Picks up human scent yes.

16 Q. Human scent?

17 A. Yes human.

18 Q. And - Okay. And when the - With Molly is that she's  
19 trained to follow only that scent once she picks it up?

20 A. Yes.

21 Q. And so a good well trained dog essentially is not  
22 going to run off and want to sniff everything else; is  
23 going to stay on that track?

24 A. That's correct

25 Q. Okay. And that's sort of why they're used is that

1 Molly's trained in a way she's not gonna smell something,  
2 you know, rabbit, another person, take off somewhere?

3 A. Right. They are trained and they - Yes they are  
4 trained to do that and they are good at what they do.  
5 However it is a dog and there is room for error in there.

6 Q. Okay. But in terms of on March 15th there was nothing  
7 about Molly's performance there that didn't look like she  
8 was unreliable at that point?

9 A. Right.

10 Q. She seemed focused?

11 A. Yes.

12 Q. And the handler is not basically trying to influence  
13 the dogs path. They're sort of I guess controlling the dog  
14 in terms of not running off but letting the dog do the  
15 guiding; correct?

16 A. Yeah you're pretty much behind - I mean the dog's  
17 taking you on a walk.

18 Q. Okay.

19 A. It would be just like you walking your dog down the  
20 sidewalk.

21 Q. Okay. And you testified I think essentially that on -  
22 And Officer Marino I think was the actual handler. ---

23 A. Uh-huh. That's correct.

24 Q. --- of the dog. And you testified there were four  
25 officers actually that day, you had a larger number of

DETECTIVE JOSH WELCH: BY MS. ANDERSON

-114-

1 support officers on that date; correct?

2 A. Yes.

3 Q. Okay. And Molly did pick up a scent trail on the  
4 15th?

5 A. That's right.

6 Q. And the individual that you were seeking to - she was  
7 seeking to track that day was Mr. Davis?

8 A. Yes.

9 Q. And that was from following from a scent at the back  
10 door of the house?

11 A. That's right.

12 Q. And essentially one of the officers during the course  
13 of Molly following the scent trail actually saw who they  
14 believed to be Mr. Davis ---

15 A. Yes.

16 Q. --- within sight?

17 A. Right.

18 Q. So that would be another indication that Molly's  
19 probably following the right track because you actually see  
20 the individual ahead of you?

21 A. That's right.

22 Q. And I think you testified that he was not taken into  
23 custody at that point but I think at that point went across  
24 the York Tech parking lot campus or somewhere in York Tech?

25 A. Uh-huh, sure did.

1 Q. Okay. And Molly was still able to follow scent trail  
2 from there; correct?

3 A. Yes.

4 Q. Okay. And you testified that on the course of the  
5 track the support officers are basically they're being very  
6 observant?

7 A. Right.

8 Q. Because you testified that the handler has to focus on  
9 the dog so you're there as support even, you know, if they  
10 see someone for safety reasons or as well to not miss  
11 anything that the handler might miss?

12 A. That's correct.

13 Q. Okay. And I think you talked yesterday about that  
14 support officer's for example on a train - trail and a  
15 scent track look in trash cans or bushes or areas where  
16 something or someone could be concealed?

17 A. Someone could be hiding that's right.

18 Q. And on the track that was followed on the 15th support  
19 officers did not find the gun as they were following the  
20 track?

21 A. We did not.

22 Q. And Mr. Davis was taken and the State has shown you on  
23 this Exhibit he was taken into custody sort of I think in a  
24 maybe a business parking lot or - -

25 A. Industrial park.

DETECTIVE JOSH WELCH: BY MS. ANDERSON

-116-

1 Q. Industrial park. Okay. Thank you. And when he was  
2 taken into custody he was on a cell phone at the time?

3 A. He was talking on a cell phone.

4 Q. Okay. I think he had cigarette in his hand?

5 A. I believe that's right.

6 Q. Okay. And he didn't have a gun out when you took him  
7 into custody?

8 A. No, ma'am.

9 Q. And he would have been searched when he was taken into  
10 custody?

11 A. He was searched.

12 Q. And no gun was found on him at that time?

13 A. No gun and the keys - He didn't have the victim's keys  
14 that he took either.

15 Q. And -

16 MS. ANDERSON: I beg the Court's indulgence for one  
17 moment.

18 (PAUSE.)

19 Q. And, Detective, you testified I think yesterday that  
20 after Mr. Davis was taken into custody, the officers, you  
21 followed basically in reverse the track that Molly had  
22 taken you on?

23 A. Yes.

24 Q. And traced the entirety of that track?

25 A. Do what now?

1 Q. Traced the entirety of that track back to Tyger Place?

2 A. The best we could yes.

3 Q. Okay. And no gun was located on that path?

4 A. No gun was located on that direct path no, ma'am.

5 Q. And I think you also testified yesterday that you  
6 walked, as officers walked that path, you checked in any  
7 bushes or plants along the way?

8 A. We did look in trash cans along the way and we did  
9 look sort of in the bushes right there at the bank and  
10 checked that area.

11 Q. Okay. No gun was found?

12 A. No gun was found in the area as we checked no, ma'am.

13 Q. And after the 15th subsequently Rock Hill police  
14 officers also went out to the area on March 16th; correct?

15 A. I was in that group yes, ma'am.

16 Q. Okay. And no gun was found on the 16th either?

17 A. No, ma'am, we did not find a gun.

18 Q. And then Rock Hill officers I believe also went out to  
19 the area on March 17th?

20 A. I was in that group also.

21 Q. And no gun was found during that either?

22 A. No, ma'am.

23 MS. ANDERSON: That's all the questions I have,  
24 Detective.

25 THE COURT: Redirect?

DETECTIVE JOSH WELCH: BY SOLICITOR VALENZUELA

-118-

1 SOLICITOR VALENZUELA: Yes, Your Honor.

2 REDIRECT EXAMINATION

3 DETECTIVE JOSH WELCH BY SOLICITOR VALENZUELA:

4 Q. Detective Welch, did you - when you were - excuse me -  
5 looking in the trash cans and the bushes, were you able to  
6 search every trash can and bush as you passed by them  
7 trying to track down the defendant?

8 A. Of course not. That's not feasible. I mean there's no  
9 possible way you could say unless you actually went with  
10 spray paint and marked, you know, it's so time consuming  
11 there's no way.

12 Q. What was you all's primary purpose when K 9 Molly was  
13 tracking the defendant's scent?

14 A. Our primary purpose and focus was finding the  
15 defendant because we had information that he was armed.  
16 And so our primary focus was him and he was the initial  
17 threat.

18 Q. So the runners and you were serving as a runner that  
19 day and then the K 9 handler you all's initial purpose was  
20 to find the defendant and so it would not have been to  
21 locate evidence while you followed the scent that Molly - -

22 A. That's correct

23 Q. Okay. Now when you said that you checked the trash  
24 cans and the bushes, were you able to go and look further  
25 out to where perhaps throwing distance would be if someone

1 were to throw something that would obviously not be on the  
2 direct path of --

3 A. Right. Throwing - you know if throwing - If the  
4 person threw it - and also we were relying on the track  
5 that the K 9 went. A K 9 is not gonna directly run step  
6 for step where the person went. A person's human odor is  
7 just constantly you're shedding what we call skin raps off  
8 of you. Its just constantly falling off of you day in and  
9 day out and that's - that's what the dog is actually  
10 smelling. So as a person is running those may come off,  
11 they may you know go here, go there, the wind blows it a  
12 little bit so the dog is not gonna track step for step  
13 where this person went. The dog is gonna kind of skirt the  
14 scent and follow it.

15 Q. And going back to our prior question. And so in that  
16 case when you all were following where K 9 Molly was  
17 tracking, you all were not stopping to go look at bushes  
18 and trash cans that were beyond directly where the track --

19 A. Where the dog was tracking that's correct no.

20 Q. Okay. And now the path that the defendant took K 9  
21 Molly and you all on, did that pass by any buildings?

22 A. Yes.

23 Q. Did you all check all the roofs of those buildings to  
24 see if there was a gun found up there?

25 A. No we did not.

OFFICER JUSTIN COOK: BY SOLICITOR VALENZUELA

-120-

1 SOLICITOR VALENZUELA: Thank you.

2 THE COURT: Recross?

3 MS. ANDERSON: Nothing further, Your Honor.

4 THE COURT: You can step down.

5 DETECTIVE WELCH: Thank you, Your Honor.

6 THE COURT: I appreciate your time. Thank you.

7 (WITNESS LEAVING WITNESS STAND.)

8 THE COURT: Call your next witness.

9 SOLICITOR VALENZUELA: Your Honor, the State would  
10 call Officer Justin Cook.

11 SOLICITOR SPRINGS: Officer Cook.

12 (WHEREUPON: OFFICER JUSTIN COOK,  
13 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

14 THE COURT: Have a seat up here.

15 OFFICER COOK: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 OFFICER JUSTIN COOK BY SOLICITOR VALENZUELA:

18 Q. Good morning, Officer Cook.

19 A. Good morning, ma'am.

20 Q. Can you state your full name for the record please?

21 A. Justin Cook.

22 Q. And, Officer Cook, where do you work?

23 A. I work for the Rock Hill Police Department.

24 Q. How long have you worked as a police officer?

25 A. I've worked as a police officer about seven and a half

1 years.

2 Q. And how many of those years were spent with Rock Hill  
3 P.D.?

4 A. Two years.

5 Q. Two years? Where did you spend the remainder of those  
6 five and a half years --

7 A. I've been a police officer in Maine and a deputy  
8 sheriff in Maine. And I've also worked for the United  
9 State's Border Patrol.

10 Q. Did you have to go through any training when you were  
11 training to become an officer in Maine?

12 A. Yes, ma'am, there was an eighteen week academy there.

13 Q. And did you complete that academy?

14 A. Yes, ma'am.

15 Q. And how about when you worked for the border patrol;  
16 did you have to go through any training then?

17 A. Yes, ma'am, there was a twenty week academy for them  
18 as well.

19 Q. Did you complete that academy?

20 A. Yes, ma'am.

21 Q. And then when you transferred into the Rock Hill  
22 Police Department, did you have to take any training here  
23 in South Carolina?

24 A. I had to do a three week course at the South Carolina  
25 Criminal Justice Academy to get certified as a South

OFFICER JUSTIN COOK: BY SOLICITOR VALENZUELA

-122-

1 Carolina law enforcement officer.

2 Q. And you completed that training?

3 A. Yes, ma'am, that's correct.

4 Q. And now what are your responsibilities with Rock Hill  
5 Police Department?

6 A. I've worked as a patrol officer on the patrol shift  
7 and I'm currently assigned to the Traffic Enforcement Unit.

8 Q. On March 15th of 2012, were you working that morning?

9 A. Yes, ma'am, I was.

10 Q. And did you respond out to that  
11 morning?

12 A. I did.

13 Q. Why did you go out; why did you respond out - -

14 A. I received a call from Rock Hill police dispatch about  
15 a 911 call that they believed was a domestic - was a  
16 domestic disturbance from that department - or from that  
17 apartment complex.

18 Q. About what time was it when you responded out - -

19 A. I believe it was about 5:00 a.m..

20 Q. Can you explain the conditions that morning; was the  
21 sun out, was it --

22 A. The sun was just starting to come up just barely and  
23 there was also the apartment complex was also lit by street  
24 lights.

25 Q. Do those street lights and the sun allow you to have

1 some visibility?

2 A. Yes, ma'am.

3 Q. Of the building and the surrounding areas?

4 A. Yes, ma'am.

5 Q. Now what did you find when you arrived to

6

7 A. When I arrived I pulled into the parking lot and  
8 before I even exited my car a lady who was now known to be  
9 the victim, Ms. Robinson, she came running out to my car  
10 before I even got out of the car. She was in a very  
11 frantic state and she as I got out she pointed, pointed off  
12 in the distance at - at a male, at a black male running  
13 away from the scene who I now know as the defendant.

14 Q. Were you able to see that black male that you just  
15 described?

16 A. Yes, ma'am. He was probably seventy-five yards away  
17 from me, or so.

18 Q. I'm handing you what's been labeled State's Exhibit's  
19 One through Four, which were previously admitted and then  
20 we're publishing them over here.

21 (STATE'S EXHIBITS ONE THROUGH FOUR PUBLISHED ON  
22 COURTROOM OVER HEAD PROJECTOR.)

23 SOLICITOR VALENZUELA: Madame Clerk, will you please  
24 dim the lights.

25 (COURTROOM LIGHTS TURNED DOWN.)

OFFICER JUSTIN COOK: BY SOLICITOR VALENZUELA

-124-

1 BY SOLICITOR VALENZUELA:

2 Q. What are we looking at here?

3 A. This is the victim's apartment com - apartment  
4 building in Tyger Place Apartments.

5 Q. And then do you recognize this angle?

6 A. Yes, ma'am. This is looking at it, - looking at it  
7 from this angle. Her apartment is on the left.

8 Q. Is that correct?

9 A. It's either that one where the white chairs are or the  
10 one to the right of that I believe.

11 Q. Okay. So this is her building --

12 A. That is her building yes, ma'am.

13 Q. Okay.

14 A. And the gap, the gap to the right of that where that  
15 pole is, I could see - I could see the defendant running,  
16 running in the distance from where I was. The parking lot  
17 where I was parked was to the right of that just out of the  
18 view.

19 Q. Okay, Officer Cook, so if we're looking at it from the  
20 juries perspective, the parking lot is where you are?

21 A. Yes, ma'am. I'm in the parking lot to the right, to  
22 the right just off of - just out of view.

23 Q. Okay. So the parking lot is right about here.

24 (SOLICITOR INDICATED ON EXHIBIT.)

25 Q. And so you're saying that you're able to see a black

1 male running through that wood line that we see over here  
2 beside the defendant - the victim's home?

3 A. Yes, ma'am, that's correct.

4 Q. Okay. Now later through your investigation were you  
5 able to identify who that black male was that was running?

6 A. Yes, ma'am. The victim identified him as Dawone  
7 Davis.

8 Q. That's the defendant; correct?

9 A. Yes, ma'am.

10 Q. Were there other people present in the home when you  
11 responded?

12 A. Yes, ma'am. There was the victim, the defendant's  
13 father he was present. A couple of small children and  
14 another black male, young black male whose name I don't  
15 recall at this time.

16 Q. So you didn't get that black male's name?

17 A. If I did I don't remember. It didn't - it didn't seem  
18 relevant at the time. He didn't have any good information  
19 for me I could use.

20 Q. Well let's take this one step at a time. Did you  
21 speak to that black male?

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

23 Q. Did he indicate that he had been there that day, that  
24 morning?

25 A. I believe he did.

OFFICER JUSTIN COOK: BY SOLICITOR VALENZUELA

-126-

1 Q. Did he give you any other information about what  
2 happened?

3 A. He did not.

4 Q. And then you also mentioned that there was - the  
5 defendant's father was also there?

6 A. Yes, ma'am.

7 Q. And you spoke to him?

8 A. That's correct

9 Q. And he indicated that he had been there?

10 A. He did.

11 Q. I'm handing you what's previously marked as State's  
12 Exhibit Eleven and Twelve. Will you take a look at those  
13 please.

14 (WITNESS COMPLIED.)

15 Q. Do you recognize what's in those photos?

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

17 Q. What is it?

18 A. This is pictures that was taken of the victim shortly  
19 - shortly thereafter.

20 Q. Do those photographs fairly and accurately represent  
21 what the victim looked like the morning of March 15th?

22 A. Yes, ma'am, they do.

23 SOLICITOR VALENZUELA: Your Honor, the State moves to  
24 admit Exhibits Eleven and Twelve into evidence.

25 MS. ANDERSON: No objection.

1 THE COURT: In without objection.

2 SOLICITOR VALENZUELA: And to publish to the jury,

3 Your Honor.

4 THE COURT: You may.

5 (WHEREUPON: STATE'S EXHIBITS ELEVEN AND TWELVE

6 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE AND PUBLISHED

7 TO THE JURY.)

8 BY SOLICITOR VALENZUELA:

9 Q. Now, Officer Cook, looking at these exhibits that you  
10 have in your hand, is this Exhibit Eleven?

11 A. No, ma'am, this is Exhibit Twelve.

12 Q. Okay. So looking at Exhibit Twelve, what does this  
13 show?

14 A. This shows bruising and swelling to Ms. Robinson's  
15 face shortly after I arrived.

16 Q. And is that what she looked like that morning?

17 A. It is.

18 Q. And is this Exhibit Eleven?

19 A. Yes, ma'am, it is.

20 Q. And what does this photograph show?

21 A. The same. It shows - It's a different angle of Ms.  
22 Robinson's face with some swelling near her left eye.

23 (PAUSE.)

24 SOLICITOR VALENZUELA: Officer Cook, please answer any  
25 questions defense counsel may have for you.

OFFICER JUSTIN COOK: BY MS. ANDERSON

-128-

CROSS EXAMINATION

1  
2 OFFICER JUSTIN COOK BY MS. ANDERSON:

3 Q. Officer Cook, you arrived somewhere around just after  
4 five o'clock; correct?

5 A. Yes, ma'am.

6 Q. And I think the dispatch call came in somewhere around  
7 5:00 or five o'clock a.m.?

8 A. Yes, ma'am.

9 Q. Okay. So you got there pretty much on scene shortly  
10 after the dispatch call?

11 A. Yes, ma'am, just within a few minutes.

12 Q. Okay. And you testified on direct that you or an  
13 individual that you later found to be Ms. Robinson came up  
14 to your car as soon as you arrived?

15 A. Yes, ma'am.

16 Q. And she pointed at an individual that you said you  
17 subsequently found out to be Mr. Davis, sort of leaving the  
18 area?

19 A. That's correct

20 Q. And you actually - you testified you did physically  
21 see him leave the area?

22 A. I saw him fleeing the area yes, ma'am, that's correct.

23 Q. And as the officer who sort of first responded, you  
24 were ultimately the officer who filled out the Incident  
25 Report in this case; correct?

1 A. That's correct

2 Q. And I believe you filled that out, it indicates on  
3 your report - I have a copy if you don't recall - is  
4 somewhere round six o'clock that morning on the 15th?

5 A. I believe it was around five o'clock. Oh, that I  
6 filled it out?

7 Q. That you filled the report ---

8 A. Yes, ma'am.

9 Q. Okay. So shortly after basically you left the scene  
10 you were able to sit down and fill that out?

11 A. Yes, ma'am.

12 Q. So basically while everything was very fresh you had  
13 the opportunity; it wasn't a delay of several days or so?

14 A. That's correct

15 Q. And in your report basically you documented what you  
16 found when you went out to Tyger Place; correct?

17 A. That's correct

18 Q. And sort of the people that were involved when you  
19 went out there as well?

20 A. Yes, ma'am.

21 Q. Okay. And one of the individuals you documented that  
22 in your investigation you determined Sherika Robinson to be  
23 the victim in this case?

24 A. That's correct

25 Q. And on this report you indicated that she did have

OFFICER JUSTIN COOK: BY MS. ANDERSON

-130-

1 visible injury?

2 A. Yes, ma'am.

3 Q. Okay. And you denoted that; you made a note about  
4 some lacerations, minor lacerations?

5 A. Okay.

6 Q. Do you need to see it or --

7 A. No that's okay.

8 Q. I don't want to - Okay. And you testified basically  
9 just now that you took some photographs as well?

10 A. Yes, ma'am.

11 Q. Okay. And then on the box it indicates that there  
12 were a complaint of any non-visible injury, you checked the  
13 box no?

14 A. Okay.

15 Q. And do you recall also that under this section that it  
16 indicates using alcohol you checked the box yes?

17 A. Okay. I do not recall that but okay.

18 Q. Okay. Let me --

19 May I approach, Your Honor?

20 Just let me - I don't want you to - just let you  
21 review that for a moment so that it's fresh in your mind.

22 (WITNESS COMPLIED.)

23 A. Yes, ma'am.

24 Q. And your report listed Mr. Watson as being present at  
25 the house?

OFFICER JUSTIN COOK: BY MS. ANDERSON

-131-

1 A. Yes, ma'am.

2 Q. And I think you testified on direct there are actually  
3 several people present at the house?

4 A. Yes, ma'am.

5 Q. And one you indicated was a black male whose name you  
6 couldn't recall?

7 A. That's right.

8 Q. You recall the name Lanny or a nickname Lanny?

9 A. I honestly don't remember.

10 Q. Okay. And you did indicate you talked with him on  
11 that morning?

12 A. Yes, ma'am.

13 Q. But you didn't put in information about that in your  
14 report?

15 A. Yes, ma'am.

16 Q. Okay. And you also indicated I believe on direct that  
17 Mr. Watson was spoken to as well?

18 A. That's correct.

19 Q. And you recall that Mr. Watson indicated he did not  
20 see a gun?

21 SOLICITOR VALENZUELA: Your Honor, objection, hearsay.

22 THE COURT: I sustain the objection.

23 BY MS. ANDERSON:

24 Q. Ms. Robinson did reference - your report indicates Ms.  
25 Robinson referenced Mr. Watson as being correct? Excuse

OFFICER JUSTIN COOK: BY MS. ANDERSON

-132-

1 me, as being present?

2 A. Could you repeat that?

3 Q. I'm sorry about that. When you wrote in your report  
4 you did document information from Ms. Robinson that Mr.  
5 Watson being present?

6 A. Yes, ma'am.

7 Q. During the actual incident?

8 A. Yes, ma'am.

9 (JUROR INDICATED TO THE COURT.)

10 THE COURT: Yes, sir. Let's take a break?

11 All right, we'll take a break. That's fine. We can  
12 all take a break.

13 (JURY EXITS COURTROOM AT 10:25 A. M..)

14 THE COURT: We'll take about a ten minute break.

15 MS. ANDERSON: Yes, Your Honor.

16 THE COURT: You can step down. Don't discuss your  
17 testimony with anyone during the break.

18 OFFICER COOK: Yes, Your Honor, thank you.

19 (WITNESS LEAVING WITNESS STAND.)

20 THE COURT: We'll be at ease.

21 (COURT IN RECESS AT 10:25 A. M..)

22 (COURT BACK IN SESSION AT 10:48 A. M..)

23 THE COURT: Thank you. Take your seats.

24 SOLICITOR VALENZUELA: Your Honor, before you call the  
25 jury back, I wanted to go ahead and admit Defendant's two

1 prior CDV convictions as Court Exhibits so I don't forget  
2 that later.

3 THE COURT: All right.

4 MS. ANDERSON: I'm just - is this in anticipants the  
5 use of it to test later or just for testimony and question?

6 THE COURT: Yeah what's the purpose?

7 SOLICITOR VALENZUELA: In the - At the end is when  
8 we're discussing the different charges the State would ask  
9 that CDV charge as a lesser included CDV HAN and one  
10 establish that if he were convicted of CDV it would be his  
11 CDV third.

12 THE COURT: All right. That would be for sentencing  
13 purposes only. You can do that at sentencing.

14 SOLICITOR VALENZUELA: Okay.

15 THE COURT: I mean that's - -

16 SOLICITOR VALENZUELA: I apologize. I was told that I  
17 needed to make sure that I admitted those. Not - -

18 THE COURT: We can make them Court's Exhibits if you  
19 want too. We will go ahead and make them Court Exhibits  
20 now.

21 (WHEREUPON: COURT'S EXHIBIT NUMBER ONE AND TWO  
22 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

23 THE COURT: All right, bring in the jury.

24 (JURY REENTERS COURTROOM AT 10:50 A.M..)

25 THE COURT: All right.

OFFICER JONATHAN MORENO: BY SOLICITOR VALENZUELA

-134-

1 MS. ANDERSON: Nothing further on cross, Your Honor.

2 THE COURT: Any redirect?

3 SOLICITOR VALENZUELA: No redirect, Your Honor.

4 THE COURT: Officer, you can step down. Thank you,  
5 and be excused, we appreciate your time.

6 OFFICER COOK: Thank you, Your Honor.

7 (WITNESS LEAVING WITNESS STAND.)

8 THE COURT: Call your next witness.

9 SOLICITOR VALENZUELA: Your Honor, the State calls  
10 Officer Jonathan Moreno.

11 Officer Moreno, please.

12 (WHEREUPON: OFFICER JONATHAN  
13 MORENO, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS  
14 FOLLOWS:)

15 MADAME CLERK: Thank you. Please have a seat.

16 DIRECT EXAMINATION

17 OFFICER JONATHAN MORENO BY SOLICITOR VALENZUELA:

18 Q. Good morning, Officer Moreno, how are you?

19 A. Good morning. How are you?

20 Q. Good. Can you state your full name for the record  
21 please?

22 A. Officer Jonathan Moreno.

23 Q. And where do you work, Officer Moreno?

24 A. Rock Hill Police Department.

25 Q. And how long have you worked as a police officer?

1 A. A year and a half.

2 Q. Have you spent that full year and a half with Rock  
3 Hill Police Department?

4 A. Yes I have.

5 Q. And how long - What are your responsibilities there  
6 with Rock Hill Police Department?

7 A. I work patrol as well as part of the K 9 Unit.

8 Q. How long have you been a K 9 handler?

9 A. Eight months.

10 Q. Now can you explain to us when you say you're part of  
11 the K 9 Team; is that part of your regular  
12 responsibilities, is that an additional duty?

13 A. No it's an additional duty.

14 Q. Now are you required to go through any training to  
15 become a police officer for Rock Hill P.D.?

16 A. Yes I am.

17 Q. And what training was that?

18 A. I had to attend the South Carolina Police Academy  
19 which is located in Columbia, South Carolina.

20 Q. Have you gone through any previous; had you gone  
21 through any police training before that?

22 A. Yes I actually attended the Florida Academy for six  
23 months as well before I came to South Carolina.

24 Q. So you did six months down in Florida at their  
25 academy. And how long is your training here in South

OFFICER JONATHAN MORENO: BY SOLICITOR VALENZUELA

-136-

1 Carolina?

2 A. It was three weeks for the legal portion.

3 Q. Are you required to go through any training to become  
4 a K 9 handler?

5 A. Yes.

6 Q. And what training is that? Do you have any annual  
7 training?

8 A. We have an annual winter conference that we attend at  
9 King's Mountain State Park. It's a forty credit hour  
10 course for all handlers as well as training weekly.

11 Q. So you go through those forty hours every year?

12 A. Yes every year.

13 Q. And do you go through that training along with your  
14 K 9? Is it you and the K 9 going through the training  
15 together?

16 A. Yes its both myself and K 9 Molly.

17 Q. Then you also mentioned that you have weekly training;  
18 is that correct?

19 A. Yes.

20 Q. And how long is that weekly training?

21 A. That's four hours per week and sixteen hours a month.

22 Q. So for a total of sixteen hours a month?

23 A. Yes.

24 Q. And you've completed all sixteen hours every month  
25 since you've been a K 9 handler?

1 A. Yes I have.

2 Q. Now what do you do during those weekly training  
3 sessions?

4 A. We build scenarios for myself and the K 9; different  
5 scenarios that we encounter on calls or possible scenarios  
6 that we can encounter in the future. Just to prepare  
7 myself, the K 9 team and the K 9 dog for any scenario that  
8 might come about in the future.

9 Q. When you say scenarios can you explain to the jury a  
10 little bit more about that; give them an example of what a  
11 scenario might be?

12 A. For example we might train at a school, inside the  
13 city, in the woods; we can build the scenario in the sense  
14 of starting off the last known location where the person  
15 was last seen. An article that the person left behind or a  
16 vehicle where that person left from.

17 Q. And when you say that you're using that article of the  
18 vehicle, are you using that article or the vehicle as an  
19 initial scent for the dog?

20 A. Yes.

21 Q. About how many tracks do you think you've done in  
22 training?

23 A. Over a hundred tracks.

24 Q. And when I say - When I use the term tracks, is it  
25 accurate that tracks refers to one of those training

OFFICER JONATHAN MORENO: BY SOLICITOR VALENZUELA

-138-

1 scenarios where you start off with a scent and then follow  
2 that scent until you locate the suspect?

3 A. Yes.

4 Q. And you said - How many of those have you done?

5 A. Over a hundred.

6 Q. And how many calls have you responded to as a handler,  
7 so real life scenarios, real life situations?

8 A. Over forty.

9 SOLICITOR VALENZUELA: Your Honor, the State moves to  
10 admit the witness as an expert in the field of K 9 tracking  
11 and handling.

12 THE COURT: Any voir dire?

13 MS. ANDERSON: No, Your Honor.

14 THE COURT: I find he is qualified in that area, those  
15 areas.

16 SOLICITOR VALENZUELA: Thank you, Your Honor.

17 Q. Okay, Officer Moreno, tell us a little bit about your  
18 K 9? What name do you refer to her by?

19 A. K 9 Molly, she's a girl, her name is Molly.

20 Q. And what type of dog is Molly?

21 A. She's a red blood hound.

22 Q. How old is she?

23 A. She's four now.

24 Q. And do you do your training only with her?

25 A. Yes. It's just myself and K 9 Molly at all times

1 during training.

2 Q. So when you were referencing that annual training that  
3 you did but those forty hours that you did, you did all of  
4 those with Molly, K 9 Molly?

5 A. Yes.

6 Q. And your weekly training scenarios you do those with K  
7 9 Molly as well?

8 A. Yes.

9 Q. Now do you go out when you respond to real life calls  
10 do you only take K 9 Molly out with you?

11 A. Yes just Molly and myself.

12 Q. Now explain to the jury what kind of K 9 Molly is. In  
13 this case she was searching for a person. Is that what  
14 she's qualified to do; what she's trained to do?

15 A. K 9 Molly's ability is for search and rescue. She can  
16 search whether it's a suspect or a missing person; young or  
17 elderly.

18 Q. Do you have - Do you know - There are K 9's that are  
19 able to detect drugs; is that correct?

20 A. Yes there are.

21 Q. Is K 9 Molly able, trained to detect drugs?

22 A. No she's not.

23 Q. Are there also K 9's that are trained to detect items?

24 A. Yeah those would be article K 9 dogs.

25 Q. Is Molly, K 9 Molly trained to be an article locating

OFFICER JONATHAN MORENO: BY SOLICITOR VALENZUELA

-140-

1 dog?

2 A. No she's not.

3 Q. In your training and experience is K 9 Molly a  
4 reliable person search K 9 dog?

5 A. Yes.

6 Q. Now were you working the morning of March 15th, 2012?

7 A. Actually I was off duty but I received a page  
8 regarding this incident.

9 Q. Now when you say you received a page, are you subject  
10 to being paged that at any time as part of your  
11 participation in the K 9 team?

12 A. Yes. Whether I'm on duty or off duty the K 9 team  
13 receives a page to notify us of an incident. From there we  
14 contact dispatch and notify them that we'll be on our way.

15 Q. So you received a page the morning of March 15th,  
16 2010; is that correct?

17 A. Yes I did.

18 Q. Okay. And did you respond out to in  
19 response to that page?

20 A. Yes.

21 Q. And what did the page inform you was going on?

22 A. The page informed me that we had a suspect flee the  
23 scene of a criminal domestic violence incident that was  
24 high and aggravated which just means that there was a  
25 weapon involved. From there we let them know that we were

1 on the way.

2 Q. About what time did you reach Tyger Place that  
3 morning?

4 A. I arrived approximately 5:30 and I received the page  
5 at 5:18.

6 Q. Were you able to gather any additional information  
7 once you responded to the scene about the suspect?

8 A. Once we arrived on scene we learned that the suspect  
9 was a black male with a white shirt; armed with jeans, had  
10 tattoos on his arm, neck and face, and the one visible  
11 tattoo that we learned through our investigation was a tear  
12 drop on his face.

13 Q. Now you went through a lot of information right there  
14 so I want to go back just briefly. You said that you had a  
15 description of what he was wearing; tattoos that were on  
16 his body and then that he was armed. What does it mean  
17 when you're informed that a suspect is armed?

18 A. When the suspect is armed it's mostly for officer  
19 safety. It lets us know that we have the possibility of a  
20 weapon being involved that can be used against us that was  
21 previously used for the incident.

22 Q. Now when you started out on your track with Molly,  
23 where did you all start?

24 A. We started at the last known location where the  
25 suspect was last seen which was the back yard

1

2

Q. I'm handing you what's been labeled State's Three and Four, those have already been admitted into evidence.

3

4

You're looking at State's Exhibit Three; is that correct, published on the screen?

5

6

A. Yes it is.

7

Q. Does that look familiar to you?

8

A. Yes it does.

9

Q. And what are we looking at here?

10

A. This is going to be the back of the residence.

11

Q. When you said that you started your track at the back of the residence, was it in this area?

12

13

A. Yes it was right there in between the fence line and the residence.

14

15

Q. And then just - We've given the jury some context just to make sure, over here if the jury's standing in the same position this picture is; where is the victim's home in relation?

16

17

18

A. The victim's home would be to the right.

19

20

Q. So it would be like here; is that correct?

21

A. Uh-huh.

22

Q. And then is that the back door or the front door?

23

A. That would be the back door.

24

Q. And then what is over here to the left?

25

A. That's the fence line that separates York Tech College

1 campus with the residential area.

2 Q. So on the other side of this fence is York Tech  
3 Campus?

4 A. Yes.

5 Q. I'm going to pull out the map and have you step down.  
6 This is Exhibit - State's Exhibit Five. If you want to  
7 step down for me.

8 (WITNESS LEAVING WITNESS STAND.)

9 SOLICITOR VALENZUELA: Your Honor, may I reposition.

10 THE COURT: Yes.

11 Q. Okay, Officer Moreno, if you'll just point to give the  
12 jury some context on this map. Where is the victim's home?

13 A. Right here.

14 (WITNESS INDICATED.)

15 Q. Okay. And then if you could point to about where you  
16 started out with K 9 Molly.

17 A. Back of the residence.

18 Q. Just to go back briefly. Did you have any other of  
19 the K 9 team members with you that day when you were  
20 following this track with K 9 Molly?

21 A. Yes I had four runners with me.

22 Q. And so the four runners were with you throughout this  
23 time?

24 A. Yes.

25 Q. Okay. So go ahead and walk us through where K 9 Molly

OFFICER JONATHAN MORENO: BY SOLICITOR VALENZUELA

-144-

1 - where you started out and where you went from there.

2 A. -- last known location --

3 SOLICITOR SPRINGS: Use the pointers so everybody can  
4 see. It's right there on your right.

5 MADAME COURT REPORTER: Wait just a minute.

6 I can't hear you. You've got your back to me, okay.

7 A. Okay. This is the last known location, it was in the  
8 back of the residence. Once she confirmed there was a  
9 scent there which she does if she pulls on the lead. Once  
10 she pulls I ask her a command if she has something. From  
11 there she notifies with a bark that she has an affirmative  
12 scent.

13 Q. Let me stop you there. Did you do that there, did she  
14 pull on the leash in locating this situation?

15 A. Yes she did.

16 Q. And did you give her the command to see if she had -  
17 if she had been able to smell something at this point?

18 A. Yes.

19 Q. And did she respond to that command?

20 A. She responded to the command.

21 Q. Okay. So you identified that there was, that she did  
22 pick up a scent at the back of the victim's home?

23 A. Yes.

24 Q. But before that point was there anyone - Did you know  
25 if there was any contamination of that portion, anybody who

1 had been back there other than the defendant?

2 A. Before we put the K 9 on the ground we want to  
3 eliminate that by asking anyone that's on scene to see if  
4 anybody had been in the back yard. The answer was no.

5 Q. So the only person known to be in the back yard that  
6 morning was the suspect was the defendant?

7 A. Yes.

8 Q. Okay. I'm sorry I interrupted you. So you were just  
9 saying that she had just barked to indicate that she had  
10 picked up a scent behind the victim's home?

11 A. Yes.

12 Q. Thank you. Where did you all go from there?

13 A. From there we went back to the residence started going  
14 towards West Baskins, along the fence line and we cut into  
15 this cul-de-sac over here. West Baskins would be over  
16 here. Arriving towards that intersection one of our  
17 runners identified a possible suspect that matched the  
18 description. We attempted to stop the suspect but he fled  
19 officers. I paused and held position while runners began  
20 foot pursuit. The suspect was last seen heading towards  
21 York Tech Campus but we lost sight of him.

22 From there being that the - it was so close to the  
23 incident and the suspect had a description and the time  
24 frame we put all those variables into moving the track  
25 which we did. We moved the track over here along the fence

OFFICER JONATHAN MORENO: BY SOLICITOR VALENZUELA

-146-

1 line into the last known location. From there we continued  
2 on --

3 Q. Let me stop you briefly there. So what you're saying  
4 is the runner identified a suspect who matched the  
5 description that you all already had?

6 A. Yes.

7 Q. Combined with the timing of the situation being so  
8 close in time to when this was supposed to happen?

9 A. Yes.

10 Q. And knowing that it was very close to incident  
11 location you decided to move K 9 Molly to the location  
12 where the suspect had last been seen?

13 A. Yes.

14 Q. So you stopped the scent pursuit and moved her to the  
15 new location?

16 A. Uh-huh.

17 Q. At this point did you - did she pull on her leash to  
18 indicate that she had - that she was - had a scent, was  
19 picking up a scent?

20 A. Once we did we reconfirmed her which we did the same  
21 procedure. We ask the command, she pulled on the lead and  
22 she barked to confirm that she had scent. From there we  
23 continued on into York Tech College Campus through here and  
24 came down in between the campus buildings, slowly continued  
25 on through the campus, cut down towards Anderson Road and

1 as we approached Anderson Road --

2 Q. Let me stop you at Anderson Road. So when you're  
3 leading us through where K 9 Molly led you, K 9 Molly is  
4 leading you in this direction because she can smell the  
5 defendant's skin cells at least through this point?

6 A. Yes.

7 Q. So you're following the path that the defendant took?

8 A. Yes.

9 Q. Are you following it exactly or is it more  
10 approximate?

11 A. It's more approximate.

12 Q. And so he led you through all these several buildings  
13 right here?

14 A. Yes.

15 Q. Did you have - Did you or the four runners have him in  
16 sight at any point here?

17 A. Not through the college campus.

18 Q. So while he was running through the campus you couldn't  
19 see what he was doing?

20 A. No we had no idea what he was doing. Just what we  
21 were seeing through the track.

22 Q. Okay. And so I think you had just led us over to South  
23 Anderson Road?

24 A. Once we left the campus we were crossing Anderson Road.  
25 As we crossed any intersection we want to make sure we

OFFICER JONATHAN MORENO: BY SOLICITOR VALENZUELA

-148-

1 .reconfirm to make sure she has scent. So once we cross  
2 Anderson Road we were arriving toward the bank which I  
3 believe is Arrow Point Bank. We crossed in between a set  
4 of bushes, she reconfirmed the track by pulling on the lead  
5 as well as barking, we continued on along the bank and in  
6 between the bank and Tech Park Boulevard towards Lake Shore  
7 Parkway. We crossed the street once again.

8 Q. Let me stop you real quick, because it looks like  
9 you're going through a wooded area; is that correct?

10 A. Now we weren't going through the area. We were along  
11 the street in between the wooded area and Tech Park  
12 Boulevard.

13 Q. So is there a wooded area beside where the Defendant  
14 was running or what K 9 Molly was indicating the defendant  
15 had just run by?

16 A. Yes there's a wooded area on both sides.

17 Q. Okay. And so you got past the wooded area. And then  
18 what happened?

19 A. Once we crossed the street on Lake Shore Parkway, we  
20 confirmed her once again by pulling on the lead and as well  
21 as confirming with a bark and we continued on the right  
22 side of Lake Shore Parkway, crossed by in between the  
23 Dickerson Company and Lake Shore Parkway Road over to this  
24 wood line here. Once we arrived to this wood line we  
25 circulated the wood line very well, exited the wood line

1 and as we approached the road I saw the same description  
2 and the same suspect across the street. I let my runners  
3 know that this possible suspect was across the street, they  
4 - the runners left to secure the suspect; after he was  
5 detained I approached with K 9 Molly and she ID'd the  
6 suspect. The way she ID'd the suspect is by putting her  
7 paws on the person's chest to let us know that was the  
8 scent she was running after.

9 Q. So at this point you're the first person who makes  
10 visual contact with the defendant, you confirm that that's  
11 him and then you lead - your runners secure him and then  
12 you lead K 9 Molly over to him; is that correct?

13 A. Yes.

14 Q. And K 9 Molly what would she do if this was not the  
15 scent, the correct person?

16 A. If it was not the correct person, she has no interest  
17 for them. She can either walk away or not put her paws on  
18 the person.

19 Q. And so in this case she did indicate that she was  
20 interested in him?

21 A. Yes she was interested in him, she identified him with  
22 her paws.

23 Q. Did - At this point was the defendant searched?

24 A. Yes after he was detained and we confirmed the ID we  
25 had him in custody.

OFFICER JONATHAN MORENO: BY SOLICITOR VALENZUELA

-150-

1 Q. Was he - Was a gun found on him?

2 A. No he did not have a gun in his possession.

3 Q. Did you take part in the - in going back and retracing  
4 the steps to try to find the hand gun?

5 A. Yes.. After we had him transported to the law center we  
6 circulated the area where we had him in custody and we did  
7 not find the firearm.

8 Q. Okay. If you could go ahead and take a seat for me.

9 (WITNESS RETURNED TO WITNESS STAND.)

10 Q. Now you walked through the - these various buildings  
11 and through Tech Park. What do you think could have  
12 happened to the handgun?

13 MS. ANDERSON: Your Honor, I object.

14 THE COURT: I sustain the objection.

15 Q. When you rerouted your steps going back, did you  
16 notice that there were bushes and trash cans of any on that  
17 route?

18 A. Yes there were many scenarios along that track where  
19 there could be a lot of possibilities.

20 Q. What was you all's main priority when you were  
21 initially following the defendant you hadn't located him  
22 yet when you were following K 9 Molly? What was your main  
23 propriety - -

24 A. Our main propriety was the possibility of the weapon  
25 being present, was just for the safety of the public being

1 that the track led through a college campus. Fortunately  
2 enough the college campus was not open at the time and  
3 crossing a major street such as Anderson Road.

4 Q. Did you at the time when you and K 9 Molly were  
5 initially trying to find the suspect, did you still believe  
6 him to be armed, to have a gun on him?

7 A. Well once we're notified of that information we want to  
8 keep that in the back of our minds just for safety and to  
9 keep us all even more alert just because of the possibility  
10 of the weapon being present.

11 Q. Is it fair to say that your main propriety was finding  
12 the suspect through K 9 Molly when you were initially  
13 trying to find him?

14 A. Yes it was.

15 Q. When you all were going through York Tech, did your  
16 runners stop to look at various items trying to find the  
17 defendant?

18 A. Along the whole track we train one another to check  
19 through dumpsters, check bushes, make sure buildings are  
20 secured, that way we know we're isolating any other options  
21 from somebody getting behind us or evading us once again.

22 Q. Now your - the runners are checking these doors and  
23 bushes except for the purposes of finding the suspect that  
24 you're tracking; is that correct?

25 A. Yes.

OFFICER JONATHAN MORENO: BY SOLICITOR VALENZUELA

-152-

1 Q. Okay. What's the approximate distance from the  
2 victim's home following the path that you took to where you  
3 eventually located the defendant?

4 A. The whole track was a little over a mile.

5 Q. And about how long was the search that you used K 9  
6 Molly from the beginning until you finally located the  
7 defendant?

8 A. It was fifty-one minutes.

9 Q. So almost an hour?

10 A. Yes.

11 Q. And in that hour that you were pursuing the defendant,  
12 about how much of that time did you actually have him, you  
13 or the fellow runners have him in your sight?

14 A. From the time we confirmed the suspect from the back  
15 of the residence, it was within the first ten minutes that  
16 we actually saw a possible suspect flee the area.

17 Q. And so when the runners saw that suspect, about how  
18 long did he have visual contact of that suspect?

19 A. It must have been seconds.

20 Q. Okay. So a few seconds out of those fifty-one minutes  
21 were you all actually able to see the defendant and what he  
22 was doing?

23 A. Yes.

24 Q. So is it fair to say that for basically fifty minutes  
25 the defendant was out of your sight and you didn't know

1 what he was doing?

2 A. Yes.

3 Q. Now can you use - I know we talked about article dogs,  
4 but could you have used Molly - K 9 Molly to locate the gun  
5 on your track back to the victim's house after you located  
6 the defendant?

7 A. No we wouldn't be able to.

8 Q. And why is that? Why can't K 9 Molly do that?

9 A. She's never been trained to find articles or items in  
10 any scenario.

11 Q. So when you all walked back, is she still just scenting  
12 where the defendant has been?

13 A. Yes she's just following his scent.

14 Q. And when you all were walking back you all were  
15 looking on the return trip back the purpose was to try to  
16 find the handgun since it wasn't found on him; is that  
17 correct?

18 A. Yes. Once we circulated the area all we were using  
19 was our own eyes. The dog was not being used at that  
20 point.

21 Q. When he walked he walked through several buildings I  
22 believe you showed us. Were you all able to look at the  
23 scene to go up and look at the roof tops and see if there  
24 were any guns up there?

25 A. No we were not able to search roof tops.

OFFICER JONATHAN MORENO: BY SOLICITOR VALENZUELA  
BY MS. ANDERSON

-154-

1 Q. Were you able to - If someone had thrown something  
2 were you able to look in every position where that item  
3 could have been thrown in relation to where the scent led  
4 you?

5 A. No we weren't able to check every little bit of the  
6 property around this.

7 Q. Now through further investigation after were you able  
8 to determine what the name of the person was that K 9 Molly  
9 identified as being the scent she was following?

10 A. Yes. Once we found the possible suspect matching the  
11 description, we always want to find some kind of  
12 identification or ask the person if they have any ID or  
13 what their name is. That's how we identify the person from  
14 the description and the name that was given.

15 Q. And what name was that?

16 A. It was Mr. Davis.

17 Q. The defendant?

18 A. Yes.

19 SOLICITOR VALENZUELA: Officer Moreno, please answer  
20 any questions that Ms. Anderson has for you.

21 CROSS-EXAMINATION

22 OFFICER JONATHAN MORENO BY MS. ANDERSON:

23 Q. Officer Moreno, there are trained article dogs;  
24 correct?

25 A. Yes there are.

1 Q. Rock Hill Police Department has some trained?

2 A. No we don't.

3 Q. You don't? Okay. And Molly's a well trained dog?

4 A. Yes she is.

5 Q. She's a pretty reliable dog?

6 A. Yes she is.

7 Q. And when you brought Molly out on March 15th she  
8 didn't have any - your observation of her as her trainer  
9 she didn't have any difficult following a track on that  
10 that morning?

11 A. No she did not.

12 Q. She didn't see - In fact you testified she reconfirmed  
13 several times that she was following and had found the  
14 scent; correct?

15 A. Yes.

16 Q. She didn't never had any hesitancy about which way to  
17 go with the track?

18 A. No she did not.

19 Q. And from your experience from working with Molly you  
20 felt confident that Molly was accurately following the  
21 track?

22 A. Yes I did.

23 MS. ANDERSON: Nothing further, Your Honor.

24 THE COURT: Redirect?

25 SOLICITOR VALENZUELA: Nothing further, Your Honor.

ERNESTINE EVANS: BY SOLICITOR VALENZUELA

-156-

1 THE COURT: You can step down and be excused. We  
2 appreciate your time.

3 OFFICER MORENO: Thank you, Judge.

4 (WITNESS LEAVING WITNESS STAND.)

5 THE COURT: Call your next witness.

6 SOLICITOR VALENZUELA: Your Honor, the State calls Ms.  
7 Ernestine Evans.

8 She's in that side...

9 MADAME CLERK: Raise your right hand, place your left  
10 hand on the Bible. The other one.

11 (WHEREUPON: ERNESTINE EVANS,  
12 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

13 MADAME CLERK: Please have a seat.

14 DIRECT EXAMINATION

15 ERNESTINE EVANS BY SOLICITOR VALENZUELA:

16 Q. Good morning, Ms. Evans.

17 A. Hi.

18 Q. How are you? Can you please state your full name for  
19 the record nice and loud?

20 A. Ernestine Evans.

21 Q. And, Ms. Evans, where do you live?

22 A.

23 Q. Is that close to the victim's home?

24 A. Its in the back of her.

25 Q. I'm sorry.

1 A. It's in the back of her.

2 Q. So its behind her home?

3 A. Yes.

4 Q. Do you know the victim?

5 A. I don't know 'em but I met Dawone many times.

6 Q. Do you know the victim Ms. Robinson?

7 A. Yes.

8 Q. And do you know her well?

9 A. Yes.

10 Q. And do you know the defendant Dawone Davis?

11 A. I know him but I don't know him like that.

12 Q. Well that's okay. Do you have - Did you know him  
13 before March 15th of this year?

14 A. Yes.

15 Q. And had you been able to see him before that point?

16 A. Like out places like in the street.

17 Q. Did you know what he looked like before March 15th?

18 A. Yes.

19 Q. Do you remember the morning of March 15th when police  
20 responded out to the victim's home?

21 A. Yes, ma'am.

22 Q. And what did you see that morning?

23 A. I just seen - I went up the street when it was like I  
24 said six something. I went up the street, I seen the  
25 police car come in. I told my daughter to wait a minute

ERNESTINE EVANS: BY SOLICITOR VANENZUELA

-158-

1 I'm gonna run up the street to see what was going on cause  
2 I didn't know who house it was at first until I got up  
3 there and it was in NuNu's house.

4 Q. Let me stop you real quick. We're just gonna kind of  
5 take this a little bit slower for the jury.

6 A. Okay.

7 Q. Okay. And you said NuNu. Who's NuNu?

8 A. Sherika.

9 Q. And Sherika Robinson, the victim in this case?

10 A. Yes.

11 Q. Okay. And so it - When you say it was NuNu, what was  
12 NuNu?

13 A. What you mean what was NuNu?

14 Q. Well you came up to the house --

15 A. I didn't get to go to her house.

16 Q. Okay. So --

17 A. I didn't get to her house period. I got like where  
18 the apartment on the other side. Her apartment on one  
19 side, and the apartment on this side we was standing right  
20 there.

21 Q. And what did you see at that point?

22 A. I just seen Dawone run from behind the house.

23 Q. So you saw the defendant Dawone Davis run from behind  
24 the --

25 A. That was him yes.

1 Q. And but you knew him from before; is that correct?

2 A. Yes but it was like I said earlier in the morning.

3 Q. So - But are you saying you did see him running from  
4 behind the house?

5 A. I seen a person yes.

6 Q. And what made you think that it was Dawone that was  
7 running behind the house?

8 A. I guess cause of NuNu.

9 Q. Can you explain what you mean by that?

10 A. Cause all the commotion was coming from her house.

11 Q. Did you know NuNu, Sherika Robinson, to have a  
12 relationship with Mr. Davis?

13 A. I know they got kids together.

14 Q. When you saw that person running, what was your  
15 thought? Did you think that's Dawone Davis running?

16 A. Excuse me.

17 Q. When you saw the person running from behind the  
18 victim's house ---

19 A. Uh-huh.

20 Q. --- did you think that's Dawone Davis?

21 A. I assumed.

22 Q. What did you think?

23 A. I just think NuNu was fighting with somebody. I  
24 couldn't really say cause I wasn't in her house.

25 Q. When you saw that person running did you see any - Did

ERNESTINE EVANS: BY SOLICITOR VANENZUELA

-160-

1 you - Was there anything distinct about them?

2 A. No.

3 Q. Was there anything - Did you see them holding  
4 anything?

5 A. Maybe a cell phone was something, not no weapon or  
6 nothing. I couldn't really detect what it was anyway cause  
7 we was like - he ran from behind the house and we was way  
8 on the other side.

9 Q. Do you remember speaking to me, Ms. Evans?

10 A. Yes.

11 Q. Along with my investigator Martha Parrish?

12 A. Uh-huh.

13 Q. And do you remember at that time telling me that it  
14 was Dawone Davis that you saw running from behind the  
15 house?

16 A. Yes.

17 Q. And do you remember telling me that he had something  
18 in his hand - and let me finish.

19 A. Okay. Yeah.

20 Q. He had something in his hand, that it looked like it  
21 could have been a gun ---

22 A. No.

23 Q. --- by how he was carrying it?

24 A. No I did not tell you that.

25 Q. Let me finish the whole --

1 A. Okay.

2 Q. Let me finish the whole statement because you're going  
3 to be able to say whatever you want to ---

4 A. Okay.

5 Q. --- to the jury.

6 A. All right.

7 Q. But do you remember telling me that he was carrying  
8 something in his hand ---

9 A. I said ---

10 Q. --- and you thought it could have been a gun by the  
11 way he was carrying it, but that you weren't sure ---

12 A. Huh-huh.

13 Q. --- because you couldn't see what was in his hand?

14 A. I didn't say that. I just can't tell no story. I did  
15 not say that. I said I seen him ran from behind her unit  
16 with something in his hand. You all ask me was it a gun,  
17 did it have a black handle or a silver handle? I said,  
18 Ma'am, I couldn't detect that.

19 Q. Well, Ms. Evans, let's go through the statement ---

20 A. Okay.

21 Q. --- one at a time, because we do want you to tell the  
22 truth.

23 A. Okay, cause I'm telling the truth.

24 Q. Ms. Evans, can you read over this please?

25 A. No I can't read that good. I told you that, ma'am.

ERNESTINE EVANS: BY SOLICITOR VANENZUELA

-162-

1 Q. Okay. I will read along with you.

2 A. Okay..

3 Q. Defense counsel has a copy of this statement.

4 A. Okay.

5 Q. And we'll read over it here. So it says your name at  
6 the top, Ms. Ernestine ---

7 A. Uh-huh.

8 Q. --- Evans. Do you recognize your name?

9 A. Uh-huh.

10 Q. --- from reading that?

11 THE COURT: You've got to --

12 Wait.

13 You've got to say yes or no.

14 A. Oh okay. I'm sorry.

15 Yes, ma'am.

16 Q. Okay. And then it states that your address is

17 ; ---

18 A. Yes, ma'am.

19 Q. --- is that right? Okay. And it says that you  
20 completed eleven years in school.

21 A. Yes, ma'am.

22 Q. Is that correct? And it was about 6:00 a.m., when I  
23 was walking out to crank my car and smoke my cigarette and  
24 I noticed a bunch of police pulling in at NuNu's, Sherika  
25 Robinson's area of the complex.

1 A. Uh-huh.

2 Q. There was already one police already at her door. Her  
3 door was open and I could hear her hollerin. I had told my  
4 ten year old daughter to stay in the house, I was coming  
5 over here to check on NuNu.

6 A. Where's that at?

7 Q. As I was --

8 A. Yes, ma'am.

9 Q. As I was walking over there I saw Dawone running form  
10 behind the apartment in the woods.

11 A. Uh-huh.

12 Q. Toward the other apartments. Is all ----

13 A. Yes, ma'am.

14 Q. --- of that correct?

15 A. That's right.

16 Q. And he was carrying something in his hand.

17 A. Uh-huh.

18 Q. It looked like a gun by the way - Right now I'm just  
19 reading ---

20 A. Okay go ahead.

21 Q. --- this statement.

22 A. Yes, ma'am.

23 Q. It looked like a gun by the way he was holding it but  
24 I couldn't tell for sure. It was light enough that I knew  
25 for sure that I was Dawone. When I came in to check on

ERNESTINE EVANS: BY SOLICITOR VANENZUELA

-164-

1 NuNu I noticed she had a black eye.

2 A. Yes, ma'am.

3 Q. NuNu did not have a black eye the day before when I  
4 saw her. I see NuNu every day because I watch her son every  
5 morning.

6 A. Yeah.

7 Q. Is that your signature down there?

8 A. Yes, ma'am.

9 Q. And then does it say statement written by Martha  
10 Parrish?

11 A. Uh-huh.

12 Q. So do you remember giving her this statement ---

13 A. No ---

14 Q. --- that day?

15 A. --- I don't remember giving her the part about the  
16 gun. The gun - When you all read that back to me and Ms.  
17 Robinson that day in her house, why was the gun - you all  
18 didn't say nothing about the gun then.

19 Q. So you're saying that we - that we made this up and we  
20 read ---

21 A. Yes.

22 Q. --- you something false?

23 A. Yes, ma'am.

24 Q. Ms. Evans, --

25 A. Cause I didn't say nothing about no gun.

1 Q. Ms. Robinson - Ms. Evans, do you know - I know that  
2 you mentioned you know the defendants son, does your family  
3 have anything to do with the defendant's family?

4 A. Yeah they related.

5 Q. How are they related?

6 A. That's my - Dawone and my daughter's boy friend is  
7 first cousin.

8 Q. So your daughter --

9 A. Got kids by his first cousin.

10 Q. Do you that affect - Does that make you uncomfortable  
11 being here to testify?

12 A. No. No. I'm just not gonna tell nothing and I did  
13 not say that. Everything you read on the paper is correct  
14 but when you got to the gun part, no I did not tell you all  
15 that.

16 Q. So let's review. You agree that you did see Dawone  
17 Davis running from behind the apartment ---

18 A. Yes.

19 Q. --- that day?

20 A. I did.

21 Q. And you saw him - something in his hand?

22 A. Exactly.

23 Q. Okay.

24 A. But I never told the - it was a gun. You ask me that.

25 Q. We've established that you think ---

ERNESTINE EVANS: BY SOLICITOR VANENZUELA,  
BY MS. ANDERSON

-166-

1 A. Okay.

2 Q. --- we made that up and included that ---

3 A. Uh-huh.

4 Q. --- in your written statement. We've established  
5 that. Thank you, Ms. Evans. If you'll answer any  
6 questions that defense counsel has for you.

7 A. Okay.

8 SOLICITOR VALENZUELA: I'm sorry, Your Honor, we'd  
9 like to make Ms. Evans --

10 Your Honor, may we approach?

11 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF  
12 THE JURY AT 11:30 A.M..)

13 THE COURT: Ms. Anderson, you may proceed.

14 MS. ANDERSON: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 ERNESTINE EVANS BY MS. ANDERSON:

17 Q. Ms. Evans, just briefly. You called the Solicitor's  
18 sometime in July. Right? And you told her at that time  
19 that you had never said anything about seeing the gun?

20 A. Cause I did.

21 Q. So in other words you had told her that before you  
22 came to court today?

23 A. Yeah I called her and ask her when I got that letter  
24 where the gun part come from cause we never did discuss -  
25 she ask me and I told her I never - I can't answer that I

ERNESTINE EVANS: BY MS. ANDERSON

-167-

1 didn't see what Dawone had in his hand cause I couldn't  
2 see. He was running.

3 Q. Uh-huh.

4 A. Yeah. I didn't - Everything else on the paper I admit  
5 yes I said it but the gun no. Huh-huh, I didn't say that.

6 Q. And do you remember that was back in July of this year  
7 when you called her?

8 A. Uh-huh.

9 Q. Okay. So basically you told her that before you came  
10 in and testified?

11 A. Yes. Yes I did.

12 Q. That's all I have.

13 A. Okay.

14 MS. ANDERSON: Thank you, Ms. Evans.

15 SOLICITOR VALENZUELA: Nothing further of this  
16 witness, Your Honor.

17 THE COURT: You can step down and be excused. We  
18 appreciate your time. Thank you.

19 MS. EVANS: Thank you all.

20 THE COURT: Call your next witness.

21 SOLICITOR VALENZUELA: Your Honor, the State calls Ms:  
22 Angela Covington.

23 MADAME CLERK: Raise your right hand, place your left  
24 hand on the Bible.

25

(WHEREUPON: ANGELA

ANGELA COVINGTON: BY SOLICITOR VALENZUELA

-168-

1 COVINGTON, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS  
2 FOLLOWS:)

3 DIRECT EXAMINATION

4 ANGELA COVINGTON BY SOLICITOR VALENZUELA:

5 Q. Good morning, Ms. Covington.

6 A. Good morning.

7 Q. Can you state your full name for the record please?

8 A. My name is Angela Denise Covington.

9 Q. Ms. Covington, you don't want to be here; is that  
10 correct?

11 A. That's right.

12 Q. Did the State have to subpoena you to get you here?

13 A. No. I mean they gave me a subpoena letter here.

14 Q. Have you indicated to me before that you don't want to  
15 be here?

16 A. I'm saying I don't understand my purpose of being  
17 here.

18 Q. Okay. Well we'll walk through that..

19 A. All right.

20 Q. Where do you live, Ms. Covington?

21 A. I live on

22 Q. Is that close to the victim Ms. Robinson's home?

23 A. I live in front of her. Her apartment complex is  
24 behind mine.

25 Q. Do you know Ms. Robinson the victim?

1 A. I been knowing her for a little over a year from us  
2 speaking time to time, going to her house visiting. I  
3 don't know her - I mean I know of her from living out there  
4 but I'm not originally from Rock Hill.

5 Q. Do you consider her a friend?

6 A. Yeah.

7 Q And do you know the defendant Mr. Dawone Davis?

8 A. I don't even know how he looks. Never seen him before  
9 in my life.

10 Q. On March 15th of 2012 do you remember the police  
11 responding out to your neighborhood?

12 A. Yes, ma'am.

13 Q. Can you tell us what happened that morning?

14 A. Well I got a phone call at five - want to say about  
15 five o'clock in the morning, A. M., to go to the hospital  
16 to pick up a friend of mine to take her back to West Gate.  
17 And as I was approaching my entrance to my window - first I  
18 looked out to see if anybody was there - I saw who you all  
19 call Dawone Davis was --

20 Q. Well I don't want you to say what we call --

21 A. Well Dawone Davis ---

22 Q. Just tell the jury --

23 A. --- was trying to get in some cars, I guess to see if  
24 the doors was unlocked in my parking lot cause I live  
25 behind her. I live in the circle.

ANGELA COVINGTON: BY SOLICITOR VALENZUELA

-170-

1 Q. Let me stop you real quick cause you said that you  
2 didn't know Dawone Davis but then you said that you looked  
3 out and you seen Dawone Davis. So who - What description  
4 of the person do you --

5 A. Well, I'm saying his name cause ya'll called his name.  
6 That's the reason why I said I don't - I never been through  
7 this so I don't know how to get on the stand and ---

8 Q. That's fine.

9 A. --- approach the --

10 Q. I'm going to talk you through it so my question is,  
11 when you looked out your window, was the description of the  
12 person that you saw ---

13 A. I saw a ---

14 Q. --- trying to get --

15 A. --- brown skinned guy with a white t-shirt in his hand  
16 was trying to get in some cars.

17 Q. Okay. Let me just slow you down a little bit, cause I  
18 can be considered to have brown skin and so I just kind of  
19 want to make it - But would you consider him to be an  
20 African-American brown skinned ---

21 A. Yeah.

22 Q. --- person that you saw or ---

23 A. Yes.

24 Q. --- Latino?

25 A. African-American.

1 Q. Okay. And then was he of slim build or was he of  
2 thick build?

3 A. Medium. Slim size guy.

4 Q. Okay. So he was a slim, black male?

5 A. Right.

6 Q. Okay. And then I think you just said something about  
7 he had a - What did you say he had on?

8 A. Well like I said when I looked out my window he was  
9 trying to get in some - I guess to see if some doors was  
10 unlocked so he could get in the car. I don't know what the  
11 purpose was but he was trying to get in the car. And as I  
12 was coming out I seen he had a white t-shirt in his hand.  
13 Then he must a seen me coming out to get in my car cause I  
14 happened - Well I had my car, I had electric locks. I had  
15 popped a lock before I went out to the car. And when I had  
16 got in my car --

17 Q. Let me stop you real quick cause I want to get into  
18 all of that. Just focusing on his description, you said  
19 that he had a white t-shirt in his hand.

20 A. Uh-huh.

21 Q. Would you describe that as holding it in his hand or  
22 wrapped around his hand?

23 A. He had it holding it in his hand.

24 Q. And was he wearing a shirt?

25 A. Huh-huh. He had - When I seen him he didn't have a

ANGELA COVINGTON: BY SOLICITOR VALENZUELA

-172-

1 shirt on at the time.

2 Q. Did you --

3 A. He had it in his hand.

4 Q. Did you notice any tattoos on him?

5 A. He had some tattoos on him.

6 Q. And what did he have covering the lower portion of his  
7 body?

8 A. I don't know if it was blue jeans or shorts. Whatever  
9 he had on at the bottom was blue.

10 Q. Okay. And so I just want to make sure that we got  
11 that description.

12 A. Uh-huh.

13 Q. So you see him trying to open doors and you've gone  
14 out to get in your car.

15 A. To get in my car. I was on the way to pick somebody  
16 up from the hospital and he came to my car and ask for a  
17 ride so he was trying to get a ride out of there. I just  
18 backed on up put it in drive and left. I don't know which  
19 a way he went after that.

20 Q. And that's okay. Now when you say that he ask for a  
21 ride, did he ask for a ride like can I please get a ride

22 --

23 A. No he was like Yo, Yo, I need a ride, I need a ride.  
24 And I was like just put my car in reverse and backed on out  
25 of my parking lot and went on.

1 Q. But did you know him at all?

2 A. I don't know him. I ain't never seen him that day in  
3 my life.

4 Q. So it was a strange person who was trying to get into  
5 cars ---

6 A. Right.

7 Q. --- and then tried to get into your car?

8 A. Yeah cause I ain't never seen him a day in my life.

9 MADAME COURT REPORTER: Just a minute.

10 THE COURT: Yeah. You talk --

11 Let her finish.

12 SOLICITOR VALENZUELA: Yes, your Honor.

13 THE COURT: You should know by now her standard of  
14 speech pattern so --

15 A. Yeah but she confuses me.

16 THE COURT: Wait just a minute. I don't mean she's  
17 trying to confuse you but just you might delay - that's not  
18 the right word.

19 Pace your questions along with her speech patterns so  
20 the court reporter can keep up with who's saying what.

21 SOLICITOR VALENZUELA: Yes, Your Honor.

22 Do you want a glass of water?

23 A. I'm fine.

24 Q. When you - When you were talking to this person who  
25 was trying to get into your car, I think you just told us

ANGELA COVINGTON: BY SOLICITOR VALENZUELA

-174-

1 he said Yo, yo, can I get a ride. What did you indicate to  
2 him?

3 A. Put my car in reverse and backed on out and went on  
4 out.

5 Q. And did he back away from the car at that point or did  
6 he appear like he wanted to get into the car?

7 A. From my understanding it look like he was kind of  
8 holding onto the door handle for a little bit until I  
9 backed up and he got up off the door.

10 Q. Is it fair to say that you had to reverse and  
11 basically get him off your car before you were able to  
12 escape?

13 A. I don't really know. Like I said I was just on my way  
14 out and he just grabbed my door and I was just minding my  
15 business, going where I belong to go so --

16 Q. How did it make you feel when you were doing this?  
17 Did it make you feel scared or apprehensive?

18 A. It just --

19 MS. ANDERSON: Your Honor, I object to the leading.

20 THE COURT: I sustain the objection.

21 BY SOLICITOR VALENZUELA:

22 Q. How did you feel?

23 A. I didn't feel scared. I mean cause even if he didn't  
24 scare me it was just that somebody was asking for a ride  
25 and I already knew I - I don't know him so I already knew I

1 wasn't gonna give him no ride so I just went on about my  
2 business.

3 Q. Had police already responded to the victim's house at  
4 this point?

5 A. Yeah I think so cause like I say I had - I was just  
6 gettin up from a phone call. I was asleep cause the kids  
7 was gettin ready to get up for school so I normally get up  
8 around that time anyway. Yeah they was already back to her  
9 back because I just kind of remember him a little bit of  
10 hollerin but I don't - I can't you know say where it was  
11 coming from cause I didn't never approach that circle, the  
12 third circle that she stay in. I never went back to that  
13 part.

14 Q. Okay. And so you heard some screaming but you didn't  
15 know where it was coming from?

16 A. Right.

17 Q. You knew that the police were out there?

18 A. Yes.

19 Q. You looked out your window and saw a man that you  
20 didn't recognize with his shirt off trying to get into  
21 people's cars. Was it more than one car?

22 A. It was quite a few in the parking lot where I live at.

23 Q. And then you go out to your car and he tries to get  
24 into your car.

25 A. Yeah.

ANGELA COVINGTON: BY SOLICITOR VALENZUELA

-176-

1 Q. And so hearing screaming, having police cars out  
2 there, seeing him trying to get into cars, didn't it scare  
3 you that this man --

4 MS. ANDERSON: Objection, Your Honor.

5 THE COURT: I sustain the objection.

6 A. No.

7 THE COURT: I sustain the objection.

8 SOLICITOR VALENZUELA: I didn't know what the  
9 objection was.

10 THE COURT: The objection was you suggested an answer  
11 while actually you are arguing with her when you used the  
12 term that you used. So just take her answers as they are,  
13 don't argue with her.

14 SOLICITOR SPRINGS: I beg the Court's indulgence.

15 (PAUSE AT 11:40 A.M..)

16 BY SOLICITOR VALENZUELA:

17 Q. Ms. Covington, after you were able to drive away, what  
18 happened then?

19 A. I went to the stop sign by the Hood Center and was a  
20 police officer sitting across from York Tech and I went by  
21 there to ask him was they looking for somebody like it was  
22 somebody out there in the parking lot trying to get in some  
23 cars. And they told me I needed to open my trunk to make  
24 sure he wasn't in there. They searched my whole car. He  
25 wasn't in there and they let me go on to the hospital and

1 he went on over to Tyger Street.

2 Q. So after you were able to - After you drove away, you  
3 stopped and ask a police officer if they were looking for  
4 somebody ---

5 A. Yeah.

6 Q. --- after this happened to you? Okay. Did you make  
7 any phone calls back to your house?

8 A. Yeah I called my twenty-year old daughter and a nine  
9 year old and a eight year old son. I called back and told  
10 them somebody was out in the parking lot if someone knocked  
11 on the door don't answer it.

12 Q. And why did you feel the necessity to call and tell  
13 them --

14 A. Because I hadn't been in Rock Hill, I don't know, a  
15 year, and we don't really know a lot of people. And I just  
16 didn't want narry one of the kids to get up and you know  
17 open the door just open it if somebody knock on the door  
18 and say open your - you know knock on your door. Nine  
19 times out of ten a kid don't ask who it is, they'll just  
20 open the door and it was about time for them to get for  
21 school and I didn't want them to open the door so that's  
22 why I called my daughter.

23 Q. Do you make that phone call every morning or this was  
24 something --

25 A. No. I usually don't go out. I usually don't go no

ANGELA COVINGTON: BY SOLICITOR VALENZUELA

-178-

1 where in the mornings. I had just got a call to go to the  
2 hospital to give somebody a ride. I'm usually there and  
3 going to the bus stop at that time in the mornings.

4 Q. Earlier do you remember speaking to me and my  
5 investigator Martha Parrish over at the victim's home?

6 A. Yes.

7 Q. And do you remember telling my investigator that when  
8 you looked out you saw the person that you saw with the  
9 white t-shirt wrapped around his hand?

10 A. It was in his hand.

11 Q. You don't remember telling us that it was wrapped  
12 around his hand?

13 A. No. But I know he had a white t-shirt in his hand.

14 Q. Were you able to see if that was the only thing he had  
15 in his hand?

16 A. Yeah. Cause you could see the bottom of his hand. It  
17 wasn't like he had nothing. It was just a t-shirt. Maybe  
18 he might a took it off and just had it in his hand.

19 Q. Who did you ride over here with this morning?

20 A. I don't know the lady's name. It was one of the one's  
21 which you all came --

22 Q. Did you ride over here with Ms. Ernestine Evans, the  
23 other lady that testified before you?

24 A. Uh-huh. We all rode together. All of us rode in the  
25 same car.

1 SOLICITOR VALENZUELA: Please answer any questions  
2 that defense counsel has for you.

3 A. Okay.

4 MS. ANDERSON: Your Honor, I have no questions.

5 THE COURT: All right. You can step down and be  
6 excused. We appreciate your time.

7 MS. COVINGTON: All right.

8 (WITNESS LEAVING WITNESS STAND.)

9 THE COURT: Call your next witness.

10 SOLICITOR VALENZUELA: Your Honor, the State calls Ms.  
11 Sherika Robinson to the stand.

12 THE COURT: All right. Why don't we take a short  
13 break before this, it may be a lengthy so we'll take about  
14 - this is a refresher break.

15 Ms. Foreman, if you'll just knock on the door and tell  
16 the bailiff everybody is ready to come back we'll put it on  
17 your schedule. We'll take a short break before we get into  
18 this witness.

19 (JURY EXITS COURTROOM AT 11:45 A. M..)

20 (COURT IN RECESS AT 11:45 A. M..)

21 (COURT BACK IN SESSION AT 12:00 P.M..)

22 THE COURT: Thank you. Take your seats.

23 Get in Mr. Davis.

24 The jury has sent in a note that they are ready to  
25 return.

SHERIKA ROBINSON: BY SOLICITOR VALENZUELA

-180-

1 Stephanie, give this to the Madame Court Reporter.

2 (WHEREUPON: COURT'S EXHIBIT NUMBER THREE IDENTIFIED  
3 AND MARKED, RECEIVED INTO EVIDENCE.)

4 THE COURT: Wait, wait, wait. I'm sorry.

5 (DEFENDANT, DAWONE DAVIS, REENTERING COURTROOM.)

6 (JURY REENTERS COURTROOM AT 12:01 P.M..)

7 THE COURT: Call your next witness.

8 SOLICITOR VALENZUELA: Your Honor, the State calls  
9 Sherika Robinson to the stand.

10 (WHEREUPON: SHERIKA  
11 ROBINSON, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS  
12 FOLLOWS:)

13 DIRECT EXAMINATION:

14 SHERIKA ROBINSON BY SOLICITOR VALENZUELA:

15 Q. Good morning, Sherika. Can you please state your full  
16 name for the record please?

17 A. Sherika Nicole Santana Robinson.

18 Q. Where do you live, Sherika?

19 A.

20 Q. And how long have you lived at that address?

21 A. A year and a half.

22 Q. Were you living at Tyger Place on March 15th of this  
23 year?

24 A. Yes, ma'am.

25 Q. And who lives with you at that address?

1 A. Our son, Dawone Davis, Junior; our daughter Nashia  
2 Davis and myself.

3 Q. And how old are your kids?

4 A. Our son is six years old; our daughter is three years  
5 old.

6 Q. When you say our, who is the father?

7 A. Dawone Davis.

8 Q. Now how long have you known the defendant?

9 A. For eight and a half years.

10 Q. Now I noticed that you're looking towards that side of  
11 the room. Is that just because you don't want to look at  
12 the defendant?

13 A. Correct.

14 Q. What's your son's name?

15 A. Minor 1 , Junior.

16 Q. And what's your daughter's name?

17 A. Minor 2

18 (SOLICITOR MOVED PODIUM TO BEHIND COURT REPORTER.)

19 Q. Is this a little bit better?

20 A. Yes, ma'am.

21 Q. Now were your children at the Tyger Place apartment in  
22 the early morning hours of March 15th of this year?

23 A. Yes, ma'am.

24 Q. Okay. And why don't you tell us a little bit about  
25 what happened that day, starting with when you first saw

SHERIKA ROBINSON: BY SOLICITOR VALENZUELA

-182-

1 the defendant.

2 A. I'm kind of nervous ya'll, so give me a moment.

3 Q. Let's start with the time. What time was it when you  
4 first saw the defendant?

5 A. Probably around about 5:30, by five o'clock, somewhere  
6 in there. I'm not sure, a.m..

7 Q. Okay. It was a.m.?

8 A. Yes, ma'am.

9 Q. Was it - you say - Could it have been earlier?

10 A. Yes, ma'am.

11 Q. Was it considered maybe the middle of the night?

12 A. Yes, ma'am.

13 Q. Okay. And were you awake when you saw the defendant?

14 A. Yes.

15 Q. And why were you awake at that time?

16 A. Cause I was up doing my spring cleaning and I was in  
17 my kitchen.

18 Q. Okay. Let me stop you real quick cause it sounds a  
19 little bit weird to be up in the middle of the morning  
20 doing your spring cleaning. Are you usually up in the  
21 middle of the night?

22 A. Yes.

23 Q. And why is that?

24 A. Cause I work third shift.

25 Q. So usually you're working hours are that time from;

1 would it be 8:00 p.m., to 6:00 A. M., something like that?

2 A. Yes, ma'am.

3 MS. ANDERSON: Your Honor, I object to the leading.

4 THE COURT: Let her answer the questions. Just ask -

5 SOLICITOR VALENZUELA: Okay.

6 Q. So how did you see the defendant, where were you?

7 A. I was in my kitchen cleaning, washing dishes. Our son  
8 Dawone Davis, Junior, the six year old, he has asthma real  
9 bad and I don't smoke in my house so I went out for a break  
10 and smoked a cigarette on the front porch. I came back in  
11 and started back washing dishes. His father was there with  
12 me.

13 THE COURT: His? His who?

14 A. Dawone, the defendant. Father was there with me, he  
15 also smoked too. I didn't lock my front door.

16 Q. So when you came back in from smoking a cigarette you  
17 didn't lock your front door; right?

18 A. I didn't lock my front door. I continued to wash  
19 dishes. I heard my door open but I'm thinking that it's  
20 the defendant's father that was in the house with me. He  
21 came in into the kitchen.

22 Q. Who came in?

23 A. The defendant.

24 Q. Dawone?

25 A. Yes. Came in grabbed my hair just to not really grab,

SHERIKA ROBINSON: BY SOLICITOR VALENZUELA

-184-

1 pull, he just touched it to let me know that it was him. I  
2 had spoke with him earlier that day.

3 Q. Okay. Let me stop you ---

4 A. Okay.

5 Q. --- so we can start taking this ---

6 A. Okay.

7 Q. --- a little bit at a time. So he came in and he  
8 started talking to you. Was - How was the conversation at  
9 that point?

10 A. It was calm. He ask me did I want to talk.

11 Q. Were you surprised that he was at your house at this  
12 time of the day?

13 A. Yes.

14 Q. Okay. So were you scared at this point?

15 A. Not actually scared because he know how I go about  
16 sleeping and being up cause he knows me. So I wasn't  
17 scared because we was on good terms.

18 Q. Okay. So you were on good terms but you didn't expect  
19 him there at that time?

20 A. Correct. I didn't have - I didn't know that he was  
21 coming.

22 Q. Okay.

23 A. So I wasn't scared at that time because he ask me do  
24 you want to talk. And I told him yes. I know his dad - He  
25 must had a been in the house before that or before he came

1 into the kitchen and pulled my hair because our daughter  
2 was in my bedroom. He removed her out of my bedroom into  
3 my son - our son's bedroom.

4 Q. And how did you find that out? How did you find - -

5 A. When I walked behind him to come and talk to him in my  
6 bedroom I noticed that our daughter wasn't in the bed. He  
7 wanted to shut the door at - when we got in the bedroom he  
8 wanted to shut the door and I was like why do you want to  
9 shut the door we just only talking. So he shut the door  
10 and he said well who wants to go first. He was like I want  
11 you to speak what's on your mind.

12 Q. Okay. And so did you all converse at that point,  
13 talking back and forth?

14 A. Yes.

15 Q. And what were you all discussing?

16 A. Discussing what was on our mind and who was gonna talk  
17 first.

18 Q. And what was on your mind at that time?

19 A. What was on my mind is did he feel some type of way  
20 about our son. Did he think that - I ask him did he think  
21 that our son was not - well our son wasn't his, did he want  
22 a DNA test. How was you gonna go about helping me with our  
23 kids because I need help. And he was like is you sure  
24 that's all that's on your mind? Dawone, the defendant ask  
25 me was I sure. And I told him yes that's the only thing

SHERIKA ROBINSON: BY SOLICITOR VALENZUELA

-186-

1 that's bothering me.

2 Q. So, Sherika, you all were talking about this during  
3 this time. Did you leave the bedroom at any point during  
4 your conversation with him?

5 A. Yes I did but not just yet.

6 Q. Okay. So tell us what, was there anything more than  
7 just talking at this point that was going on in the  
8 bedroom?

9 A. No that's - What made me go, leave the room, because  
10 after he ask me was I finished, I told him yes. He said is  
11 you sure? I told him yes. He said well okay, I talked to  
12 someone. And I was looking around like, you know, who you  
13 talk to? He was like do you want to know? I shook my head  
14 yes. He say, well you know there's no God; right? I say  
15 like, well, Dawone, where is this coming from? He say,  
16 Bitch, you know you can't destroy the Devil; right? So,  
17 Bitch, you can't destroy me. I'm something like the Devil.  
18 So at this time my heart's beating fast, like what is going  
19 on? Where is this coming from?

20 Q. Was it kind of a sudden change in the defendant?

21 A. Yes.

22 Q. Okay.

23 A. So at that time he said well you know the Devil told  
24 me to dress your family in black.

25 Q. How did that make you feel?

1 A. Afraid. Scared, heart beatin. I'm just like I don't  
2 know what to do at this time. My door is shut, you know,  
3 don't nobody hear us right now at this moment. Everyone is  
4 asleep so I say well can I use the restroom? I say I want  
5 to go to the bathroom.

6 Q. Let me back you up just a little bit.

7 A. Okay.

8 Q. When he said the Devil told me to dress my family in  
9 black, what did that - What did you take that to mean?

10 A. That he was gonna hurt me, kill me, do something to  
11 me.

12 Q. So you went to the bathroom?

13 A. I went to the bathroom. He stood in my room door to  
14 make sure I came back cause he know at this time that I am  
15 afraid.

16 Q. Okay, now, when you say - Where is your bathroom in  
17 relation to the door that you say he's standing in?

18 A. Okay. It's right beside it. It's right beside my room  
19 door. My rood door is like this way.

20 (WITNESS DEMONSTRATED.)

21 A. And the bathroom is like angle off to it. So he's  
22 standing in the door to make sure I'm coming back. I'm  
23 taking my time cause I'm nervous. He say I'm not finished  
24 talking to you. I say okay I'm coming back in there, I'm  
25 coming. So I goes back into the room, he wanted to shut

SHERIKA ROBINSON: BY SOLICITOR VALENZUELA

-188-

1 the door again so now at this time I'm trying to say it  
2 ain't no need, it ain't no need. And we loud. Why is you  
3 shutin the door? Bitch, if you come to this mother fucking  
4 door again shit gonna look ugly. That's when our daughter  
5 - remind you that he had done moved our daughter out of my  
6 room earlier that day - that night. My daughter comes back  
7 into the room cause I'm scared to go to the room he's  
8 talking about the Devil and I know I can't beat the  
9 defendant. I don't have no weapons or nothing around me to  
10 defend me. So I'm thinking by my daughter coming back into  
11 the room he's gonna calm down. He did calm down for a  
12 minute.

13 Q. What did he do when your daughter entered the bedroom?

14 A. When our daughter came into the bedroom he picked her  
15 up he put her into the bed and patted her on the back until  
16 she continued - I mean until she went back to sleep.

17 Q. When you say he put her back in the bed; did he put  
18 her in the bed in the bedroom that you all were in - -

19 A. Yes. In my bedroom yes. He did put her back in my  
20 son's bed.

21 Q. Are you saying that your daughter was in your bedroom  
22 for the rest of the night when - -

23 A. Yes, ma'am.

24 Q. When everything else happened?

25 A. Yes, ma'am. So she's back in the bedroom, he's still

1 talking, he's like well - the defendant - he say - he's  
2 pointing all in my face - well first before he even start  
3 pointing in my face he was like well you know I'm going to  
4 jail. He was like I'm tired. I say what you mean you  
5 tired? He was like I'm going to jail any way I'm just  
6 tired of this shit. And I was like tired of what? I say  
7 well can you answer my question, do you feel anything type  
8 of way about our son? Do you want a DNA test or whatever?  
9 He grabbed me by my neck and say, "Bitch" and pushed me to  
10 my bed. He's pushing me.

11 (WITNESS STOOD TO DEMONSTRATE.)

12 A. I want to demonstrate to ya'll to show ya'll how he  
13 was really trying to kill me in this room. He pushed me  
14 down and he was putting all his force onto my neck telling  
15 me, "Bitch, I'll kill you. All I need for you to tell me  
16 about - I don't need no fuckin DNA test, Bitch, you ain't  
17 shit." Just pushing me so I'm trying to get him off of me.  
18 I'm struggling, I'm crying, I almost - I got weak and I was  
19 just crying. When he seen the tears and my eyes getting  
20 red he let me go.

21 Q. Sherika, could you breathe at this point?

22 A. No, ma'am.

23 Q. So was he cutting off your airway?

24 A. Yes, ma'am.

25 Q. Okay.

SHERIKA ROBINSON: BY SOLICITOR VALENZUELA

-190-

1 A. It was like - At first I was moving and fast motion  
2 and then I just start and I just couldn't do anything else.  
3 And he was like okay well I guess I'm gonna let her go. He  
4 let me go, I tried to - Now our daughter is up now at this  
5 moment. My baby is crying looking at him beat on me. I'm  
6 like "Dawone, is you gonna do this in front of our baby?"  
7 "Fuck this. I don't give a Fuck I ain't got shit to  
8 loose." So I'm like, "Dawone, really? You gonna do this  
9 in front of my baby?" He pulled out the gun, he was like  
10 "Bitch, I kill you. I don't give a Fuck, Fuck you, Fuck  
11 everybody in this house, Fuck everybody." I'm looking at  
12 him like, really? So I'm trying to defend myself. I say  
13 well maybe if I act like him he'll calm down. So I walk  
14 upon the gun and I say "Well Dawone, if that's what you  
15 want to do go ahead kill me in front of my baby, I'm tired,  
16 you weren't helping me, you not doing nothing for us, so if  
17 that's what you want to do in front of her, go ahead." I'm  
18 in his face asking him is this really what you want to do?  
19 My baby just crying, our daughter is just crying, nothing  
20 coming out of her mouth, mouth wide open, she just crying,  
21 crying, crying, crying. So I'm in his face and I'm  
22 pointing, I'm like if that's what you want to do go ahead.

23 Q. Now when you say you're pointing, what --

24 A. I'm pointing in his face telling him --

25 Q. What were you using? Did you have --

1 A. My finger. I'm using my finger telling him go ahead  
2 kill me it don't even matter. So he cocked the gun back.  
3 I say "So now you fixin to pistol whip me? I said it don't  
4 even matter go ahead and do what you got to do." At that  
5 time he say, "Bitch, get out of my face." And I don't know  
6 if he hit me with a closed fist or he hit me with the gun.  
7 I feel onto the bed, I'm out of it. He continued to - the  
8 only thing that I feel and hear is his fist pounding ---

9 (WITNESS DEMONSTRATED.)

10 A. --- against my head.

11 (WITNESS DEMONSTRATED.)

12 A. Just pounding.

13 (WITNESS DEMONSTRATED.)

14 A. The only thing I felt was wind how he cocked it back  
15 so hard beating me in my face. At that moment after I got  
16 back together ---

17 (WITNESS CRYING.)

18 A. --- to see my face --

19 (WITNESS OFFERED WATER.)

20 SOLICITOR VALENZUELA: Let me get you some tissue.

21 THE BAILIFF: I'll get you some water, ma'am.

22 (WITNESS OFFERED CUP OF WATER.)

23 (WITNESS CRYING.)

24 SOLICITOR VALENZUELA: Just take a moment.

25 (PAUSE.)

1 SOLICITOR VALENZUELA: You okay?

2 A. Uh-huh. So at that time I'm just in and out, in and  
3 out. He hit me like four or five times. Every time he hit  
4 me my vision got even blurred. When I got myself together  
5 I yelled for his father. "Willie, Willie." His father was  
6 in there asleep, I yelled to the top of my lungs. His  
7 daddy is disabled. By the time he got in there Dawone was  
8 over me, the defendant, still cussing "Fuck you, Bitch, I  
9 don't give a Fuck about you. You ain't shit, ya'll ain't  
10 never did shit for me. I ain't got shit to loose. I'm  
11 going to jail anyway. Bitch, I kill you like my home boy  
12 killed - did his baby momma. I just don't give a Fuck  
13 right now."

14 Q. Sherika, what did you think he meant when he said  
15 that? When he said I'll kill you like my home - -

16 THE COURT: You got to speak up so they can hear you.

17 SOLICITOR VALENZUELA: Yes. Sorry, Your Honor.

18 Q. What did you think he meant when he said I'll kill you  
19 like my home boy did his baby's momma?

20 A. Me knowing him the way he beat me the way he was  
21 choking me and me knowing that he had a gun, I really  
22 thought that my life was going to end that day.

23 Q. When you say that he pulled out this gun, was that the  
24 first time that he had pulled out his gun that day that you  
25 had been talking to him?

1 A. Yes.

2 Q. And do you remember what the gun looked like?

3 A. It was silver and brown. I'm afraid of guns, I don't  
4 know what type of gun it was but I just know the color.

5 Q. And so can you give us a little bit more just like  
6 where was the brown portion, where was the silver portion  
7 of it?

8 A. The gun was silver all over and it was like a brown  
9 handle - I mean like where you put the bullets in it I'm  
10 not sure. What is that --

11 Q. That's okay. You're describing just fine.

12 A. Okay. And that's it.

13 Q. Okay.

14 A. And it might have been about this long.

15 (WITNESS DEMONSTRATED.)

16 A. That's all I know.

17 Q. Did he point the gun at you ---

18 A. Yes.

19 Q. --- that night? And show us how he was holding the  
20 gun.

21 A. In my face cause I walked up on it. As I was - At  
22 first he was pointing it straight as I was walking up on it  
23 he was like "Bitch, I'll kill you." And I was like "Well  
24 go ahead and do what you got to do." So after that he  
25 grabbed the gun like he was about to, you know, hit me with

SHERIKA ROBINSON: BY SOLICITOR VALENZUELA

-194-

1 it. So I say "You fixin to pistol whip me"? I say "That's  
2 what you gonna do"? I say "You ain't nothing but a pussy.  
3 You know why would you want to fight a girl or fight a  
4 woman, fight your baby momma, really?" And it was a push  
5 and hit. I don't know how he hit me, what he hit me with,  
6 it was just fast.

7 Q. Okay. And you were telling us about how you called  
8 out for the defendant's father to come ---

9 A. Uh-huh.

10 Q. --- to you. You mentioned that he was disabled.

11 A. Yes he's disabled. He came into the room and took  
12 about fifteen minutes to get there. I'm just yelling and  
13 crying for him - When his father came into the room Dawone  
14 was still over me saying, "Bitch, I kill you, Fuck you, I  
15 do like my home boy did his baby momma." His daddy touched  
16 him on his shoulder, his father, Dawone's father touched  
17 him on his shoulder and told him "Leave her alone." He  
18 turned around and he pushed his father onto the floor and  
19 he slid like across my room floor.

20 Now at this time him and his father is arguing back  
21 and forth. I done ran out my room to call 911. I'm  
22 telling them somebody help me, somebody come and get him  
23 he's armed. They ask me what is my address, I'm like  
24 somebody just come and help me, help me. They both entered  
25 - Dawone and his father entered the living room. He still

1 cussing saying, "Bitch, I don't give a Fuck about you." He  
2 kept drawing back at me but he never did hit me again. I'm  
3 begging, you know, trying to block myself. Why did -  
4 "Can't none of you all beat me, you all - Fuck you all,  
5 ain't nobody did shit for ya'll"; you know, you just  
6 basically back and forth. Every time I said something he  
7 wanted to hit me. But he know at this time I'm afraid of  
8 him. I'm not fixin to get in his face any more. I tried  
9 to do all I can do to try to protect myself. He's just -  
10 just bucking at me, just "Bitch, I'll beat your ass."  
11 Saying, "I do this and I do that." And I'm like "Really?"  
12 I say, "Dawone, I always been there for you. How can you do  
13 me like this?" "I don't give a Fuck." Man he was talking  
14 to his father and him and his father is still going into  
15 it. He back and forth from me to his father.

16 Q. Sherika, during this time is when you mentioned the  
17 911 call. When did you make that 911 call?

18 A. When I entered - Well when I entered into the living  
19 room I stayed in the living room when I was able to get out  
20 my room when he was arguing with his father in my room. I  
21 made the 911 call when I went into my living room.

22 Q. And did police respond out ---

23 A. Yes.

24 Q. --- and respond to that 911 call?

25 A. They did.

SHERIKA ROBINSON: BY SOLICITOR VALENZUELA

-196-

1 SOLICITOR VALENZUELA: Give me just a minute okay.

2 (PAUSE AT 12:22 P.M..)

3 Q. Sherika, let's go back to when you were earlier in the  
4 bedroom. Now, do you remember telling me before that your  
5 daughter stayed in the other room with your son?

6 A. When, with the argument?

7 Q. Yes. Just going back and where everyone was in the  
8 house. Let's just go through. Where were your son in the  
9 house?

10 A. In his bedroom.

11 Q. In a separate bedroom than in what was happening?

12 A. Uh-huh.

13 Q. Okay. And then you told us that the defendant moved  
14 your daughter into another bedroom.

15 A. Uh-huh.

16 Q. And then that she woke up; ---

17 A. Uh-huh,

18 Q. --- is that correct? And then where did he put the  
19 daughter, your daughter from there?

20 A. In my bedroom.

21 Q. So - I'm showing you what's been labeled State's  
22 Exhibit Thirteen. Do you recognize what this is?

23 A. Yes, - ma'am.

24 Q. And how do you recognize - Well what is it?

25 A. The 911 call.

1 Q. Okay. How do you recognize that that's the 911 call?

2 A. I listened to it and I dated and initialed.

3 Q. And you put your initials on it?

4 A. Yes, ma'am.

5 Q. And is that the 911 call that you made that night?

6 A. Yes, ma'am.

7 SOLICITOR VALENZUELA: Your Honor, the State moves to  
8 admit Exhibit Thirteen into evidence.

9 MS. ANDERSON: No objection, Your Honor.

10 THE COURT: In without objection.

11 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTEEN

12 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

13 SOLICITOR VALENZUELA: Your Honor, may we publish it  
14 to the jury?

15 (STATE'S EXHIBIT NUMBER THIRTEEN PUBLISHED TO THE JURY  
16 AT 12:25 P.M..)

17 (WITNESS CRYING.)

18 THE COURT: Do you need a break?

19 All right, let's take a break. Return to the jury  
20 room.

21 (JURY EXITS COURTROOM AT 12:27 P.M..)

22 (WITNESS LEAVES WITNESS STAND.)

23 THE COURT: Let's take a short break. Let me know --  
24 Ms. Valenzuela, let me know when she's comfortable.

25 (COURT IN RECESS AT 12:27 P.M..)

SHERIKA ROBINSON: BY SOLICITOR VALENZUELA

-198-

1 (WITNESS RETURNED TO WITNESS STAND.)

2 (COURT BACK IN SESSION AT 12:34 P.M..)

3 THE COURT: Take your seats. Bring in the jury.

4 (JURY REENTERS COURTROOM AT 12:36 P.M..)

5 DIRECT EXAMINATION -- CON'T

6 SHERIKA ROBINSON BY SOLICITOR VALENZUELA:

7 Q. Sherika, so you called 911. Did the police respond  
8 out after you called 911?

9 A. Yes, ma'am.

10 Q. And what did the defendant do when the police pulled  
11 up?

12 A. The defendant ran out the back door into the woods and  
13 I don't know where he went to.

14 Q. The back door of your house?

15 A. Yes, ma'am.

16 Q. Now when the police got to your home did you get a  
17 chance to talk to them?

18 A. Yes.

19 Q. Did you tell them what had happened?

20 A. Yes, ma'am.

21 Q. What did you tell them?

22 A. Well I went out there to one of the police officers,  
23 the first police that pulled up, before he even got out of  
24 his car I came to him. And I was telling him that my kid's  
25 father had come over and jumped on me. But I also had

1 pointed him out as me telling him that my kid's father came  
2 unexpected and jumped on me and he had a gun and I was  
3 saying there he goes right there pointing to him. At that  
4 time I don't even know what happened cause I was still out  
5 of it, going in and out. I don't --

6 Q. That's okay. We'll take it one question at a time  
7 okay. What injuries did you have as a result of what the  
8 defendant did?

9 A. I had a black eye and I had migraines for like two and  
10 a half weeks.

11 Q. Now you said that you spoke to police. Do you know if  
12 the police spoke to anybody else who had been in your home  
13 that day?

14 A. Yes. He spoke with my mom.

15 Q. Was your mom in your home that day?

16 A. Yes that night she came when the police came cause I  
17 called her.

18 Q. Was your mom at the home before police responded out  
19 there?

20 A. No.

21 Q. Okay. Who else did the police speak to?

22 A. I know he spoke with Lanny.

23 Q. And who's Lanny?

24 A. Our friend. Me and the defendant's friend.

25 Q. And was Lanny at your house ---

SHERIKA ROBINSON: BY SOLICITOR VALENZUELA

-200-

1

A. Yes.

2

Q. --- while all this was going on?

3

A. He was passed out drunk.

4

Q. But he was at your house?

5

A. Yes, ma'am.

6

Q. And you said he's your friend and the defendant's

7

friend?

8

A. Correct.

9

Q. Okay. And who else did the police speak to other than  
you and Lanny?

10

11

A. I'm not for sure. I didn't know if he spoke to his  
father or not.

12

13

Q. To whose father?

14

A. The defendant's father.

15

Q. Okay.

16

A. Cause I was out there trying to get Lanny not to get  
locked up cause he was just talking for no reason. So it  
was more than one officer talking to --

17

18

Q. To different people?

19

A. Exactly. And I was outside at the time so I'm not  
sure.

20

21

Q. Did you talk to the police again the next day on March  
16th?

22

23

A. Yes, ma'am.

24

Q. Okay. And what did you tell police when you spoke to

25

1           them then?

2           A.    The whole story.

3           Q.    And what was that? You can just give a summary of  
4           what you told them.

5           A.    That my kids father came over, jumped on me. We was  
6           talking about the kids how he was gonna - how we was gonna  
7           come to an agreement of him helping me with the kids and it  
8           escalated to all that.

9           Q.    What is all that? Did you tell --

10          A.    The fightin and the argument and...

11          Q.    Did you tell them specifically what the defendant had  
12          done to you?

13          A.    Yes. I just don't want to go all over it again.

14          Q.    I know. I know you don't but we do need to know what  
15          you told police the next day about what he had done.

16          A.    He hit me. I told them that he jumped on me, he  
17          threatened to kill me and his father. You know that he had  
18          a gun.

19          Q.    Did you give the police a description of the gun that  
20          the defendant had?

21          A.    Yes, uh-huh.

22          Q.    Was that description - What was that description?

23          A.    A gun about this big.

24                   (WITNESS DEMONSTRATED.)

25          A.    Brown and silver.

SHERIKA ROBINSON: BY SOLICITOR VALENZUELA

-202-

1 Q. Now how sure are you that the defendant had a gun that  
2 morning when he was attacking you?

3 A. Cause I walked up on it. I'm very sure.

4 Q. What made you believe that he had a gun?

5 A. When I seen it. What you mean? I'm not  
6 understanding.

7 Q. Just tell us what about what happened made you think  
8 that he had a gun.

9 A. When he pulled it out. I mean I'm still not gettin  
10 the question.

11 Q. I think you're answering it.

12 A. Okay.

13 Q. When you were in the room with the defendant did you  
14 think that he was going to kill you?

15 A. Yes, ma'am.

16 Q. And is the person who threatened to kill you with a  
17 gun in the room today?

18 A. Yes, ma'am.

19 Q. Can you please point him out for the jury?

20 (WITNESS INDICATED.)

21 Q. Can you tell us something that he's wearing so that we  
22 know who you're pointing at?

23 A. A blue shirt.

24 SOLICITOR VALENZUELA: Let the record that the  
25 defendant - that the victim has identified the defendant.

1 (WITNESS IDENTIFIED DEFENDANT.)

2 Q. Sherika, I'm handing you what's been labeled State's  
3 Exhibit Ten. Do you recognize that?

4 A. Yes, ma'am.

5 Q. What is it?

6 A. A call on a CD.

7 Q. And how do you know that we're talking about the same  
8 call you're thinking about?

9 A. Cause I listened to it, initialed it and dated it.

10 Q. And what is it that you hear on that phone call?

11 A. Dawone and his girlfriend.

12 Q. How do you know that the conversation you're hearing  
13 is Dawone and his girlfriend?

14 A. Cause I been knowing him for eight and a half years  
15 and I talk to his girlfriend several times.

16 Q. Okay. So you've known the defendant for eight and a  
17 half years. Have you talked to him on the phone throughout  
18 those eight and a half years?

19 A. Yes, ma'am.

20 Q. And in person?

21 A. Yes, ma'am.

22 Q. And do you feel comfortable that you know his voice?

23 A. Yes, ma'am.

24 Q. And when you heard this phone call were you able to  
25 identify his voice?

SHERIKA ROBINSON: BY SOLICITOR VALENZUELA

-204-

1 A. Yes, ma'am.

2 Q. How sure are you that this was his voice?

3 A. Very sure. Too sure.

4 Q. And you said that he was talking to his girlfriend.  
5 How long have you known his girlfriend?

6 A. Like four months.

7 Q. And have you had opportunities to speak with her?

8 A. Yes, ma'am.

9 Q. And are you familiar with what her voice sounds like?

10 A. Yes, ma'am.

11 Q. And did you identify her voice on this phone call?

12 A. Yes, ma'am.

13 Q. How sure are you that this is her voice on the phone  
14 call?

15 A. Sure. Cause we talk like several times a day arguing  
16 over the phone so - and her voice is annoying.

17 Q. Okay. Thank you, Sherika.

18 SOLICITOR VALENZUELA: Your Honor, combining Detective  
19 Welch's earlier testimony and the victim's statements we  
20 admit Exhibit Ten.

21 MS. ANDERSON: Your Honor, I renew my objections that  
22 remain --

23 THE COURT: Over objection they are allowed into  
24 evidence.

25 (WHEREUPON: STATE'S EXHIBIT NUMBER TEN IDENTIFIED AND

SHERIKA ROBINSON: BY MS. ANDERSON

-205-

1 MARKED, RECEIVED INTO EVIDENCE.)

2 SOLICITOR VALENZUELA: And, Your Honor, may we publish  
3 to the jury?

4 THE COURT: You may publish.

5 (STATE'S EXHIBIT NUMBER TEN PUBLISHED TO THE JURY AT  
6 12:44 P.M..)

7 SOLICITOR VALENZUELA: Sherika, please answer any  
8 questions that Ms. Anderson has for you.

9 CROSS-EXAMINATION

10 SHERIKA ROBINSON BY MS. ANDERSON:

11 Q. Ms. Robinson, I want to set a little bit of the  
12 background. I know you testified on direct of explaining  
13 that you were up doing some cleaning at the time.

14 A. Correct.

15 Q. Okay. And I think that later you talked about that  
16 Lanny was at the house and Lanny was passed out drunk.

17 A. Correct.

18 Q. Okay. Do you recall how much you had to drink that  
19 night or that morning?

20 A. None.

21 Q. Nothing?

22 A. No, ma'am.

23 Q. And you testified that initially that when Dawone came  
24 in you guys were just having a calm conversation.

25 A. Correct.

SHERIKA ROBINSON: BY MS. ANDERSON

-206-

1 Q. Okay. And then I think you testified there was some  
2 discussion about whether you'd finished saying everything  
3 you had to say.

4 A. Correct.

5 Q. Okay. And then you said he just sort of abruptly  
6 started saying things about the Devil or things like that.

7 A. Correct.

8 Q. And it was no sort of warning as to where that came  
9 from?

10 A. Correct.

11 Q. And I think then you said that you ask to leave the  
12 room at that point and you actually went to the bathroom at  
13 that point.

14 A. Correct.

15 Q. And you didn't at that point go and call the police or  
16 anything like that; right?

17 A. No I didn't.

18 Q. Okay. And I think you go on - correct me if I'm  
19 getting the sequence wrong, but when you came back in the b  
20 bedroom and you said the arguments were they did escalate  
21 at that point; right?

22 A. Correct.

23 Q. Okay. And then I think at some point I think you said  
24 your daughter came back in but Dawone did calm down at that  
25 point with your daughter?

1 A. Correct.

2 Q. Okay. And then you testified on direct that he was  
3 pushing you I think down on the bed and then weight on your  
4 neck; correct?

5 A. Correct.

6 Q. Okay. And you said on direct that you couldn't  
7 breathe at that point?

8 A. Correct.

9 Q. Okay. And I think then what you testified on direct  
10 is that he pulled out a gun and pointed it at you.

11 A. Correct.

12 Q. Okay. And you said at that point what you did was you  
13 sort of confronted him as well. Sort of you said like got  
14 up in his face with that.

15 A. Correct.

16 Q. Okay. Trying to defuse the situation you said. Okay.  
17 And I think you said at some point you were saying go  
18 on or some sort of argument with him about that?

19 A. Correct.

20 Q. Okay.

21 A. About what? About what, go on about what?

22 Q. Some discussion you said you testified is you kind of  
23 got up in his face when he pointed the gun at him?

24 A. Uh-huh.

25 Q. Okay. Excuse me, that was your testimony. And you

SHERIKA ROBINSON: BY MS. ANDERSON

-208-

1 testified then on direct that at that point that you did  
2 get hit in your eye?

3 A. Correct.

4 Q. And that side of the photograph the officers took  
5 showed that you had that swollen eye; correct?

6 A. Correct.

7 Q. Okay. And you testified I think on direct at that  
8 point that you said I think you were going in and out of  
9 consciousness you said at that point?

10 A. Yes, ma'am.

11 Q. And then you said you called out for Willie to come in  
12 and help?

13 A. As I got back to that yes, ma'am.

14 Q. Okay. And - Now when Willie was in the room, when  
15 Dawone's father was in the room the gun wasn't out at that  
16 point; right?

17 A. I don't know.

18 Q. Okay.

19 A. Cause I ran out of the room that time Willie came in  
20 the room so I don't know.

21 Q. Okay. And you said then you made the 911 call from  
22 the living room; right?

23 A. Correct.

24 Q. Okay. And you actually went out and you talked you  
25 said the officer that drove up at that point in the parking

1 lot outside?

2 A. Correct.

3 Q. Okay. And the police got there pretty quickly; right,  
4 after you called?

5 A. Not quick enough for me.

6 Q. Do you remember how many - how long it was or are you  
7 sure?

8 A. About - I'm not sure.

9 Q. You're not sure? Okay. Five minutes or less or more?

10 A. I'm not sure.

11 Q. You're not sure. Okay.

12 A. I'm not sure.

13 Q. And you went up to - Do you recall what officer it  
14 was? Was it Officer Cook?

15 A. No, ma'am. No, ma'am.

16 Q. Okay.

17 A. I don't know.

18 Q. But whoever the first officer was in the car that was  
19 the person you spoke to?

20 A. Correct.

21 Q. And I think you testified on direct but I don't want  
22 to - that you were - You said something on direct that when  
23 you went up to that officer about going in and out. Do you  
24 recall that?

25 A. Yeah.

SHERIKA ROBINSON: BY MS. ANDERSON

-210-

1 Q. Do you know - What would you mean by that?

2 A. Like going in and out like remembering and not  
3 remembering.

4 Q. Okay. And you didn't - -

5 A. Hold up. I got one. Is you talking about when he was  
6 punching me cause I was going in and out all day so is -  
7 which part are you talking about?

8 A. I think you started - you said something about going  
9 in and out when you went up to the officer in the car and I  
10 just wanted to make sure I wasn't confused on what you were  
11 saying.

12 A. Huh-huh.

13 Q. Okay.

14 A. I didn't say about the officer.

15 Q. No.

16 A. I was going in and out when he continued to punch me.

17 Q. Okay. Not with the officer. Okay.

18 A. Correct.

19 Q. All right. And you didn't have the police to call EMS  
20 for you that morning did you?

21 A. No.

22 Q. Okay. You didn't go to the hospital that day?

23 A. No, ma'am.

24 Q. Okay. And we saw and I think you've seen a  
25 photographs where the officers they photographed your

1 injury on the 15th.

2 A. Uh-huh.

3 Q. And let me just make sure I know, I think there's --

4 And then when you went and you talked with other  
5 officers assisting they also photographed your injury as  
6 well.

7 A. Correct.

8 Q. So you showed them, you know, this is my injury please  
9 photograph this?

10 A. I didn't tell them to. They did it on their own but  
11 yes, ma'am.

12 Q. Okay. And you testified on direct that you had  
13 migraines for two and a half weeks afterward?

14 A. Yes, ma'am.

15 Q. Did you get any medical treatment for that?

16 A. I went to North Central. That's for the parents that  
17 don't have Medicaid and kind of like you're on the poor  
18 side. But yes, ma'am, I went.

19 Q. Okay. Did you - Do you have your medical records with  
20 you or...

21 A. No, ma'am, I have a copy of my - my payments that they  
22 gave me but when you go to there they don't really give you  
23 no medical records, no examine, they don't do stuff like  
24 that. I couldn't afford it at the time to go to a doctor,  
25 a real doctor.

SHERIKA ROBINSON: BY MS. ANDERSON

-212-

1 MS. ANDERSON: I beg the Court's indulgence.

2 (PAUSE.)

3 Q. And now you actually met with the officers two  
4 different times with giving statements; right?

5 A. Rephrase that please, ma'am.

6 Q. Okay. You actually gave two different statements to  
7 the officers with this case; right?

8 A. Yes, ma'am, I talked to two officers.

9 Q. Okay. And the first one was where an officer while  
10 you were at your apartment had you write a statement out  
11 that first --

12 A. Yes, ma'am.

13 Q. Okay. And you recall that statement basically you  
14 said that Dawone came in the house and hit you. It looks  
15 like, I'm not sure if this head or hand and face ---

16 A. Uh-huh.

17 Q. --- you indicated that. Okay. And then your  
18 statement said about making you go in your room and showing  
19 you the gun.

20 A. I probably didn't - I'm not a good speller but no that  
21 ain't how it went.

22 Q. Okay. Do you remember writing that out that way?

23 A. Yeah.

24 Q. Okay.

25 A. Writing it out that way? No, ma'am. If you reach it

1 to me I can read it to you for you to show me what it says.

2 Q. Sure.

3 May I approach, Your Honor?

4 Would you read that?

5 (WITNESS RECEIVED DOCUMENT.)

6 A. It says "Dawone came out into my house without me  
7 knowing and came and hit me in my face with his hand. And  
8 he said, "Bitch, I'm going to jail anyway I will kill you.  
9 Fuck you, Bitch." And then he made me go in - He made me  
10 go in the room and showed me a gun and then his dad came in  
11 and pushed me down." I don't remember this. "And then he  
12 said Fuck you, I'll kill both of ya'll."

13 Q. Okay. And that was the one that you wrote ---

14 A. Yes, ma'am.

15 Q. --- like a couple of hours --

16 A. But that was just a brief. I left it out and I was in  
17 pain and upset that day. I left out some things.

18 Q. Okay.

19 A. But that was just the brief to let them know what was  
20 going on in the house.

21 Q. Okay. As I guess we can get out of it is the next  
22 statement when you went and talked with the detectives and  
23 they typed something up for you to sign.

24 A. Yes because I told them that I couldn't spell that  
25 good yes, ma'am.

SHERIKA ROBINSON: BY MS. ANDERSON

-214-

1 Q. And then that was ---

2 A. And they typed the report.

3 Q. Okay. And that was a longer version you gave?

4 A. Yes that was everything. Didn't leave nothing out.

5 Q. Okay. So there were things included in that statement  
6 that weren't in the first statement?

7 A. Correct.

8 Q. Okay. And now you testified the Solicitor ask you a  
9 question about being --

10 THE COURT: Yes, ma'am.

11 A. I got a question. On that letter that I --

12 THE COURT: She will ask you a question.

13 A. Okay.

14 Go ahead.

15 Q. The Solicitor ask you on direct a question about how  
16 sure you were that there was a gun that day.

17 A. Uh-huh.

18 Q. Okay. I think you answered I think very sure ---

19 A. Yes.

20 Q. --- were your words.

21 A. Yes.

22 Q. And you do recall that somewhere back in July you did  
23 talk with the Solicitor about the case?

24 A. Uh-huh.

25 Q. Like in preparation for the case.

1 THE COURT: You need to answer.

2 A. Oh. Yes.

3 Q. Okay. And during that discussion with her you did  
4 indicate that you were not sure if it was a gun?

5 A. No. I probably told her that I wasn't sure what kind  
6 of gun it was but I'm sure that it was a gun.

7 Q. Do you recall telling her that he did not have the gun  
8 when his father was in the room?

9 A. His father said he didn't see his son. I'm going off  
10 what he told me because they - he wouldn't talk to them.  
11 His father wouldn't talk to them so I ask him did he see  
12 the gun when he came in and he said no.

13 MS. ANDERSON: I beg the Court's indulgence.

14 (PAUSE.)

15 MS. ANDERSON: Nothing further, Your Honor.

16 THE COURT: Redirect?

17 SOLICITOR VALENZUELA: Nothing further, Your Honor.

18 THE COURT: You can step down and we appreciate your  
19 time. Thank you.

20 (WITNESS LEAVING WITNESS STAND.)

21 THE COURT: Members of the jury panel, we'll break for  
22 lunch until 2:15. Have a pleasant lunch, we'll see you at  
23 2:15.

24 (JURY OUT FOR LUNCH RECESS AT 12:58 P.M..)

25 THE COURT: Just for planning, you got two more

1 witnesses listed, are you calling either or both?

2 SOLICITOR VALENZUELA: Just one, Your Honor.

3 THE COURT: Okay. We can just plan - I'll talk to the  
4 defendant after the State rest.

5 Any witnesses on behalf of --

6 MS. ANDERSON: Nothing, nothing beyond whether the  
7 defendant wishes to testify.

8 THE COURT: Okay. Now does either side have any  
9 request to charge that I can be looking at?

10 MS. ANDERSON: Your Honor, I can work on those. I can  
11 say - I'll work on that over lunch, Your Honor.

12 THE COURT: All right. Does the State have any?

13 SOLICITOR VALENZUELA: Your Honor, we know that we're  
14 going to request to charge the CDV as a lesser included of  
15 CDV HAN. That's it for right now.

16 THE COURT: What about the simple assault and those  
17 categories? It's usually the State's position that those  
18 are not - that's your position also?

19 SOLICITOR VALENZUELA: That is not our position but in  
20 this case because they've stipulated that he is a household  
21 member we don't feel a need to include those lesser  
22 included.

23 THE COURT: What's the defense's position?

24 MS. ANDERSON: Your Honor, I think that's a problem.  
25 I may look into that if I have an opportunity to just look

1 into it.

2 THE COURT: Okay.

3 MS. ANDERSON: And, Your Honor, I will say pending on  
4 what witness the State does intend to call, I think that if  
5 it's Ms. Parrish then there probably - I will have an  
6 objection to some of the testimony. I may be in a position  
7 to make a proffer. So just for planning purposes as well  
8 and discussing that.

9 THE COURT: Martha Parrish the intended witness?

10 SOLICITOR VALENZUELA: Yes she is.

11 THE COURT: You've been put on notice that there may  
12 be some objection to some of her testimony so you may want  
13 to do a proffer.

14 Mr. Springs, you look - -

15 MR. SPRINGS: Yes. I just want to verify, we got a  
16 witness stipulation I'd like to hand it up to you now.

17 Give those to Ms. Anderson.

18 And you're going to articulate those to the jury, Your  
19 Honor, the charges?

20 THE COURT: I'll do my best to articulate them. I'll  
21 read them.

22 MR. SPRINGS: We're getting organized, Your Honor.

23 THE COURT: Just hand them up here. We'll take a  
24 break until 2:15. Just put them on the bench here.

25 (COURT IN LUNCH RECESS AT 01:01 P.M..)

1 (COURT BACK IN SESSION AT 02:19 P.M..)

2 THE COURT: Take your seats. Get Mr. Davis in.

3 Any request to charge from the State?

4 SOLICITOR VALENZUELA: I'm sorry, Your Honor.

5 THE COURT: Any request to charge?

6 (DEFENDANT, DAWONE DAVIS, BLACK MALE, REENTERS  
7 COURTROOM.)

8 SOLICITOR SPRINGS: Regular CDV as a lesser included.

9 THE COURT: All right.

10 SOLICITOR SPRINGS: And not Assault and Battery  
11 because we think with a household member you assault and  
12 battery a household member it's a CDV.

13 THE COURT: Okay.

14 MS. ANDERSON: Your Honor, essentially I think a lot  
15 of this Your Honor may already have included, I think from  
16 the multiple charges just to charge as to that. Also with  
17 the one charge with being a possession of a weapon by a  
18 person previously convicted of a violent crime, I know  
19 we've entered into a stipulation, I request some sort of a  
20 charge that the fact that he had a prior and couldn't be  
21 used in any way as did any of the other charges.

22 Additionally, Your Honor, I think on the State's  
23 indictment for Criminal Domestic Violence of a High and  
24 Aggravated Nature references an allegation of serious  
25 bodily injury, and I was going to inquire if Your Honor has

1 some sort of definition of serious bodily injury. I've  
2 been looking for one and in the charge books, I know that  
3 the new statutory system with assault and battery doesn't  
4 say serious bodily but does have some more specific  
5 definitions but we were going to inquire as to Your Honor  
6 has - -

7 THE COURT: Absent a statutory definition I'm just  
8 going to use the word serious bodily injury and have the  
9 jury take it in the common parts kind of a situation cause  
10 if the legislature and the courts haven't decided that I  
11 think that's a jury question.

12 MS. ANDERSON: Yes, Your Honor.

13 THE COURT: I'd forgotten - I had actually forgotten  
14 about the - they call them inconsistencies but the fact  
15 that under regular assault they've got all these  
16 definitions and they don't have - We've had this come up  
17 before and it just hasn't crossed my mind until you raised  
18 it, but I think before - before I do what I'm doing now is  
19 simply let the jury - just charge them serious bodily  
20 injury and certainly you all can argue as to whether a  
21 black eye, swelling of the face, if he really committed  
22 constitute serious bodily injury or whether that's just -  
23 Well I'll let you all argue that.

24 MS. ANDERSON: Yes, Your Honor.

25 THE COURT: Anything else?

1 MS. ANDERSON: I think everything else would be  
2 covered by Your Honor's standard.

3 THE COURT: Okay. Let me check on one thing. I'll be  
4 right back.

5 (COURT LEFT THE BENCH MOMENTARILY.)

6 THE COURT: Is the State ready?

7 SOLICITOR SPRINGS: Yes, Your Honor. Just one quick  
8 question. On the CDV HAN you are pretty much gonna go  
9 through the whole definition of - -

10 THE COURT: Well let's see - Let's do this. My clerk  
11 had not gone over it with a find tooth comb which I will,  
12 but let's see what criminal domestic violence...

13 Mr. Springs and Ms. Anderson, if you all will come  
14 look at what I most probably will charge with some  
15 modifications.

16 (BENCH CONFERENCE/SIDE BAR DISCUSSION OFF THE RECORD.)

17 THE COURT: It says assault and battery involves the  
18 use of a deadly weapon or results in serious bodily injury.

19 MS. INZERILLO: Yes, Your Honor, she has a serious  
20 assault and battery involving the use of a deadly weapon.

21 SOLICITOR VALENZUELA: I had most serious before  
22 assault and battery.

23 THE COURT: I see. Okay.

24 SOLICITOR VALENZUELA: And then we scratched off, it  
25 looked like I had duplicate definitions at the end so we

1 scratched off that part. But other than that it looks like  
2 we do agree on that charge.

3 MS. ANDERSON: Looks just like the language from the  
4 statute.

5 THE COURT: All right. The State has one witness  
6 still?

7 SOLICITOR VALENZUELA: Yes, Your Honor.

8 THE COURT: All right. Bring in the jury.

9 SOLICITOR VALENZUELA: But, Your Honor, I'm sorry,  
10 defense - -

11 THE COURT: Wait just - -

12 SOLICITOR VALENZUELA: Defense counsel wanted a  
13 proffer of our testimony first.

14 THE COURT: Okay.

15 MS. ANDERSON: Your Honor, I guess what I can ask is  
16 my understanding is that the witness would be Martha  
17 Parrish and I guess the reason in that and being called is  
18 because and the testimony of Ms. Evans earlier I think  
19 that's the extent of what she testified to.

20 SOLICITOR VALENZUELA: Ms. Evans and Ms. Covington,  
21 Ms. Covington clarifying earlier stating that the t-shirt  
22 was wrapped around Mr. Davis's hand.

23 MS. ANDERSON: Ms. Covington did not give us the  
24 actual statement.

25 SOLICITOR VALENZUELA: Right. She gave a statement

INVESTIGATOR MARTHA PARRISH: BY SOLICITOR VALENZUELA - IN CAMERA -222-

1 and Martha took notes while she was giving the statement.

2 SOLICITOR SPRINGS: Oral statement, no written  
3 statement.

4 MS. ANDERSON: No written statement.

5 THE COURT: All right. Well where does that leave us?

6 SOLICITOR SPRINGS: We're ready to call Martha Parrish  
7 to impeach these two witnesses of ours.

8 THE COURT: I know but do we need a proffer?

9 MS. ANDERSON: We may need to, Your Honor.

10 THE COURT: Let's go ahead and move on and let's go  
11 ahead and do this.

12 THE BAILIFF: Are you ready for them, sir?

13 SOLICITOR VALENZUELA: We're going to do a proffer  
14 first without the jury.

15 THE COURT: No. No, without the jury. We're not  
16 ready for the jury yet.

17 (WHEREUPON: MARTHA PARRISH,  
18 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

19 DIRECT EXAMINATION - IN CAMERA

20 INVESTIGATOR MARTHA PARRISH BY SOLICITOR VALENZUELA:

21 Q. Martha, will you state your full name for the record?

22 A. Martha Parrish.

23 Q. And where do you work?

24 A. The Solicitor's Office here in York County.

25 Q. Are you a law enforcement officer?

INVESTIGATOR MARTHA PARRISH: BY SOLICITOR VALENZUELA - IN CAMERA -223-

1 A. Yes, ma'am.

2 Q. And how long have you been a law enforcement officer?

3 A. Sixteen years.

4 Q. And which agency were you with, having been with?

5 A. Mecklenburg County Sheriff's Office in Charlotte, North  
6 Carolina, Rock Hill Police Department in Rock Hill South  
7 Carolina and here for ten years.

8 Q. How long were you with the Mecklenburg Police  
9 Department?

10 A. Two years.

11 Q. And how long were you with the Rock Hill Police  
12 Department?

13 A. Five years.

14 Q. Were you present when Ernestine Evans talked about the  
15 incident and what she saw on March 15th of 2012?

16 A. Yes, ma'am.

17 Q. And - Do you remember the date that we went out to  
18 talk to Ms. Evans?

19 A. Yes, ma'am. It was on my handwritten notes 5/23/2012  
20 around 1:00 p.m. sometime.

21 Q. And what did she say? What did she say to us about  
22 the fleeing man that she saw?

23 A. She stated that she saw someone running through the  
24 wooded area and that he was carrying something that  
25 appeared might have been a gun, appeared to be gun by the

INVESTIGATOR MARTHA PARRISH: BY SOLICITOR VALENZUELA - IN CAMERA -224-

1 way he was carrying it.

2 Q. Are you sure that she said that?

3 A. Yes, ma'am.

4 Q. And did you make a written - Did you write down the  
5 statement that she gave you?

6 A. Yes, ma'am.

7 Q. And did you include that in your written statement?

8 A. Yes, ma'am, its on the second page.

9 Q. Did Ms. Evans initial both pages of that two page  
10 statement?

11 A. Yes, ma'am.

12 Q. Did Ms. Evans sign that statement?

13 A. Yes, ma'am, along with myself.

14 Q. And do you recall if you read that statement out to  
15 her?

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

17 Q. And then she signed it indicating that that was the  
18 complete statement?

19 A. Yes, ma'am.

20 Q. Did she indicate that that statement was correct?

21 A. Yes, ma'am.

22 Q. Did you also speak to Ms. Angela Covington that day?

23 A. Yes, ma'am.

24 Q. And did Ms. Covington give you an oral statement?

25 A. Yes, ma'am.

INVESTIGATOR MARTHA PARRISH: BY SOLICITOR VALENZUELA - IN CAMERA -225-

1 Q. And what did she say about the man that she saw out in  
2 the parking lot?

3 A. She stated that she was getting into her vehicle and  
4 she saw someone coming towards her and - so she hurried,  
5 unlocked her car, jumped in across her seats and basically  
6 relocked it really quick and he started banging on the door  
7 going "Yo, Yo, give me a ride, give me a ride." Something  
8 to that extent.

9 Q. Did she give you a description of what he looked like?

10 A. Yeah. She - In fact that was part of the second page  
11 of notes that I took.

12 Q. Did she - Did her statement include anything about  
13 what he had in his hand or - -

14 A. Yeah. His exact - Her exact description was jean  
15 shorts with white shirt, a black male and he had a white  
16 shirt wrapped around his hand and she demonstrated how it  
17 was, and had tattoos all over his body, he was medium to  
18 small build, not hefty. She was trying to get away and she  
19 said she wasn't sure on facial hair.

20 Q. Did she indicate how sure she was that he had that t-  
21 shirt wrapped around his hand?

22 A. Yeah. She - Like I said, she even demonstrated how it  
23 was wrapped around his hand but she said she couldn't see  
24 what was inside of it but it could have been a gun.

25 Q. Did you have an opportunity to talk to Ms. Covington

INVESTIGATOR MARTHA PARRISH: BY SOLICITOR VALENZUELA - IN CAMERA-226-  
BY MS. ANDERSON - IN CAMERA

1 then after this - Well actually first let me back up. On  
2 what date did you talk to Ms. Covington about this oral  
3 statement?

4 A. 5/23/2012.

5 Q. Did you get a chance to talk to Ms. Covington about  
6 this statement again?

7 A. Yeah. Actually I brought her to the Moss Justice  
8 Center this morning to testify in my vehicle.

9 Q. And did she discuss this testimony?

10 A. Yeah she brought it up that she had said yeah like the  
11 guy that had the t-shirt wrapped around his hand and even  
12 demonstrated.

13 SOLICITOR VALENZUELA: Please answer any questions  
14 that Ms. Anderson has for you.

15 A. Yes, ma'am.

16 CROSS EXAMINATION - IN CAMERA

17 INVESTIGATOR MARTHA PARRISH BY MS. ANDERSON:

18 Q. Ms. Parrish, the statements that you wrote down for  
19 this summary, is that the entirety of your notes and is  
20 actually --

21 A. I'm sorry, say that again.

22 Q. Is that the entirety basically the notes as to Ms.  
23 Evans?

24 A. Yeah there weren't any notes. I actually wrote down  
25 what she said as she was saying it.

1 Q. And on this -- that's the entirety of your notes on  
2 that part?

3 A. Yes, ma'am.

4 Q. And Ms. Covington did not give any written statement;  
5 correct?

6 A. No she said she didn't want to sign anything so I just  
7 took handwritten notes as she was talking.

8 MS. ANDERSON: I beg the Court's indulgence.

9 (PAUSE.)

10 Q. You didn't visit on May 23rd of this year?

11 A. I'm sorry, say that again.

12 Q. You indicated you talked to both Ms. Evans and Ms.  
13 Covington on May 23rd.

14 A. Yes, ma'am. It was Ms. Covington was just after I  
15 talked to Ms. Evans.

16 Q. Okay. And that was at the direction of the Solicitor  
17 to go talk to those individuals?

18 A. Yes, ma'am.

19 Q. Did you receive the call from Ms. Evans in July on  
20 July 12th where she indicated she could not read or write?

21 A. No I didn't - I did not receive any call from her.

22 Q. And did you receive a call from Ms. Evans on July 17th  
23 where she called and said she had not said anything about a  
24 gun in her statement?

25 A. No, ma'am, I didn't receive any calls from her at all.

INVESTIGATOR MARTHA PARRISH: BY MS. ANDERSON - IN CAMERA -228-

1 Q. Additionally Ms. Evans statement that she couldn't see  
2 what was in the hand she never said could have been a  
3 weapon - a gun --

4 A. I'm sorry, what was the first part of that?

5 Q. So also with the caller Ms. Evans she stated she  
6 couldn't see what was in Mr. Davis's hand and she never  
7 said it could have been a gun he was carrying. You did not  
8 receive that --

9 A. No I didn't. I didn't talk to her at all other than  
10 this day I took the statement.

11 Q. And the same situation with Ms. Covington on July 17th  
12 called and said she had never said anything about a gun?

13 A. No, ma'am, I never talked to her as well after the  
14 statement.

15 Q. So just to cover as well would it have been a call  
16 with Ms. Covington that says when she gave her statement  
17 she was clear she didn't know what was in Mr. Davis's hand;  
18 she never said it was a gun?

19 A. No I did not.

20 MS. ANDERSON: I beg the Court's indulgence.

21 (PAUSE.)

22 MS. ANDERSON: Nothing further, Your Honor.

23 SOLICITOR SPRINGS: Can we ask one more quick  
24 question, Your Honor?

25 THE COURT: Yes.

INVESTIGATOR MARTHA PARRISH: BY SOLICITOR VALENZUELA - IN CAMERA-229-

1 REDIRECT EXAMINATION - IN CAMERA

2 INVESTIGATOR MARTHA PARRISH BY SOLICITOR VALENZUELA:

3 Q. Ms. Parrish, you remember how - Did Ernestine Evans or  
4 Angela Covington indicate to you that they did not want to  
5 testify?

6 A. No, ma'am.

7 Q. Thank you.

8 THE COURT: You can step down.

9 (WITNESS LEAVING WITNESS STAND.)

10 THE COURT: What's the defense's position?

11 MS. ANDERSON: Your Honor, I think one of my concerns  
12 being in light of this testimony would be Ms. Parrish was  
13 presented as a witness on the witness list subject to a  
14 sequestration order we now have testimony that she did  
15 speak to one of the witnesses when transporting them in. I  
16 think my larger concern is the background of this from  
17 which my questions were you know we have these statements  
18 being made the first time on May 25th, I've been given  
19 information disclosed by the State that there were phone  
20 calls subsequently denying parts of those statements or  
21 indicating those statements. The problem we have now is  
22 those statements are apparently made only to the Solicitor  
23 and I guess my concern is that information was known to the  
24 Solicitor prior to calling both Ms. Evans and Ms. Covington  
25 that that was their testimony, they testified consistently

1 with what I was relayed in July about their statements and  
2 we now have a situation of where the State called - is  
3 calling them essentially I guess for them to deny their  
4 statement and now to bring in another witness to I guess  
5 bolster the original statements and I'm in a position where  
6 the only person who can indicate those statements were made  
7 is now the Solicitor --

8 THE COURT: Well I was listening. Were you aware that  
9 they recanted these statements?

10 SOLICITOR VALENZUELA: Well the reason Ms. Anderson is  
11 aware is I sent her an email and I said that - -

12 THE COURT: I never said why. I didn't ask you why  
13 she knew it. I ask you if - -

14 SOLICITOR VALENZUELA: Yes.

15 THE COURT: Can I finish my question.

16 SOLICITOR VALENZUELA: Yes.

17 THE COURT: Were you aware that these witnesses  
18 recanted their testimony about being able to testify he was  
19 carrying a pistol?

20 SOLICITOR VALENZUELA: That they changed the portion  
21 of their testimony?

22 THE COURT: Yes.

23 SOLICITOR VALENZUELA: Yes.

24 THE COURT: Well if you present Ms. Parrish then they  
25 have a right to call someone and you look like the only

1 person and examine you well I don't think they ought to be  
2 put to the burden of having to present evidence. I don't  
3 see how the State can present a witness or present it  
4 strictly Rule 16-613 astringent evidence of a prior  
5 inconsistent statement of a witness is when you know that  
6 there is a third statement of -- that recants that.

7 SOLICITOR VALENZUELA: They elicited testimony from  
8 those witnesses in front of the jury, that they called the  
9 solicitor's office and that they had changed their  
10 statement and they both indicated that yes they have been  
11 able to present that testimony from the horse's mouth to  
12 the jury. I mean at this point I'm saying that the only  
13 that their able to prove this is to put me on the stand so  
14 obscured in the light of the fact that they actually had  
15 elicited that testimony already. The statement of the  
16 witnesses had already said that, that they called and said  
17 that they don't want to do that.

18 THE COURT: I don't recall that particular testimony  
19 but you tell me they testified to that...

20 SOLICITOR VALENZUELA: I mean if defense counsel if  
21 you don't feel like you can ask that I --

22 MS. ANDERSON: Your Honor, I recall that I ask Ms.  
23 Evans on cross examination that because Ms. Evans when the  
24 solicitor was attempting to impeach the witness's statement  
25 I don't recall Ms. Covington because I don't think there

1 was any attempt to impeach based on the notes of the prior  
2 statements. I think correctly I think I did not ask as to  
3 Ms. Covington. I did ask of Ms. Evans and that was based on  
4 the way Ms. Covington testified I did not ask that.

5 SOLICITOR VALENZUELA: With Ms. Covington I said do  
6 you recall telling me that the t-shirt was wrapped around  
7 his hand and she said you know he was carrying it in his  
8 hand but he didn't have anything in it because he was just  
9 holding the t-shirt which is a completely statement than  
10 telling us that the t-shirt was wrapped around his hand.  
11 But Ms. Anderson is correct, she did not cross Ms.  
12 Covington, she only crossed Ms. Covington so she would not  
13 ask Ms. Covington about her statements. If we had the  
14 opportunity we can recall Ms. Covington if we need to do  
15 that.

16 THE COURT: They get the opportunity with the  
17 knowledge that - that that testimony is a yes or no?

18 MS. ANDERSON: Yes, Your Honor.

19 THE COURT: All right. Well I'll allow her to testify  
20 under Rule 6 - South Carolina Rules Of Evidence Rule 613,  
21 "exstringent evidence of prior inconsistent statement".

22 Tell me again exactly what the inconsistency is? I  
23 know she was - it has to do with whether she did or did not  
24 see a gun. But tell me again what the - with specificity  
25 what the inconsistent statement is.

1 SOLICITOR VALENZUELA: For Ms. Evans her witness  
2 statement says that she saw something in his hand and that  
3 it - I want to make sure that I read it correctly.

4 "Carrying something in his hand it looked like a gun by the  
5 way he was holding it but I couldn't tell for sure." And t  
6 then today she's saying she thought he was carrying his  
7 cell phone and that she had never said that it looked like  
8 it was a gun.

9 In fact when I read her her statement she - I  
10 personally did as indicating that that was never even read  
11 to her so she had no awareness at all that that was in her  
12 statement. And so Ms. Parrish would testify that you know  
13 clear it up for the jury that I did not insert a statement  
14 that Ms. Evans was never aware of.

15 As for Ms. Covington it comes down to her saying that  
16 he's carrying the white t-shirt in his hand versus a white  
17 t-shirt being wrapped around his hand. That's important in  
18 this case because the State's alleging that he had a gun  
19 perhaps he was hiding that gun in the white t-shirt versus  
20 her statement is now is that he's carrying the t-shirt in  
21 his hand then that's a different statement from what she  
22 gave the last time.

23 THE COURT: I'll allow Ms. Parrish to testify to  
24 those.

25 MS. ANDERSON: Your Honor, what I would ask is I guess

1 the situation I'm in is because we knew on July the 17th  
2 the State is aware these were statements. I'm in a  
3 situation now being unable then to I guess - The State is  
4 now going to impeach the statements they made on July 17th  
5 and in court today. At this time I would request the State  
6 would stipulate that the Solicitor was contacted by Ms.  
7 Evans and on July 17th and stipulate that they at that time  
8 told her basically what has been relayed to me denying  
9 those statements.

10 THE COURT: Wasn't her testimony from which one, Ms.  
11 Evans, that she did call the Solicitor and relayed that  
12 information?

13 MS. ANDERSON: Yes, Your Honor.

14 THE COURT: And also I take it Ms. Covington was not  
15 ask about that? Is that correct about the call to the  
16 Solicitor's office? Well I can't tell you what to do on  
17 behalf of your client in the defense case, but I'm going to  
18 allow Ms. Parrish to testify and then where it goes from  
19 there is a trial strategy or whatever you need for an  
20 appeal. Whatever position it puts the defense is just puts  
21 the defense in that position because I find that under Rule  
22 613 South Carolina Rules of Evidence the testimony that  
23 they intend to put up is admissible and where we go from  
24 there is not up to me at this point. All right.

25 You ready for the jury? Ms. Valenzuela, you ready for

1 the jury?

2 SOLICITOR VALENZUELA: I'm sorry, Your Honor, can I  
3 have just two quick minutes?

4 (PAUSE.)

5 SOLICITOR VALENZUELA: Thank you, Your Honor.

6 THE COURT: Bring in the jury.

7 (JURY REENTERS COURTROOM AT 02:58 P.M..)

8 THE COURT: Call your next witness.

9 SOLICITOR VALENZUELA: Your Honor, the State calls  
10 Investigator Martha Parrish.

11 (WHEREUPON: MARTHA PARRISH, BEING  
12 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

13 DIRECT EXAMINATION

14 INVESTIGATOR MARTHA PARRISH BY SOLICITOR VALENZUELA:

15 Q. Investigator Parrish, can you please state your full  
16 name for the record?

17 A. Yes, ma'am. It's Martha Ann Parrish.

18 Q. Investigator Parrish, where do you work?

19 A. I work for the Solicitor's Office here in York County.

20 Q. And where did you work before you worked for the  
21 Solicitor's Office?

22 A. Mecklenburg County Sheriff's Office in Charlotte, North  
23 Carolina and Rock Hill Police Department.

24 Q. How long were you with the Mecklenburg Police  
25 Department?

INVESTIGATOR MARTHA PARRISH: BY SOLICITOR VALENZUELA

-236-

1 A. Approximately two years.

2 Q. And how long were you with Rock Hill Police  
3 Department?

4 A. Approximately five years.

5 Q. Were you present when Ernestine Evans talked about the  
6 incident and what she saw?

7 A. Yes, ma'am.

8 Q. And what day was it that she talked to you about what  
9 she saw?

10 A. It was 5/23/2012.

11 Q. And, where are you referring to up there?

12 A. I'm sorry, a handwritten statement that I took and my  
13 handwritten notes on another statement.

14 Q. And what did Ms. Evans say about whether or not the  
15 fleeing man had something in his hand?

16 A. She stated that "he was carrying something in his hand  
17 it looked like a gun by the way he was holding it."

18 Q. Are you sure that she said that?

19 A. Yes, ma'am.

20 Q. Okay. And then did you write down exactly as she  
21 spoke it, the statement that she gave you?

22 A. Yes, ma'am.

23 Q. And you documented that in your written statement?

24 A. Yes, ma'am, and reread it to her after I was finished.

25 Q. Okay. And did she indicate that that was her

1 statement by putting initials on the first and second page?

2 A. Yes, ma'am, she did.

3 Q. And did she also sign the statement at the bottom of  
4 the second page?

5 A. Yes, ma'am, that's how I do all my statements.

6 Q. Did she indicate to you at any time that this was not  
7 her statement or that you had read a portion incorrectly?

8 A. No, ma'am, she did not.

9 Q. And you read the entirety of the statement to her?

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

11 Q. Were you also present when Angela Covington told you  
12 what she saw as far as a suspicious man trying to open car  
13 doors in her parking lot?

14 A. Yes, ma'am.

15 Q. And what day was it when you spoke with her?

16 A. 5/23/2012 at approximately 1:45 p.m..

17 Q. The same day then?

18 A. Yes, ma'am, shortly after the first statement I took  
19 from Ms. Evans.

20 Q. And what did she say about the man having something in  
21 his hand?

22 A. She stated that when he was knocking on her car window  
23 that he had his t-shirt wrapped around his hand like he had  
24 something inside it that could possibly have been a gun.

25 Q. When you say that she said he had something wrapped

INVESTIGATOR MARTHA PARRISH: BY MS. ANDERSON

-238-

1 around his hand; how sure are you that she said that she  
2 had a t-shirt wrapped around it; he had the t-shirt wrapped  
3 around his hand?

4 A. She actually held her hand like the t-shirt was  
5 wrapped around and actually demonstrated how it was on her  
6 own hand.

7 SOLICITOR VALENZUELA: Please answer any questions  
8 that Ms. Anderson has for you.

9 A. Yes, ma'am.

10 CROSS EXAMINATION

11 INVESTIGATOR MARTHA PARRISH BY MS. ANDERSON:

12 Q. Ms. Parrish, you work for the Solicitor's officer;  
13 correct?

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

15 Q. As an investigator for the Solicitors?

16 A. Yes, ma'am.

17 Q. And in this case you assisted Ms. Valenzuela in this  
18 case?

19 A. Yes, ma'am, I was assisting her to take statements.

20 Q. Okay. So your involvement on the case is not the  
21 initial investigation prior to someone being arrested or  
22 charges are being developed; correct?

23 A. No, ma'am, I only come involved once charges have been  
24 made and people have been arrested.

25 Q. And then the Solicitor request your involvement and

1 assistance on the case?

2 A. Yes, ma'am, that's correct.

3 Q. And what did you review - Let me back up. When you  
4 went out to speak to Ms. Evans and Ms. Covington on May  
5 23rd, who else was with you?

6 A. Ms. Lydia Linder, the victim advocate.

7 Q. Okay. And what did you review prior to speaking to  
8 those witnesses?

9 A. I read over the case summary from the file that law  
10 enforcement did from Rock Hill Police Department.

11 Q. And the Solicitor questioned you regarding Ms. Evans'  
12 statement that - Ms. Evans' statement; right?

13 A. Yes, ma'am.

14 Q. Okay. And you actually wrote that statement; correct?

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

16 Q. And in Ms. Evans' statement Ms. Evans essentially says  
17 she never conclusively said she sees a gun; correct?

18 A. Yes, ma'am, that is correct.

19 Q. And then you indicate Ms. Covington there was no  
20 actual written statement; correct, just your notes?

21 A. Yes, ma'am, that is correct.

22 Q. And also in Ms. Covington's statement she never tells  
23 you conclusively she sees a gun?

24 A. No, ma'am, she did not.

25 Q. Okay. In fact beyond the t-shirt she tells you she

INVESTIGATOR MARTHA PARRISH: BY MS. ANDERSON

-240-

1 couldn't see anything else in his hand?

2 A. Yes, ma'am, that is correct.

3 Q. And you had not spoken to - You did not speak to Ms.

4 Evans or Ms. Covington after taking those statements;

5 correct?

6 A. No, ma'am. Not until this morning.

7 Q. And the Solicitor then did not tell you that Ms. Evans

8 contacted her on July 12th; correct?

9 A. No, ma'am.

10 Q. And the Solicitor did not tell you that Ms. Evans

11 contacted her and told her that she could not read or write

12 when she gave her - she did not mention that when she gave

13 her statement?

14 A. No, ma'am.

15 Q. And the Solicitor did not tell you on July 17th that

16 Ms. Evans contacted the Solicitor's office?

17 A. No, ma'am, no one told me that they contacted the

18 Solicitor's office.

19 Q. And so the Solicitor didn't tell you that Ms. Evans

20 contacted her on July 17th said she had never said anything

21 about a gun in her statement; that she couldn't see what -

22 was in Mr. Davis's hand and that she had never said it

23 could have been a gun by the way he was carrying it?

24 You were informed of that?

25 A. No, ma'am, I was not.

1 Q. And the Solicitor also didn't inform you on July 17th  
2 that Ms. Covington contacted her and indicated that when  
3 she gave her statement she was clear she didn't know what  
4 was in the hand - Mr. Davis's hand and that she had never  
5 said it was a gun? You weren't told about that either?

6 A. No, ma'am, I was not.

7 Q. And you had no other involvement in the case other  
8 than when the Solicitor ask you to go out on May 23rd and  
9 speak to these witnesses?

10 A. That's correct

11 MS. ANDERSON: Nothing further, Your Honor.

12 SOLICITOR VALENZUELA: Nothing further, Your Honor.

13 THE COURT: You can step down.

14 INVESTIGATOR PARRISH: Thank you.

15 (WITNESS LEAVING WITNESS STAND.)

16 SOLICITOR VALENZUELA: Your Honor, the State rest.

17 THE COURT: Members of the jury panel, the State is  
18 telling us it has presented it's case, so we have to take a  
19 break at this time because we have to take up some legal  
20 matters and we'll send for you as promptly as those are  
21 taken care of.

22 (JURY EXITS COURTROOM AT 03:01 P.M..)

23 THE COURT: Anything from the State?

24 SOLICITOR VALENZUELA: Nothing, Your Honor.

25 THE COURT: Defense?

1 MS. ANDERSON: Your Honor, at this time on behalf of  
2 Mr. Davis I would move for a directed verdict on the  
3 charges as to only a lesser charge of criminal domestic  
4 violence. On the charge of criminal domestic violence of a  
5 high and aggravated nature and for a directed verdict on  
6 the other charges.

7 THE COURT: Well I deny the motion. I find that there  
8 is ample direct evidence that the State did in fact present  
9 that evolving event in which broken into pieces could  
10 constitute one or all of the charges for which he is  
11 charged so I deny the motion for a directed verdict.

12 MS. ANDERSON: Yes, Your Honor.

13 THE COURT: Anything else from the State?

14 SOLICITOR VALENZUELA: No, Your Honor.

15 THE COURT: Anything else from the Defense?

16 MS. ANDERSON: Your Honor, at this time I think Mr.  
17 Davis is prepared to if you wanted to ask - -

18 THE COURT: Yes. Okay. Mr. Davis, we've reached the  
19 part of the trial where you have a right to present a  
20 defense if you wish but you may recall I told the jury that  
21 you are presumed innocent and I will tell them that again  
22 so you don't have to present any defense. You can call  
23 witnesses if you wish. You can testify if you wish and you  
24 have the right to remain silent if you wish. If you  
25 testify the State would be able to ask you about those

1 offenses we talked about yesterday. There were two, strong  
2 armed robbery, petit larceny and seems like there was one  
3 other.

4 MS. ANDERSON: Conspiracy, Your Honor.

5 THE COURT: And conspiracy. Each of those carry or  
6 under our rules are offenses criminal crimes which the  
7 State can ask you as to whether or not you have in fact  
8 been convicted of those. Now I will tell the jury if that  
9 occurs that they cannot use the fact that you had a prior  
10 criminal record as any evidence that you committed this  
11 offense. I will tell them that they can only use that  
12 prior record in determining whether to believe you or not;  
13 that is, in judging your credibility. So if you testify  
14 you will be answering questions under oath and the State  
15 can ask you about those crimes and there would be only four  
16 and I would tell the jury there can only be four in  
17 determining what believability or credibility the jury  
18 wishes to give your testimony.

19 If you exercise your constitutional right to remain  
20 silent, I will tell the jury that that is what you have  
21 done; I will remind them that you are presumed innocent and  
22 you need not prove your innocence. I will tell them that  
23 the State - I will remind them that the State must prove  
24 your guilt beyond a reasonable doubt and I will tell them  
25 that they cannot talk about the fact that you chose to

1 exercise your right to remain silent while they're  
2 deliberating and they cannot factor in their own mind the  
3 fact that you exercised your right to remain silent. I  
4 will tell them they cannot use that - your exercise of that  
5 right in any way whatsoever. Do you understand all of  
6 that?

7 MR. DAVIS: Yes, sir.

8 THE COURT: Have you explained that to him, Ms.  
9 Anderson?

10 MS. ANDERSON: Yes, Your Honor.

11 THE COURT: Do you believe he understands?

12 MS. ANDERSON: Yes, Your Honor.

13 THE COURT: Do you have any questions about any of  
14 that?

15 MR. DAVIS: No, sir.

16 THE COURT: Mr. Davis, this right is yours whether you  
17 testify or remain silent. It is not your attorneys, you  
18 certain can entertain their advice but it is up to you to  
19 determine whether you wish to testify or not. Have you  
20 determined whether you want to testify or not?

21 MR. DAVIS: No, sir.

22 THE COURT: You're not going to testify?

23 MR. DAVIS: No, sir.

24 THE COURT: Am I reading him right; he's going to  
25 exercise his right to remain silent?

1 MS. ANDERSON: Yes, Your Honor.

2 THE COURT: Is that right, Mr. Davis?

3 MR. DAVIS: Yes, sir.

4 THE COURT: All right. Then the State will be ready  
5 to open when the jury returns. Defense has a right to  
6 close. Anything else before the jury comes in?

7 MS. ANDERSON: Your Honor, can I have a brief break  
8 just before the jury comes in?

9 THE COURT: All right, we'll do that. Why don't we  
10 take a quick break and everybody refresh and look real  
11 quick; I'm going to do a verdict form on the two count  
12 indictment because it not only has two counts it also has a  
13 lesser included. So if you all will look at the verdict  
14 form we'll take just a real short break and I'll go ahead  
15 and when we come back in before you go into your arguments  
16 I'll tell them that we reached the point where you will be  
17 arguing but I'm also going to read them the stipulations  
18 prior to closing arguments because they constitute evidence  
19 and that should be in the record before your arguments. So  
20 we'll take a real short break.

21 MS. ANDERSON: Yes, Your Honor.. Thank you.

22 (COURT IN RECESS AT 03:07 P.M..)

23 (COURT BACK IN SESSION AT 03:19 P.M..)

24 THE COURT: Thank you. Take your seats.

25 Is the State ready?

1 SOLICITOR VALENZUELA: Yes, Your Honor.

2 THE COURT: Defense ready?

3 MS. ANDERSON: Yes, Your Honor.

4 THE COURT: All right, bring in the jury.

5 (JURY REENTERS COURTROOM AT 03:20 P.M..)

6 THE COURT: Members of the jury panel, the State has  
7 rested and Defense has rested also so we've reached the  
8 point in the trial where you will hear the closing  
9 arguments of the attorneys. Unlike yesterday today they  
10 will not be making simply statements, road maps or blue  
11 prints of the trial, they will trying to tell you why your  
12 verdict should be a certain verdict. They are what we call  
13 summations or arguments.

14 Now I will charge you more about this when I charge  
15 you the law but it is up to you to determine the facts in  
16 this case except as to two facts. The parties have  
17 stipulated as to certain facts. That means - a stipulation  
18 means that the parties have agreed that these facts are  
19 true and you do not have to wrestle with whether they have  
20 been proven in court. Both parties, the State and the  
21 Defense, have agreed for - while you to can consider it you  
22 can consider these facts as in fact true facts. The  
23 Defendant stipulates that in 2008 he was convicted of a  
24 crime of violence as that term is used in South Carolina  
25 Code as annotated 16-23-30 in defining 16-23-10, and I will

CLOSING ARGUMENT: BY SOLICITOR VALENZUELA

-247-

1 be charging you on possession that relates to where I talk  
2 about the crime of violence. The Defendant also  
3 stipulates and agrees that he is the father of the victim  
4 Ms. Robinson's children and therefore she is a household  
5 member of his as that term is used in the Code Section I'll  
6 read to you a little bit about criminal domestic violence.  
7 So he has agreed he has been convicted of a crime of  
8 violence and he has agreed that he is - has children with  
9 Ms Robinson and therefore is a household member with her as  
10 I will define that later.

11 All right, Madame Solicitor.

12 SOLICITOR VALENZUELA: May it please the Court.

13 THE COURT: Yes, ma'am.

14 SOLICITOR VALENZUELA: Madame Clerk, will you dim the  
15 lights please.

16 (COURTROOM LIGHTS TURNED DOWN.)

17 SOLICITOR VALENZUELA: Let's go over the four charges  
18 that we talked about at the beginning of this trial the  
19 defendant is facing.

20 If you have any problems seeing please just indicate  
21 that to the judge.

22 The defendant is charged with criminal domestic  
23 violence of a high and aggravated nature; use of a weapon  
24 during the commission of a violent crime; pointing and  
25 presenting; and possession of a handgun after having been

CLOSING ARGUMENT: BY SOLICITOR VALENZUELA

-248-

1 convicted of a crime of violence.

2 Now looking at pointing and presenting. The Defendant  
3 pointed or present a handgun - a firearm, a handgun at  
4 another person regardless of whether the firearm was loaded  
5 or unloaded. When you go back to your jury room and you  
6 think about the testimony as it was presented, and I'll get  
7 into it a little bit more as we go further, here the  
8 correct verdict - the verdict would be guilty if you find  
9 that the defendant did have a gun and he had pointed that  
10 gun at another person.

11 With possession of a handgun after having been  
12 convicted of a crime of violence, and this what the judge  
13 was referring to when he referred to the stipulation, if  
14 you find the defendant was in possession of a handgun then  
15 he is guilty of possession of a handgun after having been  
16 convicted of a crime of violence because he has stipulated  
17 that yes he does in fact have a prior conviction for a  
18 crime of violence.

19 Now criminal domestic violence of a high and  
20 aggravated nature. When the judge charges you this there's  
21 three different ways that you can find that the defendant  
22 committed criminal violence of a high and aggravated  
23 nature. The first one is that the defendant committed a  
24 serious assault and battery which involved the use of a  
25 deadly weapon. Did he commit an assault and battery that

1 involved the use of a handgun? And was that person a  
2 family member? We know that she was a household member  
3 because the defendant has stipulated. So in this case did  
4 he use a deadly weapon, did he use a gun to assault and  
5 batter the victim, the mother of his children? That's one  
6 of the ways that the right verdict here would be guilty for  
7 criminal domestic violence of a high and aggravated nature.  
8 Did the defendant commit a serious assault and battery that  
9 resulted in serious bodily injury to the victim?

10 And we'll go through the photos that are admitted into  
11 evidence and I urge you to look at them. To flip through  
12 the photos that the officers took that same day that the  
13 defendant beat her in the face over and over again.  
14 Testimony from the victim where she says I could feel the  
15 wosh of air because he was putting so much force behind it.  
16 A serious assault and battery that resulted in serious  
17 bodily injury to the victim. Look at those photos;  
18 remember her words, remember the emotion as she told you  
19 what she was feeling when he hit her -

20 (SOLICITOR HIT PALM OF HAND WITH FIST FOUR TIMES.)

21 SOLICITOR VALENZUELA: --- over and over and over and  
22 over again. That's only two, and their with force, so if  
23 you find that he assaulted her with a deadly weapon, guilty  
24 of criminal domestic violence of high and aggravated  
25 nature. If you find that he assaulted and battered her and

CLOSING ARGUMENT: BY SOLICITOR VALENZUELA

-250-

1 that resulted in serious bodily injury, guilty of criminal  
2 domestic violence of a high and aggravated nature.

3 And the last one. If the defendant committed an  
4 assault with or without any accompanying battery, and that  
5 assault would reasonably cause a person to fear imminent  
6 serious bodily injury of death. There's a lot of words in  
7 there but what we're thinking about here is would a person  
8 looking at this assault has happened to them, this threat,  
9 this violence that's happened with them, could they  
10 reasonably think I am about to die. He is about to kill me  
11 and not even fully dead I am about to be seriously hurt, I  
12 am being seriously hurt by the father of my children. So  
13 when you go back there you look at the three different  
14 options that you have and you look at the evidence and you  
15 remember what the victim was telling you on whether the  
16 defendant is guilty of criminal domestic violence of a high  
17 and aggravated nature through the first portion of this,  
18 the second portion, the third portion or all three.

19 Let's look at the first one a little bit more. The  
20 defendant committed a serious assault and battery which  
21 involved the use of a deadly weapon. You heard the victim.  
22 She's sure that there is a gun. He pulled the gun out.  
23 Her method to try to defuse the situation is to try to end  
24 it; was just to confront him. What are you gonna do with  
25 that gun? She says it was right there in her face. She

CLOSING ARGUMENT: BY SOLICITOR VALENZUELA

-251-

1 described that gun. She just didn't say I don't know, it  
2 was something that looked like a gun. No, she said, it was  
3 gun, it had brown over here where you put the bullets in  
4 it, and silver. She saw that gun because it was pointed  
5 right at her face and that it was used to beat her.

6 And what did she say when she was - when he was there  
7 standing in the house with her and she needed help and she  
8 was calling 911? When she's under the pressure of just  
9 calling somebody for help and just telling the truth, would  
10 she have had time to plan out a story or to create anything  
11 when she is literally in the moment, heart pounding in her  
12 chest, somebody please come help me. What does she say to  
13 911?

14 (STATE'S EXHIBIT NUMBER THIRTEEN PUBLISHED TO THE  
15 JURY.)

16 SOLICITOR VALENZUELA: That evokes an emotional  
17 response and it sure did in the victim because she was  
18 remembering what she was feeling when she made that 911  
19 call. You know we started this trial by talking about what  
20 that overwhelming fear is.

21 (SOLICITOR POUNDING ON CHEST.)

22 SOLICITOR VALENZUELA: We can only imagine the victim  
23 what she's feeling as she calls 911 and she just wants some  
24 help and she wants to make sure that she clarifies right  
25 just as quick as I can what happened. "He jumped on me and

CLOSING ARGUMENT: BY SOLICITOR VALENZUELA

-252-

1 he's got a gun please come help me." And so that day when  
2 the police come out when he's run out the back door and  
3 there is a policeman there and he's talking to her about  
4 what happened, and she gives him a handwritten statement  
5 she says "He had a gun".

6 I don't get to come back up here after defense counsel  
7 stands up here. I get to do my closing and then defense  
8 counsel gets to come up here and she argues for the  
9 defendant. And I don't know what she's gonna say. I can  
10 only guess at what she's gonna say by looking at what she  
11 told you in the opening arguments. And in that opening  
12 statement yes it's a simple CDV. But listen to what the  
13 State's evidence is gonna be about the gun. And so when  
14 she's up here trying to tear apart what the victim told you  
15 today, and what she told 911, and what she told officers  
16 the day of the incident, and what she told officers the day  
17 after the incident, think back about what kind of position  
18 the victim was in, the stress that she was under. Maybe  
19 she got a detail wrong. Maybe she said that he hit her and  
20 then pointed the gun but really what he did was he pointed  
21 the gun and then he hit her. My goodness she's standing  
22 outside of her home with neighbors coming out, her face  
23 swelling up, and she doesn't even know where this man is  
24 and the officers are like we need you to get a statement.  
25 I just want to tell you what happened. And the short and

1 sweet of that was is he beat me -

2 (SOLICITOR CLAPPED HANDS THREE TIMES.)

3 SOLICITOR VALENZUELA: --- and he pointed a gun at me.

4 And that doesn't change when she talks to 911. It doesn't

5 change when she talks to officers the day of the incident,

6 it doesn't change when she talks to officers the next day.

7 And, ladies and gentlemen, it did not change when she sat

8 up here under oath and told you that that is what happened.

9 There was a gun.

10 So let's look at the theory of it just being a simple

11 domestic violence incident. Why did he run? Why did he

12 run out that back door? Run out that back door, go over

13 here - and you heard testimony. Now those ladies didn't

14 want to be here but you heard them say "he was checking the

15 doors trying to open them. Yo, yo, give me a ride, get me

16 out of here." So why did he run if it was just a simple

17 domestic violence? And what did he have in his hand when

18 he ran out of that house? Now Ms. Evans might be thinking

19 about her daughter and how her daughter has a baby with the

20 defendant's cousin but she said that she saw Dawone Davis

21 running through those woods and he had something in his

22 hand. And the victim has given testimony that yes that

23 what he had in his hand was probably the gun because he had

24 just been pointing a gun at her before he ran out that

25 door. You heard testimony from the officers that did the K

CLOSING ARGUMENT: BY SOLICITOR VALENZUELA

-254-

1 9 search following the defendant's scent. And how they  
2 followed him over to this cul-de-sac and how they didn't  
3 see him in the cul-de-sac but they spotted him around that  
4 area. So while he was out of sight of those officers what  
5 was he doing? What did he have the opportunity to do  
6 there? And when he was seen for what the K 9 officer  
7 handler said a few seconds in this area and then ran off  
8 and they lost sight of him and he's running through  
9 buildings, around buildings, excuse me, around buildings  
10 with bushes and trash cans around there, when the officers  
11 did not check the roof tops of the buildings that he's  
12 running by, when officers stated that their primary purpose  
13 when they were following that K 9 dog was to locate the  
14 suspect so they checked around the immediate areas but they  
15 didn't check where a gun could have been thrown. Their  
16 purpose was to find that defendant and almost an hour  
17 later, what, fifty-one minutes later they locate the  
18 defendant. So from here through campus across Anderson  
19 Road, through this Tech Park area, and all the way over  
20 here in one of the corporate buildings almost the entire  
21 time out of sight of law enforcement and then he just  
22 strolls out.

23 The second one. We talked about the first one, we  
24 talked about the second - and now we talk about the second  
25 one. Did he commit a serious assault and battery that

1 resulted in serious bodily injury? This is the morning of.  
2 Officers had just responded and they're getting a  
3 photograph and this is what the victims face looks like  
4 almost right away.

5 (SOLICITOR HELD UP PHOTO.)

6 SOLICITOR VALENZUELA: And the next day only twenty-  
7 four hours later. Just a simple CDV. If you find that  
8 he's committed the first one the defendant committed a  
9 serious assault and battery which involved the use of a  
10 deadly weapon, guilty of criminal domestic violence. Or if  
11 you think he committed a serious assault and battery that  
12 resulted in serious bodily injury to the victim, guilty of  
13 criminal domestic violence of a high and aggravated nature.  
14 And I should have said that with the first one - guilty of  
15 criminal domestic violence of a high and aggravated nature.

16 Now let's look at the last one. The defendant  
17 committed an assault with or without an accompanying  
18 battery and that assault would reasonably cause a person to  
19 fear imminent serious bodily injury or death. Now the  
20 judge is going to charge you on assault. And he'll use the  
21 analogy of a punch, someone is going to throw a punch. Do  
22 they have the ability to do that? If I come up to my co-  
23 counsel and I draw my hand back to hit him, even though I  
24 don't follow through with it, that's an assault right  
25 there. What if like in this case you draw your hand back

CLOSING ARGUMENT: BY SOLICITOR VALENZUELA

-256-

1 and you make contact? A battery. So was there an attack  
2 to do violence when the defendant beat the victim when he  
3 punched her in the face? When he strangled her? When he  
4 pushed her back on the bed and he held her down and she's  
5 thinking to herself I can't breathe? Was there an attempt  
6 to do violence? And when he's beating her and strangling  
7 her and then saying things like "I'm already about to go to  
8 jail might as well go for something." What are you  
9 thinking there when - what is the victim thinking when he's  
10 punching her and he's choking her and he's saying to her  
11 "I'm already about to go to jail"? Would that easily  
12 cause a person to fear that they are about to be seriously  
13 hurt or killed?

14 What about when he beat her, he strangled her and he  
15 said "I'm gonna do you" and I do not have it strictly from  
16 the witness "but I'm going to do you like my homey did he's  
17 baby's momma. The Devil told me to come here and dress my  
18 family in black." What was she thinking when that is what  
19 he says to her in the same time frame as he is hitting her  
20 and strangling her and pulling her back? "When the Devil  
21 told me to come here and dress my family in black?" Makes  
22 me think if guilt, that's what it makes me think of.

23 I actually want to back up a step there. Just looking  
24 at the facts, just looking at the evidence, you go back  
25 there and you deliberate and you decide yes the defendant

1 beat the victim, yes the defendant strangled the victim and  
2 he said "I'm gonna dress my family in black and I might as  
3 well go to jail for something." That all right there  
4 would that reasonably make a person believe that they are  
5 about to be seriously hurt or killed? If so, guilty of  
6 criminal domestic violence of a high and aggravated nature  
7 without even talking about the gun. Without even talking  
8 about the gun. But do you know what, ladies and gentlemen,  
9 the victim says that there was a gun. The beating, the  
10 strangling, the threatening, the pointing a gun, does that  
11 reasonably make a person think that they're about to be  
12 hurt or killed?

13 Use of a weapon during the commission of a violent  
14 crime. The defendant used a handgun or he displayed what  
15 appeared to be a handgun. And the defendant did so while  
16 committing a violent crime. Criminal domestic violence of  
17 a high and aggravated nature. So when you're deliberating  
18 if you have any - for yes in fact he is guilty of  
19 committing criminal domestic violence of a high and  
20 aggravated nature, either because he used a deadly weapon  
21 because he had a serious assault and battery which caused  
22 serious bodily injury, or because he assaulted with out  
23 without an accompanying battery he assaulted her in a way  
24 to make - to reasonably make a person think fear, imminent,  
25 it is about to happen, I am about to be seriously hurt or

CLOSING ARGUMENT: BY SOLICITOR VALENZUELA

-258-

1 killed. So in looking at any of those if you determine  
2 that he is guilty of criminal domestic violence of a high  
3 and aggravated nature, you look at this statute. You look  
4 at this charge, did he use a handgun when he did that  
5 criminal domestic violence of a high and aggravated nature?  
6 Or did he display what appeared to be a handgun when he  
7 committed that criminal domestic violence of a high and  
8 aggravated nature? And if you determine that he did then  
9 he is guilty of use of a weapon during the commission of a  
10 violent crime.

11 A recap. He was there that night. K.9 tracked him.  
12 Ms. Evans saw him. Ms. Covington saw a man fitting his  
13 description in the next cul-de-sac. The victim testified  
14 that yes moments ago he had just run out the back door.

15 (STATE'S EXHIBIT THIRTEEN PUBLISHED TO THE JURY.)

16 SOLICITOR VALENZUELA: Like I mentioned I'm not going  
17 to be able to come up here and stand before you again after  
18 defense counsel presents their case. But I hope that you  
19 will think about what I've presented to you and think in  
20 your head. Have we heard how she would respond to that? I  
21 wonder what she would say, I wonder what she would remind  
22 us of, what testimony we heard, what evidence we saw in  
23 response to that? And I hope that you remember that this  
24 opportunity, this is Sherika Robinson's chance at justice.  
25 This is her chance to be here and be told by the people of

1 York County that it is not okay. And so before I sit down  
2 I want to leave you with the defendant's own words.

3 (STATE'S EXHIBIT TEN PUBLISHED TO THE JURY.)

4 THE COURT: Turn on the lights.

5 (COURTROOM LIGHTS TURNED BACK UP.)

6 THE COURT: Do you want the easel up?

7 MS. ANDERSON: Your Honor, if I can use the easel, if  
8 you can just get the screen up.

9 Ladies and gentlemen, when I stood in front of you  
10 yesterday I told you point blank Mr. Davis is guilty of  
11 criminal domestic violence. A simple criminal domestic  
12 violence. The testimony shows that. The photographs the  
13 solicitor talked to you about, the observations of the  
14 officers that corroborates Ms. Robinson's statement that  
15 she was struck in the face and she suffered a black eye.  
16 There's no way around that. I'm not going to stand up here  
17 and tell you otherwise. But what I told you when I stood  
18 up here yesterday is that the issue in this case was the  
19 State claiming there was a gun involved.

20 And, ladies and gentlemen, that claim isn't supported  
21 by anything other than Sherika Robinson's statement which  
22 nothing else backs. And I talked to you briefly about the  
23 concept of reasonable doubt. And it's your duty as a jury  
24 to analyze things and put the burden on the State and  
25 analyze them in the terms of reasonable doubt. This isn't

CLOSING ARGUMENT: BY MS. ANDERSON

-260-

1 a popularity contest. I understand that this is a  
2 situation where Mr. Davis has given a black eye to the  
3 mother of his children and that's illegal. And there's no  
4 question he's guilty of simple criminal domestic violence.  
5 And certainly that may seem distasteful and it may seem  
6 very distasteful to analyze the details of what happened.  
7 But that's what our system requires. Its not about whether  
8 or not you like Mr. Davis but you have a duty to look at  
9 the case critically and hold the State to the burden of  
10 proof and look at the evidence objectively. Its one of the  
11 reasons we have jurors who don't know anything about the  
12 case before. That is your duty. And I'm telling you right  
13 from the get go, yes, this was a criminal domestic  
14 violence.

15 The lesser charge of what the State is charging of  
16 criminal domestic violence of a high and aggravated nature,  
17 find him guilty of that, he is guilty of that, the evidence  
18 supports that. What it doesn't support are these other  
19 charges. And if you think back over the testimony the only  
20 person who came in here today or yesterday and testified to  
21 you that they saw a gun is Ms. Robinson. I told you before  
22 and you saw again today, no gun was ever brought in this  
23 courtroom because no gun was ever found. We'll talk about  
24 that more in general but I want to talk to you a little bit  
25 about Ms. Robinson's statement.

1 She testified to you that she was up at the time and  
2 said she hadn't been drinking at all. But we do know from  
3 Officer Cook's testimony that his incident report which has  
4 a box to indicate whether or not someone had been using  
5 alcohol was marked yes. Ms. Robinson came in and claimed  
6 extensive injuries to you. Testified several times of  
7 going in and out of consciousness, not being able to  
8 breathe, but didn't request EMS. In the officer's report,  
9 Officer Cook, the officer who was in the vehicle who first  
10 drove up and he testified he was the one that she ran up  
11 to, on his Incident Report there's a box he testified to  
12 that says "complaint of any non-visible injuries" and  
13 that's marked no.

14 Solicitor referenced that defense counsel might nick  
15 pick things in her statement. Well, ladies and gentlemen,  
16 we talked about differences or variances in what someone  
17 says because that is important because if something isn't  
18 corroborated by anything else or it changes slightly then I  
19 submit to you it calls into question if that's exactly the  
20 way things happened. And if there's questions in your  
21 mind, if there's hesitation, that's reasonable doubt. And  
22 that's the big issue in this case, that's the big issue in  
23 any criminal case is reasonable doubt.

24 I talked to you a little bit about the Solicitor  
25 several times varied dramatic renditions talking about the

CLOSING ARGUMENT: BY MS. ANDERSON

-262-

1 assault on Ms. Robinson. And I think Ms. Robinson  
2 testified and the Solicitor arguing to you of being beat  
3 multiple times in the face, about the head, even possibly -  
4 what Ms. Robinson testified even possibly with a gun.  
5 Again, ladies and gentlemen, I don't want to minimize the  
6 facts she did have a black eye. She did suffer an assault.  
7 But I would ask you with the elaborateness of what was  
8 conveyed to you if that reflects any injuries that are  
9 visible. Would there not be additional bruising, would  
10 there be more evidence of it if that was what happened  
11 versus what she relayed on her first statement, the  
12 statement she wrote when officers were there and said he  
13 hit me in the face. That's reflected, that's corroborated  
14 by the officers and that's a simple form of domestic  
15 violence no question.

16 The State has made a big deal about the course and yes  
17 Mr. Davis wrote them and we had extensive testimony about  
18 the K 9. We also had testimony that said that the people  
19 who first saw Mr. Davis at the time is referenced to Willie  
20 Watson and the fact that he said he didn't see a gun. He's  
21 there in the house at the time. Now the police don't  
22 document that but the officers testified that he was talked  
23 to. He didn't see a gun. Ms. Robinson as well testified  
24 she talked to him, he didn't see a gun. So we had a person  
25 in the house who doesn't see a gun. The State wanted to

1 bring up Ernestine Evans testifying that when she saw him  
2 running out she thought she saw something in his hand.  
3 Well on direct examination by the State she said she  
4 thought it was a cell phone. No conclusive said she saw a  
5 gun. Well she testified in the State's questioning was it  
6 looked like a cell phone. And if you recall back to what  
7 the K 9 officer, the officer's who pursued, what he had in  
8 his hand when he stopped was a cell phone.

9 Ms. Covington as well whose car he came up and ask a  
10 ride and she said no essentially. Never testified seeing a  
11 gun. The State has made a big deal about the pursuit and  
12 him being out of eyesight of the State or excuse me, the  
13 officers. If you recall back when the Rock Hill Police  
14 Department arrives on scene, when Officer Cook gets there  
15 very shortly thereafter, they see Mr. Davis fleeing. Ms.  
16 Robinson points him out and Officer Cook testifies he sees  
17 him at that point.

18 We then have testimony that Officer Moreno and the K 9  
19 Unit, Molly the K 9, come out and they start basically this  
20 track. And at that point they again they see Mr. Davis and  
21 it was at the fence line I believe of the York Technical  
22 College and when you saw those photographs that the State  
23 admitted into evidence, the fence line is pretty close to  
24 the house. So at this point we don't have Mr. Davis out of  
25 view for a long time, we have them looking right at him.

CLOSING ARGUMENT: BY MS. ANDERSON

-264-

1 Then seeing right there he's in a proximity to the house.  
2 And Officer Moreno testified essentially that Molly is a  
3 well trained K 9; she does what she's supposed to do. She  
4 follows instructions, she followed her trail and she found  
5 the scent without what seems like too much problem. And  
6 she followed the scent and Officer Moreno testified I think  
7 it was three additional times she reconfirmed a scent. He  
8 didn't have any question that morning that Molly was  
9 following the scent. So this isn't a situation where we  
10 don't know where Mr. Davis is or we don't know where Mr.  
11 Davis has been because Molly is following the scent. She  
12 follows the scent she's successful. They come up on Mr.  
13 Davis they take him into custody. And when they take him  
14 into custody he has a cigarette in one hand and a cell  
15 phone in another and he has no gun on him.

16 Four officers are accompanying Officer Moreno as they  
17 track. As they are tracking the scent that Molly is  
18 telling them and a trained K 9 that's the reason she's  
19 following that path. The handler, Officer Moreno, doesn't  
20 influence where she goes or what she does; she's following  
21 the scent and he indicated she was following the scent on  
22 that morning.

23 Now the State wants to make a big deal of the fact  
24 that when they were initially attempting to locate Mr.  
25 Davis that they didn't look everywhere. They weren't

1 focused on trying to find the gun. Even though I believe  
2 Detective Welch did testify they were looking around in  
3 areas, bushes, things like that. So this isn't a situation  
4 where they weren't alerted although they were observant.  
5 Okay, fine. So even if we look at that, no gun found. But  
6 that isn't the only search, ladies and gentlemen, the State  
7 doesn't talk to you about that. Detective Welch also  
8 testified that once Mr. Davis was taken in custody and no  
9 gun was found anywhere on him or around him, they walked  
10 the path back and the path they chose was the path that  
11 Molly took them on to begin with and the path that Molly  
12 took is the path that is essentially the trail of Mr.  
13 Davis. And even Officer Moreno testified that - they  
14 testified that they initially when they started the scent  
15 trail from the back door and insured that it wasn't being  
16 confused with anyone else. So Molly is following where Mr.  
17 Davis went and they walk it back. Well at that point Mr.  
18 Davis is in custody the focus at that point isn't on  
19 locating a suspect. What do you think the focus is on?  
20 The focus is on looking for a gun that the victim has  
21 claimed exist. And at that point you have four, maybe five  
22 officers, and I think at some point it was testified that  
23 it was light enough, I think Officer Cook testified when he  
24 first got there at 5:30 it was starting to get light  
25 enough. But you have all these officers specifically

CLOSING ARGUMENT: BY MS. ANDERSON

-266-

1 looking for this alleged gun. And at that point it's  
2 testified I think they are looking in dumpsters, in bushes,  
3 in trees, in anywhere something might be concealed. They  
4 don't find it. And it isn't just that. Detective Welch  
5 testifies they come out the next day and they search the  
6 same path. The same area, the area that they traveled  
7 through because Molly detected that this was the area they  
8 should look and they don't find a gun. Certainly you can't  
9 say that their focus in on finding a suspect that day  
10 because Mr. Davis is in jail. No gun. Looking in  
11 dumpsters, bushes, everywhere possible, no gun.

12 Then they come out a third day. Detective Welch  
13 testified he was in both those groups. They come out  
14 again. Again they're not looking for a suspect at this  
15 point, they look in the area again. Bushes, trees,  
16 dumpsters, no gun. Nothing corroborates Ms. Robinson's  
17 statement that there is a gun.

18 And, ladies and gentlemen, I would point that out  
19 because I would point to you the difference between the  
20 injury that is corroborated and what isn't corroborated.  
21 And I submit to you that's the difference between the  
22 charge he's guilty of and the charges that he's not guilty  
23 of. The State's attempt - The State's only attempt can say  
24 of roof tops. No gun. Could have been there, could have  
25 been this. In three days of searching we don't find a gun

CLOSING ARGUMENT: BY MS. ANDERSON

-267-

1 so it could have been, maybe it was, who knows. Ladies and  
2 gentlemen, all of that language sounds like reasonable  
3 doubt. Reasonable doubt as to whether a gun was used in  
4 this incident.

5 The State has talked a lot about the testimony of Ms.  
6 Robinson and again, I don't mean to down play that. She  
7 did suffer a black eye, no question about that. But I also  
8 ask you to call in question some of the things she said as  
9 well of this thinking about it critically. The Solicitor  
10 talked about the statements of, this bizarre statement she  
11 says of "the Devil told me to dress my family in black"  
12 which she says comes out of nowhere, there's been no  
13 argument prior to that, they're just having a discussion  
14 prior to that, she's had no opposition, she's talking to  
15 Mr. Davis prior to that. And the Solicitor made a big deal  
16 about that being something that would cause her to be  
17 afraid, Ms. Robinson to be afraid. But in her testimony  
18 her sequence of events is after that she ask I need to go  
19 out and go to the bathroom and she does. She leaves the  
20 room, doesn't call the police at that point, comes back in  
21 the room. Unquestionably like I said there was an  
22 argument, there was a domestic violence, criminal domestic  
23 violence but its simple criminal domestic violence.

24 Her testimony after that is the to the point where her  
25 daughter comes in the room Mr. Davis calms down. It

CLOSING ARGUMENT: BY MS. ANDERSON

-268-

1 doesn't sound consistent with a claim - I change that.  
2 That all happens after as well. And then at that point we  
3 have the sequence that Ms. Robinson testified to you about  
4 the gun. And she testified to you that from the point she  
5 says there's a gun being held to her face as she's  
6 threatened, her response is to get up in Mr. Davis's face,  
7 to confront, to taunt about using it. Again, ladies and  
8 gentlemen, you just have to look at this is a critical  
9 situation is this a simple criminal domestic violence or is  
10 this the picture the State is trying to portray to you.  
11 Why not run out at that point? Why not if these statements  
12 were so threatening why not when you leave to go to the  
13 bathroom to go get someone else in the house, we know there  
14 are other people in the house. Lanny who is apparently  
15 talked to but we don't know what was said, may have been  
16 intoxicated. At the time there apparently had been some  
17 drinking going on at the house. We know Mr. Watson is  
18 there, he ultimately intervenes in the situation. Why if  
19 this is such a threatening situation at this point, why not  
20 seek help at this point?

21 In all of this area, ladies and gentlemen, no gun was  
22 ever found. Three days of searching no gun ever found by  
23 multiple officers no gun. The State would want to argue  
24 that it was disposed of somewhere along the way, but there  
25 is no evidence to support that. It's just as logical and

1 I'd say more logical that there wasn't a gun. There wasn't  
2 a gun on March 15th.

3 The judge is going to charge you as to the law that  
4 applies in this case. And I talked to you a little bit  
5 about sort of my illustration about pole vaulting and how  
6 that relates to reasonable doubt. And I bring it up again,  
7 ladies and gentlemen, because that is the critical question  
8 for you. I told you the key issue in this case is the  
9 State's theory and the State's allegation of a gun. And  
10 the State I submit to you wants - wants that to be the  
11 case. They keep trying, trying with explanations of what  
12 could have happened or might have happened, trying with  
13 witness's who clearly saying I didn't say that, I never  
14 conclusively said that. The State is trying to come up  
15 with something that reports what Ms. Robinson says about a  
16 gun. But the reality is, ladies and gentlemen, none of the  
17 evidence supports that. It supports there was a criminal  
18 domestic violence and that Dawone Davis is guilty on the  
19 charge of criminal domestic violence but in nothing more.

20 Your duty as jurors is to hold them to that burden; to  
21 examine all of this evidence, examine what is there, to  
22 examine what isn't there. And what isn't said and what  
23 isn't found and what isn't seen. And if they are one  
24 centimeter short, one inch short of clearing the bar it  
25 doesn't matter, they have not cleared the bar, they have

CLOSING ARGUMENT: BY MS. ANDERSON  
CHARGE TO THE JURY

-270-

1 not met their burden and it is your duty as jurors to  
2 return a verdict of not guilty. Thank you for your  
3 attention. I ask you to think critically about this, not  
4 be allowed to be carried away by your duties, not be  
5 carried away by emotion, but to look at things critically  
6 and access them as according to the law. And I ask you  
7 then to find Mr. Davis is guilty only of a lesser charge  
8 criminal domestic violence for the black eye that Ms.  
9 Robinson suffered. And I ask you to find him not guilty of  
10 all of the other charges that he's charged with today.  
11 Thank you.

12 THE COURT: Members of the jury panel, I appreciate  
13 the attention you have given to us at this point. I am now  
14 going to charge you the law that you are to apply to the  
15 facts as you determine the facts to be.

16 Mr. Davis is charged with four separate charges in  
17 three separate indictments, criminal domestic violence of a  
18 high and aggravated nature, and a second count in that  
19 indictment possession of a firearm during the commission of  
20 a violent crime. And then a possession of a handgun by a  
21 person convicted of a crime of violence. And the fourth is  
22 the pointing and presenting a firearm.

23 Each indictment carries a separate and distinct  
24 charge. You are to look at each separately with one  
25 exception and I'll talk to you more about that in just a

1 second. But each indictment rises and falls on it's own  
2 merits; that is, you look at the facts and the law as to  
3 each charge. And again, with one exception what you  
4 determine on one charge is not to influence what you charge  
5 on the other. Again, each is to be considered in the  
6 context of the law and the facts that apply to it.

7 The one exception is the count two as to criminal  
8 domestic violence of a high and aggravated nature. I will  
9 charge you in a few moments that criminal domestic violence  
10 of a high and aggravated nature is by law a violent crime.  
11 If you find Mr. Davis guilty of that charge you could  
12 consider whether he possessed a firearm during the  
13 commission of the violent crime. However I will give you  
14 an option of what is called a lesser included offense of  
15 criminal domestic violence, not of a high and aggravated  
16 nature, just criminal domestic violence, that is not a  
17 violent crime. So if you find - If you determine that the  
18 State has failed to prove Mr. Davis guilty of criminal  
19 domestic violence of a high and aggravated nature but you  
20 do find they have proven he is guilty of that lesser  
21 included criminal domestic violence, you could not under  
22 that verdict find him guilty of possessing a firearm during  
23 the commission of a violent crime because you had not found  
24 him guilty of a violent crime.

25 Now, the fact that Mr. Davis has been charged, the

## CHARGE TO THE JURY

-272-

1 fact that he was arrested, the fact that he is on trial is  
2 not any indication or any evidence he committed these  
3 offenses. That's the way our system works. When an  
4 individual is thought to have violated a law they are  
5 arrested, the case is processed through our court system,  
6 it goes to trial and it is up to a jury to determine  
7 whether the State has met the burden of proving that  
8 person's guilt beyond a reasonable doubt which I'll talk to  
9 you about more in a moment, but the fact that he is on  
10 trial is not any indication that he committed these  
11 offenses. That's just, again, the way our system works.

12 In fact Mr. Davis is presumed innocent of each of these  
13 charges. Anyone charged with an offense in our system is  
14 by law presumed innocent. This presumption of innocence is  
15 a substantial right, it is not a mere legal theory or a  
16 mere legal phrase; it is a substantial right. The  
17 presumption of innocence in Mr. Davis's favor commenced at  
18 the time of his arrest, has remained with him as his case  
19 is processed through our court system. The presumption of  
20 innocence in his favor presides with him and adheres to his  
21 benefit at this very moment. And in fact the stays with  
22 him and adheres to his benefit as you deliberate. The  
23 presumption of innocence in his favor is removed if and  
24 when and only if and when you determine and find  
25 unanimously the State has proven his guilt as to a charge

1 beyond a reasonable doubt.

2 Now the State is not required to find - to prove his  
3 guilty beyond all or beyond every doubt. We know that's  
4 not possible and that's not allowed. I'm not required -  
5 I'm sorry, not required in a case of this type. Our courts  
6 have said that reasonable doubt is defined as the kind of  
7 doubt that would cause a reasonable person to hesitate to  
8 act. Proof beyond a reasonable doubt is proof that leaves  
9 you firmly convinced of someone's guilt. If based on your  
10 consideration of the evidence you are firmly convinced Mr.  
11 Davis is guilty of one or more of these offenses you would  
12 find him guilty. On the other hand if you think there is a  
13 real possibility as to an offense he is not guilty you  
14 would give him the benefit of that reasonable doubt and  
15 find him not guilty. He is entitled to the benefit of  
16 reasonable doubt on any - that you may have as to any issue  
17 or evidence in this trial.

18 I remind you that you are the sole judges of the facts  
19 and I am the sole judge of the law in this case. You must  
20 take, accept, and apply the law as I charge it even if you  
21 think the law should be different or even if you think I  
22 charge the law in error. Your oath requires you to accept  
23 and apply the law as I charge it. And you are not to infer  
24 from anything I have said or done or anything I now say or  
25 do as indicating an opinion of mine on the facts. Our law

CHARGE TO THE JURY

-274-

1 does not allow a trial judge to formulate or to express to  
 2 a jury any opinion on the facts. It is solely your job to  
 3 examine the evidence, give to the evidence the effect, the  
 4 value, the weight and the truth you believe it should have.  
 5 In doing this you may believe one witness as opposed to  
 6 several; several witnesses as opposed to one, and you may  
 7 believe all or part or none of a witnesses testimony. Use  
 8 your common sense, your sense of logic, your sense of  
 9 reason; use your experiences in life as you analyze the  
 10 evidence.

11 As judges of the facts you necessarily must judge the  
 12 credibility that is the believability of the witness's who  
 13 have testified. In assessing believability use the things  
 14 that you in your day to day life find as indicating to you  
 15 the truthfulness in a person. You can use certain  
 16 evaluators. A witness's demeanor, how they act on the  
 17 stand. Are they hesitant or straight forward? Is their  
 18 testimony consistent or inconsistent with testimony given  
 19 or statements given at an earlier time? You can look at  
 20 any bias or prejudice, that is, whether a witness wished to  
 21 help or hurt one side or the other. And you can consider  
 22 the opportunity a witness had to actually know those things  
 23 about which they testified. You consider these things  
 24 determine the true facts apply the law and you will be in a  
 25 position to return a verdict that speaks the truth.

1           Normally a person cannot give opinion testimony. That  
2           is one can only usually testify as to something they  
3           observed with one of their five senses. Usually it's  
4           something they've seen or heard but it could be something  
5           in the nature of taste, touch, or smell. However where an  
6           individual has certain training and skill and experience in  
7           a certain area, that person may be qualified as an expert  
8           and that person may be allowed to render opinions in the  
9           area in which they are qualified as an expert. Here we  
10          had an expert qualified in K 9 handling and tracking. Now  
11          an experts opinion is allowed in evidence to assist you, it  
12          is not binding on you. You can take it in part, or whole,  
13          or reject in part or whole the testimony of the expert.  
14          Again, their testimony is not - in this case his testimony  
15          is not binding on you. It is allowed into evidence to  
16          assist you in reaching your decision based on the facts and  
17          the evidence.

18          The fact that Mr. Davis has exercised his  
19          constitutional right to remain silent cannot be used  
20          against him in any fashion whatsoever. Anyone charged with  
21          an offense in our system has an absolute right to remain  
22          silent and not make any statement or testify against  
23          themselves. The fact that he has exercised his right to  
24          not mitigate against him in anyway whatsoever. It cannot  
25          be used against him in any way whatsoever. It cannot be

## CHARGE TO THE JURY

-276-

1 discussed by you, that is, that he chose to exercise his  
2 right to remain silent. And you cannot factor into your  
3 consideration the fact that he exercised his constitutional  
4 right to remain silent. He is as I told you earlier  
5 presumed innocent. He has nothing to prove as far as his  
6 innocence. He is presumed innocent. And the State has to  
7 as I also told you prove his guilt beyond a reasonable  
8 doubt as to a charge before you as a trial jury can convict  
9 him as to a charge.

10 Generally in cases such as this there are two types of  
11 evidence presented. Direct and Circumstantial evidence.  
12 Direct evidence is testimony of someone who claims to have  
13 actual knowledge of a fact such as an eyewitness. Direct  
14 evidence is evidence which immediately establishes the main  
15 fact sought to be proven. Circumstantial evidence is proof  
16 of a chain of facts and circumstances which indicate the  
17 existence of a fact. Circumstantial evidence is evidence  
18 which immediately establishes a collateral fact or  
19 collateral facts from which the main fact may be inferred.  
20 It is based on inference and not on personal knowledge or  
21 observation. Our law makes absolutely no distinction  
22 between the weight or value to be given either direct or  
23 circumstantial evidence. Nor is a greater degree of  
24 certainty required of circumstantial evidence than it is of  
25 direct evidence. What you should do in this case is weigh

1 all of the evidence. After weighing all of the evidence if  
2 you are not convinced of Mr. Davis's guilt beyond a  
3 reasonable doubt you would find him not guilty.

4 The first charge I'm going to go over is criminal  
5 domestic violence of a high and aggravated nature. That is  
6 a statutory offense enacted by our legislature. In order  
7 for me to go over these - this offense I have to define for  
8 you assault and assault and battery. An assault occurs  
9 when a person unlawfully attempts or offers to commit a  
10 violent injury upon another person and had the present  
11 ability to complete the attempted injury. An assault is  
12 the intentional creation of a reasonable fear of immediate  
13 bodily harm in another. It is not necessary that the  
14 attempted injury are or actually take place. The example I  
15 always use is that of someone rearing back their fist. If  
16 I rear back my fist in a rude angry resentful manner and  
17 I'm close enough to strike you but all I do is raise it  
18 back and it creates a situation where you could be in fear  
19 then I have committed an assault. A battery is the  
20 unlawful touching of another person by one who has  
21 committed an assault. This can be caused by a part of an  
22 accused body or by any object put in motion by the accused.  
23 The battery is the completion of an assault. It is the  
24 completion of the assault by using or apply force to  
25 another however slight in a rude angry or resentful manner

## CHARGE TO THE JURY

-278-

1 without legal justification for so doing. Using my earlier  
2 example, if I rear back and assaulted you and I follow  
3 through and I actually make contact with you I have  
4 committed an assault and then a battery by actually  
5 touching you.

6 Our legislature has enacted a law that makes it a  
7 criminal offense to commit what is called criminal domestic  
8 violence and also criminal domestic violence of a high and  
9 aggravated nature. The latter is what Mr. Davis is charged  
10 with. This is under Section 16-25-20 of our South Carolina  
11 Code of Laws and you do not need to remember the code  
12 section number. That law states in a pertinent part that  
13 it is unlawful to cause physical harm or injury to a  
14 person's own household member, or, to offer or attempt to  
15 cause physical harm or injury to a person's own household  
16 member with the apparent present ability under  
17 circumstances reasonably creating fear of imminent peril.

18 I told you that the defendant has stipulated that he  
19 is a household member; household members do include under  
20 our law persons how have a child in common, and he has  
21 admitted that under that definition that he was a household  
22 member with Ms. Robinson, the alleged victim.

23 A later section states that a person who commits  
24 criminal domestic violence has been defined for you as  
25 causing physical harm or injury to a person who is a

1 household member or offering or attempting to cause  
2 physical harm or injury to a person's own household member  
3 with apparent present ability under circumstances  
4 reasonably creating fear of imminent peril if in addition  
5 that at that time either of those are committed the  
6 following occurs; an assault and battery which involves the  
7 use of a deadly weapon or results in serious bodily injury  
8 to the victim, or, an assault without an accompanying  
9 battery which would reasonably cause a person to fear  
10 imminent serious bodily injury or death.

11 In order to find Mr. Davis guilty of criminal domestic  
12 violence of a high and aggravated nature you must find the  
13 State has proven beyond a reasonable doubt that he has  
14 violated the statutes that I have just read to you. That  
15 is he has committed criminal domestic violence and that it  
16 constituted criminal domestic violence of a high and  
17 aggravated nature under the charge.

18 Now, if you find the State has failed to prove beyond  
19 a reasonable doubt that he is guilty of criminal domestic  
20 violence of a high and aggravated nature you may consider  
21 whether the State has proven beyond a reasonable doubt that  
22 he is guilty of criminal domestic violence but not of a  
23 high and aggravated nature. Here the State must prove  
24 beyond a reasonable doubt that Mr. Davis caused physical  
25 harm or injury to a member of his household, or, the offer

## CHARGE TO THE JURY

-280-

1 or attempted to cause physical harm or injury to a member  
2 of his own household with the apparent present ability at  
3 the time to cause harm or injury under circumstances which  
4 reasonably created a fear of imminent danger to the victim.

5 To find the defendant guilty of either criminal  
6 domestic violence of a high and aggravated nature or simply  
7 criminal domestic violence, the State would have to - you  
8 would have to be convinced unanimously beyond a reasonable  
9 doubt that the State has carried the burden of proving and  
10 proven that beyond a reasonable doubt.

11 Now count two of the indictment that has a criminal  
12 domestic violence of a high and aggravated nature on it is  
13 the one that has the uniqueness of being considered only if  
14 you find Mr. Davis guilty of the charge of criminal  
15 domestic violence of a high and aggravated nature. He is  
16 in count two of that indictment charged with being in  
17 possession of a weapon during the commission of a violent  
18 crime. Here the State must prove that the defendant was  
19 in possession of a firearm or visibly displayed what  
20 appeared to be a firearm during the commission of a violent  
21 crime. Criminal domestic violence of a high and aggravated  
22 nature is defined by our legislature and by our law as a  
23 violent crime. A firearm would include a pistol or a  
24 revolver. The State would have to prove that offense  
25 beyond a reasonable doubt before you could convict Mr.

1 Davis of that offense.

2 The next charge I'm going over on a separate  
3 indictment, those two are on the same indictment, is  
4 possession of a handgun by a person convicted of a crime of  
5 violence. Our law states that it is unlawful for a person  
6 who has been convicted of a crime of violence in any court  
7 of the United States, any other state, commonwealth,  
8 territory to possession - or the District of Columbia, to  
9 possess or acquire a handgun in one of those states. So  
10 this law makes it unlawful for someone convicted of a crime  
11 of violence to possess or acquire a handgun here in our  
12 state.

13 The next indictment that I'm going over is one that  
14 says it makes it unlawful to point and present a firearm.  
15 That law simply says that it's against the law to point or  
16 present a firearm at another person whether that firearm is  
17 loaded or unloaded. Here the State must prove beyond a  
18 reasonable doubt that Mr. Davis presented or pointed at  
19 another person a loaded or unloaded firearm and again a  
20 pistol or revolver would fall into the category of a  
21 firearm.

22 Now your verdict must be unanimous, all twelve of you  
23 must agree. Once you have agreed the foreman will as I  
24 will instruct you more in a moment, fill out the verdicts.  
25 Again your verdict must be unanimous, it cannot be based on

## CHARGE TO THE JURY

-282-

1 passion, prejudice, sympathy, public opinion or matters  
2 outside the record. While you are deliberating if you have  
3 any questions, Mr. Foreman, write them down and knock on  
4 the door and send them out by way of the bailiff. I may be  
5 doing some other work in here but I will stop that and send  
6 for you as promptly as I can. I may be able to answer any  
7 question you have by writing an answer on the note. And if  
8 I send a note back in with an answer, please keep that note  
9 and turn it in with the evidence because I have to make it  
10 part of the record.

11 When you've reached a verdict knock on the door tell  
12 the bailiff, the bailiff will come and get me and I will  
13 send for you as quickly as possible. Again I may be doing  
14 something else but when you've reached a verdict knock on  
15 the door and tell the bailiff and he will tell me.

16 As to any notes, before I respond I will confer with  
17 the attorneys. It may be that I can't write an answer on  
18 the note and I'll have to bring you back in and answer it  
19 here in open court. In South Carolina we do not send in to  
20 the jury room a charge on the law, that is a written  
21 charge, but if you wish me to go over any part or all of my  
22 charge on the law, let me know and I'll bring you back in  
23 and recharge you. You can also have testimony replayed and  
24 if you wish that to occur let me know and I'll bring you  
25 back in and we will replay any testimony you wish.

1           Once you go to the jury room in just a moment, do not  
2 start deliberating because I have to go over my charge with  
3 the attorneys. If I have made an error I will have to  
4 correct it because I told you you have to follow it as I  
5 delivered it. If I have not made any error I will send in  
6 to you the verdict forms and the exhibits and the bailiff  
7 will tell you to start deliberating. Again remember your  
8 verdict must be unanimous, all twelve jurors must agree on  
9 the verdict.

10           Mr. Berry, when the jury goes out in just a moment you  
11 will stay in and you will not participate further since you  
12 are the alternate. We do not need your services further.  
13 We appreciate your assistance.

14           On the indictments for possession of a handgun by a  
15 person convicted of a crime of violence, and the pointing  
16 and presenting a firearm, I do not have a sheet of paper  
17 called a verdict form. I do on the other indictment and  
18 I'll go over that in a moment. I do that because there are  
19 two counts and also because as to criminal domestic  
20 violence of a high and aggravated nature there is the  
21 lesser included criminal domestic violence.

22           As to the other two, you will see on the back the word  
23 verdict and down in the bottom left hand corner a place for  
24 you to sign and the date. Today is the 7th. On one of the  
25 lines above your signature you will write the verdict, that

## CHARGE TO THE JURY

-284-

1 is the unanimous verdict of the jury. If that verdict is  
2 not guilty, that is, if it's unanimous that the State has  
3 failed to prove Mr. Davis guilty of either or both of those  
4 offenses you would write the two words not guilty on one of  
5 those lines above your signature, Mr. Foreman.

6 As to the criminal domestic violence of a high and  
7 aggravated nature, and possessing of a firearm during the  
8 commission of a violent crime, I have a verdict form. I  
9 have count one and count two listed. Under Count One you  
10 have three options basically, and the order these are in is  
11 of no importance, I have to put them in some order and this  
12 is the way I always put them. If you find the State has  
13 found - If you find the State has proven Mr. Davis guilty  
14 unanimously beyond a reasonable doubt of criminal domestic  
15 violence of a high and aggravated nature you would put an X  
16 or a check on that line in front of that sentence. If you  
17 find the State has failed to prove him guilty of that  
18 offense but have found that they have proven him guilty of  
19 a lesser included criminal domestic violence without high  
20 and aggravated nature you would simply put an X or a check  
21 in the second line. If the State has failed to prove his  
22 guilt beyond a reasonable doubt as to either, you would use  
23 the third line and say we find the defendant not guilty and  
24 simply put a check or an X in that.

25 Under Count Two I have put a little note that you

1 consider that only if you unanimously found him guilty of  
2 criminal domestic violence of a high and aggravated nature.  
3 If you have you will consider Count Two and the options  
4 there are we find the defendant guilty of possession of a  
5 firearm during the commission of a violent crime. Or we  
6 find him not guilty of possession of a firearm during the  
7 commission of a violent crime. Again you will put an X and  
8 a check on the line in front of whatever unanimous verdict  
9 of the jury is.

10 MR. FOREMAN: And where do I sign?

11 THE COURT: And sign it.

12 MR. FOREMAN: And where do I sign on that?

13 THE COURT: Its got a place there that says Foreman.

14 MR. FOREMAN: Okay.

15 THE COURT: I was picking it back up to tell you.

16 MR. FOREMAN: Okay.

17 THE COURT: But there is a place for you to sign on  
18 that one too. So I'm going to let you now go into the jury  
19 room but do not start deliberating yet, everybody but Mr.  
20 Berry and I will send for you - Don't get too comfortable  
21 because if I have to send for you it will be very promptly.

22 (JURY OUT TO DELIBERATE AT 04:30 P.M..)

23 THE COURT: I will be with you in a minute, Mr. Berry.  
24 Anything from the State as far as the charge?

25 SOLICITOR VALENZUELA: I don't know if Defense counsel

CHARGE TO THE JURY

-286-

1 is going to raise this, but I know that they had wanted a  
2 curative instruction that the stipulation that he was  
3 convicted of a prior crime of violence should not be used  
4 in any way except to establish...

5 THE COURT: Okay. You're right.

6 Anything other than that?

7 MS. ANDERSON: Yes, Your Honor. I don't - I did not  
8 hear in the discussion, Your Honor, the definition of CDV  
9 versus CDV HAN but I did not hear that if it was a question  
10 to the defendant's would be given the benefit of the lesser  
11 charge. I checked with co-counsel and she did not hear  
12 that also herself.

13 THE COURT: Quite frankly I will charge that but I  
14 usually do not include that in my standard charge but I  
15 will. How do you say that again?

16 MS. ANDERSON: Your Honor, I think the way I've heard  
17 other judges is that there is a question between the two  
18 offenses and the defendant is to be given the benefit of  
19 the lesser offense.

20 THE COURT: Well I'm not going to charge that.  
21 They've got - I usually don't charge it and the reason I  
22 don't charge it is earlier beyond a reasonable doubt - I'm  
23 not going to charge that. I don't usually charge it and  
24 that's why you didn't hear it but you are entitled to that  
25 curative instruction.

1 Bring the jury in just a minute.

2 Mr...Berry, don't go away.

3 (JURY RETURNS TO COURTROOM AT 04:33 P.M..)

4 THE COURT: Members of the jury panel, I do need to  
5 make one clarification. If you recall Mr. Davis has  
6 stipulated that in 2008 he was convicted of a crime of  
7 violence as that term is used under 16-23-30 and 16-23-10.  
8 That stipulation is just that he has as defined under that  
9 Code Section been convicted of a crime of violence which  
10 pertains only to the indictment for possession of a handgun  
11 by a person convicted of a crime of violence. He has not  
12 stipulated and the State has to prove beyond a reasonable  
13 doubt the other - they have to prove this offense, that he  
14 possessed a firearm but the fact that he has been convicted  
15 of a violent crime in 2008 it is not to be used against him  
16 or have any bearing whatsoever on your consideration of any  
17 of the other charges. He is agreed that that fact exist as  
18 it applies in that particular indictment.

19 I'm going to let you go back but don't start  
20 deliberating yet.

21 (JURY EXITS COURTROOM AT 04:35 P.M..)

22 THE COURT: Anything further from the State?

23 SOLICITOR VALENZUELA: No, Your Honor.

24 THE COURT: The Defense?

25 MS. ANDERSON: No, Your Honor.

1 THE COURT: All right. If you'll check the exhibits  
2 and the verdict forms we'll send that back and the  
3 stipulations go to the court reporter.

4 (WHEREUPON: COURT'S EXHIBIT NUMBER FOUR IDENTIFIED  
5 AND MARKED, RECEIVED INTO EVIDENCE.)

6 THE COURT: And, Mr. Berry, you can leave and call back  
7 tomorrow after 1:00 and you will receive the next  
8 instructions. Thank you. You can stay if you wish too but  
9 you certainly can...

10 All right, we'll be at ease and the Solicitor let me  
11 know what you got to do.

12 SOLICITOR VALENZUELA: Yes, Your Honor. =

13 (COURT IN RECESS AT 04:36 P.M..)

14 (DEFENDANT, DAWONE DAVIS, BLACK MALE, REENTERS  
15 COURTROOM AT 05:08 P.M..)

16 (COURT BACK IN SESSION AT 05:10 P.M..)

17 THE COURT: Thank you. Take your seats.

18 And the jury has reached a verdict so anything before  
19 the jury comes in from the State?

20 SOLICITOR VALENZUELA: Nothing, Your Honor

21 THE COURT: Anything from the Defense?

22 MS. ANDERSON: No, Your Honor.

23 THE COURT: Bring in the jury.

24 Whatever the verdict is everyone keep your seats and  
25 keep quite. If you cannot sustain what the verdict might

## VERDICTS

-289-

1 be please leave.

2 (JURY REENTERS COURTROOM AT 05:11 P.M..)

3 THE COURT: Mr. Foreman, I understand the jury has  
4 reached verdicts.

5 MR. FOREMAN: Yes we have, sir.

6 THE COURT: Hand them to the bailiff he will hand them  
7 up to me.

8 (VERDICTS RECEIVED UP BY THE COURT.)

9 MADAME CLERK: Indictment 2012\_GS-46-2284 the State  
10 versus Dawone Davis indictment for criminal domestic  
11 violence of a high and aggravated nature, we find the  
12 defendant guilty of criminal domestic violence of a high  
13 and aggravated nature. Signed by the Foreperson dated  
14 today's date.

15 Indictment 2012-GS-46-2284A we find the defendant not  
16 guilty of possession of a firearm during the commission of  
17 a violent crime. Signed by the Foreperson dated today's  
18 date.

19 Indictment 2012-GS-46-2285 the State versus Dawone  
20 Davis indictment for pointing or presenting a firearm,  
21 verdict not guilty, signed by the Foreperson dated today's  
22 date.

23 Indictment 2012-GS-46-2287 the State versus Dawone  
24 Davis indictment for possession of a handgun by a person  
25 convicted of a crime of violence, the verdict not guilty,

## SENTENCING

-290-

1 signed by the Foreperson, dated today's date.

2 Ladies and gentlemen of the jury, if this be your  
3 verdict so say you all by raising your right hand.

4 Let the record show all jurors affirmed this verdict.

5 (JUROR AFFIRMED UNANIMOUS VERDICT.)

6 THE COURT: Anything from the State before the jury is  
7 dismissed?

8 SOLICITOR VALENZUELA: No, Your Honor.

9 THE COURT: Anything from the Defense?

10 MS. ANDERSON: No, Your Honor.

11 THE COURT: Members of the jury panel, I appreciate  
12 your help. I'm going to let you leave, Please call back  
13 tomorrow after 1:00. Call back tomorrow after 1:00. Thank  
14 you for your help.

15 Mr. Foreman, we need to get you to sign something on  
16 the original indictment and also the verdict form.

17 (JURY FOREMAN SIGNED INDICTMENT AND VERDICT FORMS.)

18 (JURY DISMISSED AT 05:14 P.M..)

19 SOLICITOR SPRINGS: Your Honor, do you have the latest  
20 copy prior to - we want to see if this is a serious  
21 offense?

22 (PAUSE.)

23 SOLICITOR SPRINGS: They made some changes in 2010,  
24 just not sure.

25 MS. ANDERSON: I think its violent and not so serious.

## SENTENCING

-291-

1 THE COURT: It says it has assault and battery of a  
2 high and aggravated nature, it does not have assault and  
3 battery, criminal domestic violence of a high and  
4 aggravated nature.

5 (PAUSE.)

6 THE COURT: Ms. Valenzuela, if you will give me all of  
7 his record, I know I heard a little bit about him, but all  
8 of his record and then I'll be glad to hear from the victim  
9 if she has anything she wants to say.

10 SOLICITOR VALENZUELA: Yes, Your Honor. The defendant  
11 has an assault and battery second with a sentencing date of  
12 November of 2011. Another assault and battery second and  
13 the victim was Sherika Robinson. The defendant also has a  
14 criminal domestic violence from 2007, I believe the victim  
15 in that CDV first was also the victim Sherika Robinson. He  
16 also has a petit larceny from 2003. The criminal  
17 conspiracy from 2005. And the defendant has two separate  
18 convictions for strong armed robbery. He has a conviction  
19 from May of 2005 and June of 2008. And I believe I turned  
20 in the CDV second conviction I believe that was from 2009.  
21 I made that a Court's Exhibit. In that CDV Sherika  
22 Robinson was also the victim. And so just to make sure the  
23 court knows that the defendant has been convicted of  
24 assaulting the same victim three prior times aside not even  
25 counting the one that is before you today. And on top of

## SENTENCING

-292-

1 that has two separate convictions for strong armed robbery.

2 THE COURT: All right, does the victim want to say  
3 anything else? I heard her testimony.

4 SOLICITOR VALENZUELA: She does not.

5 THE COURT: Ms. Anderson, I'll be glad to hear from  
6 you and then from Mr. Davis.

7 MS. ANDERSON: May it please the Court.

8 Your Honor, Mr. Davis as you heard or are aware was  
9 arrested on March 15th, he was denied bond at that point  
10 and therefore he was never able to be released from bond on  
11 this charge. He has therefore been incarcerated and would  
12 be entitled by my calculation a hundred and forty-six days  
13 of credit. Subsequent to this charge he did come in front  
14 of a judge for a probation violation hearing and was  
15 revoked on that. He has been in SCDC, he knows he will be  
16 going back to SCDC I believe on a three year sentence on  
17 that. But as I stated he would have for a hundred and  
18 forty-six days credit, he has never bonded out and denied  
19 bond on this charge. Your Honor, we understand the  
20 circumstance, I've talked to him about the fact of the  
21 mandatory minimum; that this is a violent offense. He  
22 knows obviously he will be serving time. We would just ask  
23 Your Honor to consider something under - We're asking for  
24 just something less than the maximum sentence and that it  
25 would run concurrent to the sentence he is already serving.

## SENTENCING

-293-

1 THE COURT: Anything you want to say, Mr. Davis?

2 MR. DAVIS: I just want to say my apologies to the  
3 Court and to the victim. That's it.

4 THE COURT: All right. The sentence - I'll give him  
5 credit for a hundred and forty-six days. The sentence is  
6 ten years but that's consecutive to the sentence he's  
7 already serving on his probation revocation. Thank you.

8 MS. ANDERSON: Yes, Your Honor.

9 SOLICITOR VALENZUELA: Thank you, Your Honor.

10 (DEFENDANT, DAWONE DAVIS, BLACK MALE, ESCORTED FROM  
11 COURTROOM TO HOLDING CELL.)

12 THE COURT: We'll stop for the day and start back at,  
13 I think, 10:00 in the morning.

14 (COURT IN RECESS AT 05:20 P.M..)

15 - END OF TRANSCRIPT OF RECORD -

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County: YorkDate: August 6-7, 2012**VOIR DIRE/BATSON SHEET**Case No: 2012-GS-46-02284Judge: John C. Hayes, IIIState/Plaintiff: StateState/Pl's Atty: Sol, Johanna ValenzuelaDefendant: Dawone Quintal DavisDefense Atty: Ms. Ashley AndersonCourt Reporter: Wanda Nelson

Juror #	Name	Sex	Race	Strikes			
				Court	Plaintiff	Defense	Accept
228	Mary R. Von Ins	F	W				X
231	Richard V. Warren	M	W				X
204	Amy J. Spear	F	W				X
225	Kellie J. Tucker	F	W				X
32	Robert A. Campbell	M	W				X
221 **	David B. Thompson	M	W				X
31	Sonja R. Nunez	F	B				X
33	Ronald K. Campbell	M	W				X
140	Thomas R. Metz, Junior	M	W			X	
209	Kevin J. Stricklin	M	W			X	
174	Sam W. Redden	M	W				X
187	Kathleen A. Saunders	F	W				X
65	Kris T. Fairchild	M	W		X		
120	Ashleigh D. Ledford	F	W		X		
5	Tavera K. Anthony-Smith	F	B		X		
27	Susan K. Bryant	F	W				X
24	Linda L. Brown	F	W				X
34	Daniel J. Canfield	M	W			X	
17	William M. Berry	M	W				X

In the Court's column, indicate who made the motion to strike the jurors "for cause". C-Court; P-Plaintiff; D-Defense

\*\* Foreperson

297  
WITNESSES  
RHPD/ Cook  
  
  
  
  
  
  
  
  
  
  
ab

ARREST WARRANT NUMBER  
Count I - Arrest Warrant N-180318  
Count II - Arrest Warrant N-180340

ACTION OF GRAND JURY  
**TRUE BILL**

*[Signature]*  
Foreperson of Grand Jury  
Date: 7/19/12

VERDICT  
Guilty - CDVHAN

*[Signature]*  
Foreperson of Petit Jury  
Date: 8-7-12

DOCKET NO. 2012-GS-46-02284  
2012-GS-46-02284A

The State of South Carolina  
County of York

COURT OF GENERAL SESSIONS  
July 19, Term 2012

THE STATE  
vs.  
DAWONE QUINTAT DAVIS

Indictment for  
COUNT I - CRIMINAL DOMESTIC VIOLENCE  
OF A HIGH AND AGGRAVATED NATURE  
SC Code section 16-25-65  
CDR Code: 2988  
COUNT II - POSSESSION OF A FIREARM  
DURING THE COMMISSION OF A VIOLENT  
CRIME  
SC Code section 16-23-490  
CDR Code: 0549

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

Defendant

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

Defendant

Witness:  
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

INDICTMENT

CERTIFIED TRUE COPY

2012 AUG 10 PM 3:49

At a Court of General Sessions convened on July 19, 2012, the Grand Jurors of York County present upon their oath:   
CLERK OF COURT  
YORK COUNTY, SC

**COUNT I - CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE**

The Defendant, Dawone Quintat Davis, did in York County, South Carolina, on or about March 15, 2012, commit Criminal Domestic Violence of a High and Aggravated Nature, in that the defendant did commit an assault and/or battery upon, Sherica Nicole Santana Robinson, a household member of the Defendant, which involved the use of a deadly weapon, resulted in serious bodily injury, and/or which would reasonably cause a person to fear imminent serious bodily injury or death. Said incident having occurred in York County, South Carolina. All in violation of Section 16-25-65, Code of Laws of South Carolina (1976 as amended).

**COUNT II - POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME**

The Defendant, Dawone Quintat Davis, did in York County on or about March 15, 2012, while committing the crime of Criminal Domestic Violence of a High and Aggravated Nature, a ~~crime of violence~~ <sup>violent crime</sup> as defined in Section 16-1-60, have in his possession, or display what appeared to be, a silver revolver with a brown handle, all in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

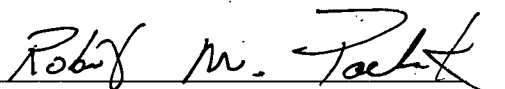
Against the peace and dignity of the State, and contrary to the statutes in such case made and provided.

  
ASSISTANT SOLICITOR

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the 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."

June 21, 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

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

ORIGINAL

Appeal from York County

John C. Hayes, III, Circuit Court Judge

RECEIVED

JUN 21 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DAWONE Q. DAVIS,

APPELLANT

APPELLATE CASE NO. 2012-212710


CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 21st day of June, 2013.



Brandon Hall  
Administrative Specialist

SUBSCRIBED AND SWORN TO before me  
this 21st day of June, 2013.



(L.S.)

Notary Public for South Carolina  
My Commission Expires July 24, 2022