

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY

SC Court of Appeals

Letitia H. Verdin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN J. DAY,

APPELLANT

APPELLATE CASE NO. 2012-211970

RECORD ON APPEAL

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED April 19, 20 2012.....	1
PRE-TRIAL MOTIONS	4
OPENING STATEMENT Mr. Bondurant.....	13
TESTIMONY	
CANDICE STANLEY	
Direct Examination by Mr. Bondurant.....	17
Cross Examination by Mr. Johnson	44
Redirect Examination by Mr. Bondurant.....	76
Recross Examination by Mr. Johnson.....	81
ROBERT BOSWICK	
Direct Examination by Mr. Bondurant.....	87
Cross Examination by Mr. Johnson	103
MELANIE MONTEMAYER	
Direct Examination by Mr. Bondurant.....	111
MARION STEPHENS	
Direct Examination by Mr. Bondurant.....	115
Cross Examination by Mr. Johnson	117
JAMES GUUTHRIE	
Direct Examination by Mr. Bondurant.....	121
Cross Examination by Mr. Johnson	126
JOHN DAY	
Direct Examination by Mr. Johnson	138
Cross Examination by Mr. Bondurant	155
VERDICT	169
SENTENCING	175
INDICTMENT	177

SENTENCING SHEET	179
CERTIFICATE OF COUNSEL	180

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT.

STATE'S EXHIBIT #1 (PHOTOS OF VICTIM'S INJURIES)

STATE'S EXHIBIT #2 (PHOTOS OF VICTIM'S INJURIES)

STATE'S EXHIBIT #3 (PHOTOS OF VICTIM'S INJURIES)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,

PLAINTIFF,

-VS-

JOHN J. DAY,

DEFENDANT.

2010-GS-23-08246

APRIL 19 AND 20, 2012

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE LETTITIA H. VERDIN, JUDGE

APPEARANCES:

CHARLES BONDURANT, ESQUIRE
ATTORNEY FOR THE STATE

BRIAN JOHNSON, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

<u>INDEX</u>				
WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Candice Stanley Bondurant Johnson	59	86	118	123
Robert Boswinck Bondurant Johnson	129	145		
Melanie Montemayer Bondurant Johnson	153			
Marion Stephens Bondurant Johnson	157	159		
James Guthrie Bondurant Johnson	163	167		
John Day Johnson Bondurant	179	197		
Cam Jones - Proffered Witness Johnson	209			
<<-->>				
				PAGE
Jury Voir Dire				24
Opening Statements Bondurant Johnson				49 55
Closing Statements Johnson Bondurant				225 239
Charge				260
Certificate of Reporter				280

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Exhibit List

3

PLAINTIFF'S/ EXHIBITS

NO	DESCRIPTION	ID	EV
S-1	Photograph of thigh	73	85
S-2	Photograph of wrist	73	85
S-3	Photograph of wrist - close-up	73	85
S-4	Letter to Mr. Boswinck from defendant	139	139

DEFENDANT'S EXHIBITS

D-1	Letter dated 7/19/10 - first letter	86	95
D-2	Letter dated 7/19/10 - second letter	86	95
D-3	Affidavit to dismiss charges	110	110

COURT'S EXHIBITS

C-1	Memorandum to File from Cam Jones dated 7/30/10	214	
C-2	Obituary of Daniel H. Hammerstad	214	
C-3	Charge	279	

1 in commission of violent crime off the table.

2 THE COURT: Oh, okay.

3 MR. BONDURANT: And no longer wishes to make
4 that an issue.

5 THE COURT: All right. So it's just the one
6 charge?

7 MR. BONDURANT: I just forgot to do that.

8 THE COURT: A criminal domestic violence of a
9 high and aggravated nature?

10 MR. BONDURANT: That's correct, Your Honor.

11 THE COURT: Do you want to take a look at it,
12 Mr. Johnson?

13 And do you have any objection to this being the
14 indictment in this case as being amended as such?

15 MR. JOHNSON: No, ma'am, Your Honor?

16 THE COURT: Any other matters we need to take
17 up prior to bringing the jury in?

18 MR. BONDURANT: I think we both have pre-trial
19 motions. It's just whenever you want to deal with it.

20 THE COURT: All right. How lengthy do you
21 think the pre-trial motions are going to be?

22 MR. BONDURANT: I don't think very.

23 THE COURT: All right. Well, go ahead, yes,
24 sir.

25 MR. BONDURANT: Okay. Your Honor, I'd like to

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Jury Voir Dire

7

1 start by the State wishes to introduce Lyle evidence in
2 this case. And I'm certainly willing to proffer
3 testimony from the victim in this case. But her
4 testimony essentially, Your Honor, is that this incident
5 happened the day they returned from court on another
6 domestic violence charge where he was convicted. And
7 his whole motive that day for why this occurred was
8 because he was angry at her for not telling the Judge at
9 that point that it was a mistake, and to essentially get
10 him off that first charge. So that was the exact same
11 day. We have a conviction with the disposition date on
12 it. It was that day.

13 As Your Honor's well aware Lyle evidence generally
14 is not allow to enter -- 404(b) evidence is not allowed
15 except to show motive and identity and intent. And this
16 is the very motive for why he did what he did that day.
17 So I can think of really no example that would best fit
18 the exception, the Lyle exceptions in this case, than
19 what the testimony will be.

20 State v. Sweat gets into that. It's a case pretty
21 close on point where the Circuit Court allowed in a
22 domestic violence for a charge of ABHAN. The guy was
23 convicted of domestic violence some forty to fifty days
24 prior. He spent some time in jail, then he was
25 released. Eleven days later he goes and attacks the

1 domestic violence victim's boyfriend. He was charged
2 with ABHAN and different things, a few separate charges.
3 And they allowed -- the court allowed that in. The
4 Court of Appeals said that that was perfectly okay.
5 That that was within the exceptions which to show intent
6 and to show motive. And I would argue that this is much
7 more, much more on point, this case, and what the
8 testimony in this case will be much more on point for a
9 Lyle exception. In fact, I think it's the very reason
10 you have Lyle exceptions because, again, her testimony
11 is that it happened on that day when they got back from
12 court, because he was very angry.

13 Also, I think there's a res gestae issue there.
14 It's almost impossible -- it would be almost impossible
15 to present this case and leave that out. Because not
16 only are you leaving out the motive and you're leaving
17 the jury to sit there and guess and speculate as to why
18 in the world he would do this, if it was just simply
19 presented as an argument they were in, you leave a
20 gaping hole there. And you're not presenting -- also
21 *State v. Sweat* goes into the res gestae theory, and even
22 on those grounds they find that it furnishes part of the
23 context of the crime. It's necessary for a full
24 presentation of the case and that's exactly what we're
25 doing here.

1 THE COURT: Mr. Johnson.

2 MR. JOHNSON: Well, Your Honor, if I may. I
3 understand he's citing a case. May I take a brief look
4 at it.

5 THE COURT: Sure. Do you have that case with
6 you?

7 MR. BONDURANT: I do, Your Honor.

8 MR. JOHNSON: It won't take me but a second,
9 Your Honor. I know how to get to it, to the meat.

10 THE COURT: That's fine.
11 What's the cite for that, Mr. Bondurant?

12 MR. BONDURANT: Your Honor, it is 362 S.C.
13 117.

14 THE COURT: All right. Thank you.

15 MR. BONDURANT: I'd like to add something,
16 too, Your Honor, when you're ready.

17 THE COURT: All right.

18 Just one moment. Let me finish.

19 MR. BONDURANT: Yes, ma'am.

20 THE COURT: All right. Yes, sir, Mr.
21 Bondurant.

22 MR. BONDURANT: Yes, ma'am. I just wanted to
23 add that, of course, the language of the 404(b) talks
24 about proof of their character or evidence to show that
25 the character conforms with the crime. This in no way

1 to show that. This is to, again, show motive and
2 intent. But what I really wanted to add was, of course,
3 you would also have to do a 403 analysis of the
4 evidence.

5 THE COURT: Well, that's my concern at this
6 point. My concern is -- well, in listening to your
7 situation, I think it's clear that the fact that she
8 would not give testimony that was favorable to him in a
9 court case is one thing. I mean, that's clear, that
10 that might be very necessary to prove your case.
11 However, I'm concerned, this is the exact same type of
12 charge and in this particular instance, could you not
13 have her testify just as easily about having gone to
14 court and she would not testify on his behalf and not
15 getting into the facts and circumstances of the
16 underlying case itself, and that she would not testify
17 on his behalf and that angered him and this incident
18 ensued? To me, that takes the prejudice out of -- any
19 unfair prejudice out of it, but I'll certainly hear from
20 you, Mr. Johnson.

21 MR. JOHNSON: Judge, I agree with your take.
22 I don't think the law -- I think the law, certain
23 aspects can be brought up about it, but I think CDV,
24 saying they went to court for a CDV, conviction and
25 things of that nature would -- the probative value would

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Jury Voir Dire

11

1 outweigh the prejudice.

2 THE COURT: I think that tips the scales on
3 403 analysis. And that's my concern. What happened at
4 that trial, was he convicted?

5 MR. BONDURANT: He was. Here's the issue is
6 -- I think she could somewhat skirt the issue. In fact,
7 I was not going to ask her about the details of what
8 happened.

9 THE COURT: Sure. Sure.

10 MR. BONDURANT: The problem is, is again the
11 motive is that he wanted her to go in there and say that
12 it was a mistake, that it didn't happen. And so I'm not
13 sure how she can get into that without pretty clearly
14 alluding to the fact that she's referring to ---

15 THE COURT: Here's what I'm going to let you
16 do.

17 MR. BONDURANT: Yes, ma'am.

18 THE COURT: I'm going to allow her to testify
19 as to the fact that she had gone to trial, gone to trial
20 I guess in Magistrate's Court ... Was that it?

21 MR. BONDURANT: Uh-huh (affirmative).

22 THE COURT: --- on a case against him. That
23 she was -- that he wanted her to change her testimony
24 and say what she had told the policeman had been
25 untruthful and that she refused to do so. And after the

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Jury Voir Dire

12

1 trial, went home, this incident happened. I will not
2 let you say exactly what the charges itself was. The
3 jury may infer it. They may infer it all day. But I
4 don't think we can prevent that. But I'm not going to
5 allow her to specifically go into that it was a criminal
6 domestic violence.

7 MR. BONDURANT: Here's another issue I'll have
8 is -- of course, I was going to seek to introduce the
9 certified conviction, that they did in fact go to trial
10 on that day and it was dispositioned on that day ---

11 THE COURT: You don't have to have it to prove
12 the elements of this charge. What was your basis for
13 wanting to enter that conviction?

14 MR. BONDURANT: It's evidence that she's --
15 there's an issue with whether she's telling the truth or
16 not. She, like most domestic violence victims, changed
17 her story at one point. So it's highly probative
18 corroborating evidence from a legal document that says
19 that she did go to court that day, and that he was
20 convicted on that crime. And I, I mean, I think that is
21 highly, highly probative, and I would ---

22 THE COURT: That she was telling the truth on
23 one occasion so she must be telling the truth on this
24 occasion?

25 MR. BONDURANT: Correct. That she was telling

1 the truth on what his -- that they went to the court
2 that day and that he had the motive to do what he did.

3 THE COURT: Mr. Johnson, I'll let you respond
4 to that, if you'd like.

5 MR. JOHNSON: I think that's the exact type of
6 information, inadmissible character evidence, that the
7 Court's trying to prevent. And I object.

8 THE COURT: I think it -- I think if it's not
9 right on point, it certainly skirts the bolstering. I'm
10 not going to allow you to introduce the conviction
11 unless you need it for some other element of this
12 particular crime.

13 All right. Anything else, Mr. Bondurant?

14 MR. BONDURANT: Can we redact the conviction
15 to take out the domestic violence language? I mean it
16 says here, case with the warrant number, says the charge
17 ---

18 THE COURT: Well, let's back up. Let's talk
19 about this for a second. You want to talk about this
20 court case as a motive, as the motive for this. But
21 now, now what you're asking to do is use this case to,
22 in some way, prove elements or to convince the jury of
23 the truthfulness of this victim here today. I'm not
24 going to allow you to enter any kind of conviction or
25 anything like that. Just simply that she gave testimony

1 not in accordance with what he wanted her to and -- or
2 he wanted her to change her story and she refused to do
3 so. And after they returned home from court that day,
4 then this incident happened. That's as far as I'm going
5 to let you go with that.

6 All right. Anything else from the State?

7 MR. BONDURANT: Yes, Your Honor. There's also
8 letters written from the Defendant while he was in jail
9 to the roommate that lived with him at the time of this
10 incident. Of course, any time the word jail or anything
11 like that comes up, there's a potential for a mistrial.
12 And, again, I think what he says in the letter is, it's
13 certainly valuable, important in this case.

14 THE COURT: What does he say?

15 MR. BONDURANT: He talks -- a lot of the
16 letter is just about arrangements that he wants the
17 roommate to make as far as the house goes, and calling
18 his kids and things of that nature. But he says a
19 little bit about the charge and the allegation. He
20 says, she told them I beat her with a claw hammer. She
21 told H.Q. Benford that she fell on the porch and I don't
22 know what else she told. And, of course, the State
23 seeks to introduce that as evidence of post-arrest of
24 somebody that was in the house when this happened. And
25 the tone of the letter and how that -- it's a piece of

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Opening Statement by Mr. Bondurant

49

1 Is there any objection to my initial charge from
2 the State?

3 MR. BONDURANT: No, Your Honor.

4 THE COURT: Anything from the Defense?

5 MR. JOHNSON: No, ma'am, Your Honor.

6 THE COURT: All right, then. Well, then we
7 are -- are you all ready to proceed?

8 MR. BONDURANT: Yes, ma'am.

9 THE COURT: All right. We'll begin with
10 opening statements. Mr. Bondurant.

11 MR. BONDURANT: May it please the Court, Your
12 Honor.

13 THE COURT: Yes, sir.

14 **OPENING STATEMENT**

15 **BY MR. BONDURANT:**

16 This case is about a stronger, older man who used
17 violence to assert power and control over his younger
18 girlfriend. This case is about a thirty-seven year old
19 defendant attacking his teenage girlfriend with a hammer
20 because she wouldn't follow his instructions.

21 In June of 2010, on June 30th, 2010, they were
22 living together and they go to court because he's been
23 charged for a prior crime. And they go to court and
24 when they get to court the Judge asks her some
25 questions. She answers those questions honestly and

1 then the Judge, based on her answers, finds him guilty
2 of the charge. He's livid. They are leaving the
3 courthouse and he says to her, if you ever get me in
4 trouble again, they'll be taking you out in a body bag.
5 She understand that this is a very dangerous situation
6 so she doesn't go back out to the car with him. She
7 goes to -- she walks down the street. She says, I'm
8 going to be away from him and let him cool down some.
9 She does that and he takes the truck home; he goes home.
10 They live very close to the courthouse. She waits and
11 she walks home several hours later. She walks home, he
12 comes out and they continue to argue. They then enter
13 the house and when they go in the house they go to their
14 bedroom.

15 Now, they live in a bedroom on one side of the
16 house and on the other side of the house is a bedroom
17 where the roommate, Robert, is staying. He was asleep
18 at the time. He awakes when he hears the argument. So
19 he gets up and just turns up the TV loud, he just chalks
20 it up to a -- sort of a spat between them. So they go
21 into the bedroom and then he's still livid. And they
22 continue to argue until he snaps. He snaps and he grabs
23 a hammer that's nearby and he throws it to where she's
24 sitting and it hits the wall beside where she's sitting.
25 And leaves a little hole when it drops to the floor.

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Opening Statement by Mr. Johnson

57

1 guys to stay patient. Like she said, it will be a short
2 trial. Just make sure that -- don't form any opinions
3 as the Judge has instructed you to do, and look at all
4 the evidence. At that point in time, I feel confident
5 that you'll find my client, John Day, not guilty of this
6 crime. Thank you.

7 THE COURT: Ladies and gentlemen, we're going
8 to begin the testimony in this case, but I'm going to
9 let you take a ten-minute break. I know you've been
10 sitting for a while. Let's just take a brief break and
11 I'll ask you to step to the jury room, but please don't
12 discuss the case with anyone.

13 (WHEREUPON, the jury exited the open court at
14 approximately 11:38 p.m.)

15 THE COURT: Let's be in recess for ten
16 minutes.

17 (WHEREUPON, the Court stood at recess for a short
18 break.)

19 THE COURT: Are we ready to bring the jury
20 back in?

21 MR. BONDURANT: We're ready.

22 THE COURT: Okay.

23 And Mr. Bondurant, I'm sure your victim understands
24 and knows that she cannot say that this is a CDV?

25 MR. BONDURANT: Right. I've gone over and

1 over again, so ...

2 THE COURT: Or go into the underlying facts.

3 MR. BONDURANT: Keep your fingers crossed,
4 Your Honor.

5 THE COURT: I just wanted to remind you.

6 MR. BONDURANT: Thanks.

7 MR. JOHNSON: Thank you, Your Honor.

8 (WHEREUPON, the jury entered the open court at
9 approximately 11:52 a.m.)

10 THE COURT: Two things I had forgotten to do.
11 I had forgotten to tell you how much I appreciate your
12 service in this trial. And I had forgotten to introduce
13 you here to my law clerk, and you may see this is Stan
14 Overby. You may see us talking from time to time. I'll
15 assure you we're talking about the case. He is working
16 to help me prepare my charge on the law at the end and
17 sometimes we'll have discussions at the bench about
18 that. And I just did not want y'all to think we were
19 chatting about something else. But he's a first year
20 lawyer and sometimes when first year lawyers do really
21 well in school, they'll go to work for a Judge, for
22 whatever reasons, their first year out of law school and
23 that's what he's doing and helping me very much.

24 All right. That being said, are you ready to
25 proceed Mr. Bondurant?

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Candice Stanley - Direct Examination by Mr. Bondurant

59

1 MR. BONDURANT: Yes, ma'am. Thank you.

2 The State calls Candice Stanley to the stand.

3 THE CLERK: Ms. Stanley, if you'll pause at
4 the end of the bench. Please place your left hand on
5 the bible and raise your right hand.

6 Do you solemnly swear or affirm to tell the truth,
7 the whole truth and nothing but the truth, so help you
8 God?

9 THE WITNESS: I do.

10 THE CLERK: Thank you. Please be seated.
11 Please state your name for the record.

12 THE WITNESS: Candice Stanley.

13 CANDICE STANLEY,

14 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MR. BONDURANT:

17 Q. Good morning. Candice, can you start by telling us
18 how old you are?

19 A. I'm nineteen.

20 Q. And just make sure you speak up so the jury can
21 hear you?

22 A. Okay.

23 Q. Where are you from?

24 A. I'm from Anderson, South Carolina. I grew up in
25 Greer, South Carolina.

- 1 Q. You grew up in ---
- 2 A. In Greer.
- 3 Q. Just a little bit louder so they can hear you.
- 4 A. In Greer, South Carolina.
- 5 Q. Where?
- 6 A. Greer.
- 7 Q. Greer, okay. And where did you go to high school?
- 8 A. Greer High School.
- 9 Q. And just tell us a little bit some of the things
- 10 you did at Greer High school?
- 11 A. I was involved in the symphonic band. I played
- 12 volleyball, I played softball, from middle school all
- 13 the way through high school.
- 14 Q. What did you do in the band, what specifically did
- 15 you ---
- 16 A. I played the flute.
- 17 Q. Okay. Would that require to you to go into
- 18 competitions?
- 19 A. No, sir. We just played concerts for family, for
- 20 our school.
- 21 Q. Okay. And what about, do you have any siblings?
- 22 A. Yes, sir. I have four siblings, two brothers and
- 23 two sisters.
- 24 Q. Okay. And what age group are we talking about?
- 25 A. My oldest brother is twenty-eight, and all the way

1 down to fifteen years old.

2 Q. Okay. And is your mom and dad still here in
3 Greenville?

4 A. In Simpsonville.

5 Q. In Simpsonville?

6 A. Yes, sir, I guess that's Greenville County.

7 Q. Okay. Good. Now, Candice, how do you know the
8 Defendant?

9 A. It was an accident text how we met.

10 Q. Explain that a little bit.

11 A. We had moved -- my junior year of high school we
12 had moved to Illinois, and I was trying to get in
13 contact with a friend from school named Jonathan, and we
14 call him John. And I text that number that he had
15 written in my yearbook. And I said, is this John? And
16 John Day text me back and said, yes, this is. And
17 that's how it all started. We figured out, of course,
18 we really didn't know each other, but we kept talking.

19 Q. Okay. And how old were you at this time?

20 A. Sixteen years old.

21 Q. Okay. And do you know how old the Defendant was?

22 A. At the time, no, I didn't. He told me he was
23 twenty-nine.

24 Q. How old was he?

25 A. He was thirty-six.

1 Q. Thirty-six, okay. So tell us a little bit about
2 the progression of your relationship from -- where did
3 it go after the text messaging?

4 A. Well, we texted for, I'd say, a good six months
5 until we actually moved back down to South Carolina from
6 Illinois. Once I moved here, it started out with he
7 drove by my house. I just came out. We saw each other
8 and then from that point on, it would be, he would come
9 pick me up and take me to school in the mornings and
10 sometimes I would lie to my mother and tell her I was
11 going to the mall and I would go to his house and go see
12 him.

13 Q. Okay. And how old were you when that was going on?

14 A. Sixteen.

15 Q. Okay. And ---

16 MR. JOHNSON: Judge, may we approach, please?

17 THE COURT: Yes.

18 (WHEREUPON, Mr. Bondurant and Mr. Johnson
19 approached the bar.)

20 Q. What did you -- when you started dating at that
21 point, what did you know about the Defendant, if
22 anything?

23 A. Well ---

24 Q. As far as his family life ---

25 A. Oh, I knew that -- at first I knew he had one son

1 and he told me he was about five years. I knew that he
2 had a wife. That was his only wife, that that was the
3 mother of the child and she had passed away, named
4 Tammy. And that's pretty much it that I knew about him
5 and his family.

6 Q. Okay. Is that -- how many children -- did you find
7 out something different later?

8 A. Yes.

9 MR. JOHNSON: Judge, may we approach once
10 more?

11 THE COURT: Yes.

12 (WHEREUPON, Mr. Bondurant and Mr. Johnson
13 approached the bar.)

14 THE COURT: Your objection's sustained, Mr.
15 Johnson.

16 MR. JOHNSON: Thank you, Your Honor.

17 Q. After you started -- tell us more about after you
18 started dating, you said you would sneak out and things
19 of that nature, what happened then in the relationship?

20 A. Well, we had been sexually active since, like, the
21 second time we met. And whenever I would sneak out and
22 go see him, of course, that's what we would do. Maybe
23 once or twice we would go see a movie or something. But
24 most of the time we would sit at the house.

25 Q. Okay. And did you stay at your house or did you

1 ---

2 A. Oh, no. I went to where he was staying.

3 Q. Okay. Did you ever move in together?

4 A. Yes, sir, after I turned seventeen.

5 Q. When you turned seventeen?

6 A. Because it was legal.

7 Q. Okay. And then leading up to -- where did you
8 move? Let's start there.

9 A. We moved to [REDACTED] in Greer, South
10 Carolina.

11 Q. Okay. Is that Greenville County?

12 A. Yes, sir.

13 Q. Okay. And were you working at the time?

14 A. Yes, sir.

15 Q. Where were you ---

16 A. I was working at Mr. Bingo in Greer.

17 Q. Okay. Had you worked anywhere prior to that?

18 A. Yes, sir. I had worked at Dairy Queen, the one in
19 Illinois when we lived there. And then when we moved
20 back here, I worked at a Dairy Queen also down here.

21 MR. JOHNSON: Judge, I'm inclined to approach
22 one last time. I apologize.

23 THE COURT: I understand.

24 (WHEREUPON, Mr. Bondurant and Mr. Johnson
25 approached the bar.)

1 THE COURT: Ladies and gentlemen, a moment ago
2 you heard some testimony as to the fact when this victim
3 moved out and she said, when it was legal. She was
4 referring to her understanding of when she could legally
5 move out of her home. To be clear, that had nothing to
6 do with the Defendant and should not in anyway be
7 considered in your deliberations with regard to the
8 Defendant.

9 Is that acceptable?

10 MR. JOHNSON: Yes, ma'am, Your Honor.

11 THE COURT: All right.

12 Yes, sir.

13 Q. So y'all moved in together at [REDACTED] in
14 Greer?

15 A. Yes, sir.

16 Q. Okay. And up until the day of this incident, is
17 that where y'all lived?

18 A. Yes, sir.

19 Q. And after the incident, did you continue to live
20 there?

21 A. After it happened and I called the police or my
22 friend's mother called the police, I did move out and
23 actually lived with that friend for a month. And then I
24 did move back in with him.

25 Q. Okay. Now, let's go into the day of the incident,

- 1 June 30th. Y'all were living there at [REDACTED]
2 Street?
3 A. Yes, sir.
4 Q. I assume you woke up that morning as normal?
5 A. Yes, sir.
6 Q. Where then did you go?
7 A. We went to the courthouse in Greer.
8 Q. Okay. Why did you go to the courthouse?
9 A. We had to take care of something that -- it was for
10 him and we went up there. And we took care of that and
11 got done.
12 Q. Okay. Had he been charged with a prior crime?
13 A. He got charged that day, yes, sir.
14 Q. Okay. And that's what you were going to court for?
15 A. Yes, sir.
16 Q. Okay. When you got to court, did you speak with
17 the Judge?
18 A. Yes, sir, I did.
19 Q. Okay. And did a Judge make a decision?
20 A. Yes, sir.
21 Q. And what was that decision?
22 A. He found John Day guilty.
23 Q. Okay. What happened ---
24 MR. JOHNSON: Judge, please, can we approach?
25 THE COURT: Yes.

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Candice Stanley - Direct Examination by Mr. Bondurant

67

1 (WHEREUPON, Mr. Bondurant and Mr. Johnson

2 approached the bar.)

3 THE COURT: Ladies and gentlemen, I'm going to
4 ask you to step to the jury room for just a brief
5 moment.

6 (WHEREUPON, the jury exited the open court at
7 approximately 12:03 p.m.)

8 THE COURT: Mr. Johnson.

9 MR. JOHNSON: Judge, at this point I'm
10 inclined to ask for a mistrial. I mean, we're going
11 down several different roads at a very quick pace.
12 There's a number of things I have contention with me.
13 Most concerning, I think they went outside the
14 parameters when he said pre-trial for the prior
15 conviction of CDV. And then, of course, while I
16 accepted your curative instruction at this point, it's
17 building to the point where I don't know that we keep
18 giving these instructions at some point, they're going
19 to think that we're hiding something from them. And I
20 -- for that reason, I think a mistrial is warranted in
21 this case.

22 THE COURT: My ruling was that his conviction
23 was not admissible. And Mr. Bondurant, I believe you're
24 going to say that you were talking about the piece of
25 paper, evidence in his conviction.

1 MR. BONDURANT: The certified conviction.
2 That's correct, Your Honor. I don't -- I completely
3 understood the certified conviction because the
4 conviction was the whole motive. I don't see how you
5 can go into court and talk about -- logically talk about
6 her cooperation and then leave out anything that the
7 Judge did, and then have him angry about that. My
8 understanding was that we just could not in anyway get
9 into domestic violence whatsoever. I mean, the ---

10 THE COURT: Okay. Here's what we're going to
11 do. I'm going to deny your motion for a mistrial at
12 this point. And I will tell you, Mr. Bondurant, I think
13 it's -- it is -- I think Mr. Johnson put it very well
14 when he said it is building. It is building at this
15 point. I'm going to give another curative instruction
16 to the jury. I'm going to give another curative
17 instruction to them. I want us to move on from whether
18 or not he'd been convicted of this crime, the fact --
19 the point is what, what my understand was made him so
20 upset was that she would not change her story at court.
21 That's what -- and that's what the focus of this needs
22 to be. That's my understanding of the facts. Now, if I
23 am unclear on that or if there's something else you want
24 to tell me about that. But my understanding is that
25 that was the motive for this CDV. All right?

1 I'll give a brief curative instruction, but let's
2 move on from his guilt or innocence on that, because I
3 think that just is really skirting the line of some
4 improper bolstering and it is certainly implied he did
5 that one and so he did this one. All right?

6 (WHEREUPON, the jury entered the open court at
7 approximately 12:07 p.m.)

8 THE COURT: Thank you, ladies and gentlemen.

9 Ladies and gentlemen, the guilt or innocence of the
10 Defendant on any prior charge is not a matter for you to
11 consider in anyway in this particular charge. I'm going
12 to order that portion of the testimony stricken and it's
13 not to be considered by you in anyway. All right.

14 Mr. Bondurant.

15 Q. Candice, what was the Defendant's reaction to your
16 testimony?

17 A. He was not happy with it.

18 Q. Okay. And then what happened preceding that?

19 A. We were leaving the courthouse and as we were
20 walking out he said, if I get in trouble again, you're
21 going to be leaving in a body bag. And then he gets in
22 his truck and leaves.

23 Q. Where did you go?

24 A. I started walking down the street and I went and
25 sat on the church step for a little bit.

1 Q. Okay. How long did you stay there?

2 A. A few hours, probably two to three hours.

3 Q. Your house, where was that in relation to the
4 courthouse or where you were sitting?

5 A. Not even a full mile.

6 Q. Okay. And so what did you do after sitting there?

7 A. I thought I was away for long enough to where he
8 had cooled down and I walked the rest of the way to the
9 house.

10 Q. Okay. And so what happened when you got to the
11 house?

12 A. He came outside. We were arguing. He asked for
13 the engagement ring back. I gave it back to him. And
14 his cell phone back, I gave it back to him. And we just
15 -- we stood outside. We argued for a little bit and
16 then he asked me to come inside.

17 Q. Okay. What did you do?

18 A. At first I said, no. I didn't want to go in the
19 house. And then he was like, well, come on, I just want
20 to talk to you. So we ended up going into the house and
21 we went into our bedroom.

22 Q. Okay. Was anyone else there at the house?

23 A. Robert was there.

24 Q. Okay. Who's Robert?

25 A. He was our roommate, and he was a co-worker from

1 Dairy Queen.

2 Q. Okay. And tell me a little bit about how y'all met
3 Robert?

4 A. From working at Dairy Queen, I knew him. He was my
5 friend to begin with and he needed somewhere to go and
6 we had an extra room, and so we let him come stay with
7 us.

8 Q. Okay. Describe a little bit of the layout, sort
9 of, of the house.

10 A. It was a room on one end of the house, a hallway,
11 then there was the kitchen and the living room, and then
12 there was a little hallway and there was a bathroom and
13 there was the other bedroom. And that was the house.

14 Q. Okay. And so you went inside the house, where was
15 Robert?

16 A. I'm guessing in his bedroom. I didn't see him.

17 Q. Okay. And so what happened when you went inside
18 the house?

19 A. We went into the bedroom. We started arguing
20 again. I had put my dog, at the time, in the car before
21 we had gotten into the house and into the bedroom. And
22 we were arguing. He had grabbed the hammer and he said,
23 if you don't get the dog out, I'm going to break the
24 window and get it out because it was going to die,
25 because it was hot. Then he threw the hammer. And I

1 was sitting on the edge of the bed. In between the wall
2 and the bed there was space and he threw the hammer and
3 it hit the wall right beside me and it fell. And when
4 it fell, I tried to push it up under the bed with my
5 foot. And whenever we were arguing, he came at me and
6 he punched me in the top of my head. When he hit me, I
7 used my feet and kicked him back. And when I did that,
8 it really made him mad. So he reached for the hammer
9 and I put my arm up and my leg and laid down, kind of on
10 my side on the bed, and that's when he struck me with
11 it.

12 Q. Okay. And so can you show the jury how you were
13 sitting?

14 A. I was like this on the bed.

15 Q. Okay.

16 A. With my arm and my leg up.

17 Q. And where did he hit you?

18 A. He hit me in my wrist right here and two times in
19 my thigh.

20 Q. Okay. And with what side -- what part of the
21 hammer did he hit you with?

22 A. The round part. The part that you put the nail in
23 with.

24 Q. Okay. Was he saying anything at this time?

25 A. All I remember is me screaming stop.

1 Q. Okay. What kind of injuries did you have?

2 A. I had -- it broke the skin. In all three of them,
3 it broke the skin and I had bruising.

4 Q. Okay.

5 (WHEREUPON, State Exhibit Numbers 1 through 3 were
6 marked for identification.)

7 Q. Okay. So after you screamed stop, what happened?

8 A. He stopped. After he'd hit me the three times, he
9 stopped and he left the bedroom. I noticed a rip in my
10 pants and whenever I did, I took them off and changed
11 into some long Bermuda shorts and I put on a long-
12 sleeved pink shirt and I threw those pants away because
13 they were damaged.

14 Q. Did you call the police?

15 A. No, I did not.

16 Q. Why?

17 A. I was scared.

18 Q. Did you seek medical treatment?

19 A. No, I did not.

20 Q. Why not?

21 A. Because I figured it would get him in more trouble.

22 Q. Okay. So he leaves the room. What happens then?

23 A. I change. He comes back into the room and he says,
24 let me see what I did. So I pull up my shirt and I pull
25 up my shorts and I show him. And he's like, well, what

1 are you going to tell people what happened? And we had
2 came up with that we would tell people that we fell on
3 the front porch, because it was a wooden porch and it
4 had nails in it. So we told them -- we had planned to
5 say that I fell in the front porch and scraped my arm
6 and my leg on the nails on the front porch.

7 Q. Okay. So after that y'all talked about that, then
8 what happened? What did you do that day?

9 A. We were done. He apologized. He said, I'm so
10 sorry. It'll never happen again. We -- I, you know,
11 let it go. We went to go eat dinner and we came back to
12 the house. And I think I remember correctly, one of his
13 friends came over.

14 Q. Do you remember who this was?

15 A. I don't know. I've only met a couple of them and
16 it was like one time.

17 Q. Okay. When you came back -- well, where was Rob?
18 Did you see Rob during this entire time, during this ---

19 A. Not while this was happening, no. I seen him after
20 and he was in his bedroom. I went to his bedroom and
21 knocked on the door, I came in.

22 Q. I'm sorry, specify after.

23 A. After he had hit me ---

24 Q. When? That day?

25 A. --- and I changed. I'm sorry?

1 Q. That day?

2 A. Yes, sir. It was that day.

3 Q. Okay. And tell us about seeing Robert?

4 A. I just asked him -- I pulled my pants up a little
5 bit, my shorts up a little bit, and I said, do you see
6 anything? And he said, no. I said, well, good, because
7 I fell in the front porch. And then I left. I went
8 back into the living room.

9 Q. Okay. Sort of describe, where were you standing --
10 where was Robert when you saw him?

11 A. In his bedroom.

12 Q. What was he doing, if you remember?

13 A. I don't remember.

14 Q. Where were you standing?

15 A. I was standing at the door.

16 Q. Okay. And were you still wearing the Bermuda
17 shorts?

18 A. Yes. I had changed.

19 Q. And so you went in and the first thing you said to
20 him was?

21 A. Do you see anything?

22 Q. Okay. And what did you -- did you make any move?

23 A. Yes. I pulled up my shorts -- excuse me. I didn't
24 move my shirt or nothing, but I pulled my shorts up
25 about mid-thigh, and they were up higher on my thigh.

- 1 Q. Why did you do that?
- 2 A. Because I didn't want him to see them.
- 3 Q. Okay. What did you then say to him after that,
- 4 after you pulled up your shorts?
- 5 A. I asked him did he see anything. And he said, no.
- 6 And I said, good, because I fell on the front porch.
- 7 Q. Okay. Then what -- anything else notable that day
- 8 that you did?
- 9 A. No, sir, not that I can think of.
- 10 Q. Okay. So did you go to work that day?
- 11 A. No, sir, not that day.
- 12 Q. And where were you working at that time?
- 13 A. Mr. Bingo.
- 14 Q. What did you do there?
- 15 A. I was a sales -- I sold computers.
- 16 Q. What is Mr. Bingo?
- 17 A. It's a bingo hall where you play bingo.
- 18 Q. Okay. When did you go to work next?
- 19 A. Thursday, the day after.
- 20 Q. Then the rest of the week; did you work the rest of
- 21 the week?
- 22 A. Yes, sir.
- 23 Q. Okay. How many days? Do you remember?
- 24 A. Yes, sir. It was a Monday when I pressed charges,
- 25 so five days.

1 Q. Okay. Where were you living during that time?

2 A. With John Day at [REDACTED]

3 Q. Okay. And let's go then to the day -- let's go to

4 July 6th. What did you do that day?

5 A. I went to work that day and -- well, it started off

6 we were at the house, at the house together. I didn't

7 go to work until four o'clock in the afternoon and I

8 worked until about approximately eleven o'clock at

9 night. Before I even went to work we had argued, and I

10 remember I was really upset and scared that, you know,

11 something was going to happen again. Well, he had

12 gotten out of the shower, and we were painting out

13 bathroom. And he had the hammer and he put the top back

14 on the paint can. And I remember what really scared is

15 he looked at me and he said, do you want this again?

16 And held the hammer up. So when I went to work, I had

17 shorts on that day, and everybody saw the bruises and

18 the marks and they knew that ---

19 Q. Without going into to sort of what they said, you

20 can't testify to what anybody else said.

21 A. Okay.

22 Q. Just tell us what you then did.

23 A. Well, I showed -- I had my boss take pictures of it

24 and then after work, I had called him told him I wasn't

25 coming home.

1 Q. You called who?

2 A. John. And then I went to my best friend, Melanie's
3 house, showed her, told her what happened. She then
4 called her mom down to her bedroom.

5 Q. Well, who is Melanie?

6 A. Melanie is a good friend from school. I knew her
7 through -- from seventh grade all the way through high
8 school.

9 Q. And you went to her house after work?

10 A. Yes, sir.

11 Q. And what did you do when you got there?

12 A. I showed her and I told her what happened.

13 Q. Okay.

14 A. And then she called her mom down and wanted me to
15 show her and tell her what happened.

16 Q. Okay. Then what happened?

17 A. After I told her, her mom called the cops and a cop
18 came out. I talked to him first and I told him what had
19 happened. I didn't want to press the charges. I didn't
20 want to do it, but her mom had called anyways and the
21 cop came out.

22 Q. Why not?

23 A. Because I was scared that he would come after me
24 after he knew that I had pressed the charges.

25 Q. When you talked to the officer, were you truthful

1 with him?

2 A. When I talked to him, I told him a lot more when I
3 talked to him. And when I wrote my statement I wrote it
4 very brief because I didn't want to, I didn't want to do
5 it anyways.

6 Q. Okay. When is the next time you spoke with the
7 Defendant?

8 A. I can't remember the exact date, but it was at
9 least a week after it had happened.

10 Q. Okay. And what did y'all speak about?

11 A. I had called him and we talked on the phone and he
12 had told me, you need to go sign a paper dropping the
13 charges. And he told me, I want you to write me a
14 letter telling me this is what happened, you fell on the
15 front porch. So I did. I proceeded to write him a
16 letter and I came ---

17 Q. Do you remember what day that was, the date that
18 you wrote that letter?

19 A. No, sir, I don't. I don't remember the exact date.

20 Q. Okay. Do you recognize that?

21 A. Yes, sir.

22 Q. What is it?

23 A. That's the letter that I wrote to John Day.

24 There's two of them.

25 Q. Does that have a date on it?

- 1 A. Yes, sir.
- 2 Q. Does ---
- 3 A. They both have dates.
- 4 Q. I'm sorry. And that's the letters that you wrote
- 5 to him?
- 6 A. Yes, sir.
- 7 Q. Okay. At that time -- the letters you were
- 8 referring to in your earlier testimony?
- 9 A. Yes, sir.
- 10 Q. And, I'm sorry, what was the date on that again?
- 11 A. 7/19/2010.
- 12 Q. Okay. And so you disclosed on 7/6, July 6th, so
- 13 this was thirteen days after that. Okay. What were --
- 14 how many letters did you write?
- 15 A. I wrote him two.
- 16 Q. And what -- describe the substance of those
- 17 letters?
- 18 A. Okay. The first letter that I had written him was
- 19 stating that I fell on the front porch. I'm sorry that
- 20 I got you in trouble. And I love you. I want to be
- 21 with you. And then I wrote him another letter that was
- 22 really to him and I was telling him, look, I don't know
- 23 ---
- 24 Q. Okay. I'm just going to stop you there, quickly.
- 25 Just describe your emotions in that letter and your

1 intention -- I'm sorry. First, were your -- what was
2 the emotional tone of that second letter?

3 A. The second letter? I was very upset and I was mad.

4 Q. Okay. And what were your intentions in that letter
5 as far as getting back with him?

6 A. The first or the second? The second one?

7 Q. The second letter?

8 A. I told him, I said, I don't even know if we will
9 get back together because ---

10 Q. Okay. Let me stop you there. And so why two
11 different letters?

12 A. Because I was really -- mostly, like I was scared
13 that he was going to come after me and this time I
14 didn't know if -- what he was going to do. I had
15 written that letter and I actually come here and signed
16 the paper to drop the charges and I was just -- in the
17 second letter that I had written him when I was very
18 emotional and I was letting him have all of my emotions
19 and everything, and being completely honest with him, I
20 was just telling him, I don't know if it's worth us even
21 trying. Now, I thought I loved him. I wanted to get
22 back with him and ---

23 Q. So you loved him at that time?

24 A. I thought I did.

25 Q. Okay. Did y'all talk, other than by letter?

1 A. Yes, sir. I talked to him on the phone.

2 Q. Okay. And what did he tell you in those
3 conversations?

4 A. He told me he loved me, he was sorry. And I had
5 only talked to him once and that's whenever he told me
6 to write the letter. So ...

7 Q. The letter saying?

8 A. That I fell on the front porch.

9 Q. That you fell on the front porch?

10 A. Yes, sir.

11 Q. So you had written two letters, one which was, you
12 say, an honest letter where you were upset with him, you
13 didn't know if you were going to forgive him and get
14 back with him. And on the other hand, you wrote this
15 letter that he got you to write?

16 A. Yes, sir.

17 Q. Did you tell that stairs story to anybody else
18 after that?

19 A. Yes, sir.

20 Q. How many people did you tell that?

21 A. A lot. I even told my own mother that I fell on
22 the front porch.

23 Q. Okay. Is the person here today that hit you with
24 the hammer that day?

25 A. Yes, sir.

1 Q. Where is he?

2 A. Sitting right there.

3 Q. That's the Defendant in this case?

4 A. Yes, sir.

5 Q. Okay. Do you have any scars from the injuries?

6 A. Yes, sir. I have three scars.

7 Q. Okay. Would you mind showing the jury the scars?

8 A. Yes, sir.

9 Q. Just step down here.

10 A. I have, on my wrist right here, and it curves like
11 that right there.

12 MR. JOHNSON: Judge, if I may.

13 THE COURT: Yes, sir.

14 MR. JOHNSON: I've just -- I've seen the
15 pictures. I haven't seen ---

16 THE COURT: Oh, certainly. All right. I'm
17 going to ask you to step -- do you want her to step over
18 here.

19 MR. JOHNSON: Just right here. Just right
20 here.

21 THE COURT: All right, ma'am. If you'll let
22 the Defense attorney your scars, first.

23 MR. JOHNSON: Okay.

24 Q. Make sure that everyone sees that, okay? I think
25 he only saw the -- say it louder and so everybody can

1 hear you.

2 A. There is right here and it curves, on the side ...

3 Q. Okay.

4 A. And here.

5 Q. And I know we talked about it, you have scars ---

6 A. On my thigh. But they're up high.

7 Q. Pretty high up?

8 A. Yes, sir.

9 Q. Do you recognize these?

10 A. Yes, sir.

11 Q. Okay. What are they?

12 A. They are pictures that were taken by the police
13 officer that came to the house and they are where he hit
14 me with the hammer.

15 Q. Okay. And what is this first picture of? What is
16 State's Exhibit 3 a picture of?

17 A. That is my wrist, an up-close of my wrist.

18 Q. Okay. And so that's an accurate depiction of your
19 injuries on -- here it says 7/5/2010?

20 A. Yes, sir.

21 Q. And State's Exhibit 1 is a picture of?

22 A. That's my thigh where he hit me. And that's just

23 ---

24 Q. Okay. And again, State's Exhibit 2?

25 A. My wrist.

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Candice Stanley - Direct Examination by Mr. Bondurant

85

1 Q. This is just a different angle?

2 A. Yes, sir.

3 Q. Okay.

4 MR. BONDURANT: The State would seek to
5 introduce these into the record.

6 THE COURT: Any objection, other than those
7 already stated?

8 MR. JOHNSON: No, ma'am, Your Honor.

9 THE COURT: All right, then. Without
10 objection, they would be State's 1, 2 and 3. Is that
11 correct?

12 MR. BONDURANT: That's correct, Your Honor.

13 THE COURT: All right. They're moved into
14 evidence.

15 (WHEREUPON, State Exhibit Numbers 1, 2 and 3 were
16 admitted into evidence.)

17 MR. BONDURANT: Okay, Permission to publish
18 these?

19 THE COURT: Certainly.

20 (WHEREUPON, State Exhibit Numbers 1, 2, and 3 were
21 published to the jury.)

22 Q. How long did you stay with the Defendant after this
23 -- well, let me ask you this. Did y'all get back
24 together?

25 A. Yes, sir, we did.

1 Q. And where did you live?

2 A. [REDACTED]

3 Q. Okay. And how long did y'all stay together?

4 A. After we were together with -- I put in two months
5 breaks. We were together for a year and a half. It was
6 more than a year.

7 Q. Now, when you say two months breaks, you mean broke
8 up?

9 A. Yes, sir. I left one month and then later on I
10 left another month.

11 Q. Okay.

12 MR. BONDURANT: No further questions.

13 THE COURT: Mr. Johnson?

14 MR. JOHNSON: Your Honor, if I may allow the
15 jury to finish looking at the pictures and any scaring?

16 THE COURT: Certainly.

17 (WHEREUPON, Defendant Exhibit Numbers 1 and 2 were
18 marked for identification.)

19 THE COURT: They're finished.

20 MR. JOHNSON: Your Honor, if I may?

21 THE COURT: Yes, sir.

22 MR. JOHNSON: All right.

23 CROSS-EXAMINATION

24 BY MR. JOHNSON:

25 Q. Okay, Ms. Stanley, so the testimony you just gave

1 here before us today, that's the truth?

2 A. Yes, sir.

3 Q. Okay. Now, first, we talked earlier about a court
4 date, and I don't want to go into it, but what time was
5 that court date?

6 A. In the morning. I don't remember the exact time,
7 but it was in the morning around eight-thirty, nine
8 o'clock.

9 Q. Eight thirty, nine o'clock. Do you know what time
10 you left?

11 A. No, sir, I'm not sure, but it was around noon,
12 lunchtime.

13 Q. Around noon, lunchtime. Okay. Now, you stated
14 after you left court at lunchtime ---

15 A. Yes, sir.

16 Q. --- you went and hung out on the steps of a church
17 for a long time?

18 A. Yes, sir.

19 Q. And this is June 30th?

20 A. Yes, sir.

21 Q. Now, where did Mr. Day work?

22 A. I have -- I cannot remember.

23 Q. Was it called Spartan Felt?

24 A. I can't remember.

25 Q. You can't remember ---

1 A. Yes, sir.

2 Q. But he worked?

3 A. Yes, sir.

4 Q. Okay. Now, Ms. Stanley, I'm holding in my hand
5 what's called a time sheet or a time card. Do you know
6 what a time sheet or a time card is?

7 A. Yes, sir.

8 Q. What's that for?

9 A. Your hours that you work.

10 Q. Okay. Now, I'm going to show you -- let me find
11 the right date. Well, first let me ask you, are you
12 familiar with how military time works?

13 A. No, sir.

14 Q. Do you know that like twelve is twelve a.m. and
15 then twenty-four is the other end of it. Is that right?

16 MR. BONDURANT: Your Honor, may -- I've got an
17 objection. May we approach?

18 THE COURT: Yes, sir.

19 (WHEREUPON, Mr. Bondurant and Mr. Johnson
20 approached the bar.)

21 Q. You know, actually, I think I stated it wrong. I
22 think twelve is twelve noon. That's twelve p.m., and
23 then twelve a.m., is actually twenty-four. Have you
24 ever heard it like that before?

25 A. Yes, sir, I mean, I never used it but I kind of ---

1 Q. Okay. Anyhow, you stated you left court about
2 twelve?

3 A. Approximately.

4 Q. Approximately twelve. And then you sat out on the
5 church steps for two or three hours, right?

6 A. Yes, sir.

7 Q. Okay. Now, in my hand I'm holding Mr. Day's time
8 card or time sheet, and you stated you know what that
9 is, right?

10 A. Yes, sir.

11 Q. Now, I'm going to show you this time sheet. Now,
12 where is his name? Is it there?

13 A. Yes, sir.

14 Q. All right. Now, I want you to look at the day
15 recorded. Is it 6/30?

16 A. Yes, sir.

17 Q. And what time does it say he got into work?

18 A. Eleven-seventeen.

19 Q. And that's eleven-seventeen a.m., right?

20 A. Yes, sir.

21 Q. All right. But you stated that you left court at
22 twelve?

23 A. I said approximately. I don't remember the exact
24 time we went in or the exact time we left. It was
25 almost two years ago.

1 Q. Well, in any case, you went out to the church steps
2 and you hung out there for two or three hours, too,
3 right?

4 A. Yes, sir.

5 Q. Now, did you -- hold on one second. Now, you
6 stated on the 6th is when -- that's when you told the
7 police about it, right?

8 A. Yes, sir.

9 Q. Did you state -- I'm trying to remember, did you go
10 to work on the 6th?

11 A. Yes, sir, I did.

12 Q. What time did you go to work?

13 A. Four p.m.

14 Q. Okay. And you stated that before hand, you and
15 John were painting the bathroom?

16 A. No, sir. We had painted the bathroom that weekend.
17 He was putting the can -- the top back on the can of
18 paint.

19 Q. And what time was this?

20 A. I don't remember.

21 Q. Morning, afternoon?

22 A. It was earlier during the day.

23 Q. Earlier?

24 A. I'm not going to say morning or afternoon. I mean,
25 it was earlier and it was probably before afternoon, so

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Candice Stanley - Cross Examination by Mr. Johnson

91

1 in the morning.

2 Q. So in the morning?

3 A. Yes, sir.

4 Q. Early morning?

5 A. Yes, sir.

6 Q. Okay. Now, what time did John generally go to
7 work?

8 A. I can't remember. I didn't even remember where he
9 worked. I'm sorry.

10 Q. That's fine. Now, did you give a -- who was the
11 police officer who came and you talked to?

12 A. I don't remember his name, but he's here.

13 Q. He is here today, right?

14 A. Yes, sir.

15 Q. All right. Did you give him -- you stated you gave
16 him a written statement?

17 A. Yes, sir, I did.

18 MR. BONDURANT: I hate to do this, Your Honor,
19 can we approach, please?

20 THE COURT: That's fine. Just one moment,
21 ladies and gentlemen.

22 (WHEREUPON, Mr. Bondurant and Mr. Johnson
23 approached the bar.)

24 Q. So, Ms. Stanley, it's your testimony, and I'm sorry
25 to do it like this. I kind of got started and want to

- 1 keep my ground. You said today when you talked to the
2 officer, you did give him a statement. Is that correct?
3 A. Yes, sir.
4 Q. Yeah.
5 A. I talked to him and written a statement.
6 Q. You wrote a statement?
7 A. Yes, sir.
8 Q. Okay. Is this that statement?
9 A. Yes, sir, it is.
10 Q. Okay. Do you need to familiarize yourself with it
11 at all?
12 A. No, sir.
13 Q. Okay. Now, in this statement you state that when
14 you got home from court he started drinking. Is that
15 right?
16 A. No, sir.
17 Q. Is that not what the statement says?
18 A. From work, not court.
19 Q. When he got home from work he started drinking?
20 A. That's what I said in my statement.
21 Q. All right. Now, you stated here today that when
22 you got home from court he asked you to come in and he
23 beat you. Is that right?
24 A. Yes, sir.
25 Q. Now, was he drinking or was he not?

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Candice Stanley - Cross Examination by Mr. Johnson

93

1 A. No, sir, he wasn't.

2 Q. Now, who's Marion Stephens?

3 A. That is my best friend Melanie Montemayer's mother.

4 Q. Okay. And is that her name still Marion Stephens?

5 A. Yes, sir.

6 Q. Okay. Now, you told her, you gave her -- you told
7 her kind of what happened, too, right? Or your version
8 of what happened, right?

9 A. Yes, sir.

10 Q. Okay. Now, have you -- in your course in the
11 preparation of the trial, have you seen the statement?
12 Let me show it to you. Have you seen this?

13 A. No, ma'am.

14 Q. No, sir?

15 A. I mean, no, sir. I'm sorry. Excuse me. Pardon
16 me.

17 Q. That's okay. That's okay. So you've never seen
18 this?

19 A. No, sir.

20 Q. Okay. But are you aware ---

21 MR. BONDURANT: Objection, Your Honor, if he's
22 going to go into the substance of the material. Ms.
23 Stephens can testify. She can't testify to what Ms.
24 Stephens ---

25 MR. JOHNSON: Your Honor, I'm just asking her

1 if she's aware.

2 THE COURT: All right. I'll allow you to ask
3 the question. Just be careful.

4 MR. JOHNSON: Okay.

5 Q. Are you aware that she portrayed in her statement
6 that he would not let you leave and when he went to work
7 is when you got out and came over there?

8 A. No, sir. I didn't know that.

9 Q. Did you tell her that?

10 A. No, sir, I didn't. Because I left from work to go
11 to her house.

12 Q. So is she lying?

13 MR. BONDURANT: Objection, Your Honor.

14 THE COURT: Sustained. Careful about pitting.

15 Q. Now, I just previously marked as Defense Exhibit
16 Number 1 and Defense Exhibit Number 2 the two letters
17 that we spoke of earlier. Are these the letters?

18 A. Yes, sir, they are.

19 Q. Now, you referred to one as the first and then one
20 as the second one.

21 A. Yes, sir.

22 Q. In other words, one is one that he tells you to
23 write and the other one is the one that was your true
24 feeling. Okay.

25 MR. JOHNSON: Your Honor, at this time, I

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Candice Stanley - Cross Examination by Mr. Johnson

95

1 believe there's no objection. I'd like to enter these
2 into evidence.

3 MR. BONDURANT: No, objection, Your Honor.

4 THE COURT: All right. Then without objection
5 as Defendant's 1 and 2.

6 (WHEREUPON, Defendant Exhibit Numbers 1 and 2 were
7 admitted into evidence.)

8 A. Can I tell you which is which?

9 Q. Sure.

10 A. The one-page is the one that I wrote to him that we
11 had planned about me falling on the stairs. The two-
12 page letter is the one that I wrote to him with my true
13 feelings.

14 MR. JOHNSON: Since they're in evidence, what
15 I'd like to do is, what I'd like to do is portray the
16 letters to the Court at this time. Permission to
17 publish to the jury by reading.

18 THE COURT: Yes, sir.

19 MR. JOHNSON: All right.

20 Q. All right. Now ---

21 A. That's the one that I had planned to write.

22 Q. This is the one that you had planned to write?

23 A. Yes, sir.

24 Q. Okay. All right. You say ---

25 MR. JOHNSON: It says on 7/19/10, it says,

1 Baby, you know that I fell on the front porch at the
2 house and cut my leg and arm. I'm so sorry that I lied
3 on you and you got locked up. I just wanted you to hurt
4 as bad as I did when I thought you were cheating on me.
5 You know what really happened and know you did nothing
6 wrong. I will do whatever it takes to make this go
7 away. I love you so much and I want to be with you
8 forever. Please forgive me for everything I did wrong.
9 Please don't give up on us and let's work this out when
10 you get out. I didn't mean to take all of your money
11 either and I will pay it all back to you. I already
12 gave sixty to Sandra, and I'll give you a hundred and
13 twenty more when I get paid next, but I don't know who
14 to give it to you. Do you want me to give it to Sandra
15 to give to you? Hope to hear from you soon and please
16 don't give up on us. Take into consideration what all I
17 have told you. I love you and I miss you very much.
18 Candice.

19 Q. Now, I read that right. Is that right?

20 A. Yes, sir.

21 Q. Now, here's the other letter. And this is the one
22 you say these are your feelings?

23 A. Yes, sir.

24 Q. All right.

25 MR. JOHNSON: I got an appointment set for

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Candice Stanley - Cross Examination by Mr. Johnson

97

1 Wednesday to sign that paper. Now, if this works out
2 then we're starting out brand new. I want it to be like
3 we never met before. You will tell me everything ---

4 Q. And everything is in capitals and underlined?

5 A. Yes, sir.

6 MR. JOHNSON: --- about the beginning to end
7 and no -- excuse the language to the Court -- bullshit.
8 I want to know who all you cheated on and who it was
9 with, all of your kids and their moms and no sex until a
10 few months later. If you love me, then you will do
11 this, start over fresh and new and the past will be the
12 past. I'm getting a house pretty soon. It's three
13 bedrooms, two baths and it's in Greenville. I haven't
14 been doing much but this is going to take a while for
15 both of us to get over and a lot of work and a lot of
16 trust and a lot of love. There is so much -- again,
17 excuse the Court -- shit you have lied to me about.
18 And, yes, I do believe you did cheat on me with
19 Jennifer, Michelle, Shay, Tammy, and Candy. There's too
20 much evidence that you cheated in the past, why not do
21 it again. You have serious problems and I hope you get
22 help with them. And don't ever, I mean ever, lie to me
23 again about anything. I'm still upset and trying to
24 decide whether or not it would be worth even trying to
25 fix. We're so far apart on too many things and I'm

1 trying really hard to see past all the bad, but I don't
2 know who the real John Day is. When or if you write
3 back send it to Robert. But put my name and he will
4 give it to me. Love, Candice.

5 Q. So those are the two letters?

6 A. Yes, sir.

7 Q. Now, first of all, is it true did you think or did
8 he cheat on you?

9 A. Yes, sir.

10 Q. So that's true?

11 A. Yes, sir.

12 Q. And that's in both of the letters. Is that right?

13 A. Yes, sir.

14 Q. Now, you say in the second letter, you just let it
15 all out. Those were your emotions, right?

16 A. Yes, sir.

17 Q. Okay. Now, in that second letter -- look through
18 it if you need to -- but in that second letter, do you
19 say anything about him hitting you with the hammer?

20 A. No, sir, I don't. I just say I don't know if us
21 working out is even going to work and I tell him how --
22 let's see. I want to start over. If this works out ---

23 Q. Well ---

24 A. I told him, I said, if this works out -- meaning me
25 signing the paper. I told him I was going to sign that

1 paper to drop the charges. If this works out, I wanted
2 us to start over new. Know everything from his kids to
3 who he's been with while we were together, everything.
4 But no, I did not say that he hit me with the hammer in
5 either letter.

6 Q. Okay. Now, this is the second letter, once again.
7 Now, the first thing that you say obviously is that you
8 fell on the front porch at the house and cut your leg
9 and arm and you're sorry that you lied. And that,
10 according to you today, was a lie?

11 A. Yes, sir.

12 Q. Well, let's go -- let's break down the rest of the
13 letter, okay?

14 A. Okay.

15 Q. All right. You stated, I just want you to hurt as
16 bad as I did when I thought you were cheating on me.
17 And you stated -- excuse me. Let me ask the question.
18 And you stated that you did believe that he cheated on
19 you?

20 A. Yes, sir.

21 Q. Okay. Now, you stated, please forgive me for
22 everything I did wrong. Please don't give up on us and
23 let's work this out when you get out. And when you said
24 that, you were talking about him being in jail, because
25 you were writing him while he was in jail?

1 A. Yes, sir.

2 Q. And he was incarcerated on these charges. Is that
3 right?

4 A. Yes, sir.

5 Q. And when he got out, did y'all work it out?

6 A. Yes, sir. We got back together.

7 Q. Y'all got back together. And y'all were back
8 together for a good bit of time. Is that right?

9 A. Yes, sir.

10 Q. So that's true?

11 A. Yes, sir.

12 Q. All right. And then you says, I didn't mean to
13 take all your money either and I will pay it back -- pay
14 it all back to you. I already gave sixty to Sandra, and
15 I'll give you a hundred and twenty more when I get paid
16 next, but I don't know who to give it to. So is that
17 part true?

18 A. Yes, sir.

19 Q. So you took his money. How much did you take?

20 A. I took four hundred dollars.

21 Q. Did you just take four hundred?

22 A. Yes, sir, because we had a joint bank account and
23 my checks always went into the account.

24 Q. What about his checks, did they go into the
25 account?

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Candice Stanley - Cross Examination by Mr. Johnson

101

1 A. Yes, sir.

2 Q. Okay.

3 MR. JOHNSON: Your Honor, I have no intention
4 of introducing this into evidence. I'm just using it
5 for purposes of cross-examination.

6 THE COURT: All right.

7 MR. JOHNSON: Charlie's seen this.

8 Q. Okay. Now, I got the records from Bank of America
9 showing the transactions. It looks like it starts
10 roughly 6/21/2010 and it goes to about 7/12. Okay.
11 Now, is this account still open?

12 A. No, sir.

13 Q. Why is it closed?

14 A. To my understanding something bounced and wasn't
15 able to come out and so they closed the account.

16 Q. Something bounced. I mean, who bounced it? Did
17 you bounce it or did John bounce it?

18 A. I know it wasn't anything of mine that was drawn
19 out, so he had to have bounced it.

20 Q. Well, let's be clear. John was in jail from 7/7
21 right?

22 A. Yes, sir.

23 Q. To your knowledge, I mean, can he use the debit
24 card from jail?

25 A. No, sir.

- 1 Q. All right. So you had it?
- 2 A. Yes, sir.
- 3 Q. All right. Now, let's go over here to 7/7, here.
- 4 Please portray to the court the transactions, starting
- 5 on 7/7?
- 6 A. Fourteen dollars and eighteen cent -- or eighty-one
- 7 cent.
- 8 Q. Okay. What about that one?
- 9 A. Two hundred and two dollars.
- 10 Q. Now, what's that?
- 11 A. I have no idea.
- 12 Q. Well, it takes it over here.
- 13 A. Withdrawal.
- 14 Q. It was a withdrawal. And what day was that?
- 15 A. 7/12.
- 16 Q. And it looks like another transaction. What's
- 17 that?
- 18 A. 7/12.
- 19 Q. And how much money?
- 20 A. Two-oh-two.
- 21 Q. And was it a withdrawal?
- 22 A. Yes, sir.
- 23 Q. And then what's this on 7/12?
- 24 A. Fifty-four.
- 25 Q. And where was this at?

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Candice Stanley - Cross Examination by Mr. Johnson

103

- 1 A. Texas Road House.
- 2 Q. Who did you go out to eat with?
- 3 A. Melanie and her sister and her little brother?
- 4 Q. Did you take them out to eat?
- 5 A. Yes, sir, I did.
- 6 Q. Now, so did y'all share money and that's how it
- 7 works?
- 8 A. Yes, sir.
- 9 Q. So y'all didn't care whose money was whose?
- 10 A. No, sir.
- 11 Q. All right. Now, also in this statement it shows
- 12 additions to the account. It shows money going in.
- 13 Now, so he's in jail and you're out. Are y'all still
- 14 together?
- 15 A. At this time I would say no.
- 16 Q. You would say no?
- 17 A. We were talking but we were not together.
- 18 Q. Y'all are not together. He's arrested ---
- 19 A. Yes.
- 20 Q. --- and you were the reason he was arrested, right?
- 21 A. Yes, sir.
- 22 Q. Now, and that happens on July 7th, right?
- 23 A. Yes, sir.
- 24 Q. Now, here is this. What's this on July 9th? This
- 25 says -- now, what does that say?

1 A. Deposits.

2 Q. Deposits.

3 A. And other additions.

4 Q. Deposits and other additions. Excuse me. I don't
5 mean to be like I'm barking at you. Now, what happened
6 on the 9th?

7 A. His check got deposited into the account.

8 Q. How much was it?

9 A. Four hundred and sixty-one dollars.

10 Q. Now, do you think that you're entitled to spend
11 that money?

12 A. Yes, sir, at the time I did because my checks
13 always went in there and I never saw any of the money.
14 It was always to pay the bills like his child support,
15 his truck payment, the house payment, the power bill,
16 the cell phone bill, stuff like that.

17 Q. Is that what you used it for it?

18 A. Yes, sir. Oh, no, no. His money that I took out?

19 Q. Uh-huh (affirmative).

20 A. Oh, no, sir. I didn't use it for that.

21 Q. Okay. All right. Now, I know that that's -- and
22 this happened on the 9th and he's in jail and we agree
23 that y'all are not together?

24 A. Yes, sir.

25 Q. So that's not y'all's money, that's his money. So

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Candice Stanley - Cross Examination by Mr. Johnson

105

1 you took his money?

2 A. Yes, sir, I did.

3 Q. Do you know that that's considered -- taking

4 somebody's stuff, is that considered a crime. Is that,

5 you know, is that legal?

6 A. No, sir, it's not.

7 Q. Now, all the money you took out, and you go to the

8 ATM, do you get receipts? Can you see the balance on

9 the screen?

10 A. I don't remember. It was inside the bingo hall

11 where I worked.

12 Q. Okay. But you -- I mean, you've been to ATMs in

13 the past, right?

14 A. Oh, yes, sir, like that ---

15 Q. So you're familiar with how they work?

16 A. Yes, sir.

17 Q. So if you take money out, you can see a balance,

18 can't you? Or they give you a receipt showing you your

19 balance?

20 A. Yes, sir.

21 Q. That's how it works, right?

22 A. (No verbal response.)

23 Q. Now, I'm showing here the balance. Now, what's the

24 balance? What does that say?

25 A. Negative two hundred and twenty-four.

1 Q. Negative two hundred and twenty-four dollars. So
2 the money you were taking out, it wasn't even in the
3 account?

4 A. I don't think it would have let me get the money --
5 get the money out of the account if it wasn't in there.

6 Q. Have y'all got overdraft protection?

7 A. Yes, sir, I think we did. We had every little
8 thing that Bank of America had.

9 Q. Okay. Well, that's how you get it. But you took
10 it out and you knew it wasn't yours?

11 A. Yes, sir.

12 Q. And that's in the letter, right? That's in the
13 letter you say is false that you made up, and that's
14 true?

15 A. Yes, sir.

16 Q. That's all true. So we know that's true and the
17 cheating on you thing that's true, so that's two parts
18 of the letter. And I understand that you're saying you
19 fell down and that's not true, but those two parts are
20 true, right?

21 A. Yes, sir.

22 Q. All right.

23 MR. JOHNSON: Let me make sure if I have
24 anything else.

25 Q. Now, you talk about, you know, so those are the

1 three main parts of that letter. So everything's true
2 in that letter, except for the part where you say you
3 fell down the stairs?

4 A. Yes, sir.

5 Q. But you just threw that other stuff in there, just
6 to make it sound better, I guess, is what you're saying?

7 A. Yes, sir.

8 Q. Now, Ms. Stanley, this happened -- this allegedly
9 happened on June 30th, right?

10 A. Yes, sir.

11 Q. And you reported it on the 6th?

12 A. Yes, sir.

13 Q. Now, all this time you go to work, right?

14 A. Yes, sir.

15 Q. How many jobs did you have?

16 A. If I remember correctly, just one. The bingo hall.

17 Q. Just one job?

18 A. Yes, sir, I think so.

19 Q. You weren't also working at Platinum Plus at this
20 time?

21 A. No, sir, no.

22 Q. Is that where you work now?

23 A. Yes, sir.

24 Q. Okay. But you didn't -- I mean, so what did you --

25 I don't see any of your money coming into the account.

- 1 You said you put it in there too. I see some cash
2 deposits. You sure you're telling us the truth?
- 3 A. Yes, sir. Can I ask you how much the deposits were
4 that you're talking about, the cash deposits?
- 5 Q. Sure. I'll show it to you. Five hundred dollars.
- 6 A. There were no checks deposited in there. What is
7 this? This is -- is this the only page of the deposits?
- 8 Q. Yes. It's the only page for that statement. You
9 can look through it and see if you can find something
10 else, but that's what it is.
- 11 A. This is only from 6/18 to 7/09 deposits.
- 12 Q. Apologies. I'm sorry. I didn't get the statements
13 previous to that. But you want to go into that, what
14 does the deposit say?
- 15 A. On 6/18 there's a Bank of America ATM for savings,
16 Greer Main. On the 24th, Bank of America ATM, Greer
17 Main; Spartan Felt, on-line banking transfer from
18 savings, overdraft protection and Spartan Felt.
- 19 Q. So Spartan Felt, that's where -- we've established
20 that's John works, right?
- 21 A. Yes, sir.
- 22 Q. And so that's -- he -- oh, another deposited
23 happened on the 2nd of July, right?
- 24 A. Yes, sir.
- 25 Q. Okay. So the 2nd of July and the 9th of July are

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Candice Stanley - Cross Examination by Mr. Johnson

109

1 two big deposits in those days?

2 A. Yes, sir.

3 Q. And those are not your deposits, right?

4 A. No, sir.

5 Q. All right. Now, do you know this young lady?

6 A. I think I came to her to sign the paper to drop the
7 charges against John. I think it was her.

8 Q. That is correct. You came to her and you filled
9 out what's called an affidavit not to prosecute, right?

10 A. Yes, sir.

11 Q. And you said -- well, let me show you. Is this it?

12 A. Yes, sir, it is?

13 Q. Okay. Now, what date does it say that this
14 happened? Does it say a date?

15 A. I have no idea. I'm sure it does. It probably
16 does.

17 Q. There it is. There.

18 A. The 30th of July.

19 Q. Was John in jail?

20 A. I think so. I can't remember, but I'm pretty sure,
21 yes, he was in jail.

22 Q. You can take my word. He was in jail, okay?

23 A. Okay.

24 Q. So he didn't walk you up there, right?

25 A. No, sir.

1 Q. He didn't walk you up to her office?

2 A. No, sir.

3 Q. Do you know who I am?

4 A. Yes, sir.

5 Q. Did we know each other before today?

6 A. Not really, no.

7 Q. Not really, but we've spoken before?

8 A. Yes, sir.

9 Q Okay. But you came up and you filled out this
10 paperwork with Cam?

11 MR. JOHNSON: As a matter of fact -- do you
12 have any objection?

13 MR. BONDURANT: No.

14 MR. JOHNSON: I'd like this marked as Defense
15 Exhibit Number 3.

16 (WHEREUPON, Defendant Exhibit Number 3 was marked
17 for identification.)

18 MR. JOHNSON: Your Honor, he didn't have no
19 objection. I'd like to admit this into evidence.

20 THE COURT: All right. That will be entered
21 as Defendant's Exhibit Number 3.

22 (WHEREUPON, Defendant Exhibit Number 3 was admitted
23 into evidence.)

24 Q. Okay. Now, would you please read the text of it to
25 the Court? It's been entered into evidence,

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Candice Stanley - Cross Examination by Mr. Johnson

111

1 A. Yes, sir. It says: Personally appeared before me,
2 who first being duly sworn, states that on or about the
3 date of July 7, 2010, warrants I581945 were signed
4 against John J. Day charging him with CDV high
5 aggravated. That Candice Stanley, the victim in the
6 above referenced case, wants to -- this case dismissed.
7 Does hereby request that the Solicitor dismiss the
8 warrant. Has not been threatened nor promised anything
9 to request the dismissal of this warrant. And then my
10 signature.

11 Q. Okay. Now, in this document it says, you have not
12 been threatened nor promised anything to request the
13 dismissal of this warrant. Is that right?

14 A. Yes, sir.

15 Q. And you gave it to her and you gave this sworn
16 statement to her, right?

17 A. Yes, sir.

18 Q. And we sent this upstairs to Mr. Bondurant, didn't
19 we?

20 A. Yes, sir.

21 Q. So -- but we're here today and we're in trial,
22 right, and you're prosecuting this case?

23 A. Yes, sir.

24 Q. All right. So were you telling the truth to Ms.
25 Jones, were you being truthful?

- 1 A. No, sir.
- 2 Q. Now, she's my investigator. You were being
3 untruthful to me, too, right?
- 4 A. Yes, sir.
- 5 Q. And you were lying to Mr. Bondurant, weren't you?
- 6 A. Yes, sir.
- 7 Q. This is the last thing I've got, Candice, so I'm
8 just about done. Anyhow, I asked you earlier, I asked
9 you earlier, I referred to the alleged incident date was
10 6/30 and we've established that his time sheet said that
11 he went to work at eleven thirty-six or eleven-
12 seventeen, excuse me. And got off at sixteen thirty-
13 five, which I think is four thirty-five. Excuse me if
14 I'm wrong. And then you state that you also went to
15 work. And did you work -- excuse me if you've already
16 said it. Did you work everyday?
- 17 A. No, sir.
- 18 Q. Okay. What were your days?
- 19 A. My days were Thursday through Monday. I worked
20 five days a week. Tuesday and Wednesday were my days
21 off.
- 22 Q. Okay. Now, on 6/30 that was a Wednesday, right?
- 23 A. Yes, sir.
- 24 Q. So did you work the rest of that weekend or week?
- 25 A. Yes, sir, after Wednesday. I didn't work

1 Wednesday, but I worked Thursday through Monday after
2 that.

3 Q. And was this at the Dairy Queen or at the bingo
4 hall?

5 A. At the bingo hall.

6 Q. And your hours were what, four to what?

7 A. Four to approximately eleven, eleven-thirty.

8 Q. Now, there's somebody else in the courtroom named
9 Robert?

10 A. Yes, sir.

11 Q. When did Robert work? What was his customary
12 hours?

13 A. They just varied from whenever they needed him.

14 Q. They varied from time-to-time?

15 A. Yes, sir.

16 Q. Okay. Now, again, I'll refer to you on his time
17 sheet. Now, according to this time sheet, you see it
18 again, John Day?

19 A. Yes, sir.

20 Q. So he went to work Wednesday, the 30th, like you
21 said, right?

22 A. Yes, sir.

23 Q. And then he went to work Thursday, too, right?

24 A. Yes, sir.

25 Q. And then he got off, it looks like, what is that?

1 Seventeen. I guess that's five o'clock. Is that right?

2 It says seventeen. Is that right, about five o'clock.

3 And then he worked again on Friday. Went in at six

4 fifty-three, right?

5 A. Yes, sir.

6 Q. And then he got off at fifteen-thirty. And I want

7 to say that's three-thirty. Three-thirty. Okay. So he

8 went to work those days.

9 A. Yes, sir.

10 Q. And you went to work those days?

11 A. Yes, sir.

12 Q. And all this time is passing. But this time you

13 say you were scared of him during this time, right?

14 A. Yes, sir.

15 Q. You were scared of him? But he wasn't nowhere near

16 you?

17 A. No, sir. Not until Saturday and Sunday.

18 Q. Not until Saturday and Sunday, but we're talking

19 about these three days. Now, what's the significance of

20 this weekend or that weekend. We're talking about

21 Friday, July 2nd, what's the significance?

22 A. I'm sorry. I don't understand.

23 Q. Well, July 4th is a Holiday, isn't it?

24 A. Yes, sir.

25 Q. Yeah. That's the 4th of July. And isn't it true

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Candice Stanley - Cross Examination by Mr. Johnson

115

1 that he had that July, July -- Monday, July 5th off?

2 A. I don't remember. Probably.

3 Q. Huh?

4 A. Yes, he was at the house. I do remember. Yes.

5 Q. Now, did y'all go see fireworks?

6 A. On the 4th we did.

7 Q. Y'all did go see fireworks, right?

8 A. Yes, sir.

9 Q. And did y'all -- I mean, did y'all, I mean, how
10 were y'all acting towards each other? I mean, because,
11 you know, you know, some people they go see fireworks
12 and stuff and, you know, it's kind of, you know, if you
13 had a girl or a guy with you, you kind of, you know,
14 it's kind of a ---

15 MR. BONDURANT: Your Honor, objection. Is
16 there a question there?

17 MR. JOHNSON: I'm getting to it, Judge. I
18 apologize.

19 THE COURT: He's getting to it. He's getting
20 to it.

21 MR. JOHNSON: I'm getting to it.

22 THE COURT: Overruled.

23 Q. Anyhow, you know, you go see fireworks or something
24 like that together, it was kind of a -- not an intimate
25 situation, but it's kind of a, say, romantic or

1 something like that. Were y'all like that?

2 A. Probably, yes.

3 Q. Okay.

4 A. Because I know that after it happened we were even
5 sexually active that night.

6 Q. Okay. So anyhow, y'all were like that. But isn't
7 it true that everything wasn't well. Still, you know,
8 still got these charges in the back of your mind, in the
9 back of his mind, we all know that these things existed,
10 right?

11 A. Yes, sir.

12 Q. Okay. Now, isn't it true that, you know, at some
13 point you tried to kiss him and he wouldn't kiss you?
14 Isn't that true?

15 A. I don't remember.

16 Q. You don't remember that? He'd already told you
17 that you had to leave the house. Isn't that right?

18 A. That I had to leave the house?

19 Q. Uh-huh (affirmative).

20 A. When?

21 Q. Didn't he already tell you that you had to leave
22 the house?

23 A. No, sir.

24 Q. He didn't tell you that?

25 A. No, sir.

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Candice Stanley - Cross Examination by Mr. Johnson

117

1 Q. Whose house -- I mean, whose house was it?

2 A. His.

3 Q. It was his house, right? He told you you had to
4 leave?

5 A. I don't remember him telling me to leave.

6 MR. BONDURANT: Your Honor, objection.

7 Testifying for the Defendant.

8 THE COURT: I think it's proper cross-
9 examination. Go ahead.

10 Q. Anyhow, he told you to leave, right?

11 A. I don't remember, no, sir. I don't remember him
12 telling me ---

13 Q. And then at some point, you left the house, didn't
14 you?

15 A. I left on Monday.

16 Q. You left on the 6th when he told you to leave. You
17 didn't have no place stay?

18 A. No, sir.

19 Q. So then you went and stayed, then you went and
20 stayed with -- what's the last name? Stephens, Marion
21 Stephens. Isn't that right?

22 A. Yes, sir.

23 Q. Then you started telling these stories, didn't you?

24 A. Telling what stories?

25 Q. Telling these stories about him hitting you with a

1 hammer?

2 A. He really hit me with a hammer.

3 Q. Uh-huh (affirmative). Okay.

4 A. They're not stories.

5 Q. And you're telling us the truth today, though?

6 A. Yes, sir.

7 Q. You were lying those other times, but you expect us
8 to believe you now?

9 A. That's why I'm here. All I can do is tell the
10 truth.

11 Q. You ever heard of *The Boy Who Cried Wolf*?

12 A. Yes, sir, I know.

13 Q. Okay.

14 A. Trust me. I know it very well.

15 Q. All right. But you didn't learn nothing from it.

16 MR. JOHNSON: I have nothing further.

17 THE COURT: All right. Mr. Bondurant,
18 anything on redirect?

19 MR. BONDURANT: Yes, ma'am.

20 **REDIRECT EXAMINATION**

21 **BY MR. BONDURANT:**

22 Q. A few quick things. Mr. Johnson talked about your
23 statement to police on that night.

24 A. Yes, sir.

25 Q. That you were completely untruthful, lied. Why

1 were you untruthful?

2 A. Because I didn't want him to get into more trouble
3 with the statement that I was writing.

4 Q. Were you still scared at this point?

5 A. Yes, sir.

6 Q. And why were you scared?

7 A. I was scared -- you mean when I wrote this
8 statement? I was scared ---

9 Q. When you wrote the statement why were you scared?

10 A. I was scared that he was going to go to jail and
11 that whenever he got out, he was going to come after me.

12 Q. Okay. Mr. Johnson also got into the two letters
13 that you wrote.

14 A. Yes, sir.

15 Q. And he talks about how you wrote in the letter
16 where you go on to say, start by saying, you know that I
17 fell on the front porch, that you wrote about that, the
18 cheating in that one as well. But you also included the
19 cheating in the other one. Isn't that correct?

20 A. Yes, sir.

21 Q. And why would you put the cheating in this letter
22 about falling on the stairs?

23 A. To kind of make the story go more along with me
24 trying to get him in trouble, because that would have
25 been kind of my motive to get him in trouble because he

1 was cheating on me.

2 Q. Okay. And Mr. Johnson also goes into the fact that
3 you didn't mention a hammer?

4 A. Yes, sir.

5 Q. Did you mention the abuse whatsoever in this
6 letter? In either letter did you mention abuse?

7 A. I don't think so in either one.

8 Q. Why not?

9 A. I can't remember. I don't remember.

10 Q. When you wrote this letter, when you wrote this
11 letter -- why did you write the second letter about the
12 stairs?

13 A. I wrote the one about the stairs because we had
14 planned to use that, and that I was going to sign the
15 paper and drop the charges and this was going to be his
16 whole, look she fell on the stairs. This is her
17 confession right here that I didn't hit her with a
18 hammer; she fell on the stairs. And I was going along
19 with it.

20 Q. Okay. So one's a letter to cover him up?

21 A. Yes, sir.

22 Q. So if you're writing a letter to cover him up in
23 one, would you mention a hammer and everything else in a
24 written document ---

25 A. No, sir.

- 1 Q. --- in the other one? Let's talk about -- Mr.
2 Johnson made a big deal about money. Tell us about how
3 y'all dealt with money?
4 A. We had a joint account. Both checks, my check -- I
5 got paid every two weeks, and I'm pretty sure he got
6 paid every week. But they would both go into the
7 account. Approximately every two weeks, I made three
8 hundred dollars. I was working at a minimum wage job
9 and we -- our money would be spent on his truck payment,
10 the child support. Of course, our rent payment, the
11 power payment and stuff like that. I had a car and my
12 car payment every month was a hundred dollars a month
13 and my car actually got repo'ed at one point in time and
14 I had a three hundred repo fee because we couldn't pay
15 my hundred dollar car payment that month because of
16 other things we had to pay, like child support, his
17 truck payment, stuff like that.
18 Q. What about just spending money?
19 A. I don't remember. But I'm sure it was very little.
20 Q. Who doled out the money to you?
21 A. He did. He used the cards and the money for pretty
22 much everything. If I used the card, I let him know and
23 asked him.
24 Q. If you used the card, did you let him know?
25 A. I pretty much asked him, can I use the card on

1 this?

2 Q. Okay. Did you ever look at the bank statements?

3 A. No, sir.

4 Q. Never reviewed them or anything like that?

5 A. No, sir.

6 Q. Did you know how much he made?

7 A. No, sir.

8 Q. Okay. So Mr. Johnson asked you if it was illegal
9 to take money out of your own checking account. Do you
10 think that's illegal?

11 A. No, sir. Both of our names were on it.

12 Q. And you were putting money into that account,
13 right?

14 A. Yes, sir.

15 Q. Were you ever charged with a crime for taking that
16 money out?

17 A. No, sir.

18 Q. Mr. Johnson also brought up the fact that you
19 started working at Platinum Plus.

20 A. Yes, sir.

21 Q. Why did you start working at Platinum Plus?

22 A. We needed more money. It was his idea. I started
23 out as a waitress. And about a month and a half after I
24 started waitressing he said, we need more money. And I
25 knew how much the dancers made and I started dancing.

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Candice Stanley - Recross Examination by Mr. Johnson

123

1 Q. Okay. And do you still work there now?

2 A. Yes, sir, I do.

3 Q. And how often do you work there?

4 A. Once a week.

5 Q. Why?

6 A. Because I don't need that -- to make that much
7 money as I did before. I used to work five days a week.

8 MR. BONDURANT: There's no further questions.

9 MR. JOHNSON: Very briefly recross, Your
10 Honor.

11 **RECROSS EXAMINATION**

12 **BY MR. JOHNSON:**

13 Q. All right. Once again, if I understand you
14 correctly, you stated that you wrote the letter about
15 the fall on the stairs ---

16 A. Yes, sir.

17 Q. --- so that you could help John out essentially?

18 A. Yes, sir.

19 Q. Okay. Now, John in this case, he's the Defendant,
20 right? The Defendant?

21 A. Yes, sir.

22 Q. He's the person charged with the crime?

23 A. Yes, sir.

24 Q. Okay. Now, who charges people with crimes? The
25 police, right?

- 1 A. Yes, sir.
- 2 Q. Now, what's his role? Do you know his role?
- 3 A. Who, Charlie?
- 4 Q. Yeah.
- 5 A. To prove John guilty. I ---
- 6 Q. Yeah. I guess so. He's the Prosecutor, right?
- 7 A. Yes, sir.
- 8 Q. He prosecutes cases. So the police charge the
- 9 cases and Charlie prosecutes the cases, right? So
- 10 they're in control. They're in control of the charges,
- 11 aren't they?
- 12 A. Yes, sir.
- 13 Q. If he wanted to dismiss this case, could he do it?
- 14 A. Yes, sir.
- 15 Q. What about the policeman?
- 16 A. I don't know if he could or not.
- 17 Q. He would wield great influence on that, wouldn't
- 18 he?
- 19 A. Yes, sir.
- 20 Q. But you state in here today you're going to tell
- 21 the jury that you're going to write a letter to John.
- 22 You wrote a letter to try to get John out of something,
- 23 to John. You wrote it to him. He doesn't have a bit of
- 24 control. He's in jail. What is he going to do?
- 25 A. When I spoke to him, he told me to write the

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Candice Stanley - Recross Examination by Mr. Johnson

125

1 letter. And then he also told me -- I had no idea about
2 signing the paper to drop the charges until he told me.

3 Q. Okay.

4 A. I didn't know there was anything I could do, so I
5 wrote the letter, I put I fell on the stairs; you know
6 that didn't happen. And I came up here -- I took my
7 time to come up here and sign the paper.

8 Q. Okay. Anyhow, you're stating that you tried to
9 write a letter to get him out of something to him?

10 A. Yes, sir. That was his idea, write me a letter.

11 Q. Now, it was because -- I mean, were you afraid to
12 tell Charlie something like that or something? Would
13 that have anything to do with it?

14 A. I didn't know about him at the time. I didn't know
15 ---

16 Q. You didn't know about Charlie?

17 A. No, sir. He had -- the whole time that this was
18 happening, while I was still staying with John, he was
19 talking to my mom. I didn't know about him until later
20 on. And the only reason I knew about her is because
21 John informed me of it, to come and sign the paper.

22 Q. The question I have, if you wanted to try to get
23 John out of something, wouldn't it be a better place
24 telling it to a Solicitor's office -- I understand, you
25 know -- did you know what a prosecutor was? I

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Candice Stanley - Recross Examination by Mr. Johnson

126

- 1 understand you know who Charlie was, but did you know
2 where the prosecution's office was?
- 3 A. No, sir. I didn't know anything about any of this.
- 4 Q. Oh, you didn't know about that system. But you did
5 know who the police officer was, right?
- 6 A. That filed the charges?
- 7 Q. Yeah.
- 8 A. Yes, sir. I wouldn't remember his name.
- 9 Q. But you don't remember his name? Okay. All right.
- 10 A. But I did, by coming up here signing that paper,
11 try to help him.
- 12 Q. Okay. Okay. Now -- but we agreed, I mean, you
13 already lied to the police officer, right?
- 14 A. Lied to ...
- 15 Q. In your statement?
- 16 A. Yes, sir, on my written statement, yes, sir, I
17 lied.
- 18 Q. You lied to him. Is that a crime?
- 19 A. Yes, sir.
- 20 Q. Lying to the police is a crime, isn't it?
- 21 A. Yes, sir.
- 22 Q. Okay. I understand there might be some
23 discrepancies with this Bank of America thing, but lying
24 to the police is a crime, isn't it?
- 25 A. Yes, sir.

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Candice Stanley - Recross Examination by Mr. Johnson

127

1 Q. All right.

2 THE COURT: Mr. Bondurant, anything else?

3 MR. BONDURANT: Nothing, Your Honor.

4 THE COURT: Ma'am, you can step down.

5 Ladies and gentlemen, we've come to a good point
6 for a lunch break. We've probably gone past a good
7 place for a lunch break, if it were up to me. Let's be
8 in recess until two thirty. So if you'll be back in
9 your jury room about two twenty-five, so we can start
10 promptly at two thirty, I sure would appreciate it.
11 Please don't discuss the case with anyone.

12 (WHEREUPON, the jury exited the open court at
13 approximately 1:18 p.m.)

14 THE COURT: Mr. Bondurant, does Mr. Day have
15 any convictions with which you would try to impeach him
16 if he were to take the stand?

17 MR. BONDURANT: No, Your Honor.

18 THE COURT: All right. Mr. Day, I understand
19 that you're in jail over the lunch break. I do want
20 you, however, to discuss with your attorney, if you have
21 not already discussed with him, whether or not you
22 intend to testify in this case.

23 MR. DAY: Yes, ma'am.

24 THE COURT: I'm going to go through a litany
25 of rights with you about that at the appropriate time,

1 but I just didn't want that decision to sneak up on you.

2 And I know you've got an excellent attorney. He's not
3 going to let that happen. But I did want to advise you
4 of it and for you to be thinking about whether or not
5 you intend to testify in the trial of this case. All
6 right.

7 MR. DAY: Yes, ma'am.

8 THE COURT: You don't have to make the
9 decision now, but we'll talk about that probably, if I
10 had to guess, pretty shortly after the lunch hour. All
11 right.

12 All right. We'll be in recess until two thirty.

13 (WHEREUPON, court stood at recess for a lunch
14 break.)

15 THE COURT: Are we ready to bring the jury
16 back in?

17 (WHEREUPON, the jury entered the open court at
18 approximately 2:40 p.m.)

19 THE COURT: All right. Ladies and gentlemen,
20 I appreciate your being so prompt and all in getting
21 back from lunch. The delay here was my fault. I had to
22 take care of another matter here in court that was not
23 these attorney's fault and I did want to let you know
24 that.

25 All right. Mr. Bondurant, are you ready to

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Robert Boswinck - Direct Examination by Mr. Bondurant

129

1 proceed?

2 MR. BONDURANT: Yes, ma'am.

3 THE COURT: All right, then.

4 MR. BONDURANT: The State calls Robert
5 Boswinck to the stand.

6 THE COURT: Sir, if you'll come forward and be
7 sworn. Please place your left hand on the bible and
8 raise your right hand.

9 Do you solemnly swear or affirm to tell the truth,
10 the whole truth and nothing but the truth, so help you
11 God?

12 THE WITNESS: I do.

13 THE CLERK: Thank you. Please be seated and
14 state your name for the record.

15 THE WITNESS: Robert Kenneth Boswinck.

16 ROBERT BOSWINCK,

17 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MR. BONDURANT:

20 Q. Robert, can you just tell us where you're from,
21 please? Where you're from?

22 A. Bradenton, Florida, originally.

23 Q. Okay. And how long have you been in Greenville?

24 A. It's been -- I actually live in Spartanburg, in
25 Roebuck, and it's been about three years now, as of

1 April 13th.

2 Q. Okay. What brought you to Greenville?

3 A. Looking for a change of scenery. I had a friend
4 that I have known for probably ten plus years who had
5 lived up here and I ran into him. I wasn't doing too
6 well with work and everything, so he was like, well,
7 I've got a place up there. I'm like, do they have jobs?
8 Because in Florida it's kind of hard to find a job now.
9 So he's like, yeah. So I came up here with them and got
10 started.

11 Q. Okay. Do you work now?

12 A. Yes, I do.

13 Q. Where do you work?

14 A. I got a job at Dairy Queen about three weeks after
15 I got here and started out as a cook and now I'm the
16 manager there.

17 Q. Now, how many hours a week do you work?

18 A. Now I'm working forty-five plus. Then I was
19 working forty. I was working seven days a week.

20 Q. Okay. Do you have any brothers and sisters?

21 A. I'm ninth out of ten. We have six girls and I'm
22 one of four boys.

23 Q. And are they still in Florida?

24 A. A majority of them are. There's, I think, three of
25 them that are in other states but all the others are

1 down there with the grandchildren.

2 Q. What about your parents, are they still living?

3 A. Yeah. My parents both are living and they're
4 living in Bradenton, Florida.

5 Q. Okay. And tell us about your living situation.

6 When you came up here, where did you live initially?

7 A. Initially, I lived with my friend and I was just
8 getting rides back and forth, and then I got myself a
9 car, got myself back up on my feet. And it was just a
10 little bit far from where I was working. I was
11 traveling twenty minutes to go to work, so I ended up
12 looking for other places to live that was a little bit
13 closer, because gas prices were going up then and money
14 was tight.

15 Q. Okay. Did you find a place?

16 A. Yes. I had talked with Candice. We had become
17 friends at work and she had introduced me to her fiancé,
18 John, at the time. And I had gone over there maybe,
19 like, four or five times, and just hung out and watched
20 TV. And John's roommate at the time, I guess, had left
21 or he had kicked him out because he hadn't been paying
22 his rent. And he actually came and approached me and
23 said, look, Robert, you're looking for a place. I have
24 this room to rent. So I'm like, okay. So, I mean, we
25 were talking a little bit about money and everything and

1 it seemed economically good for me to move in with him.

2 Q. And when was that, when did you move in?

3 A. It was around the end of March beginning of April
4 is when I moved in.

5 Q. Of what year?

6 A. Of 2011.

7 Q. 2011 or 2010?

8 A. 2010.

9 Q. So this incident allegedly happened 6/30/2010.

10 A. Yes.

11 Q. So you moved in three to four months prior to that?

12 A. Yes.

13 Q. What was your relationship like with him in the
14 house?

15 A. At first we kind of like had like a communal area
16 where we liked to sit and watch TV and everything. Me
17 and Candice would have our little time where he'd be at
18 work and we'd just and we'd talk. And then when John
19 would get home, sometimes we would talk. But then as we
20 would be together ---

21 MR. JOHNSON: Judge, may I approach?

22 THE COURT: Yes.

23 (WHEREUPON, Mr. Bondurant and Mr. Johnson
24 approached the bar.)

25 Q. Okay. Continue.

1 A. Then I would start to just -- start to go into my
2 room.

3 Q. You were just hanging out by yourself?

4 A. Yeah. I spent a lot of time in my room to where
5 it's like they had their privacy and I had my privacy
6 and I just passed them in coming and going from work.

7 Q. Okay. And what kind of things -- what did you do
8 in your room?

9 A. Mostly watched TV. I had my laptop to where we had
10 the internet. And that would be about it.

11 Q. Okay. Let's go to 6/30, June 30th, 2010. Do you
12 remember what you were doing that morning?

13 A. That morning, I was actually sleeping. I had been
14 awoken by slamming of a door and I just had gotten up
15 and started to watching TV.

16 Q. Okay. Did you hear anything else?

17 A. After watching TV for a little while, I do remember
18 getting startled by yelling of, stop, stop. And I
19 wasn't sure what was going on. After that, it got
20 completely quiet.

21 Q. Did you hear any arguing or anything before that?

22 A. I didn't really hear any arguing. It was just the
23 screaming of stop that I heard.

24 Q. And your bedroom was on the opposite side of the
25 house?

1 A. Yeah. My bedroom is on the complete opposite side
2 of the house.

3 Q. Okay. And did anything else happen after that?

4 A. No. It actually got quite -- kind of quiet. I do
5 remember a door opening and slamming as if someone had
6 left.

7 Q. Did you see either the Defendant or Candice that
8 day?

9 A. Candice came into my room a little bit after I
10 heard the door slam. And occasionally she would come
11 into my room and stuff and show me what she was wearing,
12 ask me if she looked okay. Well, in this instance she
13 came into my room. She was like, can you see anything,
14 and started lifting up her shorts. And I'm like, no.
15 And I was on the opposite side, laying down on my bed.
16 And I'm like, no. And she's like, oh, okay. Well, I
17 fell down the stairs. And I'm like, okay. Well, you're
18 okay? She was like, yes. And she left.

19 Q. Okay. And I notice you're wearing glasses. Do you
20 remember if you were wearing glasses ---

21 A. I was not wearing glasses. I didn't have the money
22 to get glasses at this point and I am nearsighted, so
23 ...

24 Q. Okay. After that anything else happen that day?
25 Anything else happen?

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Robert Boswinck - Direct Examination by Mr. Bondurant

135

1 A. That day, no, nothing else really happened that
2 day. I had gotten up and I'd gone to work and came
3 home.

4 Q. Okay.

5 A. And that was about it.

6 Q. And for the rest of the -- the next three or four
7 or five days, did you just go about life normally, go to
8 work?

9 A. Yeah. I went to work like I normally did and
10 stuff. Stayed in my room. It was, of course, the 4th
11 of July weekend. John's daughter had came to stay there
12 or stay in the apartment with us that weekend. So, I
13 mean, I just kind of assumed that it's just going to be
14 kind of quiet because she was there.

15 Q. What about like between Candice and the Defendant,
16 did that seem to be normal?

17 A. It seemed to be normal for when I saw them. But, I
18 mean, like I said, I worked a lot so I really didn't see
19 them. I stayed in my room.

20 Q. Okay. And did -- so tell us about 7/5, July 5th,
21 2010?

22 A. On the 5th, I remember John -- when I would come in
23 and stuff, John would be extremely agitated. He had
24 been drinking. I saw the bottle of Tequila and the
25 glass. And I came in and stuff and I'm like, okay, sat

1 down and took off my shoes and got comfortable. And he
2 proceeds to tell me stuff, how she has left and he's not
3 sure if she's coming back this time, and then proceeds
4 to tell me that he had hit her with a hammer. My
5 reaction, was like, what? And like shock and dismay,
6 and I'm like well, it's a good thing she's gone. What
7 happens next time, are you going to kill her? Let's
8 keep her away. Don't let her come back. Let's end
9 this. It's not a good relationship. It seems toxic to
10 me. You guys need to end this. And then I proceeded to
11 get up and go to my room.

12 Q. So you went to your room after that. Do you
13 remember anything else after that?

14 A. After that, it was -- not much. I went to my room
15 and stayed in there. John got up and went to work the
16 next morning.

17 Q. Okay. Do you remember the police coming to the
18 house?

19 A. The next night -- actually, that night is -- I'm
20 sorry. He didn't get up and go to work the next
21 morning. That night is when the cops came and knocked
22 on the door. He starts calling for me and stuff and I
23 come out of my room and I see him. He is getting
24 arrested. The cop is like looking at me and stuff and
25 as he gets taken out the cop comes at me. He's like,

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Robert Boswinck - Direct Examination by Mr. Bondurant

137

1 well, if you know anything about this -- if you know

2 anything about the hammer, I'm going to come back and

3 I'm going to arrest you. So I told ---

4 Q. Did you ask him what hammer -- did je ask you ---

5 A. He mentioned the hammer and everything and I said,

6 I don't have any tools here. There's a toolbox. Help

7 yourself.

8 Q. And did you tell him about John's confession?

9 A. I didn't tell him about John's confession. I was
10 kind of pissed off that the guy was -- excuse me for my
11 language.

12 THE COURT: All right. So stricken.

13 A. I was upset that he was accusing me of doing
14 something.

15 Q. And what time was this that this happened?

16 A. It would have been like around two to three o'clock
17 in the morning.

18 Q. Two to three o'clock in the morning. Okay. And
19 when do you remember speaking to the Defendant again
20 after that?

21 A. He actually wrote me a letter, which I actually
22 have today. That's all I spoke to him of, was he spoke
23 to me through the letter.

24 Q. I'm going to ask you to take that letter out,
25 please?

1 THE COURT: Mr. Johnson, have you seen this
2 letter?

3 MR. JOHNSON: Yes, ma'am, Your Honor.

4 Q. Okay. And this is -- what is this, first of all?

5 A. Okay. This is -- has the return address for John
6 Day. And then it has only my first name and the address
7 where we were living at [REDACTED],
8 Greer, South Carolina. It has on there that the
9 postmarked date was July 20th of 2010.

10 Q. And flip it over, please. What is on the back?
11 What is on the back of the letter?

12 A. Am I allowed to?

13 Q. Yes. I'm sorry.

14 A. Are you sure?

15 Q. Yes, I'm sure.

16 A. It says the Greenville County Detention Center has
17 neither censored or inspected this item. Therefore, the
18 facility does not -- and it's blurred out.

19 Q. Okay. So it came from the Defendant while he was
20 in jail?

21 A. Yes.

22 Q. Can you take the letter out, please? Okay. Is
23 this the same letter that you've had since you received
24 it?

25 A. Yes, it is.

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Robert Boswinck - Direct Examination by Mr. Bondurant

139

1 Q. Okay. Do you recognize the handwriting in that?

2 A. Yes, I do.

3 Q. Whose handwriting is it?

4 A. It's John's.

5 Q. How do you know that?

6 A. John kept a note -- legal pad and stuff for all the
7 bills and that he would write on it and stuff when I
8 would give him my rent money. He would also like
9 scribble in, like, all sorts of writing and everything
10 in it. And I would also see that. So I had contact
11 with his handwriting.

12 Q. You're familiar enough with it to say that that's
13 his handwriting?

14 A. Yes.

15 MR. BONDURANT: The State would seek to
16 introduce that into evidence, Your Honor.

17 THE COURT: Any objection?

18 MR. JOHNSON: No objection, Your Honor.

19 THE COURT: And that'll be State's Exhibit ---

20 MR. BONDURANT: 4, I believe.

21 THE COURT: Number 4. All right.

22 (WHEREUPON, State Exhibit Number 4 was marked and
23 admitted into evidence.)

24 THE COURT: Your Honor, I would ask now that
25 the witness be allowed to read the letter, publish it to

1 the jury.

2 MR. JOHNSON: No objection.

3 THE COURT: All right, then.

4 A. It says: July 19th, 2010. Robert, I didn't think
5 -- I don't think I'm going to get out of here this time.
6 She really wrote a hell of a statement on me. Robert, I
7 trust you so don't disappoint me. You've got to get the
8 trailer cleaned out if the lights get turned off. She
9 will evict us. And there's nothing I can do really from
10 in here. All the woulda, coulda, shoulda's are over. I
11 talked to Candice the other night and she was talking
12 about getting her a house and ---

13 THE WITNESS: There's a cuss word in here.

14 THE COURT: That's fine.

15 A. --- and shit like that. I guess you know she
16 cleaned my checking account out and got some tattoos.
17 She never sees what she does wrong. It's always me and
18 it is my fault for loving her no matter what she does.
19 She told them I beat her with a claw hammer. She told
20 H.Q. Bradford or Benford she fell on the porch. I don't
21 know what she told you. But the charges are -- the
22 charges they charged me with are right up there with
23 attempted murder. I'm scared and alone and usually she
24 is the one in the spotlight with all the attention. I
25 don't think I ever seen how she really is until now.

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Robert Boswinck - Direct Examination by Mr. Bondurant

141

1 And it cost me everything. Please call Jennifer Day and
2 Sandra and help them move my stuff. Maybe then -- maybe
3 when I get out we can try it again. Just me and you.
4 Anyways, Jennifer's number is ... Is that important to
5 read?

6 Q. No, that's all right.

7 A. Sandra's number is ... Will you give them my
8 address so the kids can write me too. I need you to
9 call the kids in Indiana too and give them my address,
10 also. Robert, I'm sorry for this. I really am. And a
11 lot of it is my fault for letting it happen the way it
12 did. P.S. Everything in the bedroom is yours to keep,
13 the bed, dresser and TV. Please write me back and let
14 me know what's up. If you can swing it, try to stay. I
15 should be out no later than the 30th, but I hope this
16 will -- you've got to pay the electric, though, that's
17 automatic eviction. Try to get Candice to help you if
18 you can. And it has his signature.

19 Q. Let's talk quickly about you. You have a prior
20 record. Isn't that right?

21 A. Yes, I do.

22 Q. What do you have a prior record for?

23 A. I have a record for grand theft auto, criminal
24 mischief and battery, adjudication withheld.

25 Q. What does that mean, adjudication withheld?

1 A. Adjudication withheld was -- is that it was my only
2 offense. I completed my probation for it and with that
3 I had none of my civil liberties taken away and it kind
4 of doesn't show up against me unless I commit another
5 crime.

6 Q. Where was that?

7 A. That was in Tampa, Florida.

8 Q. When was that?

9 A. That was in, I believe, 2003 or 2002. I can't
10 remember exactly when the charges were.

11 Q. So nearly ten years ago?

12 A. Yes.

13 Q. How old were you when that happened?

14 A. Twenty-two or twenty-three.

15 Q. Okay. Just briefly, what was that about?

16 A. I got into a disagreement with my roommate and I
17 jumped into -- we got into a fight and I jumped into my
18 friend's car and took off. So ...

19 Q. When's the -- when did you speak with Candice again
20 after this whole incident?

21 A. Candice came by a couple of weeks later asking for
22 her -- actually not -- a couple of days later asking for
23 her clothes. He had put all of her clothes into his
24 truck and she'd just came and she knew the code for the
25 door, opened it up and got her clothes out. Respecting

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Robert Boswinck - Direct Examination by Mr. Bondurant

143

1 his wishes, I did not allow Candice into the apartment.

2 She came sometime, I think, a week later and she was
3 looking for her personal items like her makeup and
4 fingernail polish and her diploma, stuff like that. And
5 I stayed at the door -- kept her at the door and I went
6 and got it and brought it to her.

7 Q. Yeah. What do you mean by that, you respected his
8 wishes and kept her at the door?

9 A. Well, it kind of says to keep Candice out, in the
10 letter.

11 Q. Okay. So you were doing what he asked you?

12 A. Yeah. Trying to.

13 Q. After that -- after those several incidents when
14 did you -- did you have any more contact with Candice?

15 A. Actually, no. That was the last time that I saw
16 Candice until this week.

17 Q. Okay. Did you ever have any emotional or sexual
18 relationship with Candice?

19 A. No.

20 Q. Okay.

21 A. I'm gay, so it's just not into my ...

22 Q. Okay. Did you have any arguments, serious
23 arguments, with the Defendant after all this, after the
24 letter and everything?

25 A. I had received a notice from the electric company.

1 It was addressed to him, but I could see through the
2 envelope that the power was going to be turned off. I'd
3 already given him my money and I didn't have the extra
4 money to get the electric turned on.

5 MR. JOHNSON: Judge.

6 THE COURT: Yes, sir.

7 MR. JOHNSON: May we approach?

8 THE COURT: Yes.

9 (WHEREUPON, Mr. Bondurant and Mr. Johnson
10 approached the bar.)

11 Q. Did you leave the house?

12 A. Yes.

13 Q. When did you leave the house?

14 A. I think I left somewhere around the 25th or so.

15 Q. Of?

16 A. Of July. Because the electricity was supposed to
17 be turned off. The 24th, that's when the electricity
18 was supposed to be turned off, so that's when I left.

19 Upon leaving and stuff, and assuming the electricity was
20 going to be turned off, I had taken all of the food out
21 of the refrigerator because I didn't want the food going
22 in there and smelling and then the landlord coming in
23 and having to clean all that up. After John had gotten
24 out of jail, he calls me at work cussing and screaming
25 at me on the phone, demanding that I bring all of the

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Robert Boswinck - Cross Examination by Mr. Johnson

145

1 food back, wanting to know why I didn't stay or pay any
2 of the bills. I told him that I was at work. Hung up
3 on him. He calls back cussing again. I'm, like, dude,
4 I'm at work. So I then --

5 Q. Did you take the food back?

6 A. I took the food back. He wasn't there. Candice
7 wasn't there. So I left the food on the kitchen
8 counter, locked up the place again and then I turned my
9 keys in to the office.

10 Q. Okay. Did you have any more contact with the
11 Defendant after that?

12 A. I had no more contact after that.

13 MR. BONDURANT: No further questions.

14 THE COURT: Mr. Johnson.

15 MR. JOHNSON: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. JOHNSON:

18 Q. Now, Robert, you stated earlier that the police
19 came to where you and John and Candice had been staying?

20 A. Yes.

21 Q. And what day did they come?

22 A. They came -- actually, it would have been -- it was
23 in the middle of the night, so I'm saying it was the
24 7th, but I saw it as the 6th because I had gone to bed.

25 Q. The same night. The same night when you went to

1 bed?

2 A. Yes.

3 Q. I understand that, yeah. Anyhow, did you get to
4 see this policeman when he arrested -- I guess he was
5 arresting John. Is that right?

6 A. Yes, I did.

7 Q. Okay. And you testified here earlier that John
8 essentially admitted to you that he'd hit Candice with
9 the hammer, right?

10 A. Yes.

11 Q. So the policeman's here and the police ask you,
12 essentially if you had any input on the situation,
13 right?

14 A. No, not if I had any input on it.

15 Q. He asked you if you knew anything about the
16 incident? Well, I guess the way you put it he asked you
17 if you knew anything about a hammer or anything like
18 that, right?

19 A. He asked -- actually, if I knew about it he was
20 going to come back and arrest me.

21 Q. Okay. So you knew about it though. At least you
22 testified here today that you knew about it, right?

23 A. I found out that night, yes.

24 Q. No, but you stated earlier that Candice -- that
25 John told you previously that he'd hit Candice. Isn't

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Robert Boswinck - Cross Examination by Mr. Johnson

147

1 that right?

2 A. That night that he got arrested.

3 Q. I mean, he obviously didn't tell it to you after he
4 got arrested, right?

5 A. Excuse me?

6 Q. He obviously -- if you're stating today that John
7 told you that he hit Candice with the hammer, he did not
8 tell you after he got arrested, right?

9 A. Well, actually, right here in the letter it says
10 ---

11 Q. That's not what it says in the letter.

12 A. --- in there, that ---

13 Q. But you testified here today that he said it to you
14 when y'all were sitting in the living. You stated that
15 you got home, took off your shoes, was going to watch TV
16 and he told you that he'd ---

17 A. That's when he told me.

18 Q. Right. And so -- and this obviously was before he
19 got arrested, right?

20 A. Yes.

21 Q. Okay. Let's keep it straight now. Okay. So, in
22 any case -- so the police come -- so the police came --
23 so you would also agree that the police came after he
24 allegedly told you this, right?

25 A. Yes.

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Robert Boswinck - Cross Examination by Mr. Johnson

148

- 1 Q. And the police asked you if you knew anything,
2 right, or he was going to arrest you? If you know
3 anything about that, he was going to arrest you, right?
4 A. Yes.
5 Q. And you didn't tell him nothing?
6 A. No.
7 Q. It would have been in your best to tell him, right,
8 because he said -- he basically threatened you. He said
9 I'm going to arrest you if you know something, right?
10 A. He made me upset.
11 Q. He said, I'm going to arrest you if you know
12 something. That's what he said. That's what you said
13 he said. I don't know because there's no report on it
14 or nothing. I'm using your words, okay?
15 A. Okay.
16 Q. Is that right?
17 A. Yes.
18 Q. All right. But you didn't tell him nothing?
19 A. No.
20 Q. And you talked about your previous record, you
21 basically stated that as long as you stayed clean, as
22 long as you stay out of trouble, then none of this stuff
23 will come back up, right?
24 A. Correct.
25 Q. We're talking about the grand theft auto?

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Robert Boswinck - Cross Examination by Mr. Johnson

149

1 A. Correct.

2 Q. Where you stole your friend's car?

3 A. I took my friend's car. But, yes.

4 Q. Okay. Did he give you permission to take it?

5 A. No.

6 Q. Okay. Then you stole it. So anyhow, so it's in

7 your best interest to tell this man something because

8 you don't want to, you don't want to get back in

9 trouble. You don't want to go to jail or anything like

10 that, do you?

11 A. No.

12 Q. That's right. Okay. Now, you stated that you knew

13 Candice before you knew John, right?

14 A. Correct.

15 Q. And who, who you been sitting with today?

16 A. Candice.

17 Q. Candice, right?

18 A. Right.

19 Q. You're sitting with Candice, right? You're not

20 sitting over there, right?

21 A. No.

22 Q. Because y'all are friends?

23 A. Yes.

24 Q. That's right. Y'all worked at the Dairy Queen, so

25 y'all are friends, right?

- 1 A. I have known her longer, yes.
- 2 Q. Now, you were privy to the testimony Candice gave
- 3 today, right?
- 4 A. Excuse me?
- 5 Q. You were privy to the testimony that Candice gave?
- 6 A. What do you mean by privy?
- 7 Q. Did you hear it? I'm sorry. Did you hear the
- 8 testimony that Candice gave?
- 9 A. Yes.
- 10 Q. And you are aware that -- you're aware of
- 11 Defendant's Exhibit 1 that states, Baby, I'm sorry I
- 12 lied on you?
- 13 A. I heard it today, yes.
- 14 Q. You heard that testimony. Now, you're also aware
- 15 that the date on that letter is July the 19th, right?
- 16 A. Yes.
- 17 Q. Now, he wrote your letter, the date is what? That
- 18 letter he wrote to you?
- 19 A. July 19th is the date on it. The postmark is the
- 20 20th.
- 21 Q. Okay. So it got out on the 20th?
- 22 A. Yes.
- 23 Q. But he wrote it on the 19th?
- 24 A. Correct.
- 25 MR. BONDURANT: I'm going to object.

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Robert Boswinck - Cross Examination by Mr. Johnson

151

1 THE COURT: I'm sorry. What's your objection?

2 MR. BONDURANT: Objection, he twisted what he
3 said. Did he say, when he got out on the 20th?

4 MR. JOHNSON: Yeah.

5 Q. It's postmarked on the 20th, right?

6 A. It was postmarked on the 20th.

7 MR. BONDURANT: Okay.

8 THE COURT: All right.

9 Q. And according to you that letter basically says not
10 to let her in the house, right?

11 A. It said a lot of things.

12 Q. But I'm asking -- I'm just asking you questions
13 now. Does the letter, according to you, according to
14 your testimony, you said the way you read it, it
15 basically says not to let her in, right?

16 A. Correct.

17 Q. Now, does that sound like somebody who's made up
18 some story about falling down the stairs? Don't let
19 this person in because -- don't let her in. Does that
20 make sense to you? Would you do that?

21 MR. BONDURANT: Objection, Your Honor.

22 THE COURT: Sustained.

23 Q. Anyhow, you're aware that the letter in question,
24 that basically Candice says that she agreed to write on
25 John's behalf, that letter does not mention this, does

1 it?

2 MR. BONDURANT: Objection, Your Honor. He's
3 asking him about a letter that he's not even privy to.

4 MR. JOHNSON: Okay.

5 THE COURT: All right. I sustain the
6 objection.

7 Q. And finally you state at the time, at the time when
8 you talked to her, when she showed you her leg and you
9 stated you didn't see anything, right? She said, you
10 know, do you see this? And you said, no; right? You
11 didn't see anything?

12 A. Yes.

13 Q. All right.

14 MR. JOHNSON: I have nothing further.

15 THE COURT: Mr. Bondurant, anything else for
16 this witness?

17 MR. BONDURANT: That's it.

18 THE COURT: Sir, you can step down.

19 MR. BONDURANT: Your Honor, I believe he has
20 to go to work. We'd ask that he be excused.

21 THE COURT: Do you have any objection to his
22 being excused?

23 MR. JOHNSON: No objection, Your Honor.

24 THE COURT: All right, sir. Thank you for
25 being here. Just leave that letter right there, please.

1 MR. BONDURANT: The State calls Melanie
2 Montemayer to the stand.

3 THE CLERK: Ma'am, if you'll please place your
4 left hand on the bible and raise your right hand.

5 Do you solemnly swear or affirm to tell the truth,
6 the whole truth and nothing but the truth, so help you
7 God?

8 THE WITNESS: Yes, ma'am.

9 THE CLERK: Please be seated and state your
10 name for the record.

11 THE WITNESS: Melanie Montemayer.

12 MELANIE MONTEMAYER,

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION

15 BY MR. BONDURANT:

16 Q. Can you tell us where you're from?

17 A. Greer.

18 Q. From Greer?

19 A. Uh-huh (affirmative).

20 Q. Born and raised in Greer?

21 A. Born in Atlanta, Georgia, but I was raised here.

22 Q. Okay. What age did you come here?

23 A. Let's see. I was like four or five.

24 Q. Okay. So you've been here a pretty long time?

25 A. Uh-huh (affirmative).

- 1 Q. Where did you go to high school?
- 2 A. Greer High.
- 3 Q. Okay. How do you know Candice?
- 4 A. We've been best friends since eighth grade.
- 5 Q. Okay. And in June of 2010, where were you living?
- 6 A. Where was I living?
- 7 Q. Yes, ma'am?
- 8 A. With my mom.
- 9 Q. Okay. And do you remember in July -- okay. What
- 10 was your relationship with Candice around that time?
- 11 A. We were -- we weren't as close as we used to be,
- 12 but we still kind of kept in contact.
- 13 Q. Okay. How did you -- by phone, by email, how did
- 14 you keep in contact?
- 15 A. Phone.
- 16 Q. Phone, okay. I'm going to take you to the night
- 17 that Candice called. Do you remember what you were
- 18 doing?
- 19 A. I was in my room.
- 20 Q. Okay. And do you remember what time you received
- 21 the call from Candice?
- 22 A. When she called? I don't remember what time it
- 23 was, but I remember she told me she was going to come
- 24 over when she got off work that night because she had to
- 25 tell me something and she didn't want me to be mad.

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Melanie Montemayer - Direct Examination by Mr. Bondurant

155

1 Q. Did she come over?

2 A. Yeah. She said she was going to come stay the
3 night.

4 Q. And when she came over, did y'all talk?

5 A. Yeah. She told me what happened and then she
6 showed me all her bruises and stuff. And I don't know
7 ---

8 Q. What was your reaction?

9 A. I don't know.

10 Q. Were you upset by what you saw?

11 A. Yes.

12 Q. What did you do after speaking with her?

13 A. We went upstairs and showed my mom because I didn't
14 know what to do about it.

15 Q. Okay. And then after speaking with your mom, what
16 happened?

17 A. And then my mom is the one that called the police
18 so we could write a report on it. And then Candice
19 pretty much just told the police officer what happened
20 and they took all the pictures.

21 Q. Okay. Did you have anymore involvement after that?

22 A. She stayed with us for a few weeks after that
23 happened.

24 Q. Okay. How would you describe Candice's demeanor at
25 the time?

1 A. I don't know.

2 Q. Was she scared?

3 A. I don't think she was scared. I don't know.

4 Q. I'm sorry.

5 MR. BONDURANT: Okay. No further questions.

6 THE COURT: Mr. Johnson.

7 MR. JOHNSON: I have no questions for this
8 witness, Your Honor.

9 THE COURT: All right. Ma'am, you can step
10 down.

11 MR. BONDURANT: I'm sorry, Your Honor, they're
12 switching off on childcare, it's a mother/daughter.

13 THE COURT: I understand.

14 MR. BONDURANT: We need just a minute.

15 THE COURT: Now, ladies and gentlemen, I don't
16 want you to feel like you're chained to your seat. If
17 it'll make you more comfortable, I'll stand up and
18 stretch too. If y'all want to stand up and stretch, you
19 go right ahead.

20 MR. BONDURANT: The State calls Marion
21 Stephens to the stand.

22 THE COURT: All right. Ma'am, if you'll come
23 forward and be sworn.

24 THE CLERK: Please pause at the end of the
25 bench. Place your left hand on the bible and raise your

1 right hand.

2 Do you solemnly swear or affirm to tell the truth,
3 the whole truth and nothing but the truth, so help you
4 God?

5 THE WITNESS: Yes, ma'am.

6 THE CLERK: Thanks you. Please state your
7 name for the record.

8 THE WITNESS: It's Marion Elizabeth Stephens.

9 MARION STEPHENS,

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. BONDURANT:

13 Q. Ma'am, could you just tell us where you're from?

14 A. Greer, South Carolina.

15 Q. Born and raised in Greer?

16 A. No. I was born in Chicago, raised in Texas and
17 raised my kids here in Greer.

18 Q. Okay. When did you come here?

19 A. Sixteen years ago.

20 Q. How many children do you have?

21 A. I have four.

22 Q. Four?

23 A. Yes.

24 Q. And is Melanie one of those children?

25 A. Yes, she is.

1 Q. Okay. And just briefly, going to the night of when
2 Candice came over, what was your first encounter with
3 the situation?

4 A. Well, I was sitting in my room and I was watching
5 TV and whatnot. And Melanie had text me to come
6 downstairs into her room, she wanted to show me
7 something. And when I went down there, Candice was
8 there. And Melanie had already been crying. And I'm
9 like, okay, what's going on? And as soon as Candice
10 started talking, I knew exactly what had happened. And
11 I mean, I really got upset. She started showing me her
12 marks and everything of what had happened. And she told
13 me that John had taken a hammer and started hitting her.

14 Q. Without really getting into exactly what she said
15 ---

16 A. Okay. Okay.

17 Q. So she told you the story?

18 A. She told me the story exactly what had happened.
19 And I got really upset, because being a mom and her
20 being a very young girl, I don't think that anyone has a
21 right to be hit by anybody.

22 Q. Okay.

23 A. And just because she came to Melanie and her being
24 Melanie's friend, I knew that they're young. They're
25 not going to make the decisions to call the police so I

1 made that decision and I called them and had them come
2 to my home and we filed a report.

3 Q. Okay. And did you -- when the police came, did you
4 talk to the police?

5 A. Yes, I did.

6 Q. Okay. Did you give a statement?

7 A. Yes, I did.

8 Q. Did you give a statement that day to police?

9 A. We gave part of a statement that night and then he
10 came back another time later and had a full detailed
11 report made out.

12 Q. Okay. So you gave a statement later on ---

13 A. Uh-huh (affirmative).

14 Q. --- about what happened?

15 A. Uh-huh (affirmative).

16 MR. BONDURANT: No further questions, Judge.

17 THE COURT: Mr. Johnson, any questions for
18 this witness?

19 MR. JOHNSON: Yes, Your Honor, briefly.

20 CROSS-EXAMINATION

21 BY MR. JOHNSON:

22 Q. Ms. Stephens?

23 A. Uh-huh (affirmative).

24 Q. Is this the said statement you're talking about?

25 A. Yes, it is.

1 Q. Now, this statement -- obviously -- well, let me
2 ask you again because I can't remember how he asked it.
3 Did you see the police that night when they came to take
4 pictures of her and everything?

5 A. Yes. I spoke with him.

6 Q. At that point in time, you did not give him a
7 written statement, right?

8 A. I believe that I did give a partial statement at
9 that time. Because, like I said, he did come back and
10 we went ahead and went in like full detail as to what,
11 everything -- word-for-word or whichever you want to
12 say.

13 Q. Yes, ma'am. So essentially what you're saying, you
14 were making for it at a later time ---

15 A. Not making up for it. I gave the statement that
16 night as to what had happened, taken place that night.
17 And then in detail made more of a statement.

18 Q. Okay. But you gave him a more detailed statement
19 later?

20 A. Exactly.

21 Q. And you covered everything that you thought needed
22 to be included?

23 A. Exactly.

24 Q. And you did that -- I believe that says March the
25 12th, 2011, right?

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Marion Stephens - Cross Examination by Mr. Johnson

161

1 A. Uh-huh (affirmative).

2 Q. Okay. So that's, that's not quite a year but nine
3 months later or something?

4 A. Uh-huh (affirmative).

5 Q. But you did that. Did you take the initiative or
6 did he contact you?

7 A. Oh, they contacted us.

8 Q. They contacted you ---

9 A. Yes.

10 Q. --- and then you decided to come forward and do
11 this for them?

12 A. Yes. Yes.

13 Q. Okay. Now, do you know the contents of the
14 statement or should -- can I question you on some of the
15 contents?

16 A. You can.

17 Q. Do you know them, or should I ---

18 A. Again, it's been a year, so ...

19 Q. It's been a while, okay. Now, I'd like to point
20 your attention to essentially what is the last sentence.
21 Would you read that to yourself for me?

22 MR. BONDURANT: Your Honor, I'm going to --
23 can we approach?

24 THE COURT: Yes.

25 (WHEREUPON, Mr. Bondurant and Mr. Johnson

- 1 approached the bar.)
- 2 Q. I'm sorry. Have you had an opportunity to read it?
- 3 A. Uh-huh (affirmative).
- 4 Q. I don't mean to be hovering, but, you know, I want
- 5 to be able to see what I'm reading.
- 6 A. No, that's fine.
- 7 Q. Anyhow, essentially, the last one that says, she
- 8 had said that he would not let her leave and when he
- 9 went to work is when she got out and came over here.
- 10 A. Uh-huh (affirmative).
- 11 Q. All right. And this is talking about -- when
- 12 you're talking about wouldn't let her leave, we're
- 13 talking about form the 30th, when this is alleged to
- 14 have happened, right?
- 15 A. Uh-huh (affirmative).
- 16 Q. To July 6th. And that's what she told you?
- 17 A. Right.
- 18 Q. All right.
- 19 MR. JOHNSON: I have nothing further from this
- 20 witness.
- 21 THE COURT: Mr. Bondurant?
- 22 MR. BONDURANT: Nothing, Your Honor.
- 23 THE COURT: Ma'am, you can step down.
- 24 THE WITNESS: All right. Thank you.
- 25 MR. BONDURANT: We'd just ask that the witness

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
James Guthrie - Direct Examination by Mr. Bondurant

163

1 be allowed to be excused.

2 THE COURT: Any objection?

3 MR. JOHNSON: No objection from the Defendant.

4 THE COURT: All right. Thank you all for

5 being here.

6 MR. BONDURANT: The State would call

7 investigator James Guthrie to the stand.

8 THE CLERK: Sir, please place your left hand

9 on the bible and raise your right hand.

10 Do you solemnly swear or affirm to tell the truth,

11 the whole truth and nothing but the truth, so help you

12 God?

13 THE WITNESS: I do.

14 THE CLERK: Please be seated and state your

15 name for the record.

16 THE WITNESS: James Guthrie.

17 JAMES GUTHRIE,

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MR. BONDURANT:

21 Q. Are you currently employed?

22 A. No, sir, I'm not.

23 Q. Why not?

24 A. I retired. Thirty-two years, I thought it was time

25 to hang it up.

- 1 Q. Where did you work before you retired?
- 2 A. Before, I worked at the police department, the City
3 of Greer.
- 4 Q. The City of Greer?
- 5 A. Yes, sir.
- 6 Q. Okay. You said thirty-two years?
- 7 A. Thirty-two years.
- 8 Q. What was your rank?
- 9 A. Sergeant.
- 10 Q. Okay. And I'm just going to take you briefly to
11 the date of this incident. Did you have -- were you
12 working that day?
- 13 A. Yes, sir, I was.
- 14 Q. Okay. Did you have a chance to respond to this
15 call?
- 16 A. Yes, sir.
- 17 Q. Okay. And just briefly tell us what happened?
- 18 A. It wasn't actually the day of the incident, it was
19 five or six days later when I responded to, I think it
20 was 301 Belton Avenue, where I was dispatched to that
21 call. And I spoke with Marion, the lady that owned the
22 residence there.
- 23 Q. Okay. And you spoke with -- who else did you speak
24 with?
- 25 A. Marion was there. Candice was there and Melinda?

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
James Guthrie - Direct Examination by Mr. Bondurant

165

1 Q. Melanie?

2 A. Melanie. She was there.

3 Q. Do you remember if any of them gave you a written
4 statement?

5 A. Yes, sir. We went in, sat down at the kitchen
6 table, and Marion, the mother was telling me what
7 happened. I don't believe the two girls was in the room
8 at the time. And Candice came in with her friend and
9 she told me what happened. And at that time, I took
10 some photographs and also got a statement from her?

11 Q. From who?

12 A. From Candice.

13 Q. Okay. Is that the only written statement you got
14 that day?

15 A. That day. I can't recall getting one from Marion,
16 ---

17 Q. That day.

18 A. --- I'm not sure, that day.

19 Q. After you did your investigation what then did you
20 do?

21 A. After investigation, I go back to the police
22 department. I make out a Code 5, an incident report,
23 what happened. Put that information together. I write
24 out an arrest warrant -- I mean, not an arrest warrant
25 -- a warrant request. I was going to get a warrant on

- 1 Mr. Day for criminal domestic violence and I present
2 that to the Magistrate at that time.
- 3 Q. Okay. And after all of the procedural stuff ---
4 A. Right, yes, sir.
- 5 Q. --- what then did you do?
6 A. I can't recall how long it took to get the warrant.
7 I work at nighttime. I don't recall if that was the
8 weekend or not. I don't know. But when I did get the
9 warrant, I went over to his residence, it's a mobile
10 home park, [REDACTED] At the time, I had a
11 backup officer. During a warrant, we always have a
12 backup officer, plus, I can't serve my own warrant. I
13 have to let another officer do that. I go up to the
14 door and knock on the door and his roommate came to the
15 door and I asked if Mr. Day was there. He said he was.
16 Mr. Day -- I believe he came -- we was inside the mobile
17 home. And I believe he was in his bedroom and he came
18 out into the little hallway there. And I advised him
19 what was going on, I had a warrant for him for criminal
20 domestic violence and that he was under arrest.
- 21 Q. Okay. Did you -- when you had done your initial
22 investigation in the house there, Ms. Stephens' house,
23 did you -- had anyone told you about a hammer hitting
24 the wall?
25 A. Hitting the wall, no, sir. Not hitting the wall,

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
James Guthrie - Cross Examination by Mr. Johnson

167

1 not that I remember.

2 Q. Okay. So when you went did you speak with -- you
3 said the roommate answered the door. Did you speak with
4 him?

5 A. Yes, sir, briefly. I believe it was after that Mr.
6 Day was arrested -- he'd been taken to the car or
7 escorted out of the mobile home -- does he know anything
8 the incident? And I believe he said something like a
9 commotion was going on, but he didn't really know what
10 was going on that day, just a little commotion. And I
11 did ask him about the hammer and he had no idea about
12 the hammer. And that -- if I remember there was a
13 washer and dryer sitting there with some shelves above
14 it. And I said, if there's a hammer in here, it might
15 be up there. And I didn't see any hammer.

16 Q. So you couldn't find the hammer?

17 A. No, sir.

18 Q. Okay. Then anything else?

19 A. No, sir, not that I recall.

20 Q. Okay.

21 MR. BONDURANT: No further questions.

22 THE COURT: All right. Any questions for this
23 witness?

24 MR. JOHNSON: Very briefly.

25 CROSS-EXAMINATION

- 1 BY MR. JOHNSON:
- 2 Q. Can I call you Officer Guthrie?
- 3 A. Call me, call me Jimmy.
- 4 Q. Okay. All right. Okay. Okay. Jim, let me ask
- 5 you a question. Are you aware that Marion Stephens
- 6 ended up giving a written statement, right? Are you
- 7 aware of that?
- 8 A. Yes, sir, I got it from her. Yes, sir.
- 9 Q. Okay. So you took that one from her?
- 10 A. Right. Yes, sir.
- 11 Q. Okay. Now, are you aware that today Mr. Boswinck
- 12 essentially says he knew more than what he indicated to
- 13 you on that evening?
- 14 A. That he did more? Yes, sir.
- 15 Q. Yes, sir.
- 16 A. But I didn't know that.
- 17 Q. Okay. And he also said that you were essentially
- 18 mean and rough to him.
- 19 A. That wasn't me. That's not my demeanor. That was,
- 20 that was -- the officer that actually read the warrant
- 21 to him was Officer Russ Holthouse. And there's another
- 22 officer, which is a rookie, kind of a hot-head cop. Now
- 23 Russ and me talked about this and we're kind of thinking
- 24 maybe he was the one. We're not sure. But I didn't do
- 25 it and I know Officer Russ Holthouse isn't like that.

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
James Guthrie - Cross Examination by Mr. Johnson

169

1 Q. So in other words, you don't really believe that
2 that actually happened, you don't recall ---

3 A. I honestly don't believe it did, but ...

4 MR. BONDURANT: Your Honor, objection.

5 THE COURT: What's your objection?

6 MR. BONDURANT: That calls for speculation of
7 the witness.

8 MR. JOHNSON: Judge, I'll withdraw. I'll
9 withdraw.

10 THE COURT: All right. I would have allowed
11 the question.

12 MR. JOHNSON: Okay. Whoa. All right.

13 Q. Anyhow, but Mr. Boswinck never tried to get with
14 you later and give you a statement or anything like Ms.
15 Stephens did at a later time, did he?

16 A. Mr. Who?

17 Q. Mr. Boswinck? Robert Boswinck. The guy we were
18 just talking about?

19 A. No, sir. No, sir.

20 Q. But Marion Stephens did give you one like nine
21 months later?

22 A. Right.

23 Q. So, in other words, that opportunity ...

24 A. Right.

25 Q. Now, you stated you just kind of looked for a

1 hammer and -- you state you kind of looked for a hammer
2 and you didn't find one?

3 A. I didn't go searching for one. He said, if there's
4 one in here, it'll be on -- I believe it was a shelf
5 over the washer and dryer. And I just looked up there
6 and I didn't have a search warrant or anything. I
7 didn't ...

8 Q. But anyway, when you asked Robert he said just a
9 little commotion is all he knew about?

10 A. Correct.

11 Q. And when you -- now, did you put any pressure on
12 Ms. Stanley to give you a statement?

13 A. No, sir.

14 Q. You didn't put any pressure on her?

15 A. No, sir.

16 Q. Did she have any reason to be scared of you?

17 A. No, sir, not at all.

18 Q. Did she have any reason to lie to you?

19 A. I wouldn't think so.

20 Q. But if -- say for instance, if someone lies to the
21 police, if someone lies to you, is that a crime?

22 A. Yes, sir, it is.

23 Q. Which crime is that?

24 A. Giving false information to a police officer.

25 Q. Okay. Does it matter how severe the crime is or is

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
James Guthrie - Cross Examination by Mr. Johnson

171

1 it just one crime?

2 A. It's just one crime on that.

3 MR. JOHNSON: I have nothing further from this
4 witness.

5 THE COURT: All right. Mr. Bondurant?

6 MR. BONDURANT: Nothing, Your Honor. Thank
7 you.

8 THE COURT: Sir, you can step down.

9 MR. BONDURANT: May Jimmy be excused?

10 THE COURT: All right. Any objection?

11 MR. JOHNSON: No objection, Your Honor.

12 THE COURT: Thank you, sir, for being here.

13 MR. BONDURANT: Your Honor, that's the State's
14 case.

15 THE COURT: All right.

16 Ladies and gentlemen, we've come to a good point
17 for our afternoon break. I'll ask you to step to your
18 jury room. I'm going to take up a legal matter. And
19 please don't discuss the case with anyone.

20 (WHEREUPON, the jury exited the open court at
21 approximately 3:31 p.m.)

22 THE COURT: Any matters we need to take up at
23 this time?

24 MR. BONDURANT: None from the State, Your
25 Honor.

1 MR. JOHNSON: Your Honor, as customary, I'd
2 like to make a motion for a directed verdict. While
3 there has been evidence presented, I think that it's
4 been pretty much established that the person who would
5 be privy to this information is unreliable, is totally
6 unreliable, and leaving -- in no way showed material
7 fact. And we respectfully request a directed verdict at
8 this time.

9 THE COURT: Well, I appreciate your argument
10 on behalf of your client. I do believe that there is
11 some evidence upon which the jury could pass a verdict
12 on the case. I will deny your motion.

13 Mr. Day, would you stand for me, please.

14 MR. JOHNSON: And one last thing, Your Honor.
15 I hate to interrupt.

16 THE COURT: Oh, yes, sir. I'm so sorry.

17 MR. JOHNSON: I'd like to preserve our
18 previous objections.

19 THE COURT: Oh, absolutely, yes, sir. Thank
20 you.

21 Mr. Day, will you raise your right hand for me?
22 You swear to tell the truth, the whole truth and nothing
23 but the truth under penalty of perjury?

24 MR. DAY: I do, ma'am.

25 THE COURT: All right. You can put your hand

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
James Guthrie - Cross Examination by Mr. Johnson

173

1 down.

2 THE COURT: I spoke with you earlier about we
3 were going to come to the crossroads as to whether or
4 not you were going to testify in this trial. Do you
5 remember our conversation about that?

6 THE WITNESS: Yes, ma'am, I do.

7 THE COURT: Have you had an opportunity to
8 discuss whether or not you'll testify with your
9 attorney?

10 THE WITNESS: Yes, ma'am, I have.

11 THE COURT: Do you feel like your conversation
12 has been good with him?

13 THE WITNESS: Yes, ma'am.

14 THE COURT: You've understood his conversation
15 with you?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Has anyone forced you or pressured
18 you to make this decision?

19 THE WITNESS: No, ma'am.

20 THE COURT: Has anyone promised you anything
21 to get you to make this decision?

22 THE WITNESS: No, ma'am.

23 THE COURT: It's my understanding the State
24 does not intend to impeach with any possible criminal
25 record. So they don't intend to ask you about any

1 possible criminal record. Do you understand that?

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Do you understand you have a right
4 to remain to silent during this trial?

5 THE WITNESS: Yes, ma'am.

6 THE COURT: In other words, you don't have to
7 testify. You don't have to say anything about this case
8 whatsoever. Do you understand that?

9 THE WITNESS: Yes, ma'am.

10 THE COURT: You have an absolutely right to
11 remain silent and you know that?

12 THE WITNESS: Yes, ma'am.

13 THE COURT: In fact, I'll instruct the jury --
14 if you choose not to testify here today, I'll instruct
15 them that they cannot infer in anyway, anything, they
16 cannot read anything into or consider or even discuss
17 the fact that you did not testify in your trial. You
18 understand that?

19 THE WITNESS: Yes, ma'am.

20 THE COURT: The other side of that coin is
21 that today is your one day in Court. It's your one
22 chance to tell your side of the story. And you
23 understand you will not have another opportunity to tell
24 your side of the story. You understand that as well?

25 THE WITNESS: Yes, ma'am.

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
James Guthrie - Cross Examination by Mr. Johnson

175

1 THE COURT: Do you have any questions from me
2 about your right to testify in this trial?

3 THE WITNESS: No, ma'am.

4 THE COURT: And what is your decision, will
5 you testify or not?

6 THE WITNESS: Yes, ma'am, I will.

7 THE COURT: All right, then.

8 And Mr. Johnson you've discussed that with your
9 client?

10 MR. JOHNSON: Yes, ma'am, Your Honor.

11 THE COURT: And you agree with his decision?

12 MR. JOHNSON: Yes, ma'am, Your Honor.

13 THE COURT: All right. And you believe that
14 is, in fact, his decision?

15 MR. JOHNSON: Yes, ma'am, Your Honor.

16 THE COURT: All right, then.

17 All right. Let's be in recess for ten minutes.

18 And then we'll start with the Defense's case.

19 Well, I tell you what, let's bring up one thing
20 while you're talking. Mr. Johnson, you've got your
21 client. Do you fell like he's going to be a lengthy
22 witness? I mean, and I certainly am not pressuring you
23 in anyway?

24 MR. JOHNSON: We'll probably take fifteen,
25 twenty minutes.

1 THE COURT: Okay. All right. The reason is,
2 we are right at Judge Pyle's cut-off for when to charge
3 a jury, the latest you charge a jury in the afternoon.
4 I'm happy to charge the jury today -- argue and charge
5 today if you'd like, but I don't know if anybody wants
6 to weigh-in about that.

7 Anything from the State on it?

8 MR. BONDURANT: Nothing, Your Honor.

9 THE COURT: All right. Anything from you, Mr.
10 Johnson about it?

11 MR. JOHNSON: Your Honor, I'd love to go ahead
12 and finish up too, but I don't want to rush a decision
13 one way or another for want of getting home. So
14 whatever you see fit on that, Judge. But that's my two
15 cents. Whatever you see fit we'll go with.

16 THE COURT: Let me tell you what I'm thinking
17 about doing time-wise. Is when we come back, let's just
18 say that he takes until four. I'm considering letting
19 y'all go ahead and argue today and then charge the jury
20 first thing in the morning. I'll charge the jury on the
21 law and then they'll start deliberating. I have
22 probation revocations and I'm sure you probably know,
23 Mr. Johnson, I've got those tomorrow.

24 MR. JOHNSON: Yes, ma'am, I do. I'm well
25 aware.

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
James Guthrie - Cross Examination by Mr. Johnson

177

1 THE COURT: And so we'll kind of work around
2 that. But we'll just see where we are time-wise. Do
3 either of you think you'll have a lengthy closing
4 argument? Again, I'm not trying to limit anybody.

5 MR. JOHNSON: I won't be any longer than
6 fifteen minutes.

7 THE COURT: Okay. All right.
8 Mr. Bondurant?

9 MR. BONDURANT: I like to think I'm not that
10 long-winded, but sometimes the evidence is to the
11 contrary.

12 THE COURT: Well, you can close this in
13 fifteen minutes, can't you? No, I'm not pressing on
14 you. I'm not pressing you, I'm not.

15 MR. BONDURANT: I just lose track of time.

16 THE COURT: All right. All right. I know I
17 referenced Judge Pyle, but I won't be quite -- I won't
18 do what he did to me one time, which was say, wrap it up
19 right in the middle of my argument. All right.

20 Well, let's be in recess for ten minutes.

21 (WHEREUPON, the court stood at recess for a short
22 break.)

23 THE COURT: All right.

24 MR. JOHNSON: Judge, may I?

25 THE COURT: Yes, sir.

1 MR. JOHNSON: One more thing to visit briefly.

2 THE COURT: Sure.

3 MR. JOHNSON: When my client testifies, this
4 is what he wants to testify to and I'd like to try to
5 clear it with the court.

6 THE COURT: Sure.

7 MR. JOHNSON: Well, he states that -- well,
8 he's told me -- as I understand it he wants to testify
9 this way, that he learned of Candice falling down the
10 stairs from this Mr. Hammerstad. And I understand we
11 can't present evidence of it, but can I elicit that
12 testimony because that explains how he found out and
13 he's going to testify, that, okay, he found out and he
14 went -- he went, sorry. And asked her if she needed to
15 go the hospital, something like that. So I think, you
16 know, that allows him to kind of explain his role. But,
17 of course, I understand I can't present any evidence
18 from Mr. Hammerstad, but I think he can -- I mean, he
19 does know that that's who told him and that's who saw it
20 and now he's dead. And I'm trying to clear with the
21 Court if I can elicit that testimony. And I'll try ---

22 THE COURT: I'll allow him to testify to that
23 limited ---

24 MR. JOHNSON: Okay. You understand that?

25 (Addressed to Defendant.)

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
John Day - Direct Examination by Mr. Johnson

179

1 THE COURT: That limited testimony.

2 MR. JOHNSON: Right. Thank you, Your Honor.

3 THE COURT: Okay. Thank you. Are you we
4 ready to bring the jury back in?

5 MR. JOHNSON: I believe so.

6 THE COURT: All right.

7 (WHEREUPON, the jury entered the open court at
8 approximately 3:52 p.m.)

9 THE COURT: All right. Mr. Johnson, are you
10 ready to begin with your case?

11 MR. JOHNSON: Yes, ma'am, Your Honor.

12 At this point, I'll call the Defendant in this
13 case, John Day.

14 THE CLERK: Sir, please place your left hand
15 on the bible and raise your right hand.

16 Do you solemnly swear or affirm to tell the truth,
17 the whole truth and nothing but the truth, so help you
18 God?

19 THE WITNESS: Yes, ma'am.

20 THE CLERK: Thank you. Please be seated and
21 state your name for the record.

22 THE WITNESS: John Joseph Day.

23 JOHN DAY,

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MR. JOHNSON:

2 Q. All right. John, make sure you speak loudly so
3 everyone can hear you, okay? Speak just as loudly as I
4 am and you've got a microphone.

5 A. Yes, sir.

6 Q. All right. You just told the court your name.
7 Tell us where you're from?

8 A. I'm from Braxton, West Virginia.

9 Q. Is that where you grew up?

10 A. That's where I graduated high school from. I'm
11 actually from Indiana.

12 Q. Okay. So how long did you stay in Indiana?

13 A. Most of my life until my senior years in high
14 school, ninth grade year.

15 Q. And so then you graduated in West Virginia and then
16 what did you do?

17 A. I joined the Marine Corp, September 23, 1991. I
18 was selected out of MP School, out of the top five in MP
19 School for HMX 1 Security, Presidential Helicopter
20 Squadron.

21 Q. All right. I'm going to slow you down because I
22 don't know what you just said.

23 A. Oh.

24 Q. I'm going to slow you down. Can you explain to the
25 Court kind of what that is and what that means?

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
John Day - Direct Examination by Mr. Johnson

181

1 A. I was the Marine that saluted the President, Bill
2 Clinton, on and off Marine 1, the white top helicopter
3 that landed on the White House lawn.

4 Q. So what did you do again? What did you ---

5 A. I was Presidential Security for the aircraft.

6 Q. Now, tell us the dates again, how long you did
7 that?

8 A. From '91 to '97.

9 Q. Now, what did you do post '97?

10 A. After?

11 Q. Yes. After, excuse me.

12 A. I left the Marine Corp with an Honorable Discharge,
13 completed my contract and worked at the South Carolina
14 Department of Corrections.

15 Q. And what did you do at the Department of
16 Corrections?

17 A. I was a CO.

18 Q. How long were you there?

19 A. Two years.

20 Q. Okay. Now, I'd like to go back just a little bit.
21 In order to be what you were in the Marines, did you
22 have go in any -- through anything additional, other
23 than the basic training or did you have to ---

24 A. I was top five of the Military Police Academy and
25 also Top Gun.

- 1 Q. And that's what it required in order to do that?
- 2 A. Yes, sir. And you have to be granted a Yankee
- 3 White Security Clearance to carry a firearm within arms
- 4 reach of the President.
- 5 Q. And Yankee, that's what that means to be able to
- 6 carry arms within ---
- 7 A. It's as high as you can go.
- 8 Q. As high as you can go?
- 9 A. Besides guarding nuclear missiles.
- 10 Q. Yes. And so you were a CO for how long,
- 11 corrections officer?
- 12 A. It was '97 to '99.
- 13 Q. Okay. Now, what did you do post '99?
- 14 A. I went to work in manufacturing because there
- 15 wasn't enough money in corrections and I made more
- 16 money. I actually went to a work for a company called
- 17 Energy Automotives that made gas tanks for BMW.
- 18 Q. How long did you do that?
- 19 A. I did that for four years and then I went to BMW.
- 20 Q. How long did you work at BMW, what did you do
- 21 there?
- 22 A. It was four and a half years, five years.
- 23 Q. Now, so what year are we now? We in 2009?
- 24 A. Yes, sir.
- 25 Q. Now, let's go from 2009?

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
John Day - Direct Examination by Mr. Johnson

183

- 1 A. 2010.
- 2 Q. Let's go from 2010.
- 3 A. Yes, sir.
- 4 Q. What type of job did you do then?
- 5 A. I went to Spartan Felt.
- 6 Q. Spartan Felt is where you were working at when you
- 7 were arrested here?
- 8 A. Yes, I was.
- 9 Q. So how long had you been working there again?
- 10 A. I worked there approximately seven months, eight
- 11 months.
- 12 Q. And what did you do there?
- 13 A. I was a -- I changed the tool and dying on punch
- 14 presses.
- 15 Q. Okay. Now, now that we have a little bit of your
- 16 background out of the way, I would like to go a little
- 17 bit into how you met Candice Stanley. You do know who
- 18 Candice Stanley is, don't you?
- 19 A. Yes, I do.
- 20 Q. All right. Now, how did y'all meet?
- 21 A. She ended up text messaging me while I was at work
- 22 at BMW.
- 23 Q. Okay. Under what circumstances?
- 24 A. It was a random text.
- 25 Q. Just a random text?

- 1 A. Right.
- 2 Q. And you texted back. Is that right?
- 3 A. Yes.
- 4 Q. Now, how did y'all come to actually meet and start
- 5 dating?
- 6 A. It was -- it ended up being like a year and a half
- 7 later?
- 8 Q. Year and a half later?
- 9 A. Right.
- 10 Q. Why so?
- 11 A. She wasn't in the state. She was in Illinois.
- 12 Q. Okay. So she gets back and how did y'all, I mean,
- 13 how did y'all link up?
- 14 A. She ended up coming to my house.
- 15 Q. Why did she come to your house?
- 16 A. I invited her over.
- 17 Q. Okay. Now, what did you know about her at this
- 18 time?
- 19 A. She told me she was twenty years old at that time.
- 20 Q. Did you have any reason not to believe her?
- 21 A. None whatsoever.
- 22 Q. Okay. But she told you she was twenty, she'd come
- 23 over to your house and what would y'all do?
- 24 A. Hang out, watch movies. I was living with a
- 25 roommate, Juan.

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
John Day - Direct Examination by Mr. Johnson

185

1 Q. Okay. All right. At what point did y'all move in
2 together?

3 A. I want to say it was October when I moved to Greer.

4 Q. October of what?

5 A. 2010. No, '09.

6 Q. October of '09?

7 A. Right.

8 Q. And y'all lived together, obviously -- well, at
9 least with regards to this, y'all did until you were
10 arrested?

11 A. Yes, sir.

12 Q. Okay. Now, earlier Ms. Stanley talked a little bit
13 about a court date y'all had and what happened when
14 y'all got home. And y'all started arguing. Was that
15 the way it happened?

16 A. We did start arguing, but what we argued over was
17 me telling her it was time for her to pack her stuff and
18 go.

19 Q. Okay. Now, why did you tell her that?

20 A. That was the end of the relationship. I wanted
21 nothing more to do with her at that time.

22 Q. Okay. Now, you told her she had to pack her stuff
23 and go. Did she do that?

24 A. No, she didn't.

25 Q. Okay. And what happened? How did that -- how did

1 all that transpire and so forth?

2 A. I came home and changed my clothes after I'd told
3 her that. She came straight home with me. And I told
4 her that I wanted her to leave and she needed to pack
5 her stuff. At that time, I went and grabbed a sandwich
6 in the kitchen, changed my clothes and then I went to
7 work, as my time records will show what time I clocked
8 in.

9 Q. And that's the time records we went over earlier?

10 A. Yes, sir, it is.

11 Q. Okay. And so you went to work that day after the
12 court date?

13 A. Yes, sir, I did.

14 Q. When you came home, what did you find out of what
15 happened?

16 A. I came home and the neighbor approached me as I was
17 pulling into the driveway, Dan Hammerstad, and he told
18 me that he had saw Candice fall on the back porch of the
19 house, chasing the dog. And that he'd walked up and he
20 wanted to know how she was. I continued on. You know,
21 small talk about work, whatnot, and then I went on into
22 the house. She met me at the door. And she told me
23 that she had fell and showed me the -- it was scratches
24 at the time on her arm and her leg. And she had pointed
25 out the nails that, where the wood is shrinking,

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
John Day - Direct Examination by Mr. Johnson

187

- 1 contracted on the porch, had rose up out of the wood.
- 2 And I asked her if she needed to go to the doctor. She
- 3 said, no. And she got mad because she said I didn't act
- 4 like I even cared. Well, due to the fact of the
- 5 previous that day is why I was acting like I didn't
- 6 really care, you know. But I did offer to take her or
- 7 asked her if she wanted to go to the doctor.
- 8 Q. Uh-huh (affirmative).
- 9 A. After that I had called David Jackson, which is the
- 10 maintenance man, and told him about her falling and the
- 11 nails being raised out of the wood. He came over the
- 12 next day, after I returned from work, and I help him
- 13 nail them down and we put screws where we needed to put
- 14 screws at to hold the boards all the way down.
- 15 Q. Now, so you talked about Mr. Hammerstad, now what
- 16 -- he's not here. Where is he?
- 17 A. He passed away in a car accident.
- 18 Q. Okay. So he's dead?
- 19 A. Yes, sir, he is.
- 20 Q. Okay. Anyhow, so after this happened, you get home
- 21 and you see if she needs to go to the doctor and things
- 22 of that nature. How did the rest of the week transpire?
- 23 A. We actually went out to dinner that evening and
- 24 came back home. I ended up playing games on a Play
- 25 Station III. We was sitting in the living room. She

1 fell asleep in the living room with her dog. I went to
2 the bedroom, went to sleep, got up the next morning
3 about five-thirty for work, come out and told her that
4 she needed to go in the bedroom and lay down and go to
5 sleep. Well, I tried to get her up to go to the bedroom
6 to lay down. And then I left for work.

7 Q. Now, was it your dog together?

8 A. It was her dog.

9 Q. It was her dog? Now, where is this dog?

10 A. This dog is dead. He got killed in the road from
11 running out of -- running.

12 Q. From running?

13 A. Yeah.

14 Q. Kind of similar to what Mr. Hammerstad told you?

15 A. Yes, sir.

16 Q. Now, you go to work on, obviously, on the 30th?

17 A. Yes, sir, I did.

18 Q. And then you go the next two days, right?

19 A. Yes, sir, I did.

20 Q. Now, what happened on the weekend?

21 A. We ended up going to the 4th of July fireworks on
22 that weekend.

23 Q. Why did y'all go together? I mean, how did that
24 work?

25 A. I ended up feeling bad about, you know, telling her

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
John Day - Direct Examination by Mr. Johnson

189

1 to leave and wanted to spend some time with her.

2 Q. Uh-huh (affirmative). And that's what you did,
3 right?

4 A. Yes, sir, I did.

5 Q. Now, can you tell us anything about it?

6 A. Well, we went and watched the fireworks and she
7 backed up to me and I held her. She attempted to kiss
8 me and I refused it and when I did, I made her really
9 angry and she told me I was sending her mixed signals
10 and playing mind games with her.

11 Q. What you mean you said no. I mean, was it like,
12 no?

13 A. No, it wasn't like that. I had found out she had
14 cheated on me because she admitted to me of cheating.
15 So I was -- I wasn't ready for that, you know. It was
16 at my pace, basically. But I was starting to forgive
17 her.

18 Q. You were starting to forgive her at that point?

19 A. Yes, sir.

20 Q. Now, so you get home the 4th of July thing. And
21 what's happening now? What's happening? What's going
22 on?

23 A. I reiterated I wanted her to leave.

24 Q. Now, why did you do that?

25 A. Because she had showed out at the 4th of July,

- 1 telling me I was playing mind games. And I told her I
2 didn't want to play mind games anymore. I just wanted
3 it to be over. Pack her stuff and leave.
- 4 Q. Okay. Now ---
- 5 A. And I did not talk to her no more the rest of that
6 day when I went to work or nothing.
- 7 Q. What day are we talking about?
- 8 A. The day after.
- 9 Q. You talking about the 6th?
- 10 A. The 6th.
- 11 Q. The 6th. You were off on Monday right?
- 12 A. Yes, sir.
- 13 Q. Okay. What happened to you on the 6th?
- 14 A. I was arrested that evening.
- 15 Q. That evening?
- 16 A. Yes, sir, I was.
- 17 Q. This was after -- so basically the last time you
18 talked to her was after the -- you say the incident of
19 the 4th of July fireworks?
- 20 A. Yes, sir.
- 21 Q. Okay. Now, so you go to jail?
- 22 A. Yes, sir, I do.
- 23 Q. All right. Well, did y'all have contact from jail?
- 24 A. I received the two letters from her from jail. And
25 then I also received a -- I'd called Sandra and she was

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
John Day - Direct Examination by Mr. Johnson

191

1 trying to get my truck to move some furniture with it.

2 And I'd told Sandra not to let her have the truck.

3 Q. Okay.

4 A. And then the next day when I called back to check

5 with Sandra, she happened to be there at the house.

6 Q. Okay.

7 A. At Sandra's house.

8 Q. Did you talk to her?

9 A. Yes, I did. I told her not to drive my truck.

10 Q. Okay.

11 A. And she knows the pass code to the door and she had

12 a key, also.

13 Q. Okay. And did y'all talk about these letters at

14 all or ---

15 A. No, sir, we didn't.

16 Q. Okay. Now, why did you decide to write Robert? Do

17 you remember when you wrote him?

18 A. I was letting him that I didn't know when I would

19 be out and that he handle -- and how he needed to handle

20 things.

21 Q. Okay.

22 A. The power had to be paid on the trailer or we'd

23 have been evicted. It's an automatic there.

24 Q. Is it based upon your lease?

25 A. Yes, sir.

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
John Day - Direct Examination by Mr. Johnson

192

- 1 Q. Now, here is that -- here is said letter. Now, you
2 wrote this letter, right?
- 3 A. Yes, sir, I did.
- 4 Q. Do you remember the contents of it?
- 5 A. It was just basically what happened to me and the
6 things he needed to do.
- 7 Q. Okay.
- 8 A. And then phone numbers for the kids and Sandra to
9 help him close the trailer out if he chose to leave or
10 if he chose to pay the power bill.
- 11 Q. Now, at this point in time -- the date on this is
12 July 20th, right?
- 13 A. Sir?
- 14 Q. The date on this is ---
- 15 A. Yes, sir, it is.
- 16 Q. At this point, had you gotten Candice's letters?
- 17 A. Yes, I did.
- 18 Q. You'd already gotten them?
- 19 A. I'd already gotten them and I believe I'd already
20 seen you while I was incarcerated.
- 21 Q. You'd seen -- you're talking about me?
- 22 A. Yes, sir.
- 23 Q. I had visited you at the jail?
- 24 A. Yes, sir.
- 25 Q. Okay. Now, Robert seems to believe that, according

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
John Day - Direct Examination by Mr. Johnson

193

1 to the letter, that you didn't want her in the house.

2 Is that true?

3 A. Yes, sir. I plainly stated that I didn't want her
4 in the house.

5 Q. Okay. Now, past that point now, she talked about
6 signing the -- well, first of all, do you know -- are
7 you aware of the affidavit not to prosecute that was
8 signed?

9 A. Yes, sir, I am.

10 Q. And how are you aware of that?

11 A. You told me.

12 Q. Now, was this something that y'all arranged or what
13 was going on?

14 A. No, sir, it wasn't. I didn't have any idea to do
15 that.

16 Q. Okay. Now, when did you get out of jail?

17 A. It was the first of August.

18 Q. The first of August?

19 A. Yes, sir.

20 Q. Where did you go? I mean, did you have a place to
21 go?

22 A. I went straight back to the trailer.

23 Q. I mean, were you by yourself? Was Robert there?

24 A. I was by myself and Robert had already moved out.

25 Q. Okay.

- 1 A. He was gone.
- 2 Q. Okay. At what point did you see Candice again?
- 3 A. It was probably about two weeks, a week later. She
- 4 showed up and came over and we sat out on the porch and
- 5 talked for a couple of hours.
- 6 Q. What did y'all talk about?
- 7 A. She wanted to come back.
- 8 Q. She wanted to come back home?
- 9 A. Yes, sir.
- 10 Q. Okay. And what were your thoughts about that?
- 11 A. At first, no. You know, and explaining the
- 12 conditions of my bond and why I couldn't do it.
- 13 Q. Now, hold up. Hold up. The conditions of your
- 14 bond, what are you talking about?
- 15 A. Well, I'd just got out of jail.
- 16 Q. Well, what do you mean by conditions of your bond?
- 17 A. No contact.
- 18 Q. Huh?
- 19 A. No contact.
- 20 Q. Okay. No contact?
- 21 A. Yes, sir.
- 22 Q. What you mean no contact?
- 23 A. I'm not supposed to have any contact with the
- 24 victim.
- 25 Q. Okay. And that's per the Judge, right?

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
John Day - Direct Examination by Mr. Johnson

195

1 A. Yes, sir, it is.

2 Q. All right. Now, so you're talking to her. I mean,
3 did you tell her to leave?

4 A. I loved her. I mean, I was listening. I didn't
5 tell her to leave right at that moment, no.

6 Q. Okay. Did you ever tell her?

7 A. No, I talked to her. I mean, we continued to have
8 a conversation and she ended up coming back the next
9 day.

10 Q. Now, I mean, where was she staying at this point in
11 time?

12 A. She was staying at Melanie's.

13 Q. At who?

14 A. Melanie Montemayer's.

15 Q. So you're talking about Marion Stephens?

16 A. Yes, sir.

17 Q. You talking about her house?

18 A. Yes, sir.

19 Q. Okay. Now, she was staying over there. Now, I
20 mean, how did that work? I mean, obviously, they, you
21 know ---

22 A. She had to park her car between the trailers so
23 they wouldn't see it when they drove by. And she hid
24 when she come to see me.

25 Q. Okay. Because they wouldn't want her ---

- 1 A. They wouldn't want her there.
- 2 Q. And that's because they believed that you ---
- 3 A. Yes, sir, they believed I did that.
- 4 Q. Yeah. So y'all are talking, did she stay overnight
- 5 or did she go home or what did you do?
- 6 A. She did not stay the night -- the second night
- 7 either. She came over and we had dinner and watched a
- 8 Christian movie about couples.
- 9 Q. What do you mean a Christian movie?
- 10 A. It's reconciling. I can't remember the name of the
- 11 movie, but that's what we watch.
- 12 Q. What, about reconciling?
- 13 A. Yes, sir. It was about them having troubles in
- 14 their relationship.
- 15 Q. Okay. So at this point, in your mind, I mean, were
- 16 y'all trying to get back together? What's happening?
- 17 A. Yes, sir, we were.
- 18 Q. Y'all were?
- 19 A. Yes, sir.
- 20 Q. I mean, y'all had forgiven each other? I mean ---
- 21 A. I was teeter-tottering on it, going back and forth.
- 22 Q. Yeah.
- 23 A. But I wanted to believe her.
- 24 Q. Now, at what point -- as I understand it, even from
- 25 her testimony, y'all did get back together and she did

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
John Day - Cross Examination by Mr. Bondurant

197

1 move in?

2 A. Yes, sir, she did.

3 Q. Okay. At what point did that happen?

4 A. It was probably a week later.

5 Q. A week later?

6 A. Yeah. It was probably a week later.

7 Q. Okay. So she moved from the Stephens' home?

8 A. And right back into the house.

9 Q. Right back into the house?

10 A. Yes, sir.

11 Q. And how long did y'all stay together?

12 A. Until January 14th of this year.

13 Q. Of this year?

14 A. Yes, sir.

15 Q. Okay.

16 MR. JOHNSON: One second, please. At this
17 time, Your Honor, I have nothing further.

18 THE COURT: All right. Mr. Bondurant.

19 CROSS-EXAMINATION

20 BY MR. BONDURANT:

21 Q. Mr. Day, you said you went to court that day with
22 the victim, then you returned home and you ended the
23 relationship. Why is that?

24 A. She didn't tell the truth. She didn't make honest
25 statements. She told a lie.

1 Q. She didn't tell the truth to who?

2 A. To the Judge.

3 MR. JOHNSON: Objection, Judge. I think he's
4 trying to elicit some testimony that we talked about.

5 THE COURT: Why don't y'all approach for a
6 second. I apologize.

7 (WHEREUPON, Mr. Bondurant and Mr. Johnson
8 approached the bar.)

9 Q. Okay. So she didn't tell the truth to who?

10 A. To the Judge at the hearing.

11 Q. And that made you angry, right?

12 A. It made me not want to be with her anymore.

13 Q. But it didn't make you angry?

14 A. I was upset, disappointed, betrayed.

15 Q. So you came home and you ended it with her?

16 A. Yes, sir, I did.

17 Q. At your house?

18 A. Yes, sir.

19 Q. And you said she didn't leave?

20 A. No, she didn't.

21 Q. It was your house. Why didn't you make her leave?

22 A. I couldn't make her leave.

23 Q. Why not, it's your house?

24 A. Because she was a resident there.

25 Q. You could evict her. Did you try to evict her?

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
John Day - Cross Examination by Mr. Bondurant

199

1 A. I didn't and that's what I should have done.

2 Q. You should have tried to evict her?

3 A. Yes, sir.

4 Q. And you didn't do that?

5 A. No, I didn't.

6 Q. Did you -- let's talk about your relationship with
7 her. When y'all first started hanging out, what were
8 some of the things y'all were doing?

9 A. Watching movies, going to the mall, stuff like
10 that.

11 Q. Going to the mall. Where did she live?

12 A. In Greer.

13 Q. With who? Who did she live with?

14 A. Her parents.

15 Q. Was she in school at the time?

16 A. I don't know.

17 Q. You don't know ---

18 A. I didn't.

19 Q. --- whether she was in school at the time?

20 A. I don't know.

21 Q. So you hung out with her how long when she came
22 back?

23 A. Probably October is when she moved in with me. But

24 I -- maybe a year.

25 Q. You hung out for a year?

1 A. On and off for a year.

2 Q. And you never talked about whether she was in
3 school, what she was doing?

4 MR. JOHNSON: Judge ---

5 A. I worked first ---

6 THE COURT: All right. Hold on just a second.
7 What's your objection?

8 MR. JOHNSON: My objection is, I mean, what is
9 the relevance of talking to her about whether she was in
10 school or not?

11 MR. BONDURANT: The relevance, Your Honor, is
12 that he said that she said she was twenty years old.
13 And that ---

14 THE COURT: It's -- I think that's all
15 irrelevant. Let's just move on from that. I think
16 we've established the age of everybody.

17 Q. So did you -- you didn't know she was at Greer High
18 School then?

19 A. No, sir, I didn't.

20 Q. And you didn't know she was in Greer High School
21 the next year as a senior, as well?

22 A. No, sir, I didn't. Well -- no, sir.

23 Q. You just thought she was twenty.

24 A. Yes, sir, I did.

25 MR. JOHNSON: Judge, he's still on this.

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
John Day - Cross Examination by Mr. Bondurant

201

1 THE COURT: Let's just move on.

2 Q. You said you got home and you spoke with a Mr.

3 Hammerstad?

4 A. Yes, sir, I did.

5 Q. What time was that?

6 A. It was probably around four-thirty -- five-thirty,
7 six o'clock.

8 Q. When you talked to him?

9 A. Yes, sir.

10 Q. Where did he live?

11 A. Right across the street from me.

12 Q. He lived right across the street from you?

13 A. At an angle, a diagonal.

14 Q. And did -- and Mr. Hammerstad died when?

15 A. I have no idea when he died. Brian actually told
16 me that he was deceased.

17 Q. Okay. And so the obituary says December 30th,
18 2011, that he died. Did you speak with him at all ---

19 A. I never had any conversation with him at all.

20 Q. --- from the time of that ---

21 A. From December ---

22 Q. --- from the stairs to the time he died, you didn't
23 speak with him?

24 A. From the what?

25 Q. From the time he told you about the stairs?

1 A. Oh, we had conversation up until he moved and I
2 think he moved, it was around, I want to say November,
3 maybe, when he moved to wherever he was at on that
4 obituary.

5 Q. And you admit that you wrote this letter?

6 A. Yes, I did write that letter.

7 Q. And Mr. Hammerstad allegedly told you this stuff on
8 the day you returned home from Court, correct? On 6/30?

9 A. Later that evening, right. After I got home from
10 work.

11 Q. And who was at the house that day?

12 A. Myself and Candice.

13 Q. Was Robert there?

14 A. I don't know if he was there or not. I really
15 didn't. I come in and changed clothes and shot out the
16 door. But I didn't see his car in his parking spot
17 either. So I don't believe that he was there that
18 morning.

19 Q. Okay.

20 A. But I have no idea to where he was.

21 Q. Okay. And so you wrote this letter to Robert and
22 in that letter you talk about the charges, correct?

23 A. Yes, sir, I did.

24 Q. Okay. And you talked about her allegations towards
25 you, right?

1 A. Yes, sir.

2 Q. And then you talk about who she told, right?

3 A. Yes, sir.

4 Q. Did you ever mention Mr. Hammerstad in the letter?

5 A. No, I didn't.

6 Q. Okay. Did you ever mention the fact that you
7 talked to a David Jackson about repairing the stairs
8 after that?

9 A. No. I mean ---

10 Q. So this your written statement?

11 A. That was prior to ---

12 MR. JOHNSON: Judge, I'm going to object to
13 his characterization of a written statement in the
14 letter to Robert. I don't see how a letter to Robert -
15 --

16 MR. BONDURANT: Sorry about that. Written
17 document.

18 THE COURT: All right. Sustained. Just
19 rephrase it.

20 Q. And I'm sorry if I cut you off, please go ahead,
21 sir.

22 A. What was the question? Say it again.

23 Q. Okay. I thought I cut you off. I was just letting
24 you finish. You're talking about -- you're addressing
25 these charges and you're talking about what a dire

1 situation you're in, correct?

2 A. Yes, sir.

3 Q. And you're talking about the seriousness of the
4 charges, correct?

5 A. Yes, sir.

6 Q. And you're talking about -- and you're addressing
7 this to somebody who is living in the house with you at
8 the time?

9 A. Right.

10 Q. That would have, apparently, knowledge of whether
11 this did or did not occur?

12 A. Yes, sir.

13 Q. And yet you don't mention Mr. Hammerstad, you don't
14 mention repairing the stairs, you don't mention talking
15 to David Jackson. Isn't that true?

16 A. Yes, sir. But when -- I mean, David came over --
17 he was there at that time when David came over to repair
18 the steps.

19 Q. Who was there?

20 A. Our roommate.

21 Q. Robert?

22 A. Yes, sir.

23 Q. So -- but ---

24 A. So he knew what was -- I mean, it was no need to
25 mention that part of it.

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
John Day - Cross Examination by Mr. Bondurant

205

1 Q. So why didn't you ask him ---

2 A. I didn't go to ---

3 Q. --- I don't know what she told you?

4 A. I don't know what they had talked about. I didn't
5 talk to him anymore after that. I didn't have any -- I
6 worked first shift and he worked the evening shift.

7 Q. Well, wouldn't you say to him, Robert, you were
8 there, you saw David Jackson finish the stairs, repair
9 the stairs?

10 A. I didn't even talk to Robert. You know, he stayed
11 in his room like he had testified and he hardly ever
12 came out, except to get something to eat or to leave.

13 Q. Can you describe the stairs for me?

14 A. They're old. The wood's weathered very badly and
15 all the nails are pushed up.

16 Q. All the nails are pushed up? How many?

17 A. The back deck's probably eight by twelve, thirteen.

18 Q. She said -- so she fell on the back deck?

19 A. Yes, sir.

20 Q. And where's the back deck facing?

21 A. The road.

22 Q. The back deck faces the road?

23 A. The trailers sit this way. Highway 14 sits this
24 way. The road coming into the trailer park's right
25 here.

- 1 Q. Okay. And where was Mr. Hammerstad's ---
- 2 A. Diagonal. But he was walking his dog in this field
- 3 that's over here.
- 4 Q. Okay.
- 5 A. That's where they all walk their dogs. That's
- 6 where they're supposed to.
- 7 Q. Is David Jackson here today?
- 8 A. No, sir, he's not.
- 9 Q. You said you had no idea about the affidavit not to
- 10 prosecute before Mr. Johnson showed it to you?
- 11 A. No, sir.
- 12 Q. Okay. So, again, this -- she writes in her letter,
- 13 I went to sign that paper ---
- 14 A. I had no idea what she was talking about.
- 15 Q. Did you try to get her any medical treatment?
- 16 Other than ask her to go to the hospital, did you try to
- 17 get her any medical treatment?
- 18 A. No, because at the time it was just scratches.
- 19 That's all it looked like.
- 20 Q. Just scratches?
- 21 A. That's what it looked like. Like she skinned her
- 22 leg up and skinned her arm up.
- 23 Q. Did you see any pictures of the injuries?
- 24 A. I saw them when you just presented them to Brian.
- 25 Q. Okay.

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
John Day - Cross Examination by Mr. Bondurant

207

1 A. That was also eight days later.

2 Q. How did she get a circular ---

3 A. Sir?

4 Q. How did she get a circular injury?

5 A. I have no idea.

6 MR. JOHNSON: Judge, he's asking for some
7 expert testimony. He's not qualified to ---

8 THE COURT: If he doesn't know, I'll just
9 allow him to say he has no idea.

10 MR. JOHNSON: Okay.

11 A. I don't know.

12 Q. In your letter to Robert, you said you talked to
13 Candice the other night and she was talking about
14 getting a house and all of that. You were talking to
15 Candice, but you didn't plan on getting back with her?

16 A. No, I didn't. She wanted to use my truck.

17 Q. Okay. But you did get back with her?

18 A. I did get back with her, after I'd gotten out.

19 Q. And you just testified to Mr. Johnson that you
20 violated your bond conditions?

21 A. Yes, sir, I did.

22 Q. So what did you mean when you said to Robert, I'm
23 sorry for all of this. I really am. A lot of this is
24 my fault for letting it happen the way it did.

25 A. Because I could have gotten a restraining order and

1 also could have evicted her and not -- and if I had
2 taken those steps, this would not have happened.

3 MR. BONDURANT: No further questions, Your
4 Honor.

5 THE COURT: Mr. Johnson?

6 MR. JOHNSON: No redirect..

7 THE COURT: All right, sir. You can step
8 down.

9 MR. JOHNSON: May we approach?

10 THE COURT: Yes.

11 (WHEREUPON, Mr. Bondurant and Mr. Johnson
12 approached the bar.)

13 THE COURT: Mr. Johnson?

14 MR. JOHNSON: Your Honor, at this point the
15 Defense has no further witnesses and we rest.

16 THE COURT: All right. Then very well.

17 Ladies and gentlemen, we were having a brief
18 discussion up here about scheduling. We've come to the
19 end of this trial. We have arguments from the attorneys
20 and charge on the law left. While we do not believe any
21 of that will be lengthy, it probably is going to take
22 you all later than I'd like to this evening, so I'm
23 going to ask you to be back in your jury room tomorrow
24 morning at nine a.m. We shouldn't go very long tomorrow
25 in terms of arguments and then the case will be yours to

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Cam Jones (Proffered Testimony) - Direct Examination by Mr. Johnson

224

1 THE COURT: And I -- it looks like Mr.

2 Bondurant is saying he's fine. That he's not planning

3 on ---

4 MR. BONDURANT: That's correct, Your Honor.

5 I'm fine with that.

6 THE COURT: --- on doing anything like that.

7 All right, then. Well, if there's nothing else,

8 we'll bring the jury back in.

9 Oh, Mr. Bondurant, do you want to open on the law?

10 No?

11 MR. BONDURANT: No, ma'am.

12 THE COURT: The first jury trial I ever had in

13 the Solicitor's Office -- who did this to me? Al might

14 remember. I don't know who did it to me. Turned to me

15 and said, I'd like the Solicitor to open on the law, but

16 the Defense attorney did. I didn't know what he was

17 talking about. I had no earthly idea.

18 MR. JOHNSON: Oh, yeah. Talking the law. In

19 talking the law, I've got one last thing.

20 THE COURT: Oh, sure.

21 MR. JOHNSON: I think I forgot to renew my

22 prior objection at the close of my case, renew those and

23 then also, again, renew my motion for a directed

24 verdict.

25 THE COURT: All right. All right. Very well,

1 then. And those motions are -- your motion is
2 respectfully denied, but it is preserved for the record.

3 MR. JOHNSON: Thank you, Your Honor.

4 THE COURT: All right. Very well, then. All
5 right. Let's bring the jury back in.

6 We're making one change to the verdict form to add,
7 we, the jury, unanimously find.

8 (WHEREUPON, the jury entered the open court at
9 approximately 9:06 a.m.)

10 THE COURT: Good morning, ladies and
11 gentlemen. I thank you so much for being so prompt
12 today. We appreciate it. And we are now ready to begin
13 with closing arguments.

14 Mr. Johnson.

15 MR. JOHNSON: Thank you, Your Honor. May it
16 please the Court.

17 THE COURT: Yes, sir.

18 MR. JOHNSON: Solicitor.

19 **CLOSING STATEMENT**

20 **BY MR. JOHNSON:**

21 At the beginning of the case I told you I wasn't
22 going to say much. I was going to let everything speak
23 for themselves. I told you, put your lie detectors on,
24 turn on your common sense and watch as things unfold. I
25 believe what I said was right. I believe you saw a

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Charge

272

1 THE COURT: It's my understanding we've got a
2 verdict. Is that correct?

3 THE BAILIFF: Yes, ma'am, it is.

4 THE COURT: All right, then. Are we ready to
5 bring the jury back in, Mr. Bondurant?

6 MR. BONDURANT: Yes, ma'am.

7 THE COURT: Mr. Johnson?

8 MR. JOHNSON: Yes, ma'am, Your Honor.

9 THE COURT: All right, then.

10 (WHEREUPON, the jury entered the open court at
11 approximately 11:29 a.m.)

12 THE COURT: Madam foreperson, it's my
13 understanding that the jury has reached a verdict. Is
14 that correct?

15 MADAM FOREPERSON: Yes, Your Honor.

16 THE COURT: All right. I'd ask you to hand up
17 the verdict form, please, to the bailiff.

18 The verdict form appears to be in order. Would you
19 publish it, please?

20 THE CLERK: Your Honor, in the case of 2010-
21 GS-23-8246, the State of South Carolina versus John Day.
22 As to the criminal domestic violence of a high and
23 aggravated nature, we, the jury unanimously find the
24 Defendant guilty of criminal domestic violence of a high
25 and aggravated nature. This is signed by Ms. Waldrop,

1 our foreperson.

2 Ladies and gentlemen of the jury, you agree this is
3 the verdict you reached in your deliberation room.

4 Would you please raise your right hand.

5 (WHEREUPON, all jurors' right hands were raised.)

6 THE CLERK: Thank you.

7 THE COURT: Anything before we release the
8 jury? From the State?

9 MR. BONDURANT: Nothing, Your Honor.

10 THE COURT: Anything from the Defense?

11 MR. JOHNSON: Nothing from the Defense, Your
12 Honor.

13 THE COURT: All right.

14 Ladies and gentlemen, we thank you so much for your
15 service these past two days. I appreciate it more than
16 I can tell you and I do want to speak to you in your
17 jury room for just one moment before you leave. I will
18 ask you to go to your jury room and we'll be getting
19 your cell phones back to you and all of those other
20 things before we let you leave today. But I do want to
21 come around and speak to you. All right. Thank you,
22 again.

23 (WHEREUPON, the jury exited the open court at
24 approximately 11:31 a.m.)

25 THE COURT: I tell you what, let's get

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Charge

274

1 prepared to do sentencing, if y'all are ready for that.

2 But let me step back and just speak to the jury while

3 we're doing that, all right?

4 MR. JOHNSON: Okay.

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

7 THE COURT: I will pass along to you that
8 while I told the jury I certainly can't talk to them
9 about the verdict in anyway, that they did want to
10 compliment the court system and felt like both of the
11 attorneys did a really great job, and I would say the
12 exact same thing. I do believe that some of the jurors
13 want to stay for sentencing, so we're going to wait for
14 them to come in through the back, I think, in just a
15 moment.

16 I would say to everyone who's here that this jury
17 had to be here for two days and take time away from
18 their lives and I don't want any comments made to them,
19 one way or another, all right?

20 All right. I don't think we need to have a
21 recitation of the facts, but is there anything else from
22 the State?

23 MR. BONDURANT: Nothing. Nothing, other than
24 I think the victim wants to say something.

25 THE COURT: All right. And tell me his prior

1 criminal record?

2 MR. BONDURANT: It's just the domestic
3 violence, Your Honor, from that prior domestic violence.

4 THE COURT: All right. And that would have
5 been in ---

6 MR. BONDURANT: 2010?

7 THE COURT: 2010.

8 MR. JOHNSON: 6/30.

9 THE COURT: 6/30/2010. All right. And, yes,
10 ma'am.

11 MS. STANLEY: I feel like he should get the
12 maximum because the next time the person that he's with
13 might not be so lucky and just have scars. He could
14 really ...

15 THE COURT: Thank you, ma'am, I appreciate
16 it.

17 Mr. Johnson.

18 MR. JOHNSON: Thank you, Your Honor, as
19 you've heard -- well, first of all, let me say, I'd like
20 to ask for the mercy of the court. As you've heard, my
21 client is 37 years old, has a pretty decent background,
22 has a very minimal prior record of course. These two
23 incidents were two things that, I guess that CDV and
24 then this one, things happened, like, in a very short
25 amount of time. I can tell you that I did not represent

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Charge

276

1 Mr. Day at that trial. It was a bench trial. I did not
2 represent him, so I don't have any knowledge of it.
3 Also, as Your Honor knows, I understand this is
4 inadmissible, but I think Mr. Hammerstad, if alive,
5 could have been a game changer. He could have --
6 someone who says he's an eyewitness and actually saw her
7 fall, may have been able to change everything.

8 In any case, the jury has spoken. They have made
9 their decision. Mr. Day respects that. Of course, we
10 ask you, once again, to consider his minimal prior
11 record, the fact that he's worked pretty much all his
12 life, his service record. And I understand you've got
13 to do at the very least a year. Accordingly, we ask you
14 to consider a minimum amount. I don't know if you can
15 do that or not, but we'd definitely ask you to consider
16 it and then maybe even -- he obviously would be willing
17 to do anything that would keep him out, but probation of
18 some sort. He does have -- now, Charlie, he has a
19 little bit of credit when he initially was in. And then
20 he's been incarcerated now.

21 MR. BONDURANT: Eighty-nine days.

22 MR. JOHNSON: He's incarcerated now. Does
23 that include now?

24 MR. BONDURANT: Yes.

25 MR. JOHNSON: Okay.

1 MR. BONDURANT: He had nineteen initially.

2 And I think it's seventy now.

3 MR. JOHNSON: Okay. Seventy now. Okay. Does
4 that sound right, John?

5 THE DEFENDANT: Yes, sir.

6 MR. JOHNSON: Okay. So we ask you to consider
7 those things. We ask for the mercy of the court and I
8 don't know, John, would you like to say anything?

9 DEFENDANT: No, sir.

10 MR. JOHNSON: My client declines to speak.

11 THE COURT: He said he does not wish to speak?

12 MR. JOHNSON: He has declined to speak, Your
13 Honor.

14 THE COURT: Okay. I certainly understand
15 that. All right.

16 Well, ma'am, let me tell you about some of the
17 things that I take into consideration when I sentence.
18 First of all, I take into consideration the impact on
19 you and the seriousness of the crime. And certainly
20 that's been a great impact to you and I take this very
21 seriously. Of course, I know that the Solicitor's
22 Office has told you that this carries a maximum of ten
23 years in jail.

24 I also have to take into account any mitigating
25 factors, and one of those is that he has a very minimal

State of South Carolina -vs- John J. Day (2010-GS-23-08246)
Charge

278

1 prior criminal record. Unfortunately, it's of this same
2 nature. His prior record is of this same nature and I
3 have to take that into account as well.

4 I also take into account that I do not want him
5 simply released from the Department of Corrections with
6 nothing following him. And I have to structure a
7 sentence that allows there to be some monitoring
8 afterwards.

9 But Mr. Day ---

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: --- this was a particularly
12 vicious attack that you made on this woman. And the
13 reason that the law takes this so seriously is because
14 it's the people that are most vulnerable who are around
15 you, living in your household, and this young lady
16 depended on you in a lot of ways for every bit of her
17 support, other than, you know, what small job that she
18 had.

19 The sentence of the court is eight years. That's
20 provided upon the service of five years, the balance is
21 suspended with probation for three. The credit for time
22 served is eighty-nine days. Once you're released,
23 you'll be required to undergo batterers treatment,
24 random drug and alcohol testing and substance abuse
25 counseling if it's deemed necessary.

1 I wish you the best of luck.

2 Good luck to you, ma'am.

3 Just for anyone who wanted any clarification on the
4 sentence itself, why don't I just go ahead and do that.
5 The maximum sentence was ten years and I told you the
6 things that I take into consideration in coming up with
7 a sentence. But I sentenced him to eight years. I
8 suspended that on the service of five years in jail.

9 The balance of that is suspended on three years
10 probation. In other words, if he doesn't follow up and
11 through with his probation, he could be subject to
12 serving the remainder of the three years on his
13 sentence. So he'll serve five years in jail and with
14 certain conditions and restrictions during his probation
15 after he's released, after he's served the five.

16 I thank y'all so much for your service.

17 (WHEREUPON, Court Exhibit Number 3 was marked for
18 identification.)

19

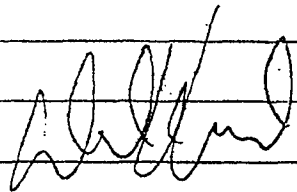
20 [END OF REQUESTED TRANSCRIPT OF RECORD]

WITNESSES

James A. Guthrie

Greer Police Department

7/7/2010



ARREST WARRANT NUMBER

1581945

DIRECT PRESENTMENT

2010 GS2308246A

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury



VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-23-8246

CAB

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August TERM 2011

4-20-12

THE STATE

vs.

JOHN DAY

Indictment for

2988

0549

DOMESTIC VIOLENCE OF A HIGH AND
AGGRAVATED NATURE

VIOLATION § 16-25-0065

POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

VIOLATION § 16-23-0490

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
COUNT ONE - DOMESTIC VIOLENCE OF A HIGH AND
AGGRAVATED NATURE
COUNT TWO - POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on

AUG 16 2011

the Grand Jurors of Greenville

County present upon their oath:

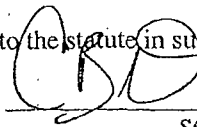
COUNT ONE - DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE

That JOHN DAY did in Greenville County, on or about the 30th day of June 2010, intentionally commit an assault and battery which involved the use of a deadly weapon or resulted in serious bodily injury to a household member, CANDICE STANLEY, and/or JOHN DAY did intentionally commit an assault with or without an accompanying battery, which would reasonably cause a person to fear imminent serious bodily injury. This is in violation of §16-25-65 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That JOHN DAY did in Greenville County, on or about the 30th day of June, 2010, possess or visibly display a claw hammer during the commission or attempted commission of a violent crime, to wit: Domestic Violence of a High and Aggravated Nature. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

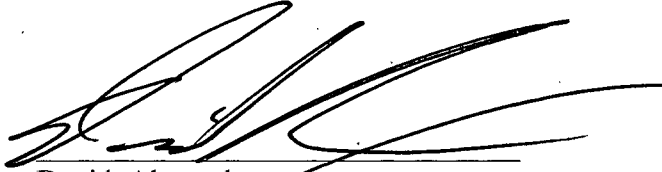
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


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 21st, 2013

A handwritten signature in dark ink, appearing to read 'David Alexander', is written over a horizontal line.

David Alexander
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

Appeal from Greenville County

Letitia H. Verdin, Circuit Court Judge

ORIGINAL

RECEIVED

JUN 21 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

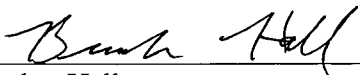
JOHN J. DAY,

APPELLANT

APPELLATE CASE NO. 2012-211970

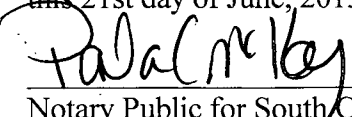
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Christina J. Catoe, Esquire, at the 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.