

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Honorable William A. McKinnon, Circuit Court Judge

RECEIVED

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S.C. SUPREME COURT

RICKY EUGENE PASSMORE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001737

APPENDIX

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State of South Carolina.,) In the General Sessions
) Court of York
)
) Case No. 2013-GS-46-02902
)
 County of York.)

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-) Transcript of Record
)
 Ricky Eugene Passmore.,)
)
 Defendant.)
)

March 31, April 1, 2014
 York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III, and a Jury.

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Reporter's Note: All Exhibits were filed with the York
County Clerk of Court's office.

1 (COURT IN SESSION IN THE MATTER OF STATE V. RICKY
2 PASSMORE MONDAY, MARCH 31, 2014 AT 02:05 P.M..)

3 THE COURT: Ms. Holland, you ready to go ahead and
4 start in pretrial on the Ricky and Micky Passmore matters?

5 SOLICITOR HOLLAND: Yes, sir, the State's ready.

6 THE COURT: Okay.

7 SOLICITOR HOLLAND: Your Honor, the State is calling
8 to trial the case of Ricky Eugene Passmore charged with
9 kidnaping on Indictment 201-GS-46-2-1-9. And count two of
10 the same indictment possession of a weapon during the
11 commission of a violent crime, that is 2-1-9-A.

12 Burglary in the first degree, 2013-GS-46-2-9-0-3.
13 And Criminal Domestic Violence of a High and Aggravated
14 Nature 2013-GS-46-2-9-0-2. Also calling to trial the case
15 against Micky Dale Passmore charged with Burglary in the
16 first degree. That's 2013-GS-46-3-2-8-7.

17 THE COURT: Will you and Mr. Epting be representing
18 the State?

19 SOLICITOR HOLLAND: Yes, sir.

20 THE COURT: All right. Who is representing Ricky?

21 MR. HALL: Your Honor, I'm representing Ricky
22 Passmore.

23 THE COURT: And Micky?

24 MR. JETER: Your Honor, Thomas Jeter and Pete Nosal
25 here representing Micky in this matter.

1 THE COURT: Okay. And both are present. All right,
2 any pretrial motions from the State?

3 SOLICITOR HOLLAND: Yes, Your Honor, I do have a few.
4 I handed up and I provided the Defense with copies. Our
5 first motion will be to have Ricky Passmore certify on the
6 record that he's waived arraignment on Indictment No.
7 2014-GS-46-2-1-9 and 2-1-9 - A. Again we called this case
8 to trial in January and actually picked a jury but this
9 issue I don't think was ever put on the record so I just
10 wanted to get that on the record.

11 MR. HALL: Your Honor, my client - I believe we did
12 waive it on the record however I must caution we are
13 waiving his arraignment.

14 THE COURT: All right. Do you understand that Mr. -
15 Do you understand what they're doing, Mr. Passmore?

16 MR. PASSMORE: No. I don't know what you're talking
17 about.

18 THE COURT: You have the right - -

19 MR. HALL: Your Honor, may I have just a second?

20 THE COURT: Sure.

21 (PAUSE.)

22 MR. HALL: Your Honor, my client would like to be ask
23 the - formally ask the questions on the record.

24 THE COURT: Okay. We'll go ahead and do a formal
25 arraignment.

1 SOLICITOR HOLLAND: Okay. We can do that.

2 THE COURT: All right. Ricky Passmore, Ms. Holland
3 on behalf of the State is going to - First raise your
4 right hand.

5 You are Ricky Passmore?

6 MR. PASSMORE: Yes, sir.

7 THE COURT: Is it Dale?

8 MR. PASSMORE: Ricky Eugene.

9 THE COURT: Is that you?

10 MR. PASSMORE: Yes, sir.

11 THE COURT: All right. The Solicitor is going to -
12 Ms. Holland on behalf of the State is going to read
13 you and tell you what you are charged with and ask your
14 plea as to that charge - the charges.

15 SOLICITOR HOLLAND: Ricky Eugene Passmore, if you
16 answer by that name please raise your right hand?

17 (DEFENDANT AFFIRMED.)

18 SOLICITOR HOLLAND: There is an Indictment 2014-GS-
19 46-0-0-2-1-9 and 2014-GS-46-2-1-9-A that is a two count
20 indictment charging you with kidnaping, possession of a
21 weapon during the commission of a violent crime. The
22 Indictment does read as to the count one kidnaping the
23 Defendant Ricky Eugene Passmore did in York County, South
24 Carolina on or about June 19th, 2013 unlawfully seized,
25 confined, inveigled, decoyed, kidnapped, abduct, or carry

1 away the victim Julia Coleman without the authority of law
2 all in violation of Section 16-3-910 of the Code of Laws
3 of South Carolina in 1976 as amended. As to Count two
4 possession of a weapon during the commission of a violent
5 crime the Defendant Ricky Eugene Passmore did in York
6 County, South Carolina on or about June 19th, 2013 while
7 committing the violent crime of kidnaping have in his
8 possession a knife or a sword all in violations of
9 Sections 16-23-490 Code of Laws of South Carolina 1976 as
10 amended.

11 How shall you be tried? Oh, I'm sorry. What say
12 you, Ricky Eugene Passmore, are you guilty or not guilty
13 of the felony wherein you stand indicted?

14 MR. PASSMORE: Not guilty.

15 SOLICITOR HOLLAND: How shall you be tried?

16 MR. PASSMORE: By God and a jury or my peers.

17 SOLICITOR HOLLAND: Okay. These good and lawful
18 jurors will pass between you and the State upon the trial
19 of this case. If you challenge them or any of them you
20 will do so as each is called to the bar to be sworn and
21 before he or she is sworn. May God grant you a just
22 deliverance.

23 THE COURT: You served him with --

24 SOLICITOR HOLLAND: I will yes, sir.

25 THE COURT: You had him served with certified --

1 SOLICITOR HOLLAND: They have them already but I can
2 give them a certified copy.

3 MR. HALL: Thank you.

4 THE COURT: For the record Ms. Holland has served Mr.
5 Passmore with certified copies of the respective
6 indictments. What next?

7 SOLICITOR HOLLAND: The second motion is just a
8 motion to sequester all witnesses. Our case agent is
9 Henry Davis with the Clover Police Department. He is
10 seated here. And the victim Julia Coleman is not
11 currently in the courtroom but with the exception of those
12 two parties I believe they both have the right to remain
13 in the courtroom. We would ask to sequester the remainder
14 of the witnesses.

15 THE COURT: Mr. Jeter, you --

16 MR. JETER: No objection.

17 MR. NOSAL: No objection, Your Honor.

18 THE COURT: All right. I will make it reciprocal all
19 witnesses are to be sequestered except for Ms. Coleman and
20 Officer Davis. And that applies of course to witnesses on
21 behalf of both Ricky and Micky Passmore.

22 SOLICITOR HOLLAND: Okay. Your Honor, the State is
23 just requesting that the defense certify they've complied
24 with our reciprocal Rule Five discovery motion that was
25 filed and served on January 15th of 2014.

-11-

1 THE COURT: Mr. Jeter or Mr. Nosal, have you complied
2 with discovery? Either of you, reciprocal discovery?

3 MR. JETER: We have, Your Honor.

4 THE COURT: Okay.

5 MR. HALL: On behalf of Ricky Passmore we have, Your
6 Honor.

7 SOLICITOR HOLLAND: All right. My fourth would be to
8 request the defense refrain from referencing the potential
9 penalties. It's just a standard motion I make that they
10 not bring up the penalties of the charges during the
11 course of the trial.

12 THE COURT: Any intention to do that, Mr. Jeter?

13 MR. JETER: No, Your Honor.

14 MR. HALL: No, Your Honor.

15 THE COURT: Okay.

16 SOLICITOR HOLLAND: And the other one is just another
17 standard to refrain from eliciting self serving hearsay.
18 Again I have no evidence that they intend to do so. Just
19 ask that they refrain from doing so.

20 MR. HALL: We will refrain.

21 MR. JETER: We will as well, Your Honor.

22 THE COURT: All right. Anything on behalf of the
23 State?

24 SOLICITOR HOLLAND: I believe that's it.

25 THE COURT: Now, Mr. Jeter or Mr. Nosal on behalf of

1 Micky, any pretrial motions?

2 MR. NOSAL: Your Honor, we have a motion for
3 severance.

4 THE COURT: Be glad to hear it.

5 MR. NOSAL: Your Honor, we finally come to what
6 appears to be the trial of - for my co-defendant Micky
7 Passmore. Your Honor, he was originally charged with
8 burglary in the first degree along with conspiracy to
9 commit kidnaping.

10 At his preliminary hearing a recorded audio tape was
11 played allegedly made by - it was a phone call allegedly
12 made the codefendant Ricky Passmore. The nature of this
13 audio tape is incredibly prejudicial; it is offensive, it
14 is reprehensible, it is shocking to say the least. It's
15 extremely prejudicial for my client.

16 There is no - We have no assurances and I don't
17 expect Ricky Passmore to testify in this matter. If the
18 State decides that they're gonna introduce this twenty
19 minute audio recording my client Micky Passmore will be
20 deprived of his right to confront a witness against him.

21 There is no way that a jury can listen to this tape
22 and separate the two and say well that was Ricky Passmore
23 that said that not Micky Passmore. It is that
24 reprehensible.

25 Your Honor, I ask that for my client to have a fair

1 trial and to preserve his constitutional rights we ask
2 that you sever them and allow then if the State wishes to
3 bring in alone we'd ask that you order that.

4 THE COURT: What's the State's position?

5 SOLICITOR HOLLAND: Would you like to hear the tape
6 or we have it prepared if you want to hear it? It's
7 twenty minutes long.

8 THE COURT: I don't mind hearing it, just generally
9 you look at whether the defenses are antagonistic or
10 whether there is a statement taken by law enforcement that
11 caused some Bruton issue, this is a little different.
12 This is a right - Not quite a Bruton issue but it's kind
13 of on the edge of a Bruton issue. What's the State's
14 position?

15 SOLICITOR HOLLAND: Your Honor, I don't believe there
16 is a Bruton issue. I agree with you, it's not a
17 testimonial statement. It's made by Ricky Passmore to his
18 daughter before he came. Certainly not a testimonial
19 statement that would be subjected to a Bruton analysis.

20 I would not disagree, the tape is incredibly
21 declamatory and offensive. Our only response to the
22 severance motion would be that if we tried them separately
23 I do think we could enter the tape in the trial of Micky
24 Passmore himself as a statement of co-conspirator. That
25 would be Rule 801(d)2 -

1 THE COURT: I don't see either one of them charged
2 with conspiracy.

3 SOLICITOR HOLLAND: They are not charged with
4 conspiracy.

5 THE COURT: How can he be a co-conspirator if he's
6 not charged with conspiracy?

7 SOLICITOR HOLLAND: Basically from my reading of that
8 rule is it would allow the State to enter a statement of
9 Ricky Passmore in the trial of Micky Passmore as long as
10 there was evidence of a conspiracy independent. I don't
11 think it's necessary they be charged with it. I could be
12 wrong.

13 There is evidence that they are engaged in conspiracy
14 in addition Ricky Passmore in this phone call attempts to
15 elicit his daughter [REDACTED] into the conspiracy by saying you
16 call me and let me know - just to give a little bit of the
17 facts in the case - the victim in the case Julia Coleman
18 has three children with Ricky Passmore. They go to the
19 home this night because they're angry cause Ms. Coleman is
20 dating an African American man. Ricky in the course of
21 that statement tells [REDACTED] if you'll let me know when he's
22 there trying to elicit her into the conspiracy.

23 But that is really our response is that we think we
24 can attempt to get it in in that way. Neither of them are
25 charged with conspiracy; law enforcement never charged

1 them and I never direct indicted them.

2 THE COURT: What relevance would it have as far as
3 since there is no conspiracy charge what relevancy would
4 it have as to Micky?

5 SOLICITOR HOLLAND: The - Micky Passmore made calls
6 to Julia Coleman the victim about --

7 THE COURT: I'm not talking about his calls. I'm
8 talking about the one you're trying to get in.

9 SOLICITOR HOLLAND: I am trying to explain. The
10 calls are very similar is what I'm trying to say. The
11 calls that Ricky Passmore makes that we actually have
12 recorded. Of course we don't have the ones that Micky
13 made recorded, they are very similar and I think they show
14 an intent of the parties to go there and what they were
15 intending to do.

16 This call completely illuminates the entire case, the
17 State's entire case as to exactly why they're there. If
18 you remove this call the case does not even resemble in
19 actuality what it actually was.

20 That would be our only way of getting it into the
21 trial of Micky Passmore. I'm just being honest with the
22 Court that is the only way. I think if we tried them
23 separately that we could get the call in as a statement of
24 a co-conspirator.

25 THE COURT: I'm gonna listen to it just so I can

1 listen with a tuned ear. Is Mr. Micky Passmore mentioned
2 in the tape?

3 SOLICITOR HOLLAND: He is not. Ricky makes one
4 statement I believe about he talks about when the role
5 goes down meaning what he would come to the house and take
6 care of the situation about being with white minded people
7 but he never refers to Micky Passmore by name or by
8 implication.

9 THE COURT: All right. And briefly what are the
10 facts that put Micky at - in the equation?

11 SOLICITOR HOLLAND: Micky arrives with Ricky, they
12 went to Ms. Coleman's home at about 5:00 a.m., Ricky
13 enters first, Micky is immediately behind him. According
14 to the witnesses' they enter the home. Ricky Passmore
15 brandishes a rather long sword that he pulls out from the
16 back of his overalls, threatens the victim and forces her
17 to stay on the couch while he goes and wakes up his
18 children and looks for his - looks for this African
19 American male in the house.

20 Mickey was there present right behind him. Micky did
21 do nothing once he got in there. It's the State's theory
22 of the case is that Micky went there to find the black
23 boyfriend when he was not there. Then his involvement
24 changed cause he did nothing to restrain the freedom of
25 Ms. Coleman and when she said when she got up to leave he

1 let her go. He in no way restrained her freedom when he
2 was there.

3 And then law enforcement is called by the minor
4 children and both Mr. Passmore's left in a vehicle driven
5 by Micky Passmore's girlfriend. They were stopped about
6 eight miles later. In the car there was a large number of
7 weapons including a firearm belonging to Micky Passmore.
8 And there was ammunition in the door frame where he was
9 seated which law enforcement will testify it looked like
10 it had just been put there because it was I believe one
11 bullet they said was kind of on the door. It looked like
12 it had been kind of dumped there once they were pulled
13 over.

14 THE COURT: Was a weapon other than the sword taken
15 in the event - into the incident?

16 SOLICITOR HOLLAND: We believe Ricky Passmore had
17 brass knuckles and -

18 THE COURT: No, no. no, not what you believe. I want
19 to know what weapons -

20 SOLICITOR HOLLAND: He had brass knuckles in his
21 pocket when he was pulled over. No other weapon was
22 pulled out.

23 THE COURT: Not when he was pulled over. When he was
24 at the incident at the time this lady was confronted.

25 SOLICITOR HOLLAND: The only weapon that was

1 brandished was the sword.

2 THE COURT: So what's the weapon got to do with it?

3 SOLICITOR HOLLAND: it's just further shows their
4 intent; they're pulled over with a car full of weapons.

5 THE COURT: Who was driving the car?

6 SOLICITOR HOLLAND: Rebecca Rogers who is the
7 girlfriend of Micky Passmore.

8 THE COURT: I guess - Yes, sir, Mr. Nosal.

9 MR. NOSAL: Your Honor, I think you've flushed it out
10 that their case they're trying to prove intent, that there
11 is no evidence whatsoever that he committed a crime inside
12 that residence. The only crime he's charged with is
13 burglary first and went in a residence without consent
14 with the intent to commit a crime at night. They're whole
15 case is based on this audio tape. And on these weapons
16 that were found in a - during a traffic stop afterwards.

17 There has been no evidence introduced, there is no
18 witness statements that say that my client had a weapon
19 inside that house. Nobody said that he committed a crime
20 inside that house except for the government. And they're
21 trying to use this audio tape to somehow satisfy the
22 element of intent to convict him of burglary first.

23 And if they introduce that and he's part of this
24 trial there's no guarantee that he is gonna be able to
25 confront the witness against him his brother. I mean,

1 Your Honor, I'm just asking that you sever this. If they
2 want to try him later they can try him later but the only
3 reason he's here in this trial is because of that audio
4 tape.

5 THE COURT: Well I hate the - Judicial economy would
6 be to try them both together but I believe - well let me
7 listen to the tape. Where I am now it sounds like it may
8 be sufficient to sever. If he's drawn into the picture by
9 this tape then he's not gonna be able to examine the
10 speaker. I think that is an infringement on his right to
11 cross examine the witnesses; so let me hear it.

12 MR. NOSAL: Thank you, Your Honor.

13 (WHEREUPON, STATE'S EXHIBIT NUMBER NINE PREMARKED FOR
14 IDENTIFICATION.)

15 (STATE'S EXHIBIT NINE, AUDIO TAPE RECORDING,
16 PUBLISHED TO THE COURT AT 02:25 P.M..)

17 THE COURT: Anything further, Mr. Nosal?

18 MR. NOSAL: Not at this time, Your Honor.

19 THE COURT: Anything further?

20 SOLICITOR HOLLAND: Nothing, Your Honor.

21 THE COURT: I'm gonna grant the motion to sever.

22 I believe the nature of the tape is such that it may
23 affect the trial personally to Mr. Micky Passmore although
24 that's not the criteria cause all the evidence the State
25 intends to present would adversely affect supposedly Mr.

1 Micky Passmore.

2 The nature of this and the fact that Micky Passmore
3 may not if his brother doesn't testify have the
4 opportunity to examine the speaker Mr. Ricky Passmore then
5 I'm gonna grant to sever.

6 MR. NOSAL: Thank you, Your Honor.

7 SOLICITOR HOLLAND: Your Honor, just for the record
8 I'd like to state that the audio we played was State's
9 Exhibit Number Nine and the State would elect to go to
10 trial on Ricky Passmore at this time.

11 THE COURT: All right. Okay. Well we'll take a
12 minute to reposition and let Mr. Ricky Passmore and his
13 counsel - we'll take a short break and then come back and
14 hear motions on behalf of Ricky Eugene Passmore.

15 SOLICITOR HOLLAND: Your Honor, I'm sorry. Can I
16 just real quickly I think this will impact a number of
17 jurors we need, we have now the amount of strikes will be
18 cut in half. The State will only have five and we will
19 only have ten to defense. We have requested a panel of
20 seventy and I believe the Clerks' were bringing up the
21 entire panel.

22 Correct? I don't know if we want to bring them all
23 up. It's up to you. I just wanted to let you know there
24 will be a large amount of jurors and our strikes will be
25 cut in half now.

1 THE COURT: Well I don't think you have to have that
2 many people out there. I know Judge Alford anticipates a
3 trial.

4 SOLICITOR HOLLAND: They were waiting on us to get
5 done for them to pick their jury. It was just the last
6 time we had so many they were standing. That's the only
7 reason I bring it up.

8 THE COURT: How long would it take to pare it down to
9 say fifty?

10 MADAM CLERK: The computer will do it.

11 THE COURT: All right. So let's pare it down to say
12 fifty. That would be twelve, two alternates, fourteen,
13 twenty-four, twenty-nine, so I think fifty would be
14 plenty.

15 SOLICITOR HOLLAND: Thank you very much.

16 (COURT IN RECESS AT 02:50 P.M..)

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

18 THE COURT: Thank you. Take your seats.

19 (DEFENDANT RICKY PASSMORE, WHITE MALE, REENTERS
20 COURTROOM.)

21 THE COURT: We're back on the record, Mr. Passmore is
22 present, he goes forward. Any motions on behalf of Mr.
23 Ricky Eugene Passmore?

24 MR. HALL: Your Honor, as far as my Motion in Limine,
25 it's the standard motion. The number one motion to

1 determine if the State has complied with Rule 5 and Brady
2 and to ensure that they have and they have been forthcoming
3 with everything.

4 Number two, Motion to Determine Prior Record of the
5 Defendant that the State has introduced and chose to
6 testify.

7 SOLICITOR HOLLAND: Yes, Your Honor. I believe the
8 only thing that Mr. Passmore has would have been two ABHAN
9 convictions, one from 2003 and one from 2006. I do believe
10 those are separate convictions.

11 And the 2003 would be within ten years, because in
12 2008, I believe he was revoked on that sentence, so it
13 would fall within ten years. I believe that would be it,
14 though.

15 MR. HALL: And, Your Honor, we would ask that that be
16 limited to if my client testifies -- Well, those are not
17 felonies at the time. But anyway he would be convicted of
18 a crime that carries more than a year.

19 SOLICITOR HOLLAND: That's for a year.

20 MR. HALL: And then three, a motion to list the
21 witnesses and any criminal histories. The State has
22 provided that. The Motion Determining the Admissibility,
23 any prior bad acts the State may intend to introduce.

24 THE COURT: Any prior bad acts?

25 SOLICITOR HALL: I do not intend to enter any. I have

1 notified - given that the victim and Mr. Passmore were
2 together for a number of years, there are some questions he
3 could ask that her response may have something to do with
4 her -- his criminal history, but I have told her not to
5 respond in any way if it would at all elude to his prior
6 criminal history or to any prior incidents between them, so
7 I don't believe there will be an issue.

8 MR. HALL: And then sixth, the Motion to Determine the
9 Existence and Admissibility of any and all statements.

10 My client did not give any -- he did not give any
11 signed statements, any written statements.

12 Certainly, we have the recording that the Court has
13 already heard. I don't know of anything that he said when
14 -- during his roadside detention in anyway.

15 SOLICITOR HOLLAND: No, Your Honor, I don't believe he
16 made any statements law enforcement would be able to use.

17 MR. HALL: And then lastly, just the same motion the
18 State would sequester.

19 THE COURT: And that's been granted reciprocally.

20 MR. HALL: And then I have passed up my Request for
21 *Voir Dire*.

22 THE COURT: It looks like things I generally ask
23 anyway you both - you both *voir dire*. All right.

24 SOLICITOR HOLLAND: I have no objection to his request
25 for *voir dire*.

1 THE COURT: You ready for the jury to come up?

2 MR. HALL: The State -- Defense is ready, Your Honor.

3 SOLICITOR HOLLAND: The State's ready.

4 THE COURT: All right. Bring us up to time.

5 (JURY ENTERS THE COURTROOM AT 3:09 P.M.)

6 THE COURT: Members of the jury panel, I'm John Hayes
7 from Rock Hill, I along with Judge Alford, the other judge
8 holding court here this week, we're starting our first
9 trial for the week here in this courtroom and it is the
10 case of the *State of South Carolina vs. Ricky Eugene*
11 *Passmore*.

12 Mr. Passmore, would you stand so the individuals can
13 see who you are.

14 (DEFENDANT AND DEFENSE ATTORNEY STOOD.)

15 THE COURT: And he is represented by Mr. Dan Hall.

16 You may be seated.

17 The State will be represented by Ms. Jessica Holland
18 and Mr. Chris Epting.

19 (SOLICITOR'S HOLLAND AND EPTING STOOD.)

20 THE COURT: You may be seated.

21 The State has alleged offenses, several, against Mr.
22 Passmore. They are kidnapping, possession of a weapon
23 during the commission of a violent crime, and that would be
24 kidnaping, criminal domestic violence of a high and
25 aggravated nature, and burglary in the first degree.

1 These are all alleged to have occurred in Clover,
2 South Carolina on or about June 19th, 2013 at or near a
3 dwelling on 2-1-0, that's [REDACTED] Trinity Street in Clover.

4 To these charges, Mr. Passmore has entered pleas of
5 not guilty and that means that the State must prove, in
6 order to have him found guilty, prove to a jury's
7 satisfaction his guilt beyond a reasonable doubt, so we're
8 going to be drawing a jury at this time.

9 The State has up to -- can strike, that is excuse up
10 to five individuals, and the defense up to ten.

11 The way we draw juries in this particular court is as
12 follows: If your name is called, please come forward and
13 bring with you any personal belongings you may have;
14 pocketbooks, book, anything, jacket.

15 One of the bailiffs will come stand out in the middle
16 of the courtroom and if you'll come stand beside that
17 bailiff and turn around and face the two tables. Face
18 first the table where the solicitors are seated. One of
19 them will say either "excuse the juror," which means you
20 may return to your seat, or "present the juror."

21 If you hear the word "present the juror," turn and
22 face the table where Mr. Passmore and Mr. Hall are seated
23 and Mr. Hall will say either "excuse the juror," again,
24 that means you may return to your seat or he will say
25 "present the juror."

1 Now, before we do that, I have certain questions I
2 have to go over to make sure that you don't have any reason
3 that would prevent you from serving as a juror on this
4 particular trial.

5 First, are any of you related by blood or marriage to
6 any of the four individuals you've just been introduced,
7 Ms. Holland, Mr. Epting, Mr. Hall, and Mr. Passmore,
8 related by blood or marriage, or, are you a close personal
9 friend such as a fellow church member, fellow lodge member,
10 fellow club member, or something like that; if so, please
11 stand.

12 No one stands.

13 If any of you were on the Grand Jury that passed on
14 these charges in an earlier time, passed on these
15 indictments at an earlier time; if so, please stand.

16 No one stands.

17 Have any of you heard about this case and know about
18 it from any source whatsoever, work, or news coverage if
19 there was any?

20 (NO ONE STANDS.)

21 THE COURT: Do any of you have any knowledge about
22 this case from any source whatsoever, please stand.

23 (NO ONE STANDS.)

24 THE COURT: Do you have any bias or prejudice towards
25 Mr. Passmore, the State, Mr. Hall, or the subject matter of

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1 this case? That is, the charges that I've read, do you
2 have some type bias or prejudice that would prevent you
3 from being fair and impartial regarding this subject matter
4 in this case -- or this case, please stand.

5 If any of you have been -- yes, ma'am, your name and
6 number?

7 MS. GEORGE: 90, Kathy George. I will be bias.

8 THE COURT: Okay. So you believe you could not be
9 fair and impartial?

10 MS. GEORGE: Correct.

11 THE COURT: All right. Well, I'll excuse you. Don't
12 leave, but we will remove you from the particular panel.

13 Thank you.

14 MS. GEORGE: Okay. Thank you.

15 THE COURT: And I appreciate you standing. I don't --
16 I'm not asking these questions just as an exercise. I
17 really want sincere response, because this is very, very
18 important.

19 If any of you are involved in law enforcement, or if
20 any of you are involved in the prosecution of criminal
21 cases, or if there is a member of your immediate family is
22 so involved, that is, if you or a member of your immediate
23 family, or sheriff's deputy, highway patrolman, FBI, Secret
24 Service, US Marshall, Attorney General, US Attorney,
25 Solicitor, City Prosecutor, or anything like that, please

1 stand? All right.

2 We'll start here and what I'll ask you to do is just
3 tell me your name and number and then why you're standing.
4 That is Uncle Joe is a sheriff's deputy or something like
5 that in Chicago or something.

6 A. My name is Jill Eaton. Juror No. 76. I'm a retired
7 police sergeant from New York City.

8 THE COURT: Okay. Just remain standing.

9 Yes, ma'am.

10 A. Irenese Caron, and I'm Juror 194 and my husband is a
11 Rock Hill police officer.

12 THE COURT: All right. This is not a Rock Hill case,
13 but I'll come back. Just one more.

14 A. My name is Laquacia Waldon and I work for the
15 Department of Social Services for York County.

16 THE COURT: All right. The three of you standing if
17 that situation, that relationship with law enforcement or
18 involvement, if that would prevent you from being fair and
19 impartial, please raise your right hand?

20 None of the three do. Thank you. You may be seated
21 and we appreciate that information.

22 Are any of you or members of your immediate family
23 members of Mothers Against Drunk Drivers, Students Against
24 Drunk Drivers, Citizens Against Violence, sometimes
25 referred to as CAV, the Sheriff's Association, the

1 Trooper's Association, Fraternal Order of Police or any of
2 the like organizations; if so, please stand?

3 No one stands.

4 Have any of you been involved with as a witness or as
5 in any relationship with the Solicitor's Office as a
6 volunteer with the Solicitor's Office, our Solicitor, Mr.
7 Kevin Bracket? Been a witness in a case prosecuted by the
8 Solicitor, or, if any of you have been involved with Mr.
9 Hall and his office, Mr. Harry Dest's office, please stand?

10 No one stands.

11 Anything further from the State?

12 SOLICITOR HOLLAND: Nothing additional, Your Honor.

13 THE COURT: Anything from Defense?

14 MR. HALL: Nothing from the Defense, Your Honor.

15 THE COURT: I will ask this, if any of you or a member
16 of your immediate family, and I'm not going to ask you to
17 go into particulars and I'm not asking about getting a
18 traffic ticket, but have any of you or a member of your
19 immediate family been arrested by the Clover police or York
20 Police Department; if so, please stand.

21 No one stands.

22 MADAM COURT REPORTER: Judge?

23 THE COURT: Yes, ma'am. Your name and number?

24 A. 117, Katrina Jack. My husband was arrested by the
25 York County.

1 THE COURT: Would that affect your ability to be fair
2 and impartial?

3 MS. JACK: No.

4 THE COURT: Thank you, you may be seated.

5 Yes, sir. Your name and number?

6 A. Craig Wright, 250. My brother was arrested for a drug
7 violation.

8 THE COURT: By who?

9 MR. WRIGHT: The Clover police.

10 THE COURT: Would that affect your ability to be fair
11 in this trial?

12 MR. WRIGHT: No, sir.

13 THE COURT: Okay. Thank you.

14 Okay. Have any of you ever been involved - have or
15 associated with a group which would be considered by you to
16 be involved in victim's advocacy, some type of group that
17 took positions perhaps political or appeared in court on
18 behalf of victims of alleged offenses; if so, please stand?

19 No one stands.

20 Do any of you know of any reason whatsoever why you
21 could not or should not serve as a fair and impartial juror
22 in the trial of the case; if so, please stand?

23 (NO ONE STANDS.)

24 THE COURT: All right. I told you how we draw jurors.
25 If you hear your name called, please come forward and bring

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1 with you your belongings and if you are chosen, if you hear
2 "swear the juror" from Mr. Hall, the Bailiff will show you
3 how to be seated in the jury box.

4 MADAM CLERK: Number Thirty-one, Suzanne Brake field.

5 (WHITE FEMALE COMING FORWARD.)

6 MADAM CLERK: What say ye for the State?

7 MR. EPTING: Please present this juror.

8 MADAM CLERK: Defense?

9 MR. HALL: Please swear the juror.

10 MADAM CLERK: You may have a seat in the jury box.

11 BAILIFF: Please have a seat. Sit down.

12 MADAM CLERK: Number Sixty-five, Matthew Deese.

13 (WHITE MALE COMING FORWARD.)

14 MADAM CLERK: What say ye for the State?

15 SOLICITOR EPTING: Please present this juror.

16 MADAME CLERK: Defense?

17 MR. HALL: Pleas swear the juror.

18 MADAM CLERK: You may have a seat in the jury box.

19 Number Seventy-nine, Shawn Estes.

20 (WHITE MALE COMING FORWARD.)

21 MADAM CLERK: What say ye for the State?

22 SOLICITOR EPTING: Please present this juror.

23 MADAM CLERK: Defense?

24 MR. HALL: Please swear the juror.

25 MADAME CLERK: You may have a seat in the jury box.

1 Number Seventy-six, Jill Eaton.
2 (WHITE FEMALE COMING FORWARD.)
3 MADAM CLERK: What say ye for the State?
4 SOLICITOR EPTING: Please present this juror.
5 MADAME CLERK: Defense?
6 MR. HALL: Please excuse the juror in this case.
7 MADAM CLERK: You may return to your seat.
8 Number 1-0-5, George Harvin. Number 1-0-5.
9 (BLACK MALE COMING FORWARD.)
10 MADAM CLERK: What say ye for the State?
11 SOLICITOR EPTING: Please present this juror.
12 MADAM CLERK: Defense?
13 MR. HALL: Please excuse the juror in this case.
14 MADAM CLERK: You may return to your seat.
15 Number 230, Phek Uy.
16 (ASIAN FEMALE COMING FORWARD.)
17 MADAM CLERK: What say ye for the State?
18 SOLICITOR EPTING: Please excuse this juror.
19 MADAM CLERK: You may return to your seat.
20 Number 116, Sandra Ingham.
21 (WHITE FEMALE COMING FORWARD.)
22 MADAM CLERK: What say ye for the State?
23 SOLICITOR EPTING: Please present this juror.
24 MADAM CLERK: Defense?
25 MR. HALL: Please swear the juror.

1 MADAM CLERK: You may have a seat in the jury box.
2 Number, 181, Patricia Powell.

3 (WHITE FEMALE COMING FORWARD.)

4 MADAM CLERK: What say ye for the State?

5 SOLICITOR EPTING: Please present this juror.

6 MR. HALL: Please swear the juror.

7 MADAM CLERK: You may have a seat in the jury box.

8 Number 186, Clarence Pruitt.

9 (WHITE MALE COMING FORWARD.)

10 MADAM CLERK: What say ye for the State?

11 SOLICITOR EPTING: Please present this juror.

12 MADAM CLERK: Defense? .

13 MR. HALL: Please swear the juror.

14 MADAM CLERK: Have a seat in the jury box.

15 Number Fifty-eight, Ronald Cunnup.

16 (WHITE MALE COMING FORWARD.)

17 MADAME CLERK: What say ye for the State?

18 SOLICITOR EPTING: Please excuse this juror.

19 MADAM CLERK: You may return to your seat.

20 Number One Twenty-two, Catherine Johnson.

21 (WHITE FEMALE COMING FORWARD.)

22 MADAM CLERK: What say ye for the State?

23 SOLICITOR EPTING: Please present this juror.

24 MADAM CLERK: Defense?

25 MR. HALL: Please excuse the juror in this case.

1 MADAM CLERK: You may return to your seat.
2 Number One forty-one, Louis Long.
3 (WHITE MALE COMING FORWARD.)
4 MADAM CLERK: What say ye for the State?
5 SOLICITOR EPTING: Please present this juror.
6 MADAM CLERK: Defense?
7 MR. HALL: Please swear the juror.
8 MADAM CLERK: You may have a seat in the jury box.
9 Number One Eighty-eight, Teresa Ramey.
10 MADAM CLERK: What say ye for the State?
11 SOLICITOR EPTING: Please excuse this juror.
12 MADAM CLERK: You may return to your seat.
13 Number Two Twenty-two, Keisha Thacker.
14 (BLACK FEMALE COMING FORWARD.)
15 MADAM CLERK: What say ye for the State?
16 SOLICITOR EPTING: Please present this juror.
17 MADAM CLERK: Defense?
18 MR. HALL: Please excuse the juror in this case.
19 MADAM CLERK: You may return to your seat.
20 Number Forty, Jaques Cannon.
21 (BLACK MALE COMING FORWARD.)
22 MADAM CLERK: What say ye for the State?
23 SOLICITOR EPTING: Please present this juror.
24 MADAM CLERK: Defense?
25 MR. HALL: Please excuse the juror in this case.

1 MADAM CLERK: You may return to your seat.

2 Number Forty seven, Samantha Collins.

3 (WHITE FEMALE COMING FORWARD.)

4 MADAM CLERK: What say ye for the State?

5 SOLICITOR EPTING: Please present this juror.

6 MADAM CLERK: Defense?

7 MR. HALL: Please swear the juror.

8 MADAM CLERK: You may have a seat in the jury box.

9 Number Forty eight, Susan Colvin.

10 (WHITE FEMALE COMING FORWARD.)

11 MADAM CLERK: What say ye for the State?

12 SOLICITOR EPTING: Please present this juror.

13 MADAM CLERK: Defense.

14 MR. HALL: Please swear the juror.

15 MADAM CLERK: You may have a seat in the jury box.

16 Number One ninety-seven, John Rogers.

17 (WHITE MALE COMING FORWARD.)

18 MADAM CLERK: What say ye for the State?

19 SOLICITOR EPTING: Please present this juror.

20 MADAM CLERK: Defense?

21 MR. HALL: Please swear the juror.

22 MADAM CLERK: You may have a seat in the jury box.

23 Number sixty-four, Vickie Decoursey.

24 (WHITE FEMALE COMING FORWARD.)

25 MADAM CLERK: What say ye for the State?

1 SOLICITOR EPTING: Please excuse this juror.
2 MADAM CLERK: You may return to your seat.
3 Number one seventy-five, Lauren Parks.
4 (WHITE FEMALE COMING FORWARD.)
5 MADAM CLERK: What say ye for the State?
6 SOLICITOR EPTING: Please present this juror.
7 MADAM CLERK: Defense?
8 MR. HALL: Please excuse the juror in this case.
9 MADAM CLERK: You may return to your seat.
10 Number one seventeen, Katrina Jack.
11 (WHITE FEMALE COMING FORWARD.)
12 MADAM CLERK: What say ye for the State?
13 SOLICITOR EPTING: Please excuse this juror.
14 MADAM CLERK: You may return to your seat.
15 Number thirty-four, Kenneth Brown.
16 (WHITE MALE COMING FORWARD.)
17 MADAM CLERK: What say ye for the State?
18 SOLICITOR EPTING: Please present this juror.
19 MADAM CLERK: Defense?
20 MR. HALL: Please swear the juror.
21 MADAME CLERK: You may have a seat in the jury box.
22 Number 1-0-1, Laquacia Weldon.
23 (BLACK FEMALE COMING FORWARD.)
24 MADAM CLERK: What say ye for the State?
25 SOLICITOR EPTING: Please present this juror.

1 MADAM CLERK: Defense?

2 MR. HALL: Please excuse the juror in this case.

3 MADAM CLERK: You may return to your seat.

4 Number one fifty-seven, Gerald Mode.

5 (WHITE MALE COMING FORWARD.)

6 MADAM CLERK: What say ye for the State?

7 SOLICITOR EPTING: Please present this juror.

8 MADAM CLERK: Defense?

9 MR. HALL: Please swear the juror.

10 MADAM CLERK: You may have a seat in the jury box.

11 THE COURT: We'll draw two alternates. Strikes will
12 be one for the State one each and two for the Defense on
13 each.

14 MADAM CLERK: Number eighty, Kathey Ethridge.

15 (WHITE FEMALE COMING FORWARD.)

16 MADAM CLERK: What say ye for the State?

17 SOLICITOR EPTING: Please present this juror.

18 MADAM CLERK: Defense?

19 MR. HALL: Please excuse the juror in this case.

20 MADAM CLERK: You may return to your seat.

21 Number two twenty-eight, Robbie Twedt.

22 (WHITE FEMALE COMING FORWARD.)

23 MADAM CLERK: What say ye for the State?

24 SOLICITOR EPTING: Please present this juror.

25 MADAM CLERK: Defense.

1 MR. HALL: Please swear the juror.

2 MADAM CLERK: You may have a seat in the jury box.

3 Number one eighty-five, Matthew Privette.

4 (WHITE MALE COMING FORWARD.)

5 MADAM CLERK: What say ye for the State?

6 SOLICITOR EPTING: Please present this juror.

7 MADAM CLERK: Defense?

8 MR. HALL: Please swear the juror.

9 MADAM CLERK: You may have a seat in the jury box.

10 THE COURT: Anything from the State involving striking
11 of the panel?

12 SOLICITOR HOLLAND: Nothing from the State, Your
13 Honor.

14 THE COURT: Anything from Defense?

15 MR. HALL: Nothing from Defense, Your Honor.

16 THE COURT: All right. Those of you who were not
17 chosen, I'm going to allow you to go back downstairs to the
18 Jury Assembly Room and the Bailiff will take you down there
19 and perhaps I'll see you later in the week, but we've got
20 this jury panel and we'll let you go back down to the Jury
21 Assembly Room.

22 I'm going to ask you to do so quietly, so I can start
23 talking with this panel.

24 You may be - Those of you who were chosen, if you'll
25 please stand, the Clerk will administer the oath.

1 MADAM CLERK: Please raise your right hand.

2 (WHEREUPON, PETIT JURY SWORN AT 03:41 P.M..)

3 MADAM CLERK: Thank you, please be seated.

4 THE COURT: You may be seated.

5 Members of the jury panel, I'm going to chat with you
6 for just a minute, and then I'll turn the case over to the
7 attorneys.

8 Mr. Mode, I'm going to ask you -- just remain where
9 you are, and I'm going to ask you to be the foreman, so
10 from now on when we come in, if you'll take this first seat
11 on the first row. And the two alternates will always sit
12 in those two seats, and then there is no assigned seating
13 for anyone else.

14 Mr. Mode will be the liaison between the jury and
15 myself and preside over the deliberations of the jury and
16 assign the jury's unanimous verdict.

17 As I told you the charges, which I also told you
18 about, against Mr. Passmore have been pled not guilty to by
19 Mr. Passmore which places on the State the burden of proof
20 of his guilt beyond a reasonable doubt.

21 He is under our law presumed innocent of each of these
22 charges and each of these charges must be examined by you
23 when you are deliberating individually, that is, each
24 charge must fall or stand on its own with one exception
25 that I'll talk to you about when I charge you at the end of

1 the case, and that has to do with the possession of a
2 firearm during the commission of a crime of violence,
3 because if he's not found guilty of a crime of violence,
4 then he couldn't possess a weapon during that time.

5 So it's logical and I'll explain that to you more but,
6 basically, each case must be proven beyond a reasonable
7 doubt on its own legs or its own merit before you convict
8 Mr. Passmore as to a particular charge.

9 I have several jobs in this case.

10 One is I'm the logistics person. I make sure one
11 person is talking at a time, that we take breaks, control
12 the movement of the courtroom, make sure witnesses are
13 talking loud enough, those type things.

14 I also have the second role of ruling on questions of
15 evidence or any other issues where the Court is needed to
16 intervene, that is where one party believes that certain
17 evidence should be received by the jury and the other under
18 some legal principal believes it should not, it's up to me
19 to determine what can be presented to the jury and what
20 cannot be presented to the jury.

21 My third job is that I am the sole judge of the law in
22 this case. I am giving you some legal principals now and
23 perhaps during the trial, I may give you some and at the
24 end of the trial, I will give you a concise and
25 comprehensive charge on the law that you are to apply to

1 the facts as you determine them to be in this case.

2 You are the judges of the facts in this case. You are
3 not to infer from anything I say or do, or anything I say
4 or do at any time during the trial as indicating an opinion
5 of mine on the facts of this case. That is solely your job
6 and I cannot invade your province and intimate to you any
7 thoughts I may have on the facts just as you cannot differ
8 with me on the law. Facts are your province.

9 It's solely up to you as the trial jury to examine the
10 evidence, give to the evidence the effect, the value, the
11 weight, and the truth you believe the evidence should have.
12 In doing this, you may believe one witness as opposed to
13 several, several witnesses as opposed to one. You may
14 believe all or part of a witnesses testimony.

15 Use your commonsense, your sense of logic, your sense
16 of reason, use your experiences in life as you analyze the
17 evidence. In analyzing the evidence, you must determine
18 who to believe, that is the credibility of the witnesses.

19 In assessing believability, credibility, use the
20 things I just talked to you about. Use the things that you
21 find in your day-to-day life as being indicative of
22 truthfulness in an individual. And you can use certain
23 evaluators, how a witness acts on the stand, are they
24 hesitant or straightforward. Is their testimony consistent
25 or inconsistent.

1 Consider the opportunity a witness had to know those
2 things they testified to. And you can consider whether a
3 witness has any interest in being biased or prejudiced
4 toward one side or the other.

5 Determine the true facts, apply the law and you'll be
6 in a position to return a verdict that speaks the truth.

7 In a moment, I will allow the attorneys to come before
8 you and make opening statements. They're not arguing a
9 position at this time. They will at a later time have the
10 opportunity to come before you and try to convince you of
11 what your verdict should be but that's not what they're
12 doing at this time. They're simply giving you an outline
13 or a blueprint of the trial.

14 Now, until we reach the point in the trial where I
15 instruct you to jointly deliberate and return a unanimous
16 verdict, you're not equipped with all you need to make a
17 fair and reasonable decision, so do not try to make up your
18 own mind until we reach that point.

19 Do not discuss the case among yourselves until we
20 reach that point, and do not let anyone discuss this case
21 with you outside the courtroom.

22 If anyone tries to discuss this case with you, tell
23 them you cannot do so as you're serving as a juror and
24 report back to me if anyone tries to discuss this case with
25 you as I will have to take action against someone trying to

1 talk to a seated juror.

2 Do not do any independent research on this case.
3 Don't go online. Don't access Google or even Cloud or do
4 any sort of - use any sort of electronic or any social
5 media to find out information regarding this trial. And
6 don't access anything about the law, about the individuals
7 involved, about court procedure.

8 Your verdict must be based on what you hear, weighing
9 the law, and the facts in this courtroom, so it would be
10 improper for you to use some type of electronic means to do
11 any research or gaining any knowledge concerning this case.
12 It would be a violation of your oath.

13 And this includes Facebook and things like that. You
14 may think there would be no harm in emailing or putting out
15 to your friends I'm serving on a jury in York County.

16 Before you know it, they may have sucked you into some
17 sort of conversation about the case which would be improper
18 or they may just email, and don't use email either, but
19 they may Facebook back and make some comment that would not
20 be fair to the parties involved in an attempt to sway you
21 even if they don't know anything about the case, so please
22 apply that admonition while you're on the trial.

23 Don't let yourself be exposed to any news coverage. I
24 do not know if there will be any, but if there is any news
25 coverage, don't let yourself be exposed to it. Again, you

1 have to base your verdict solely on the law, and the
2 evidence presented in the trial.

3 If anything catches your eye or ear that could
4 remotely deal with this trial, don't let yourself be
5 exposed to it. Don't listen to anything, read anything or
6 watch anything that could remotely deal with this trial.

7 I am concerned about your comfort. We take breaks
8 about every hour and a half. I find that is a good comfort
9 level time, but if at any time any of you need a break,
10 simply raise your right hand and with no questions asked,
11 we'll take a break. It's hard to pay attention if you're
12 distracted or not comfortable, so if you need a break, let
13 me know and we will take a break.

14 If you can't see or you can't hear, I'll try to assist
15 you with that. I'll try to make sure a witness speaks up
16 when they should and that you can see those things you need
17 to see. If something is blocking your view, I'll see - try
18 to have it moved or have that individual move so that you
19 can see what you need to see.

20 At this point, I'm going to turn it over to the
21 attorneys for their opening statements.

22 SOLICITOR HOLLAND: May it please the Court?

23 THE COURT: Yes, ma'am.

24 SOLICITOR HOLLAND: "I'm going to treat her exactly
25 like I'm going to treat that nigger. I will show no

1 mercy." Those were the words of Ricky Passmore spoken
2 about five hours before this incident occurred. Five hours
3 --

4 THE COURT: Ms. Holland, let me interrupt one minute.
5 I did not ask this and nobody reminded me.

6 The witnesses in this case are as follows: if any of
7 you have any type close relationship or related to any of
8 these witnesses, please let me know at this time? I've
9 asked you about Ricky Passmore, Micky Passmore, Rebecca
10 Rogers, [REDACTED] Kevin Hoffman, [REDACTED]
11 [REDACTED] Julia Coleman, Officer Nichols - I'm sorry
12 Officers Hawkins and Miller and Davis of the Clover Police
13 Department and Karen McClure and Ralph Merchant for the
14 York County Sheriff's Office.

15 I apologize, I overlooked that.

16 No one stands indicating they know or have a
17 relationship with any of the individuals.

18 Again, I apologize for not doing it earlier.

19 Go ahead, and I apologize for the interruption.

20 SOLICITOR HOLLAND: You're going to hear some
21 offensive language in this case and it's not meant to do
22 anything other than to show you the truth.

23 It's not the job of the State to sugarcoat an
24 incident. It is to show you the truth and to show you what
25 happened and that's why you're going to hear language. No

1 joy is deprived -- is derived from it. We apologize every
2 time we have to say it, but it's necessary, because those
3 words were the words of Ricky Passmore five hours before he
4 went into the home of Julia Coleman, a lady with whom he
5 has three children.

6 He entered her home in the hours of darkness early
7 that morning. Her three children live there with her. Her
8 eldest daughter, [REDACTED] the individual who he said those
9 words to, was in her bed asleep as was her younger brother,
10 [REDACTED]. The middle child, [REDACTED] was awake playing video
11 games when a knock came to the door at 5:00 a.m.

12 Julia was asleep on the couch. [REDACTED] went to the door
13 and said, "Mama, it's Chip," but it wasn't Chip. He opened
14 the door and in came Ricky Passmore and his brother. The
15 first words out of Mickey's mouth -- Ricky's mouth is,
16 "Where's Chip?"

17 Now it's interesting that those are the first words
18 out of his mouth is, "Where's Chip," because it's
19 interesting to know who Chip is.

20 Chip is the boyfriend of Julia Coleman, the mother of
21 Ricky Passmore's children. Chip is an African-American
22 man, and Ricky Passmore didn't like that Julia was dating
23 or seeing an African-American man and did not like that his
24 children were being exposed to that relationship and that
25 was his motivation for going there that night.

1 And when he entered the home and said, "Where's Chip"
2 Julia tried to get off the couch at which time, Ricky
3 brandished a sword, a rather long sword that he had in the
4 back of his clothing.

5 He pulled it out and said, "You move, you die."
6 Forced her to stay on the couch. He then went through the
7 home, awoke each of his children, "You're coming with me."

8 After that, continued to flip on lights and look in
9 rooms looking for Chip who luckily was not there.

10 The two children -- The two oldest children, scared,
11 run to a neighbor's house to call 911 and police officers
12 arrive as Ricky Passmore and his brother flee the scene.

13 Eight miles away, they are stopped by the York Police
14 Department and they are arrested and their car is searched
15 and in that saw numerous weapons, including an SKS firearm,
16 ammunition, brass knuckles, a stick with a pool ball
17 attached to it that has an interesting name, and they're
18 found in possession of all of those weapons. "Where's
19 Chip," was the first words out of his mouth.

20 The conversation I referenced in the beginning was a
21 conversation that Ricky Passmore had with his daughter,
22 ████ about midnight that same night. About five hours
23 before he called her, and he told █████ his disgust and his
24 disdain at his mother's -- at her mother's relationship
25 with Chip, this African-American male.

1 He makes threats. He tells you exactly what he
2 intended to do and [REDACTED] hearing this conversation begins to
3 record it. So that conversation is preserved for you to
4 hear today so that you can see his motivation and his
5 intent behind going to the home that night.

6 And, again, we apologize for any language you're going
7 to hear in this case. No joy is derived from it, but it's
8 necessary to show you the truth, to show you what happened
9 that night, so you can return the only verdict that speaks
10 the truth and that is a verdict of guilty.

11 Thank you.

12 MR. HALL: May it please the Court?

13 THE COURT: Yes, sir.

14 MR. HALL: Five o'clock in the morning on Wednesday
15 morning, early hours of Wednesday morning June the 19th,
16 that's the Wednesday after Father's Day of the last year,
17 my client, Ricky Passmore, and his twin brother, Mickey
18 Passmore, got Mickey's girlfriend out of bed, her name is
19 Rebecca Rogers, and Ricky wanted to go to Clover to get his
20 children, and so they get Rebecca up. They go out and they
21 proceed to get into their -- with her twenty-six-year-old
22 -- I'm sorry, twenty-one-year-old Lincoln Town Car, that
23 you have to lift the hood up on it to crank it and you have
24 to put the hood down while it's running. The brake lights
25 don't -- well, they work, but you have to use a toggle

1 switch under the dash to activate the brake lights.

2 The driver's side window will not roll down and on top
3 of that Rebecca, expect you'll hear from here, they had to
4 stop at a convenience store on the way to Clover to pump
5 the tire up. It's got a slow leak in it. And so they
6 proceeded to Clover to his ex-wife's house and where his
7 children were staying.

8 Now, that trip that started in that car with those
9 people on that night actually began some, as the Solicitor
10 told you, about five hours later when my client got -- gave
11 quite a explicit redneck rant over the telephone, and
12 you'll hear -- you'll hear the redneck rant and it's ugly,
13 very ugly, to his daughter.

14 We expect you'll hear that that's sort of normal
15 redneck ranting language that my client and some members of
16 his family often use.

17 When they got to Clover there really is - We do not
18 anticipate there's going to be too much dispute about the
19 factual bases of this case.

20 He, no question, he went to Clover while -- while
21 Rebecca stayed in the car, because she couldn't get out of
22 the car, because if she got out of the car, it might cut
23 off, you had to cut the -- lift the hood up, crank the car
24 up, plus the tire has got a slow leak in it. She stays in
25 the car and Mickey and Ricky get out and Ricky and possibly

1 Mickey go into the house. Go up and knocked on the door.
2 The door is opened and Rickey went in to check on his
3 children that and to see if he could find Chip.

4 Now, you're going to hear the details of it. You're
5 going to hear a lot of things on the recording and you're
6 going to hear testimony about what happened, but you know,
7 this is a mobile home up in Clover, a very small residence,
8 in and out, left and came back to York. Got stopped by the
9 York Police, and then later the Clover Police arrived down
10 near the Bi-Lo here on 321. They made it that far back
11 from Clover to York. And Ricky, my client, was charged
12 with burglary first degree, kidnapping, possession of a
13 weapon during the commission of a violent crime and
14 criminal domestic violence of a high and aggravated nature.

15 Now, I ask you to listen carefully to all of the
16 evidence. I -- My client asks that you not hold the
17 offensive redneck ranting message that he had between him
18 and his daughter against him.

19 He's guilty of a lot of things, but he is not a
20 burglar. He is not a kidnapper. And he's not guilty of
21 criminal domestic violence of a high and aggravated nature
22 and we expect that at the conclusion of the case when you
23 weigh all of the evidence that you will reach a verdict in
24 this case that is just and that is not guilty.

25 Thank you.

SERGEANT HAWKINS: DIRECT BY SOLICITOR EPTING

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1 THE COURT: You can call your first witness.

2 SOLICITOR EPTING: The State calls Officer Hawkins to
3 the stand.

4 THE COURT: You can stop right there.

5 MADAM CLERK: Raise your right hand and place your
6 left hand on the Bible.

7 (WHEREUPON, PHILLIP NEIL HAWKINS,
8 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

9 MADAM CLERK: Thank you. Please have a seat.

10 DIRECT EXAMINATION

11 SERGEANT PHILLIP HAWKINS BY SOLICITOR EPTING

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. Would you please state your full name for the record?

15 A. It's Sergeant Phillip Neil Hawkins.

16 Q. And this is a silly question given how you're attired,
17 but what is your occupation?

18 A. A sergeant, police officer for our Clover Police.

19 Q. How long have you been with Clover Police?

20 A. Just over four-and-a-half years.

21 Q. And can you briefly describe some of your duties as a
22 sergeant at Clover?

23 A. I oversee patrol officers when I work a shift.

24 Currently, right now I'm assigned as a school resource

25 officer to Blue Eagle Academy in Clover. Duties range from

1 assisting the school in security, reports that they may
2 need to file and so forth.

3 Q. I'm going to direct your attention. Were you involved
4 with a case with Julia Coleman as a victim on the early
5 morning hours of June 19th, 2013?

6 A. Yes, I was.

7 Q. Would you please relay that experience to the jury?
8 Well, tell them how you were involved and what you did.

9 A. I was the first responding officer. We had received a
10 911 call into our dispatch who relayed the information to
11 myself, as well as another patrol officer that was working
12 at the time as well for -- to respond to the address in
13 Clover. Do you want me to give the address?

14 Q. Can you remember the -- if you can remember the
15 address off the top of your head?

16 A. Address was [REDACTED] Trinity Street and I was already
17 familiar with the people that resides there, but the call
18 came in through 911 and was dispatched as there is a man
19 inside of a house with a sword.

20 Upon my arrival to the area, being the first
21 responding officer, I came in from behind the residence and
22 at that point as I was coming up to the residence, I seen
23 two juveniles who I was familiar with as well, [REDACTED]
24 [REDACTED] and [REDACTED], running around extremely
25 confused on what needed to go on.

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1 Once I exited my patrol vehicle, I believe it was [REDACTED]
2 came up to me and immediately said, you know, "There is a
3 crazy man in the house -- in our house with a sword."

4 Q. What was [REDACTED] demeanor when he said that?

5 A. He was -- he was pretty much white as a ghost is the
6 best way to describe it and you could tell he was extremely
7 fearful and the same thing with his sister, [REDACTED] who also
8 resided at the residence.

9 Once he initially told me that the man was in the
10 house with a sword, I'm not sure who made the statement but
11 one of the two said that it was his -- it was their dad who
12 did not live there.

13 So at that point not knowing if he was still there or
14 not inside the residence, I went to the house, waited
15 outside to see if I heard any commotion or anything inside.
16 Once I didn't hear anything, I knocked on a door after
17 seeing Ms. Coleman walking around in the kitchen and you
18 could tell she was still in fear, as well.

19 Once that -- Once I seen her walking around, I knocked
20 on the door. She came and opened the door and that's when
21 she went into describe how Mr. Passmore had came into the
22 residence, pushed her down on the couch and as she was
23 trying to get up he told her that he was going to kill her
24 if she moved, and then proceeded through the back of the
25 house looking for her boyfriend who was not at the

1 residence at the time. And once he seen that she was not
2 -- he as not there, she left the -- he left the residence.

3 Q. Did you --

4 SOLICITOR EPTING: Well, before we get there, Your
5 Honor, may I approach the witness?

6 THE COURT: Yes.

7 Q. Officer Hawkins, I'd like to hand you ---

8 SOLICITOR EPTING: I beg the Court's indulgence.

9 Q. I'm going to hand you what has been marked as State's
10 Exhibit Twenty-three. If you would, review that and look
11 up when -- once you finish reviewing it.

12 (PAUSE.)

13 A. Okay.

14 Q. Do you recognize State's Exhibit Twenty-three?

15 A. I do. It's a -- an aerial view of the area where the
16 residence is located.

17 Q. And you testified earlier that you're familiar with
18 that area; is that correct?

19 A. That's correct.

20 Q. That's a fair and accurate depiction of that area?

21 A. It is.

22 SOLICITOR EPTING: Your Honor, at this time, the State
23 would move to enter State's Exhibit Twenty-three into
24 evidence.

25 MR. HALL: Without objection?

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1 THE COURT: In without objection.

2 (WHEREUPON, STATE'S EXHIBIT NUMBER TWENTY-THREE
3 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

4 SOLICITOR EPTING: We'd ask permission to publish,
5 Your Honor?

6 THE COURT: You may. You need the lights down?

7 SOLICITOR EPTING: Yes, please.

8 Q. Officer Hawkins, I have placed State's Exhibit Twenty-
9 three on a slide projector. Does that comport with what
10 you have in your hands?

11 A. It appears to me to be the exact same drawing.

12 SOLICITOR EPTING: Your Honor, could the -- Officer
13 Hawkins step down from the stand to demonstrate his
14 testimony to the jury?

15 THE COURT: He may. Just make sure the jurors can
16 see.

17 SOLICITOR EPTING: We certainly can.

18 Q. Officer Hawkins, if you would, step down and come
19 closer.

20 (WITNESS LEFT WITNESS STAND.)

21 Q. If I can get you to stand to the side so we don't
22 obstruct anything the jury is seeing.

23 Q. Could you point out for the jury where [REDACTED] Trinity
24 Street is?

25 A. It's going to be this residence right here.

1 Q. All right. And correct me if I'm wrong, but your
2 testimony is that you were the first responding officer; is
3 that correct?

4 A. That's correct, and I actually came up the back from
5 321 and I came down Trinity Street, because the front of
6 the residence is on this side.

7 Q. Did you pull into a driveway or a --

8 A. I did not. I actually stopped somewhere approximately
9 right in here.

10 (WITNESS INDICATING ON EXHIBIT.)

11 Q. And you testified earlier that you saw [REDACTED] and you
12 saw [REDACTED] is that correct?

13 A. That's correct.

14 Q. Where did you see them?.

15 A. They were running around. I'm not sure of the
16 address, but they were running around in the front yard of
17 this mobile home here.

18 Q. Is that address [REDACTED] Trinity Street, is that in York
19 County?

20 A. It is.

21 Q. Is that in the City of York?

22 A. The Town of Clover.

23 Q. I'm sorry, the Town of Clover. It is?

24 A. Yes.

25 Q. And, Officer Hawkins, if you would have a seat.

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1 (WITNESS RETURNING TO WITNESS STAND.)

2 Q. And you can lay State's Twenty-three on that table
3 that's in front of you.

4 If I understand your testimony correctly so far, you
5 respond to the scene, you've spoken with the Passmore
6 children and you've checked -- you've cleared the house and
7 no one's in there except for Julia Coleman; is that
8 correct?

9 A. And a child named [REDACTED] I believe, was also there.

10 Q. Okay. Was that [REDACTED] [REDACTED]

11 A. [REDACTED].

12 Q. At some point -- So the suspects are gone?

13 A. That's correct.

14 Q. At some point did you put anything out over the radio?

15 A. I did. Once we made sure that the residence was
16 clear, we got a description of how they left from the area.
17 At that time, Ms. Coleman had told us that it was a - I
18 believe she stated a burgundy Lincoln, older model vehicle
19 that Mr. Passmore and a twin brother, as well as a female
20 driver - I don't recall if they gave us the name of the
21 female driver at that time - but said that they left in a
22 burgundy Lincoln.

23 Q. So you put that over the radio?

24 A. I did. And passed - Once we got enough information, I
25 passed it over to the York County's Sheriff's Office.

1 Well, I'm going to correct myself. I passed it to our
2 dispatcher who in turn forwarded it to the York County
3 Sheriff's Office and then to York City Police.

4 Q. At any point did you hear a word that they had that
5 vehicle or a vehicle matching that description pulled over?

6 A. It was approximately about ten, fifteen minutes, and
7 then our dispatcher came back across and said that York
8 Police had stopped the vehicle that we had passed out the
9 information on at the intersection of Alexander Love and
10 161 or, I'm sorry, 321.

11 Q. Did you proceed to where the car was pulled over?

12 A. Yes. Myself as well as the current sergeant at that
13 time, which was Sergeant Miller.

14 Q. And had York PD pulled them over on the basis of the
15 BOLO that you put out?

16 A. As far as I know, that's what they stopped them for.
17 I don't know if they had any other probable cause other
18 than the information that we had passed on.

19 Q. So you arrive on scene. Tell the jury what you see?

20 A. Well, when our dispatcher gave us the information that
21 we had passed out that we - in the vehicle there should be
22 a sword of some sort in the vehicle, as well.

23 Once we got the information from our dispatch, they
24 did confirm that there was a sword inside the vehicle that
25 they had just stopped. At that point, the York officers

SERGEANT HAWKINS: DIRECT BY SOLICITOR EPTING

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1 had told our dispatcher that - that they wanted Clover
2 officers to respond to their location and that they wasn't
3 going to touch the vehicle once they discovered that sword
4 in the vehicle.

5 Once we got there, they had already detained all three
6 people inside the vehicle. From my knowledge, you could
7 look at the vehicle and it didn't appear that anything had
8 been moved and once - While we were there, we observed a -
9 the sword that was supposed to be in the vehicle and some
10 other evidence, as well, to include an SKS with thirteen
11 rounds inside the drive - the passenger side door panel and
12 six rounds inside the SKS, so it was a loaded assault
13 rifle.

14 Also we found a crowbar, some rope, paint scraper, and
15 I'm not exactly sure of the terminology for it, but it was
16 a wooden handle with a pool ball tied on with a rope, as
17 well. Those items, some of them were inside the vehicle in
18 the passenger area and some of them was inside the trunk.

19 Q. And was that based upon you looking inside the
20 vehicle?

21 A. Yes. Once we seen the sword, that's when we had
22 arrested the Passmores and, as well as the driver, and
23 based on our inventory policy, once we arrest anybody and
24 cannot turn over the vehicle to someone at the scene, then
25 we're to inventory, notate any items of value before we

1 have the vehicle towed.

2 Q. Did you recover brass knuckles?

3 A. We did - The Clover officers did not. We got those
4 from the York officers.

5 Q. Okay. And where did they get those from?

6 A. I believe ---

7 MR. HALL: Objection, he can't -

8 THE COURT: I sustain the objection. Just --

9 He'll ask you another question.

10 A. Okay.

11 Q. Where was the sword located in the car?

12 A. At the back passenger side of the vehicle.

13 Q. Back passenger side?

14 A. Yes.

15 Q. To your knowledge, where was Ricky Passmore seated?

16 A. In the backseat.

17 SOLICITOR EPTING: I beg the Court's indulgence.

18 (PAUSE.)

19 SOLICITOR EPTING: Your Honor. May I have permission
20 to approach the witness?

21 THE COURT: Yes, sir.

22 Q. Officer Hawkins, I'm going to hand you what has been
23 marked as State's Exhibit Eleven, Twelve, Thirteen,
24 Fifteen, Seventeen, Sixteen, Twenty, Eighteen, Fourteen,
25 Nineteen, Twenty-two and Twenty-one.

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1 If you would review all those; go all the way through
2 the stack, if you will, and look up at me when you're done
3 reviewing it.

4 (WITNESS REVIEWING EXHIBITS.)

5 Q. Do you recognize what is in those exhibits that I have
6 handed up to you?

7 A. Yes.

8 Q. Are they fair and accurate depictions?

9 A. Yes.

10 SOLICITOR EPTING: Your Honor, at this time, the State
11 would seek to introduce State's Exhibits Eleven, Twelve,
12 Thirteen, Fifteen, Seventeen, Sixteen, Twenty, Eighteen,
13 Fourteen, Nineteen, Twenty-two and Twenty-one into
14 evidence, all pictures.

15 MR. HALL: Without objection, Your Honor.

16 THE COURT: In without evidence.

17 (WHEREUPON, STATE'S EXHIBIT NUMBERS ELEVEN THROUGH
18 TWENTY-TWO, IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

19 SOLICITOR EPTING: Your Honor, at this time, the
20 State would seek to publish those pictures.

21 THE COURT: Okay.

22 (STATE'S EXHIBITS ELEVEN THROUGH TWENTY-TWO PUBLISHED
23 TO THE JURY AT 04:15 P.M..)

24 Q. Now, Officer Hawkins, can you see from where you're
25 sittted - seated?

1 A. I can.

2 Q. On the projector, I have put State's Exhibit Eleven.

3 Would you please explain to the jury what we're
4 looking at?

5 A. With this photograph here, the - it's just an overview
6 of the vehicle that was stopped by York Police and also the
7 information that was passed out to York police.

8 Q. Is that - Is that vehicle that's shown the one that
9 was pulled over on the side of the road?

10 A. Yes.

11 Q. We're looking at State's Exhibit Twelve now.

12 Would you please explain to the jury what we're
13 looking at here?

14 A. With this one here, it's indicating in the photograph
15 that a baseball bat was beside the front passenger seat.

16 Q. And who was seated there?

17 A. Mickey Passmore.

18 Q. Mickey Passmore was seated there. All right. We're
19 looking at State's Exhibit Seventeen right now.

20 Would you please let the jury know what we're looking
21 at here?

22 A. In this photograph here, it's a photograph of where
23 the sword was located. Also the item that had the wooden
24 handle and a pool ball attached to it is also in that
25 photograph, as well, just underneath the passenger front

SERGEANT HAWKINS: DIRECT BY SOLICITOR EPTING

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1 seat.

2 Q. All right. Is this just a different angle, State
3 Exhibit Sixteen?

4 A. Yes, I believe it is. It just is more of a up-close
5 view of where the things were located on that side of the
6 vehicle.

7 Q. You mentioned earlier a pool ball stick weapon, is
8 that also visible in this picture?

9 A. It is. It's located in the floorboard and it's - and
10 it's a white and, I believe, it's a burgundy pool ball.

11 Q. Next slide, please.

12 State's Exhibit Fifteen, what are we looking at here?

13 A. That is the brass knuckles that was turned over to us
14 from York Police.

15 Q. State's Exhibit Eighteen, what are we looking at here?

16 A. This is after we had gotten back to the police
17 department. It was a - just an - a overall view of the SKS
18 assault rifle with nineteen rounds located in front of it
19 and the thirteen that was recovered from the door panel of
20 the vehicle and the six that was inside the rifle.

21 Q. What is the item in the upper portion of the picture?

22 A. The item directly above the - that photograph there is
23 a photo of the sword.

24 Q. Was that consistent with the description that you were
25 given on the scene?

1 A. The only description that we really received on the
2 scene was that it was a long sword that looked like - kind
3 of like a Samurai sword and that it appeared to be old.

4 Q. State's Exhibit Fourteen, what we looking at here
5 also?

6 A. That is a bayonet that was also attached to the - to
7 the rifle.

8 Q. And what are we looking at here? That's the State's
9 Exhibit Thirteen.

10 A. This is a photograph of a baseball bat which was
11 located in the front, beside the front passenger seat,
12 after we had returned back to the police department, along
13 with the wooden handle with the pool ball attached. And
14 then it catches some of the white rope that was found up in
15 a top left corner, and then a portion of the sword that was
16 located in the bottom left.

17 Q. In your experience as an officer, have you come across
18 homemade weapons?

19 A. Yes.

20 Q. On - Based on that experience, is that pool ball
21 attached to a rope attached to a stick, a weapon in your
22 opinion?

23 A. I would consider that a weapon.

24 Q. State's Exhibit Nineteen, please tell us what we're
25 looking at here, Officer Hawkins?

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1 A. In this photograph here, the bottom left, we have the
2 brass knuckles inside the photo, the white rope. Also we
3 got the paint scraper blade to the right of the rope, the
4 pry bar in the middle of the picture, a pocket knife above
5 the crowbar, and then an inhaler that was recovered, as
6 well.

7 Q. And this may be a little bit redundant, and State's
8 Exhibit Twenty?

9 A. Once again, it's just a photograph of the sword that
10 was recovered, as well as the baseball bat.

11 Q. And, again, I'm giving a little bit of redundancy,
12 State's Exhibit Twenty-one?

13 A. The pool ball with the wooden handle and a white rope
14 and brass knuckles.

15 Q. And one last one, State's Exhibit Twenty-two?

16 A. Rope, crowbar, brass knuckles, and the wooden handle
17 with the pool ball attached.

18 Q. And if I understood your earlier testimony that all of
19 these weapons were recovered from the car or from nearby
20 the car; is that correct?

21 A. Everything with the exception of the brass knuckles
22 was recovered by myself and Sergeant Miller from inside the
23 passenger compartment where the occupants were located or
24 in the trunk.

25 SOLICITOR EPTING: Your Honor, I beg the Court's

1 indulgence.

2 (PAUSE.)

3 SOLICITOR EPTING: Your Honor, may I approach the
4 witness?

5 THE COURT: Yes, sir.

6 Q. Officer Hawkins, I'm going to hand you what's been
7 marked as State's Exhibit Twenty-five.

8 If you could, please look at this.

9 A. All right.

10 Q. Do you recognize State's Exhibit Twenty-five?

11 A. I do.

12 Q. What do you recognize it to be?

13 A. That is the sword that was recovered from the vehicle.

14 Q. Is it in the same or substantially the same condition
15 as it was when you last saw it?

16 A. Substantially the same.

17 Q. Okay.

18 SOLICITOR EPTING: Your Honor, at this time, the State
19 would seek to enter State's Exhibit Twenty-five into
20 evidence.

21 THE COURT: Mr. Hall?

22 MR. HALL: Without objection.

23 THE COURT: In without objection.

24 (WHEREUPON, STATE'S EXHIBIT NUMBER TWENTY-FIVE
25 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

SERGEANT HAWKINS: DIRECT BY SOLICITOR EPTING

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1 Q. Officer Hopkins, can you feel if there is a blade on
2 this, please?

3 A. It is.

4 Q. In your opinion, is that a dull sword?

5 A. No.

6 SOLICITOR EPTING: Your Honor, permission to publish?
7 I will allow them to look at it rather than touch it,
8 because it is rather sharp.

9 THE COURT: Okay.

10 SOLICITOR EPTING: And, Your Honor, I'd ask the Court
11 to instruct any of the jurors that need a closer look but I
12 --

13 THE COURT: You can stand up or if you need to lean
14 forward.

15 (STATE'S EXHIBIT NUMBER TWENTY-FIVE PUBLISHED TO THE
16 JURY.)

17 SOLICITOR EPTING: I beg the Court's indulgence.

18 (PAUSE.)

19 SOLICITOR EPTING: May I approach the witness, Your
20 Honor?

21 THE COURT: Yes, sir.

22 Q. Officer Hawkins, I'm going to show you what's been
23 marked as State's Exhibit Twenty-six.

24 If you would, please look at that.

25 A. Yeah.

1 Q. Do you recognize State's Exhibit Twenty-six?

2 A. I do.

3 Q. What is it?

4 A. It's the SKS that was recovered from the trunk of the
5 vehicle.

6 Q. And has it been made safe?

7 A. Yes.

8 Q. It's in the same - substantially the same condition as
9 it was when you recovered it?

10 A. Substantially the same.

11 Q. All right.

12 SOLICITOR EPTING: Your Honor, at this time, the State
13 will seek to enter State's Exhibit Twenty-six into
14 evidence.

15 THE COURT: I believe you've already entered this with
16 the proper protocol involving -

17 SOLICITOR EPTING: That is correct, Your Honor. I -
18 We have placed a lock around the breach and none of the -
19 none of the bullets are in here right now and it has been
20 made safe, made sure that it is not loaded right now.

21 THE COURT: Any objection to it -

22 MR. HALL: Without objection.

23 THE COURT: In without objection.

24 (WHEREUPON, STATE'S EXHIBIT NUMBER TWENTY-SIX
25 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

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1 SOLICITOR EPTING: Your Honor, permission to publish
2 again like with the sword?

3 THE COURT: Yes.

4 SOLICITOR EPTING: Rather than handing, I will. And,
5 again, Your Honor, should I need to do anything further to
6 let the jury see that?

7 THE COURT: Well, I - No, you -

8 Members of the jury panel, we have a protocol that
9 would require to make sure that any weapons that are
10 brought into court for display are properly inspected and
11 unloaded and unfireable by virtue of some type of lock, and
12 I have been assured that that is the case and in regarding
13 to this weapon.

14 SOLICITOR EPTING: Thank you, Your Honor.

15 (STATE'S EXHIBIT TWENTY-SIX PUBLISHED TO THE JURY.)

16 SOLICITOR EPTING: I - Your Honor, is it all right if
17 I lay this underneath here or would you rather it be stored
18 somewhere?

19 THE COURT: That's fine.

20 Q. Officer Hawkins, I am going to hand you what has been
21 marked as State's Exhibit Twenty-eight.

22 If you would, please review that.

23 A. All right.

24 Q. Do you recognize State's Exhibit Twenty-eight?

25 A. I do.

SERGEANT HAWKINS: DIRECT BY SOLICITOR EPTING

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1 Q. Was that taken by you into evidence?

2 A. Yes.

3 Q. Is it in the same or substantially the same condition
4 as it was when you last saw it?

5 A. Substantially the same.

6 SOLICITOR EPTING: Your Honor, the State at this time
7 would seek to enter State's Exhibit Twenty-eight into
8 evidence.

9 THE COURT: Any objection?

10 MR. HALL: Without objection.

11 (WHEREUPON, STATE'S EXHIBIT NUMBER TWENTY-EIGHT,
12 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

13 SOLICITOR EPTING: Your Honor, may I publish this?

14 THE COURT: You may.

15 (STATE'S EXHIBIT NUMBER TWENTY-EIGHT PUBLISHED TO THE
16 JURY.)

17 THE COURT: Mr. Epting, it's in evidence and it's --
18 you referenced it by exhibit number, but I don't think any
19 vocal oral identification was made. Just might help that
20 out.

21 SOLICITOR EPTING: Certainly, Your Honor. I'm
22 publishing to the jury --

23 THE COURT: Well, I mean, you need to ask him just
24 what the exhibit is.

25 SOLICITOR EPTING: The last - This exhibit, Your

SERGEANT HAWKINS: DIRECT BY SOLICITOR EPTING

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1 Honor?

2 THE COURT: Yes.

3 Q. Hawkins, we just showed you a State -- an exhibit
4 which you identified as being in substantially the same
5 condition. Could you describe that verbally?

6 A. It's the weapon, in my opinion, that has the wooden
7 handle with the pool ball attached that was in the photos.

8 Q. And is that State's Exhibit Twenty-eight?

9 A. Yes.

10 SOLICITOR EPTING: Thank you.

11 Q. Officer Hawkins, I'm going to hand you what's been
12 marked as State's Exhibit Twenty-seven.

13 Would you please look at that and tell me if you
14 recognize it?

15 A. I do.

16 Q. Is it the same - is Exhibit -- Is Exhibit Twenty-seven
17 the same or substantially the same condition as it was?

18 A. Substantially the same.

19 SOLICITOR EPTING: Your Honor, at this time, the State
20 would seek to enter State's Exhibit Twenty-seven into
21 evidence?

22 THE COURT: Any objection?

23 MR. HALL: Without objection.

24 THE COURT: In without objection.

25 (WHEREUPON, STATE'S EXHIBIT NUMBER TWENTY-SEVEN

1 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

2 SOLICITOR EPTING: Your Honor, permission to publish?

3 THE COURT: And, again, it'd just be nice - I know we
4 got the numbers and a see-through package if our witness
5 could testify to what it is.

6 SOLICITOR EPTING: Certainly.

7 Q. What is State's Exhibit --

8 THE COURT: It might just help for the record.

9 SOLICITOR EPTING: Certainly, Your Honor.

10 Q. And what is State's Exhibit Twenty-seven?

11 A. It's the white rope that was located inside the
12 vehicle.

13 Q. Thank you.

14 SOLICITOR EPTING: I beg the Court's indulgence.

15 (PAUSE.)

16 Q. Officer Hawkins, I'm going to hand you what's been
17 marked as State's Exhibit Twenty-nine.

18 Would you please look at that? Do you recognize
19 State's Exhibit Twenty-nine?

20 A. I do.

21 Q. What is it?

22 A. It's brass knuckles.

23 Q. And are they in the same or substantially the same
24 condition as they were when you last saw them?

25 A. Substantially the same.

SERGEANT HAWKINS: DIRECT BY SOLICITOR EPTING

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1 SOLICITOR EPTING: Your Honor, the State would - The
2 State would seek to introduce State's Exhibit Twenty-nine
3 into evidence at this time.

4 THE COURT: Mr. Hall, any objection to Twenty-nine?

5 MR. HALL: Without objection.

6 (WHEREUPON, STATE'S EXHIBIT NUMBER TWENTY-NINE,
7 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

8 SOLICITOR EPTING: Your Honor, permission to publish?

9 THE COURT: Please.

10 (STATE'S EXHIBIT TWENTY-NINE PUBLISHED TO THE JURY.)

11 SOLICITOR EPTING: I beg the Court's indulgence.

12 (PAUSE.)

13 Q. And, finally, Officer Hawkins, let me show you what's
14 been marked as State's Exhibit Thirty-one.

15 If you would please look over that?

16 A. All right.

17 Q. Do you recognize State's Exhibit Thirty-one?

18 A. I do. That's the red baseball bat that was located
19 inside the passenger's front seat.

20 Q. And it's in the same or substantially the same
21 condition as it was when you last saw it?

22 A. Substantially the same.

23 SOLICITOR EPTING: Your Honor, at this time, the State
24 would move to proceed to enter State's Exhibit Thirty-one
25 into evidence.

SERGEANT HAWKINS: DIRECT BY SOLICITOR EPTING

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1 MR. HALL: Without objection.

2 THE COURT: In without objection.

3 (WHEREUPON, STATE'S EXHIBIT NUMBER THIRTY-ONE,
4 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

5 SOLICITOR EPTING: Permission to publish, Your Honor.

6 THE COURT: You may.

7 (STATE'S EXHIBIT THIRTY-ONE PUBLISHED TO THE JURY.)

8 SOLICITOR EPTING: I beg the Court's indulgence.

9 (PAUSE.)

10 Q. Officer Hawkins, is it your testimony that all of
11 these weapons that were entered into evidence were found
12 somewhere in the car?

13 A. That's correct.

14 SOLICITOR EPTING: That's all the questions I have for
15 you right now. Please answer any questions that Mr. Hall
16 may have.

17 MR. HALL: Your Honor, may we take a short recess?

18 THE COURT: All right. We'll take a refresher break.

19 Remember, Mr. Mode, when we come back in you will take
20 the foreperson's seat and the alternates will take those
21 seats. We'll take about a ten minute refresher break.

22 (JURY EXITS COURTROOM AT 04:35 P.M..)

23 THE COURT: You can step down and use the restroom.

24 THE COURT: We'll be at ease for ten minutes.

25 (COURT IN RECESS AT 04:35 P.M..)

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1 (COURT BACK IN SESSION AT 04:48 P.M..)

2 THE COURT: You can have a seat. Bring in Mr.
3 Passmore.

4 (DEFENDANT, RICKY PASSMORE, REENTERS COURTROOM.)

5 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER ONE, REMARKED
6 FOR IDENTIFICATION.)

7 THE COURT: All right. Bring in the jury.

8 Counsel, we'll probably just will be able to based on
9 the time to get through with the cross and not do any other
10 witnesses' this afternoon because of Drug Court.

11 (JURY RE-ENTERS COURTROOM AT 04:50 P.M..)

12 MR. HALL: May it please the Court.

13 CROSS EXAMINATION

14 SERGEANT WILLIAM HAWKINS BY MR. HALL:

15 Q. Officer Hawkins, let me just make sure that we are
16 clear. These items that were found, brass knuckles, rope,
17 a pool ball, sword, rifle, bat - And you're the lead - you
18 were calling yourself the case agent?

19 A. Yes.

20 Q. You were in charge of the case; is that right?

21 Is that right, you were in charge of investigating
22 this case?

23 A. The only thing that I had was the first responding
24 officer. There were other things that occurred after the
25 initial charges were made.

1 Q. So you were the first person to interview Julia
2 Coleman; is that right?

3 A. That's correct.

4 Q. And in the course of your investigation, there is no
5 indication that any of these items other than sword were
6 ever used. Right?

7 A. That's correct.

8 Q. And I'm going to show you what has been marked
9 Defendant's Exhibit One. What is that?

10 A. It's an evidence sheet.

11 Q. And who prepared that evidence sheet?

12 A. Myself.

13 Q. And so that evidence sheet, it's a fair and accurate
14 representation of what you did. Right?

15 A. Yes.

16 Q. And this has been a part of this case and it has been
17 provided to the Solicitor. Right?

18 A. That's correct.

19 MR. HALL: Your Honor, move Defendant's Exhibit One
20 into evidence.

21 SOLICITOR EPTING: No objection, Your Honor.

22 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER ONE, IDENTIFIED
23 AND MARKED, RECEIVED INTO EVIDENCE.)

24 Q. And when we go through that evidence sheet, again,
25 where do you show that the rifle was found?

SERGEANT HAWKINS: CROSS BY MR. HALL

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1 A. The trunk of the vehicle.

2 Q. The trunk of the vehicle. Is there anything illegal
3 about someone having a rifle in the trunk in their vehicle?

4 A. If they are lawfully in possession to have that rifle.

5 Q. Hunters can carry rifles in the trunk of their
6 vehicle. Right?

7 A. Yes.

8 Q.. And in fact a long gun can be carried in the passenger
9 compartment of the vehicle. Right?

10 A. Yes.

11 Q. And again, this rifle was found locked in the closed
12 trunk when you got there. Right?

13 A. That's correct.

14 Q. And then the pool ball on the rope with the wooden
15 handle, you found it in the trunk in the vehicle. Right?

16 A. That's what the evidence sheet shows.

17 Q. Well you filled it out didn't you?

18 A. Yes.

19 Q. You don't remember where you found it?

20 A. I mean, it's showing that it was found in the trunk of
21 the vehicle.

22 Q. Do you have some reason to believe that's not true?

23 A. The photographs indicating different.

24 Q. I'm sorry. Let's take a look at those photographs.

25 The photographs we looked at?

1 Would you show us - I'm not trying to trick up or
2 anything. Just tell us where you found it.

3 A. Because so many items were located, the photographs
4 before anything was disturbed shows that it was laying in
5 the back floorboard.

6 Q. So your evidence log is not correct on that. Right?

7 A. That's correct, however, there's multiple things. I
8 mean, you've got ten things within inside one vehicle.

9 Q. It's easy to get things confused isn't it?

10 A. Now I didn't say that.

11 Q. What were you saying?

12 A. That the evidence sheet shows - indicates that it's in
13 the trunk of the vehicle on this one item.

14 Q. Okay. All right. Well let's go to the other items.
15 The rope, it was found in the trunk of the vehicle. Right?

16 A. Yes.

17 Q. And then the pudgy knife was inside the backseat.
18 Right?

19 A. Yes.

20 Q. And the bat, we saw a picture of that. That was
21 inside the passenger compartment of the car. Right?

22 A. That's correct.

23 Q. And the sword was inside. We saw a picture of that.
24 Right?

25 A. That's correct.

SERGEANT HAWKINS: CROSS BY MR. HALL

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1 Q. And the crow bar inside the car. Right?

2 A. Yes.

3 Q. And then we have ammo found in the vehicle and brass
4 knuckles were found on Ricky Passmore. Right?

5 A. That's correct.

6 Q. But again, in your investigation, the part you did,
7 there is no indication that anything other than the sword,
8 all this stuff that was found, none of that according to
9 your investigation entered the house or left the car as far
10 as you know?

11 A. No.

12 Q. And according to your report, when you got there you
13 didn't see my client?

14 A. I did not.

15 Q. And obviously you didn't see the car there. The first
16 thing you saw -- the first time you saw the car was on the
17 side of the road down in York. Right?

18 A. That's correct.

19 Q. And so when you got there, everything was over?

20 A. Everything is --

21 Q. I'm sorry. As far as the incident inside the house on
22 Trinity Street, it was over?

23 A. Yes. I mean, as far as the reported incident, yes.

24 Q. Okay. I mean, it wasn't over because that's really
25 when your investigation started when you got there. It's a

1 poor choice of my words. And when you got there, you saw
2 the two children in the yard, the two teenagers. Right?

3 A. At the time I'm not exactly sure how old [REDACTED] was. I
4 mean, they were - he was the youngest one, so I don't
5 recall how old he was. He might have been twelve.

6 Q. All right. When you got there, you saw --

7 A. I saw two children, juveniles, running around in the
8 yard.

9 Q. Okay. And Julia Coleman is not in the yard?

10 A. She was not.

11 Q. And in fact when you went to the door, you indicated
12 in your report you remember indicating and stating that you
13 observed her walking from - through the living room towards
14 the kitchen?

15 A. That's correct.

16 Q. And you knocked on the door. The door wasn't open was
17 it?

18 A. I don't think I tried to open the door.

19 Q. But you knocked --

20 A. I knocked on the door.

21 Q. I mean, it wasn't open. It wasn't standing open?

22 A. That's correct.

23 Q. And you knocked on the door and she opened it. Right?

24 A. That's correct.

25 Q. And then in your report you indicate that you knocked

SERGEANT HAWKINS: CROSS BY MR. HALL

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1 on the door and you indicated that she stated that the
2 suspects were no longer there. Right?

3 A. That's correct.

4 Q. And then you indicate that you begin conversing with
5 Julia Coleman. Right?

6 A. Yes, sir.

7 Q. And she didn't have any problem understanding the
8 questions that you ask?

9 A. No.

10 Q. She wasn't hysterical?

11 A. I would consider her hysterical.

12 Q. And can you describe her demeanor?

13 A. I mean, other than what appeared to me that she was
14 frightened.

15 Q. She understood your questions? You asked her what
16 happened. Right?

17 A. Yes, sir.

18 Q. And to your knowledge, she had not called the police
19 had she?

20 A. She had not because she knew that --

21 Q. But again, you don't know what she knew. The answer
22 to my question is you don't know - she didn't call the
23 police?

24 A. Right.

25 Q. Okay. And you did not - You didn't take any written

1 statements from [REDACTED] did you?

2 A. I got him started with the statements and that is when
3 we got the call to respond to the York police officer
4 location.

5 Q. Okay. And so you didn't do any written statements?

6 A. I did not.

7 Q. Detective Mozelle did that. Right?

8 A. Yes.

9 Q. And Detective Mozelle in fact recorded statements from
10 Julia Coleman didn't he?

11 A. That I don't know. I wasn't there so I - The
12 supplement on the report shows that he did.

13 Q. Okay. Well then you're not the - Would Lieutenant
14 Davis be the more appropriate person to understand
15 everything that went on in the case?

16 A. I would say so.

17 Q. Okay. All right. Now, when you located the rifle, do
18 you remember - you pulled the bayonet open. Right?

19 A. Yes.

20 Q. So the picture that you have with the bayonet
21 extended, that was not the condition is was in in the back
22 of the car was it?

23 A. It was not.

24 Q. Okay. And so for purposes of Court Exhibit Number
25 Fourteen, that was not - the bayonet was folder back under

SERGEANT HAWKINS: CROSS BY MR. HALL

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1 in the back of the car. Right?

2 A. That's correct.

3 Q. So we don't see it as you're - And you are looking at
4 Exhibit Number Eighteen. Right?

5 A. Yes.

6 Q. And in that one, the bayonet is folded back under the
7 barrel of the gun?

8 A. That's correct.

9 Q. And so that was the condition it was in the trunk of
10 the car. Right?

11 A. That's correct.

12 Q. When you got there to the scene, do you remember if
13 the car was still running?

14 A. That I do not remember.

15 MR. HALL: Court's indulgence.

16 (PAUSE.)

17 Q. And during the course of your investigation those
18 items, again that gun that was found in the trunk of the
19 car, you have no evidence to believe that it or indicate
20 that it ever left the trunk of the car?

21 A. No.

22 Q. Thank you.

23 MR. HALL: I have no further questions for Mr.
24 Hawkins.

25 THE COURT: Any redirect?

1 SOLICITOR EPTING: Very briefly, Your Honor.

2 REDIRECT EXAMINATION

3 SERGEANT WILLIAM HAWKINS BY SOLICITOR EPTING:

4 Q. Mr. Hall motioned to the white boxes on the floor and
5 asked you if any of those had entered the house. Is the
6 sword not one of those white boxes?

7 A. Yes.

8 Q. And was it your testimony earlier that the sword in
9 fact entered the house based upon what you were told?

10 A. Yes.

11 Q. And could I have you look at that Defense Exhibit
12 Number One again? Is that up there?

13 A. I believe that's it.

14 Q. Could you please read for the jury where it stated the
15 brass knuckles were found?

16 A. Brass knuckles, it states it was found on Ricky
17 Passmore.

18 Q. Ricky Passmore?

19 A. That's correct.

20 Q. You stated earlier that you got a call to come out
21 there, to come out to the scene; is that correct?

22 A. That's correct.

23 Q. Is it fair to say that somebody probably called the
24 police for that call to come into you?

25 A. Yes.

SERGEANT HAWKINS: REDIRECT BY SOLICITOR EPTING

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1 Q. Do you know who that was?

2 A. The person that called initially was Mary. Mary
3 Jones, I believe is her last name, which is a nearby
4 resident of [REDACTED] Trinity Street, and she called upon the
5 request from [REDACTED] after he left his residence, and then at
6 that point, [REDACTED] had left the residence as well and ran
7 next door and the phone was given to her so she was
8 actually the one talking to 911.

9 Q. So [REDACTED] and [REDACTED] flee the house during the incident?

10 A. That's correct. They ran out the back door.

11 Q. And is it safe to say that Mary, whoever she is, is a
12 neighbor to --

13 A. Yes. She lives on Trinity Street right next door
14 basically. She doesn't -- Back behind how their house
15 looks.

16 Q. So while Julie might have called her children then ---

17 A. That's correct.

18 Q. --- to call 911?

19 A. Yes.

20 Q. And just to clarify, you are not the case agent; is
21 that correct?

22 A. No.

23 SOLICITOR EPTING: No further questions.

24 THE COURT: Recross.

25 MR. HALL: Nothing further, Your Honor.

1 THE COURT: You can step down.

2 (WITNESS LEAVING WITNESS STAND.)

3 THE COURT: Can I see counsel up here?

4 MS. HOLLAND: Your Honor, may we excuse this witness?

5 THE COURT: You may.

6 You may be excused.

7 THE COURT: Let me see counsel.

8 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
9 THE JURY AT 05:08 P.M..)

10 THE COURT: I have a different kind of court to hold
11 at six o'clock and I have to meet with the staff involved
12 in that at 5:30 and it's a little after five, so I just
13 wanted to see if we could fit another fifteen or twenty
14 minute witness in and I'm told we cannot. So we are going
15 to stop for today and we'll start back at 9:30.

16 Keep in mind what I told you about not accessing any
17 electronic information or do any research or discussing the
18 case or being exposed to any news coverage.

19 We'll see you back - The bailiff will tell you how to
20 get in and out while you are serving as a juror and we'll
21 try to start as promptly as we can around 9:30 so please be
22 back by 9:30 in the morning. Thank you, have a good
23 evening.

24 (JURY EXITS COURTROOM AT 05:10 P.M..)

25 THE COURT: We'll be at ease until 9:30. If counsel

1 needs to see me I will be here of course for a while.

2 SOLICITOR EPTING: Thank you, Your Honor.

3 (COURT IN RECESS AT 05:12 P.M..)

4 (COURT BACK IN SESSION TUESDAY, APRIL 1, 2014 AT 09:36

5 A.M., IN THE MATTER OF STATE VERSUS TIMOTHY DENTON PLEA W.

6 ATTORNEY TOM MCKINNEY.)

7 (COURT BACK IN SESSION IN THE MATTER OF STATE VERSUS

8 RICKY PASSMORE AT 09:45 A.M..)

9 THE COURT: If we can get Mr. Passmore in.

10 (DEFENDANT RICKY PASSMORE, WHITE MALE REENTERS

11 COURTROOM AT 09:45 A.M..)

12 THE COURT: All right, is the State ready?

13 SOLICITOR HOLLAND: Yes, Your Honor.

14 THE COURT: Defense ready?

15 MR. HALL: Defense is ready, Your Honor.

16 THE COURT: Bring in the jury.

17 (JURY REENTERS COURTROOM AT 09:48 A.M..)

18 THE COURT: Good morning. I'm sorry we are running a
19 little late but we had another matter that I had to take up
20 this morning that popped up this morning but we've done
21 that and now back in the trial of Mr. Ricky Eugene
22 Passmore.

23 SOLICITOR HOLLAND: May it please the Court, Your
24 Honor. The State calls Karen McClure.

25 (WHEREUPON, KAREN MCCLURE,

1 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

2 DIRECT EXAMINATION

3 KAREN MCCLURE BY SOLICITOR HOLLAND:

4 Q. Can you state your name for the record?

5 A. Karen McClure.

6 Q. Where are you employed?

7 A. York County 911.

8 Q. And how long have you been employed there?

9 A. Eighteen years.

10 Q. And what is the role of the York County 911 office?

11 A. We receive all the 911 calls that come in during -
12 York County.

13 Q. Okay. What is your title?

14 A. Quality Assurance Manager.

15 Q. Okay. Describe what your duties are as Quality
16 Assurance Manager.

17 A. I'm in control of all the records that are housed in
18 our center.

19 Q. And what kind of records?

20 A. Computer and dispatch records. All the calls for
21 service. All the 911 calls. Any recording. All of our
22 lines are recorded at the 911 center, emergency and non
23 emergency, and they are - I'm responsible for maintaining
24 those recordings.

25 Q. So each individual 911 call is kept in digital form?

KAREN MCCLURE: DIRECT BY SOLICITOR HOLLAND

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1 A. Yes.

2 Q. And how is that done? Are they recorded at the time
3 they are made and how are they stored?

4 A. Yes. They are actually recorded. 911 calls are
5 actually recorded before the 911 operator answers the
6 phone. It begins recording and then it records the entire
7 call until the call is disconnected.

8 Q. Okay. And are they maintained as a regular course of
9 business? You do that on all calls?

10 A. Yes.

11 Q. And how are they retrieved once they're stored?

12 A. We have a digital recording system so it's web-based,
13 a web-based server, so we sign on and retrieve them out of
14 the digital recording system.

15 Q. Okay. And pursuant to a request from my office did
16 you prepare a 911 call that was relevant to this case?

17 A. Yes.

18 Q. Okay.

19 SOLICITOR HOLLAND: May I approach the witness, Your
20 Honor?

21 THE COURT: Yes, ma'am.

22 Q. I'm handing you what has been marked as State's
23 Exhibit Ten. Can you tell us what that is?

24 A. This is the CD containing the 911 call from this
25 incident.

1 Q. And have you listened to what's on that CD?

2 A. I did.

3 Q. How do you know?

4 A. Because I initialed it and dated it.

5 Q. Okay. And so is that a true and accurate copy of the
6 911 call that was made for the emergency at [REDACTED] Trinity
7 Street on June 19th?

8 A. It is.

9 SOLICITOR HOLLAND: Request to admit State's Exhibit
10 Number Ten into evidence.

11 MR. HALL: Without objection.

12 THE COURT: In without objection.

13 (WHEREUPON, STATE'S EXHIBIT NUMBER TEN, IDENTIFIED AND
14 MARKED, RECEIVED INTO THE RECORD.)

15 SOLICITOR HOLLAND: Request to publish?

16 THE COURT: Yes, ma'am.

17 (STATE'S EXHIBIT TEN PUBLISHED TO THE JURY AT 09:54
18 A.M..)

19 SOLICITOR HOLLAND: That's all the questions the State
20 has.

21 Please answer any questions Mr. Hall may have.

22 MR. HALL: I have no questions for this witness.

23 THE COURT: You can step down and be excused. We
24 appreciate your time.

25 MS. MCCLURE: Thank you.

JULIA COLEMAN: DIRECT BY SOLICITOR HOLLAND

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1 THE COURT: Thank you.

2 (WITNESS LEAVING WITNESS STAND.)

3 THE COURT: Call your next witness.

4 SOLICITOR HOLLAND: The State calls Julia Coleman.

5 Just step right up there to the Bible.

6 MADAM CLERK: Raise your right hand, place your left
7 hand on the Bible.

8 (WHEREUPON, JULIA COLEMAN, BEING
9 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

10 MADAM CLERK: Thank you. Please have a seat.

11 THE COURT: Do you have some gum in your mouth?

12 MS. COLEMAN: Cough drop.

13 THE COURT: Okay. Go ahead.

14 DIRECT EXAMINATION

15 JULIA COLEMAN BY SOLICITOR HOLLAND:

16 Q. Could you just state your name for the record?

17 A. Julia Coleman.

18 Q. Okay. And where do you live?

19 A. [REDACTED] Trinity Street, Clover, South Carolina.

20 Q. Is that within the city limits of Clover?

21 A. Yes.

22 Q. And that's within York County?

23 A. Yes.

24 Q. How many — Do you know Ricky Passmore?

25 A. Yes.

1 Q. How do you know him?

2 A. I'm the mother of three of his children.

3 Q. And how old are your children and what are their
4 names?

5 A. [REDACTED] is 16, [REDACTED] is 14, and [REDACTED] is 10.

6 Q. And where do they reside?

7 A. [REDACTED] currently reside with his grandmother. [REDACTED] and
8 [REDACTED] reside with me.

9 Q. You and Ricky have not been together for a number of
10 years. Correct?

11 A. Correct.

12 Q. And do you also know Ricky Passmore's twin brother,
13 Micky Passmore?

14 A. Yes.

15 Q. Okay. Are you currently in a relationship with
16 someone?

17 A. Yes.

18 Q. Okay. And what is his name?

19 A. Everybody knows him as Chip.

20 Q. And what race is Chip?

21 A. African American.

22 Q. How long have you been in a relationship with Chip?

23 A. Um, just about a year now.

24 Q. And so do you live with your three - with [REDACTED] and
25 [REDACTED] in your home currently?

JULIA COLEMAN: DIRECT BY SOLICITOR HOLLAND

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1 A. Yes.

2 Q. Okay. Is it a mobile home?

3 A. Yes.

4 Q. How many bedrooms and bathrooms do you have?

5 A. Two bedrooms; one bathroom.

6 Q. Okay. Can you kind of describe the layout of the
7 house to us?

8 A. It's a very small mobile home. You come through the
9 front door to your right - immediately to your right is the
10 kitchen - you are standing in the living room. There is a
11 small hallway; first door on the left would be [REDACTED] s
12 bedroom, second door is the bathroom, the third door at the
13 time of the incident was the two boy's room.

14 Q. Okay.

15 SOLICITOR HOLLAND: May I approach the witness, Your
16 Honor?

17 (WHEREUPON, STATE'S EXHIBIT NUMBERS ONE THROUGH EIGHT,
18 PREMARKED FOR IDENTIFICATION.)

19 Q. Julia, I'm going to hand you what we've marked as
20 State's Exhibits One through Eight.

21 If you could look through those and let me know if you
22 recognize them.

23 A. Yes.

24 Q. Okay. What are those photos of?

25 A. Our mobile home.

1 Q. Okay. Is that both the exterior and interior?

2 A. Yes.

3 Q. Is that a true and accurate picture of how your home
4 looked at the time of this incident?

5 A. Yes.

6 Q. Okay.

7 SOLICITOR HOLLAND: State would request to move in
8 State's Exhibits One through Eight.

9 MR. HALL: Without objection.

10 THE COURT: In without objection.

11 (WHEREUPON, STATE'S EXHIBIT NUMBERS ONE THROUGH EIGHT,
12 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

13 SOLICITOR HOLLAND: I'll take those from you.

14 Q. Had Ricky or Mickey ever been to your house?

15 A. Yes.

16 Q. Did they have standing permission to come to your
17 house?

18 A. No.

19 Q. Did either of them have a key to your house?

20 A. No.

21 Q. Now the night this incident occurred, that was June
22 19th of last year. Correct?

23 A. Correct.

24 Q. Okay. And at this time were you dating Chip?

25 A. Yes.

JULIA COLEMAN: DIRECT BY SOLICITOR HOLLAND

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1 Q. Did Ricky Passmore know about your relationship with
2 Chip?

3 A. Yes.

4 Q. Okay. How did they learn about it?

5 A. A phone conversation that Ricky and I had and he asked
6 me was I - that he had heard that I was dating a nigger and
7 I told him that that was not accurate. That if he was
8 asking if I was dating a black man, then the answer was
9 yes.

10 Q. Did he indicate that he approved of that relationship?

11 A. He very much disapproved.

12 Q. Were you ever contacted by Micky Passmore about your
13 relationship with Chip?

14 A. Yes.

15 Q. Okay. Describe that.

16 A. He left voice mails. There were like four, I believe,
17 if I'm not mistaken. Very, very derogatory, nasty voice
18 mails left to me about a week and a half, maybe two weeks
19 prior to this incident.

20 Q. Did you report those incidents to law enforcement?

21 A. I did.

22 Q. When you spoke to Ricky about your relationship with
23 Chip, was any mention ever made of him coming to your
24 house?

25 A. Yes.

1 Q. Describe that.

2 A. In that conversation he said, "let that nigger be
3 there when I get there, we'll see who the real man is."

4 Q. And what was your response?

5 A. I told him don't come to - "Ricky, don't show up at my
6 fucking house."

7 Q. This incident occurred on June 19th 2013. Correct?

8 A. Correct.

9 Q. About what time was it when this happened?

10 A. Five o'clock in the morning.

11 Q. Was it dark outside?

12 A. Yes.

13 Q. Where was everybody sleeping at the time?

14 A. [REDACTED] was still up or had gotten back up playing video
15 games. I was sleeping on the couch in the living room.

16 [REDACTED] was in her room. [REDACTED] was in him and [REDACTED] s room on
17 a bunk bed.

18 Q. Were [REDACTED] and [REDACTED] asleep?

19 A. Yes.

20 Q. But [REDACTED] was awake?

21 A. Right.

22 Q. Was Chip there that night?

23 A. No.

24 Q. Okay. Had he been there?

25 A. Yes.

JULIA COLEMAN: DIRECT BY SOLICITOR HOLLAND

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1 Q. About what time did he leave?

2 A. 10:30.

3 Q. Describe what happened that night around midnight.

4 A. [REDACTED] woke me up with my phone. She said "mama, mama.
5 I just got off the phone with daddy. He said he is coming
6 over here. You better to listen to this." And I listened
7 to about thirty seconds, maybe forty-five seconds of the
8 conversation. I said, "I don't want to hear his bull crap
9 and propaganda." I put the phone under my pillow and I
10 just laid back down.

11 Q. Is that the same phone call that [REDACTED] recorded?

12 A. Yes.

13 Q. And did you recognize the voice on that phone call?

14 A. Yes.

15 Q. Whose voice was it?

16 A. It was Ricky and [REDACTED]

17 Q. And what did you do after that? Once you refused to
18 listen to the rest of the phone call, what did you do?

19 A. I went back to sleep.

20 Q. And did something wake you up around 5:00 a.m.?

21 A. Yes.

22 Q. What happened?

23 A. There was a knock on the door. [REDACTED] got up - and we
24 had like a triangular shaped window in the door - he looked
25 out the door, he said, "Mama, it's Chip." I said "open the

1 door." He opened the door slightly and then he said, "Mama
2 it's daddy" but by that time Ricky was already coming
3 through the door.

4 Q. Okay. So you said Ricky was already coming through
5 the door. Was anybody else with him?

6 A. Mickey was immediately behind him.

7 Q. Okay. When they come to the house, it's dark outside.
8 Correct?

9 A. Correct.

10 Q. Okay. So what did you do when they come into the
11 house?

12 A. I went to get off the couch. The first thing Ricky
13 said to me is, "where is Chip"? I said, "he's not here."
14 "Where is he?" I said, "it doesn't matter. He is not
15 here." I said, "what are you doing here?" And then I
16 said, "as a matter of fact, where's my phone" and I started
17 looking for the phone and that's the point where he pushed
18 me down on the couch, produced a sword, and said, "bitch
19 you move, you die."

20 He proceeded towards the hallway. I would say about
21 three steps into the hallway, he turned around, he told his
22 twin brother, "she moves, she fuckin dies."

23 He went to [REDACTED]'s room. Forced the door open or
24 slammed it open, whatever. Woke her up. "Get the fuck up.
25 You are going with me."

JULIA COLEMAN: DIRECT BY SOLICITOR HOLLAND

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1 Proceeded to [REDACTED] and [REDACTED] room. Woke [REDACTED] up.
2 Something about him being brainwashed by Ricky's mother to
3 be a nigger lover and you were never my son - that whole
4 conversation was stupid, but then he came back towards the
5 living room. He asked, where is [REDACTED] Again he said,
6 "where the fuck is [REDACTED] [REDACTED] said, "Daddy I sent him out
7 the back door to call the police." He said, "the police,
8 [REDACTED] Really? The fucking police, [REDACTED] She said, "yeah
9 daddy. I love you but I love my mama too and I can't watch
10 you kill my mama." At that point they were pretty much
11 ready to exit the house.

12 Q. Okay. Just briefly let's touch on what Mickey did.
13 So when Ricky looked at Mickey and said, she moves; she
14 dies. Did Mickey do anything to restrain your freedom?

15 A. No.

16 Q. Okay. But he stood there in the living room while
17 Ricky was looking for the children?

18 A. Yes.

19 Q. Just for some small minor details. Does the door to
20 your home, does it open in or out?

21 A. Out.

22 Q. So kind of the opposite of most? It doesn't open in.
23 You have to pull it out?

24 A. Right.

25 Q. And you said Ricky had a sword. Did you see the sword

1 when he entered the house initially?

2 A. No.

3 Q. Where was it?

4 A. He had it behind his back, I guess inside his
5 overalls.

6 Q. Okay. So he had on overalls?

7 A. Yes.

8 Q. And so [REDACTED] ran to a neighbor's house and called 911?

9 A. Yes.

10 Q. Okay. What did Ricky and Micky do once they learned
11 that police had been called?

12 A. Mickey was already saying, "come on, man, let's go.
13 Let's go." They went out on the porch. I stepped like on
14 the porch too. Ricky made a comment something to the
15 effect, "remember you turned your back on us" and I said,
16 "whatever, get the hell away from here". They went down
17 the steps and I pulled the door back and locked it.

18 Q. Okay. Did you see who was driving the car at the
19 time?

20 A. I could not really see.

21 Q. Okay. Throughout the incident, what did Ricky appear
22 to be doing in the house while he was waking up the
23 children?

24 A. Looking for Chip.

25 Q. Did it appear that Ricky was there picking up his

JULIA COLEMAN: DIRECT BY SOLICITOR HOLLAND

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1 children?

2 A. No.

3 Q. Would it be common for Ricky to come pick up [REDACTED]

4 A. No.

5 Q. Would it be common for Ricky to come pick up [REDACTED]

6 A. No.

7 Q. At five o'clock in the morning?

8 A. No.

9 Q. How long did it take police to arrive?

10 A. I - maybe - I don't know. I estimate, maybe eight to
11 ten minutes.

12 Q. Okay. And did you meet with law enforcement and give
13 a statement?

14 A. Yes.

15 Q. And did your children?

16 A. Yes.

17 Q. You have three children that witnessed this. Correct?

18 A. Yes.

19 Q. The oldest is [REDACTED] and she is going to testify?

20 A. Correct.

21 Q. Your youngest child is [REDACTED] How old is he?

22 A. Ten.

23 Q. Okay. Is he testifying?

24 A. No.

25 Q. Why not?

1 A. I - his age. I just don't think --

2 Q. Your middle child [REDACTED] was he under subpoena?

3 A. Yes.

4 Q. Okay. Is he going to testify for the State?

5 A. No.

6 Q. Okay. And why is that?

7 A. Because we didn't feel that it - [REDACTED] has mental
8 issues that could be very detrimental to any progress that
9 he has made in the last six months.

10 Q. We've been talking about Ricky and Micky Passmore
11 throughout all of this so I want to make it really clear
12 who we are talking about. The man who entered home with
13 the sword that you have been referring to as Ricky
14 Passmore, do you see him in the courtroom?

15 A. Yes.

16 Q. Okay. Can you point to him and tell us what he is
17 wearing.

18 A. A camouflage shirt and overalls.

19 SOLICITOR HOLLAND: Please let the record show she has
20 identified the defendant, Ricky Passmore.

21 (WITNESS INDICATED TO DEFENDANT, RICKY PASSMORE.)

22 SOLICITOR HOLLAND: I beg the Court's indulgence for
23 just one moment.

24 (PAUSE.)

25 Q. Julia, I want to go back, I just skipped one thing.

JULIA COLEMAN: CROSS BY MR. HALL

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1 When you said Ricky pulled out a sword and had you on
2 the couch, how did you feel?

3 A. Scared. Frightened.

4 SOLICITOR HOLLAND: If you can answer any questions
5 Mr. Hall may have.

6 MR. HALL: May it please the Court?

7 THE COURT: Yes, sir.

8 CROSS EXAMINATION

9 JULIA COLEMAN BY MR. HALL: .

10 Q. Ms. Coleman, you got off the couch. Right?

11 A. Yes.

12 Q. And nobody hit you with a sword when you got off the
13 couch?

14 A. When are you talking about? Initially he did push me
15 back on the couch and say, "bitch, you move, you die".

16 Q. Your testimony is that you went out on the porch.
17 Right?

18 A. When they were leaving.

19 Q. And so you got off the couch?

20 A. Yes.

21 Q. And again my question is nobody touched you with a
22 sword. Right?

23 A. No.

24 Q. In fact a sword never touched anybody?

25 A. No.

- 1 Q. Nothing was torn up in your house. Right?
- 2 A. No.
- 3 Q. The door wasn't knocked down was it?
- 4 A. It doesn't knock down. It snatches out so.
- 5 Q. But your testimony is, is that there was a knock on
- 6 the door and your testimony is is that [REDACTED] thought it was
- 7 Chip. Right?
- 8 A. Correct.
- 9 Q. And he opened the door?
- 10 A. I told him to open the door, yes.
- 11 Q. All right. He opened the door. And when you looked
- 12 at the pictures of your house, you've got a window on your
- 13 door. Right?
- 14 A. Correct.
- 15 Q. And it's clear. Right?
- 16 A. Not exactly. That morning the window was fogged up.
- 17 Q. But again, Ricky knocked on the door?
- 18 A. Correct.
- 19 Q. He didn't snatch the door open?
- 20 A. The door was locked.
- 21 Q. And let me get this straight. As far as when Ricky
- 22 came in, [REDACTED] was asleep in her room. Right?
- 23 A. Correct.
- 24 Q. [REDACTED] was asleep in the back in his room. Right?
- 25 A. Correct.

JULIA COLEMAN: CROSS BY MR. HALL

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1 Q. And [REDACTED] obviously was playing video and he hears the
2 knock on the door; he answers the door?

3 A. Yes.

4 Q. And you were asleep on the couch?

5 A. Yes.

6 Q. So as far as anything what [REDACTED] saw or heard, she
7 didn't see or hear when Ricky came in the door?

8 A. Right.

9 Q. Because she was back in her room. Right?

10 A. Right.

11 Q. And as far as what [REDACTED] saw or heard, he was back in
12 his room. He didn't see Ricky come in?

13 A. [REDACTED] I believe said that he did hear Ricky.

14 Q. But he didn't see anything?

15 A. Not until Ricky entered the bedroom.

16 Q. And Ricky went down the hall looking for [REDACTED] and

17 [REDACTED]

18 A. No. He opened the door to [REDACTED]'s room and woke her
19 up. He opened the door to the bathroom too. Nobody sleeps
20 in there so. Then he opened the door to [REDACTED] and [REDACTED]
21 room and woke [REDACTED] up.

22 Q. And then that's when - By that time [REDACTED] was out and
23 she said, "[REDACTED] go call the police"?

24 A. Yes.

25 Q. And so this would have been after Ricky had gone down

1 the hall when she said go call the police?

2 A. Yes.

3 Q. And as you've stated, you have known Ricky Passmore
4 for a long time. Right?

5 A. Yes.

6 Q. And you are the mother of three of his children?

7 A. Yes.

8 Q. All right. And you all's relationship, would you
9 describe it as being up and down over the time you've known
10 Ricky?

11 A. Yes.

12 Q. And in fact you know him well enough that when you
13 talk about on your testimony when he was talking to [REDACTED]
14 he must have been saying some things. You called it
15 propaganda. Right?

16 A. That was the conversation on the phone that I called
17 propaganda.

18 Q. It sounds like also in your testimony that when he had
19 gone back to the bedroom where [REDACTED] was asleep and got him
20 up that he questioned him - you know, goes into this rant
21 about [REDACTED] and the black boyfriend. And in your direct
22 you said that - I'm sorry. Yeah the propaganda was about
23 the phone conversation.

24 A. Correct.

25 Q. And then this conversation with [REDACTED] you called that

JULIA COLEMAN: CROSS BY MR. HALL

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1 a stupid conversation. Right?

2 A. The parts that I heard about [REDACTED] being brainwashed
3 by his mother.

4 Q. And so you know Ricky well enough that propaganda and
5 stupid conversations really is part of who he is isn't it?

6 A. Exactly.

7 Q. For a long time?

8 A. Yes.

9 Q. He'll say anything, won't he?

10 A. Yes.

11 Q. And your testimony is that you listened to that phone
12 conversation around midnight when [REDACTED] brought it to you
13 and said you need to hear --

14 A. No, that was not my testimony. I listened to about
15 fifteen seconds of that conversation.

16 Q. Typical stuff from Ricky. Right?

17 A. Um, somewhat.

18 Q. In fact, you again call it propaganda.

19 A. What I heard of it, yes.

20 Q. And you didn't call the police then did you?

21 A. No.

22 Q. [REDACTED] didn't call the police then?

23 A. No.

24 Q. In fact, you all all went to sleep?

25 A. Yes.

1 Q. And your testimony is that the first words he said
2 when he came in was "where is Chip?"

3 A. Yes.

4 Q. And do you remember telling the police officers that
5 everything happened - it all happened so fast?

6 A. Yes.

7 Q. Everything happened real fast?

8 A. Yes.

9 Q. You did testify your home is small?

10 A. Correct.

11 Q. And do you remember telling the officers that Mickey
12 needed to be - Mickey needed to be - we're talking about
13 the charges that Micky needed to be charged with
14 trespassing at least. Right?

15 A. Yes.

16 Q. You didn't say anything to the police about kidnapping
17 did you?

18 A. I told the police what happened.

19 Q. I understand that. But you didn't say anything about
20 kidnapping?

21 A. No.

22 Q. And you didn't say anything about burglary?

23 A. No.

24 Q. And did you see Rebecca Rogers that night?

25 A. I did not see Rebecca.

JULIA COLEMAN: CROSS BY MR. HALL

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1 Q. Did you see the car they came up in?

2 A. Yes.

3 Q. What kind of car was it?

4 A. It's an older model Lincoln Town car.

5 Q. And where was it when you saw it?

6 A. Parked in front of my house in the road.

7 Q. So that was when you had gotten up off the couch and
8 went out on the porch. Right?

9 A. Yes.

10 Q. And you went out on the porch and when you were out on
11 the porch, you told them to leave, you didn't have time for
12 this, didn't you?

13 A. I told them to leave. When they first came in, I told
14 them, you need to leave my house.

15 Q. And when you went out on the porch, do you remember
16 saying, "I don't have time for this shit I gotta go to
17 work."

18 A. I did say that.

19 Q. And you were smoking a cigarette then. Right.

20 A. I don't recall.

21 Q. And they left. Right?

22 A. Yes.

23 Q. They got in the car and left. Right?

24 A. Yes. Well, that was after Ricky made the statement
25 about, you remember you turned your back on us and that's

1 when I told him, I don't have time for this shit. I have
2 to go to work in the morning.

3 Q. And they left?

4 A. Yes.

5 Q. And when you indicated that he brandished the sword,
6 you are not sure whether he got it out of his back or
7 whether he had it on his side that he had the sword.
8 Right?

9 A. No. I clearly seen him bring it from behind his back.

10 Q. But my question is, you don't know whether it was
11 stuck in his overalls or whether he - you just know that it
12 came from his back. Right?

13 A. Correct.

14 Q. You weren't - And you had indicated in your testimony
15 that he pushed you on the couch?

16 A. Yes.

17 Q. You weren't injured, were you?

18 A. Physically?

19 Q. Right.

20 A. No.

21 Q. You didn't go to the doctor?

22 A. No.

23 Q. Nobody was injured. [REDACTED] wasn't injured ---

24 A. Physically, no we were not.

25 Q. --- and [REDACTED] and [REDACTED]

JULIA COLEMAN: CROSS BY MR. HALL

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1 A. Physically, no they were not either.

2 Q. And you didn't tell them to go call the police did
3 you?

4 A. We were not tog - I was in the proximity to tell them.
5 I was looking for my phone to call the police.

6 Q. But you didn't - And I understand that. You testified
7 to that, but you didn't instruct them to go out and call
8 the police?

9 A. No.

10 Q. All right.

11 A. Actually this was part of a plan that we had enacted
12 way before this in case he ever came to the house.

13 Q. Right. Now you're not testifying that Ricky never
14 came to your house ---

15 A. No.

16 Q. --- to see the children did he? And in the year that
17 you had been - Your testimony is you were in a relationship
18 with Chip. You had seen Ricky during that year hadn't you?

19 A. Yes.

20 Q. And he had been to your house with your permission on
21 occasions during ---

22 A. Like two occasions, yes.

23 Q. --- that year? And some of the children had been with
24 him during that year?

25 A. Yes.

1 Q. In fact, just right - not too long before this, they
2 had all been out at the river swimming and carrying on.
3 Right?

4 A. I don't know about that.

5 Q. You weren't with them but they were with their daddy.
6 Right?

7 A. The last time [REDACTED] seen Ricky was New Year's Eve.

8 Q. And [REDACTED] had seen him more frequently than [REDACTED]

9 A. No. [REDACTED] actually saw him more frequently than [REDACTED]

10 Q. So is it your testimony the last time any of your
11 children saw him was on New Year's Eve?

12 A. I don't remember exactly when the last time [REDACTED] saw
13 him was. I believe it was at a birthday party that he had,
14 which would have been prior to New Year's Eve.

15 Q. So from January to mid-June, your testimony is, is
16 that Ricky had not seen any of his children?

17 A. He had seen them, yes, because he had come to my house
18 I believe on two occasions.

19 Q. Had they ever been - Had they ever left their house -
20 your house to go with him from January to June?

21 A. Not that I recall. I don't recall him ever picking
22 them up at my house. Any time he seen the children, I
23 provided transportation and carried them to his house.

24 Q. And that's because he can't - he doesn't drive does
25 he? He doesn't have a driver's license.

JULIA COLEMAN: CROSS BY MR. HALL
REDIRECT BY SOLICITOR HOLLAND

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1 A. He found a way to get to my house that night, but you
2 are correct, he doesn't have a license.

3 Q. But you are not testifying that he drove that night
4 are you?

5 A. No, I'm not.

6 Q. Just a couple more questions, Ms. Coleman. You would
7 just like to be - You would like to have Ricky out of your
8 life wouldn't you?

9 A. Yes. He's been out of my life.

10 Q. And you are mad at him today aren't you?

11 A. No.

12 Q. You were mad at him that night weren't you?

13 A. Yes.

14 MR. HALL: Thank you. No further questions.

15 THE COURT: Redirect?

16 SOLICITOR HOLLAND: Just briefly, Your Honor.

17 REDIRECT EXAMINATION

18 JULIA COLEMAN BY SOLICITOR HOLLAND:

19 Q. Did Ricky ever come see your kids at five o'clock in
20 the morning?

21 A. No.

22 Q. You said on direct that you told him not to come to
23 your house. When was that?

24 A. About maybe a week and a half, two weeks prior to this
25 incident.

- 1 Q. Okay. You talked about when Ricky came in that he
2 pushed you on the couch. Just to highlight this again, how
3 did you feel when he did that? Like were you scared?
- 4 A. Scared. Yes.
- 5 Q. And you didn't have any physical injuries?
- 6 A. Correct.
- 7 Q. But what did you think was going to happen?
- 8 A. I didn't know what he was capable of doing.
- 9 Q. And he never hit you with the sword?
- 10 A. No.
- 11 Q. But was he within striking distance of you?
- 12 A. Yes.
- 13 Q. At that time, could you have gotten up? Were you
14 fearful of getting up?
- 15 A. Yes. At that very moment, yes.
- 16 Q. Did you feel like you were confined?
- 17 A. Yes.
- 18 Q. And what would you have done if you realized it was
19 Ricky Passmore on the other side of that door when the
20 knock came?
- 21 A. Never told [REDACTED] to open it.
- 22 Q. And when you told [REDACTED] to open it, who did you believe
23 was on the other side of that door?
- 24 A. Chip.
- 25 Q. I want you to describe exactly what happened when you

JULIA COLEMAN: REDIRECT BY SOLICITOR HOLLAND
RECROSS BY MR. HALL

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1 told [REDACTED] to open the door. Tell us what happened.

2 A. [REDACTED] opened the door slightly. The door opens out so
3 I don't know maybe three to four inches. [REDACTED] turns back,
4 he says, "Momma, it's daddy" but by that time Ricky had
5 already opened the door the rest of the way and was coming
6 into the residence.

7 Q. Okay. So [REDACTED] didn't open the door all the way?

8 A. No.

9 SOLICITOR HOLLAND: Beg the Court's indulgence for
10 just one moment.

11 (PAUSE.)

12 SOLICITOR HOLLAND: Thank you, Julia.

13 THE COURT: Any recross?

14 MR. HALL: Just one.

15 RECROSS-EXAMINATION

16 JULIA COLEMAN BY MR. HALL:

17 Q. So he knew it was daddy? He said - [REDACTED] - it's daddy.

18 A. After he opened the door. When he looked out the
19 window, he said it's Chip.

20 Q. And when he opened the door, he said the words "it's
21 daddy?"

22 A. Yes.

23 Q. All right. Thank you.

24 THE COURT: All right. You can step down. Thank you.

25 (WITNESS LEAVING WITNESS STAND.)

██████████: DIRECT BY SOLICITOR EPTING

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1 THE COURT: All right. We'll take a short, about a
2 ten minute refresher break.

3 (JURY EXITS COURTROOM AT 10:30 A.M.)

4 (COURT IN RECESS AT 10:30 A.M..)

5 (DEFENDANT RICKY PASSMORE REENTERS COURTROOM AT 10:40
6 A.M..)

7 (COURT BACK IN SESSION AT 10:44 A.M..)

8 THE COURT: Thank you. Take your seats.

9 The State ready?

10 SOLICITOR EPTING: The State's ready, Your Honor.

11 MR. HALL: The Defense is ready, Your Honor.

12 THE COURT: All right. Bring in the jury.

13 (JURY ENTERS THE COURTROOM AT 10:45 A.M..)

14 THE COURT: You can call your next witness.

15 SOLICITOR EPTING: Thank you, Your Honor.

16 The State calls ██████████ to the stand.

17 MADAM CLERK: Please raise your right hand and place
18 your left hand on the Bible. You left-handed?

19 MISS PASSMORE: Uh-uh.

20 MADAM CLERK: There you go.

21 (WHEREUPON, ██████████,

22 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

23 MADAM CLERK: Thank you. Please have a seat.

24 DIRECT EXAMINATION

25 ██████████ BY SOLICITOR EPTING:

[REDACTED] DIRECT BY SOLICITOR EPTING

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1 Q. Good morning.

2 A. And good morning.

3 Q. Could you please state your full name for the record?

4 A. [REDACTED].

5 Q. And how -- Is it all right if I call you [REDACTED]

6 How old are you, [REDACTED]

7 A. Sixteen.

8 Q. Do you go to school?

9 A. Yes, sir.

10 Q. What school do you go to?

11 A. Blue Eagle Academy.

12 Q. And what, if any, is your relationship with the
13 defendant, Ricky Passmore?

14 A. That's my father.

15 Q. He's your father. I would like to talk to you about
16 an incident that occurred at your house involving Ricky
17 Passmore on June -- This is the house on Trinity, all
18 right.

19 A. Yes, sir.

20 Q. About twelve o'clock that night, did you receive some
21 type of - some type of phone call or message?

22 A. Yes, sir. To be exact, around 12:31.

23 Q. All right. Could you please let the jury know about
24 it? Tell them the substance of that phone call.

25 A. It had like he said stuff, a lot of cussing, putting

██████████: DIRECT BY SOLICITOR EPTING

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1 my momma down, a lot of racism. That's really about it.
2 He did talk about some things that would happen when he
3 come into the house.

4 Q. What kind of things was he talking about?

5 A. He told me that he might - and like that he do - he
6 would do something that I might hate him for a little while
7 for. And at first, I just brushed it off until I asked him
8 what it was that he was talking about.

9 Q. And you said that was around 12:30 in the morning?

10 A. Yes, sir.

11 Q. At some point that night, did he come into the house?

12 A. At around 5:30 the next morning.

13 Q. When you say the next morning, is that five hours
14 later or is that the next day?

15 A. About five hours later.

16 Q. Okay. When - So you spoke with your father, Ricky
17 Passmore, on the phone; is that correct?

18 A. Yes, sir.

19 Q. Did you recognize his voice?

20 A. Yes, sir.

21 Q. What phone call did - What phone did he call?

22 A. He called a Motorola phone.

23 Q. And --

24 A. It was my mother's.

25 Q. It was your mother's phone. Approximately, how long

██████████: DIRECT BY SOLICITOR EPTING

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1 did you all talk if you remember?

2 A. About forty-five minutes to an hour, somewhere in
3 between there.

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

5 (PAUSE.)

6 SOLICITOR EPTING: May I approach the witness, Your
7 Honor?

8 THE COURT: Yes, sir.

9 Q. ████████ I'm doing the mark - what's been marked as
10 State's Exhibit Nine. If you would, take a look at that
11 and please let me know if you recognize that?

12 A. Yes, sir. I dated and signed it with my initials.

13 Q. Well, what do you recognize that State's Exhibit Nine
14 to be?

15 A. Huh?

16 Q. What do you recognize State's Exhibit Nine to be; what
17 is it?

18 A. This?

19 Q. Uh-huh.

20 A. This is the recording of the phone conversation.

21 Q. Okay. So you actually recorded the phone call between
22 your father and yourself. Have you listened to a copy?

23 A. Yes, sir. I listened to this very copy.

24 Q. And how do you know that's the very copy that you
25 listened to?

██████████: DIRECT BY SOLICITOR EPTING

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1 A. I put my initials on it.

2 Q. Did you date it as well?

3 A. Yes, sir.

4 Q. And are those the initials that you put on there at
5 the time that you listened to it?

6 A. Yes, sir.

7 Q. After listening to it, is that a fair and accurate
8 depiction of your conversation with your father on the
9 night in question?

10 A. Yes, sir.

11 SOLICITOR EPTING: Your Honor, at this time, the State
12 would seek to enter State's Exhibit Nine into evidence.

13 THE COURT: Any objection.

14 MR. HALL: Without objection.

15 THE COURT: In without objection.

16 (WHEREUPON, STATE'S EXHIBIT NUMBER NINE, IDENTIFIED
17 AND MARKED, RECEIVED INTO EVIDENCE.)

18 SOLICITOR EPTING: Beg the Court's indulgence.

19 Q. Now, you say that you spoke with him that night and
20 you talked about coming in the house and all those things.

21 Did you talk to him before you started actually
22 recording it?

23 A. I did.

24 Q. What made you start recording it?

25 A. About the time when he said that he was going to do

[REDACTED] DIRECT BY SOLICITOR EPTING

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1 something that I might hate him for for a really long time,
2 and I said, "I don't think I could hate you," and then I
3 thought about it a minute and I was like, okay, well, I'm
4 going to ask him what it was and that's when I started
5 recording. Right around that time is when I started
6 recording. So we were on the phone maybe two minutes.

7 Q. Okay. So it concerned you the things he was saying to
8 you such that you actually recorded it?

9 A. Uh-huh.

10 Q. Is that --

11 A. Yes, sir.

12 Q. And did you tell your mom about that phone
13 conversation?

14 A. Yes, sir.

15 Q. Tell the jury how that happened?

16 A. I went in there. I handed her the phone and I told
17 her, "You might want to listen to this recording," and she
18 listened to maybe three minutes of it, if that, and put the
19 phone down and just blew it off.

20 Q. Okay. Now, after that call, did Ricky Passmore come
21 to the house?

22 A. Yes, sir.

23 Q. Could you tell the jury how that came about?

24 A. You mean like --

25 Q. Just from your - what you firsthand experienced? Did

██████████: DIRECT BY SOLICITOR EPTING

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1 - well, I - let me approach it like this. You talked to
2 him on the phone for - you said for approximately thirty,
3 forty-five minutes; is that correct?

4 A. Yes, sir.

5 Q. Did you go to bed afterwards?

6 A. Yes, sir.

7 Q. And was this at the house on ██████ Trinity?

8 A. Yes, sir.

9 Q. Did you sleep all the way through the night or did
10 something wake you up?

11 A. I remember - Where my bed was, the door flung open,
12 hit my bed, and I jumped up. The first thing I done was
13 rolled out of bed and checked on Momma. At the time, Momma
14 was -- Mickey was going to let my mother out of the house.
15 You know, she got out the door and she turned around and I
16 guess she was going to call the police, so she turned
17 around to get her phone and couldn't find her phone, and
18 she ended up looking for it and I went down the hallway
19 where my daddy had went to check on my little brothers.

20 As I went down the hallway, ██████ was coming up the
21 hallway. I slung the backdoor open. I pushed ██████ out the
22 backdoor and I told him to go call the police. Daddy
23 turned around. When he turned around he said -- he said
24 something to the effect of, "Where the F is ██████ ██████
25 were the F are you," and I told him, I said, "I sent him

██████████: DIRECT BY SOLICITOR EPTING

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1 out the backdoor to call the police, Daddy." He said,
2 "Really, ██████ the F-ing police," and I - I told him, I
3 said, "Well, Daddy, I love you, too, but I love my momma,
4 too, and I can't see my mama die. I can't do it."

5 Q. What was his demeanor when all this was happening?

6 A. I can tell that he was disappointed in me. I could
7 tell it was something that he didn't want, but it was
8 already too late. He had done what he had done and.

9 Q. How was your mother reacting while all of this was
10 going on?

11 A. She was scared. She was scared. She was - at one
12 point, she was trying to get out the door, and then she
13 turned around to grab the phone and couldn't find the phone
14 and it was - it was crazy. It was almost like a movie.

15 Q. Did Ricky have anything in his hands, your daddy?

16 A. A sword.

17 Q. A sword. What was he doing with the sword while he
18 was inside the house?

19 A. I remember when I come down the hallway, he was coming
20 up the hallway, and he had told Momma -- or he had turned
21 around and told Mickey, "She moves, she dies," and that's
22 when he went on down the hallway.

23 Q. So you heard Ricky say to your mother, "She moves, she
24 dies?"

25 A. To Mickey.

██████████: DIRECT BY SOLICITOR EPTING

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1 Q. To Mickey. Got you. To Mickey, "She moves, she
2 dies." Who did you take "she" to be?

3 A. My momma.

4 Q. Did he do anything with the sword when he said that?

5 A. He was still holding it at the time. He didn't really
6 swing it around, and then when I told him that I sent ██████
7 out the backdoor, it kind of scared me and my first thought
8 was he's going to hit me next, and when I looked back over
9 my shoulder, my youngest brother was standing behind me.

10 Q. Is that ██████ And how old was ██████

11 A. Ten.

12 Q. So ██████ leaves to go call 911. You stay in the house
13 for a little bit. You hear him say that to your - to
14 Mickey, "She moves, she dies." Your mother's afraid,
15 you're afraid. At some point, do you leave the house as
16 well?

17 A. I had walked back to the livingroom. Daddy and Mickey
18 was walking out. Momma was trying to lock the door, shut
19 and lock the door, and she told me, she said, "Run to check
20 on your brother and make sure they don't stop him halfway"
21 and I got out the backdoor and I got up there to where he
22 was and I was like, he's okay.

23 When I got there, he was - he was stuttering and
24 couldn't get the words out right. He was trying to get the
25 police to the house. I grabbed the phone but I guess ██████

██████████: DIRECT BY SOLICITOR EPTING

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1 had given them the address and stuff and when I grabbed the
2 phone, I seen the lights coming from the direction that
3 Momma's store is in and I dropped the phone immediately,
4 ran down to the road and started waving the police to the
5 house. I think Officer Hawkins was the first one to report
6 to the scene.

7 Q. Do you remember speaking with him?

8 A. He - I was almost in front of him and he had to got
9 out and everything and he kept telling me, "Get behind me.
10 Get behind me. Get behind me." But that was all that was
11 really said at that time.

12 Q. Did you see him do anything else at the scene that you
13 can remember? At some point, did other officers arrive on
14 the scene as well?

15 A. Yes, sir.

16 Q. Now, before Mickey and Ricky leave the house, before
17 you see them leave, are they looking in any other rooms?

18 A. They were flipping on lights. I know when they come
19 back down the hallway, they flipped on the bathroom light.
20 They flipped on my light. They flipped on ██████████ and ██████████
21 light, or Daddy did, and I guess after that they didn't
22 find Chip in the house so they left especially when they
23 knew the police were coming.

24 SOLICITOR EPTING: Beg the Court's indulgence.

25 (PAUSE.)

██████████: DIRECT BY SOLICITOR EPTING

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1 SOLICITOR EPTING: Your Honor, may I have permission
2 to approach the witness?

3 THE COURT: Yes.

4 Q. For the record, ██████████ I'm handing you what's been
5 marked State's Exhibit Twenty-eight.

6 Do you recognize State's Exhibit Twenty-eight?

7 A. Yes, sir.

8 Q. Where do you recognize that from?

9 A. It was in the house. There was a bar right there
10 between the kitchen and the living room and --

11 Q. Now, when you say in "the house" whose house are we
12 talking about here?

13 A. Daddy's house.

14 Q. So Ricky Passmore's house? So you said it was in the
15 house. And I interrupted you, please continue?

16 A. It was hanging up by this piece right over the bar.

17 Q. Okay. Could you hold that up so the jury could see?

18 It's hanging up by what piece?

19 A. This piece right here.

20 Q. And that's in his house? Have you ever seen him take
21 that outside his house?

22 A. Uh-uh.

23 MADAM COURT REPORTER: Mr. Epting, I need a verbal
24 response.

25 THE COURT: Yes, you need to answer yes or no.

██████████: DIRECT BY SOLICITOR EPTING

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1 Q. I'm sorry.

2 A. Yes, sir.

3 Q. Okay. So you had - You had never seen him take that
4 outside the house?

5 A. No, sir.

6 Q. Is that part of a series or is that a stand-alone
7 piece?

8 A. He had a few of these. I don't --

9 Q. And what -- And did he have a name for that?

10 A. He called I a "nigger beater."

11 Q. I'm going to - And you can lay that down.

12 I'm going to hand you what's been marked State's
13 Exhibit Twenty-two.

14 Do you recognize that?

15 A. Yes, sir.

16 Q. What do you see on there?

17 A. What do you mean?

18 Q. Tell - if you - if you - What do you recognize from
19 that item?

20 A. I know that it used to be in the back room.

21 Q. Okay. When you say "it?"

22 A. The rope.

23 Q. Okay. So you see rope on there; is that correct, and
24 you recognize that rope?

25 Where do you recognize -

██████████: DIRECT BY SOLICITOR EPTING

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1 THE COURT: You got -- You got to have an answer yes
2 or no.

3 A. Yes, sir.

4 Q. Where do you recognize that rope from?

5 A. It used to be in the backroom. It was in where the
6 dog food and like the stuff for the laundry, you know,
7 would sit.

8 Q. Is it still at your daddy's house?

9 A. I'm not sure.

10 Q. Okay. I'm handing you what's been marked State's
11 Exhibit Nineteen.

12 Do you recognize any of the items on State's Exhibit
13 Nineteen?

14 A. I do the crowbar. It was usually out in the backyard.

15 Q. Okay. Have you ever seen him take that crowbar
16 outside the house?

17 A. I know sometimes they did take it fishing with them.

18 Q. Okay. And the knife that's in the picture, do you
19 recognize that?

20 A. I have seen it once or twice. He usually kept it in
21 his pocket. He didn't usually pull it out or nothing. I
22 know they took that fishing with them, too.

23 Q. I'm going to hand you what's been marked as State's
24 Exhibit Eighteen.

25 If you would take a look at that and let me know if

DIRECT BY SOLICITOR EPTING

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1 you recognize that?

2 A. Yes, sir.

3 Q. What's pictured in State's Exhibit Nineteen?

4 A. There is a sword and a gun.

5 Q. We'll start with the gun. Do you recognize the gun?

6 A. Yes, sir.

7 Q. Where do you recognize the gun from?

8 A. I took a picture holding it at one point in time with
9 my little brother, not the youngest, but the other younger
10 one.

11 Q. Where is the last time you saw it?

12 A. It was standing in a corner between a white shelf and
13 the door.

14 Q. In whose house?

15 A. My daddy's.

16 Q. And by your daddy, you mean Ricky Passmore?

17 A. Ricky Passmore.

18 Q. And what about the sword, have you seen the sword
19 anywhere?

20 A. Yes, sir.

21 Q. Where did you see the sword?

22 A. I seen the sword a couple of times sitting there with
23 the gun.

24 Q. At your - Still at your daddy's house, I'm presuming?

25 A. Yes, sir.

██████████: DIRECT BY SOLICITOR EPTING

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1 Q. And had you ever seen your daddy take the sword or the
2 gun out of the house?

3 A. No, sir.

4 SOLICITOR EPTING: Beg the Court's indulgence.

5 (PAUSE.)

6 Q. Well, let me ask you about one last picture, State's
7 Exhibit Thirteen.

8 Do you recognize any of the items on State's Exhibit
9 Thirteen?

10 A. Yes, sir.

11 Q. What do you recognize?

12 A. The bat.

13 Q. And where do you recognize the bat from? Where is it
14 usually kept?

15 A. It was usually kept in the living room over there
16 beside my Uncle Mickey's chair or either in the middle
17 bedroom where they kept a lot of their belongings.

18 Q. Okay. Whose house?

19 A. Ricky Passmore.

20 Q. And you said your Uncle Mickey's chair. Does your
21 Uncle Ricky and Mickey live together?

22 A. Yes, sir.

23 Q. All right.

24 SOLICITOR EPTING: Beg the Court's indulgence.

25 (PAUSE.)

██████████: DIRECT BY SOLICITOR EPTING

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1 SOLICITOR EPTING: Your Honor, at this point, I would
2 like to publish State's Exhibit Nine.

3 THE COURT: You may.

4 (STATE'S EXHIBIT NUMBER NINE PUBLISHED TO THE JURY AT
5 11:02 A.M..)

6 Q. ██████████ is that the end of the call or this ends the
7 recording?

8 A. Yes, sir.

9 Q. And this was approximately five hours before the
10 incident, right?

11 A. Yes, sir.

12 Q. The man in the house that you saw with the sword that
13 was threatening your momma that you've identified as Ricky
14 Passmore, do you see him present here in the courtroom
15 today?

16 A. Yes, sir.

17 Q. Would you please point him out?

18 (WITNESS INDICATED TOWARD DEFENDANT RICKY PASSMORE.)

19 Q. Let the record reflect that ██████████ has
20 identified Ricky Passmore that's seated at Defense Counsel
21 table in a camouflage shirt and overalls.

22 SOLICITOR EPTING: Beg the Court's indulgence.

23 (PAUSE.)

24 SOLICITOR EPTING: ██████████ that's all of the questions I
25 have for you right now. Please answer any questions Mr.

██████████: CROSS BY MR. HALL

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1 Hall may have for you.

2 THE COURT: Mr. Hall.

3 MR. HALL: May it please the Court?

4 THE COURT: Sure.

5 CROSS-EXAMINATION

6 ██████████ BY MR. HALL:

7 Q. ██████████ it's really hard to get stuck between your momma
8 and daddy isn't it?

9 A. Yes, sir.

10 Q. The phone, the recording we just listened to, you had
11 testified that you had actually talked to your daddy for
12 about forty-five minutes or an hour, so did you keep
13 talking to him after you cut the recording off?

14 A. No, I acted like the phone went dead.

15 Q. All right. And - But you had talked to him for a good
16 bit of time before you turned it off; is that right?

17 A. Yes, sir.

18 Q. And all of these things that the Solicitor went
19 through and showed you, the pool ball, it wasn't in your
20 house the night your daddy came over there was it?

21 A. No, sir.

22 Q. And you never saw that?

23 A. No, sir.

24 Q. And the rope, State's Exhibit Twenty-seven, it never -
25 it never came into your house ---

██████████: CROSS BY MR. HALL

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1 A. No, sir.

2 Q. --- that night, did it? And the bat, he showed a
3 picture of the bat. You - it didn't come into the house
4 ---

5 A. No, sir.

6 Q. --- that night, did it? And he showed you a picture
7 of the gun, and it never came in your house did it?

8 A. No, sir.

9 Q. And he showed you a picture, Number Nineteen, of the
10 crowbar, and it never came into the house, right?

11 A. No, sir.

12 Q. And let's go back and talk about what - what happened
13 or where you were. You testified that you, you talked to
14 your daddy on the phone ---

15 A. Yes, sir.

16 Q. - and then you let your momma listen to the phone
17 call, right?

18 A. Yes, sir.

19 Q. And then you went to bed?

20 A. Yes, sir.

21 Q. And you slept in your room?

22 A. Yes, sir.

23 Q. And I believe you testified that your door must have
24 been shut, because the first time you saw your daddy was
25 when he slung your door open. Right?

██████████: CROSS BY MR. HALL

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- 1 A. Yes, sir.
- 2 Q. He told you to get up?
- 3 A. Yes, sir.
- 4 Q. And then he went on down the hall to ██████████ room; is
- 5 that right?
- 6 A. ██████████ and ██████████ yes, sir.
- 7 Q. ██████████ and ██████████ So you don't know - you don't - You
- 8 didn't see him come in the door?
- 9 A. No, sir.
- 10 Q. And you didn't - And you weren't in the room when he
- 11 first came in? The first time you saw him was when he was
- 12 in the hall; is that right?
- 13 A. Yes, sir.
- 14 Q. When was the last time you had seen your daddy?
- 15 A. When he turned in the hallway and the last thing I
- 16 told him was, "I love you, Daddy, but I love my momma, too,
- 17 and I'm not going to see her die."
- 18 Q. Then, you went out the door then?
- 19 A. He went to the living room. As I was walking behind
- 20 him to the living room trying to make sure that my mother
- 21 was okay. Mama was trying to get them out the door. - I
- 22 remember turning back around, because mother told me to go
- 23 check and make sure they didn't stop ██████████ halfway, so I
- 24 turned around and I ran out the backdoor and ran to the
- 25 neighbors where ██████████ was at.

██████████: CROSS BY MR. HALL

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1 Q. And your testimony is she was trying to get them out
2 the door. She was up off the couch by then, right?

3 A. Yes, sir.

4 Q. And how was she trying to get them out the door?

5 A. She was telling them to leave, and as they were
6 walking out, she was getting the door shut and locking the
7 door.

8 Q. So she told them to leave and the last thing you saw,
9 they were leaving, right?

10 THE COURT: You got to say yes or no.

11 A. Yes, sir.

12 Q. Now, before this night, before this phone conversation
13 with your daddy, when was the last time you saw your daddy?

14 A. I'm not really sure.

15 Q. Do you remember going to the strawberry festival with
16 him over in Fort Mill?

17 A. Yes, sir.

18 Q. That would have been at the end of May, do you
19 remember that?

20 A. I don't know.

21 Q. And at some point, did you go - Did you all go out to
22 the river?

23 A. No, sir.

24 Q. You didn't go with him that - anytime in June, but you
25 had seen him in May or whenever you went to the strawberry

██████████: CROSS BY MR. HALL

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- 1 festival, you remember that?
- 2 A. Yes, sir.
- 3 Q. And your daddy, he talks a lot, doesn't he?
- 4 A. Yes, sir.
- 5 Q. And, in fact, he can get real loud ---
- 6 A. Yes, sir.
- 7 Q. --- and he gets pretty deliberate and he just says all
- 8 kinds of stuff, doesn't he?
- 9 A. Yes, sir.
- 10 Q. That's just -- And that's just the way he is?
- 11 A. Yes, sir.
- 12 Q. Is that the -- I assume that's the way the Passmore
- 13 men are. The Passmore ladies are not that way are they?
- 14 A. They can be.
- 15 Q. They can be.
- 16 A. They can be.
- 17 Q. And when -- And, in fact, he's always been that way,
- 18 right?
- 19 A. Yes, sir.
- 20 Q. And you testified that when you let your momma listen
- 21 to the - that - the recording that we just heard, you - I
- 22 believe you said that she'd listened to about three minutes
- 23 of it and she just blew it off, right?
- 24 A. Yes, sir.
- 25 Q. And, in fact, you didn't call the police after you had

██████████: CROSS BY MR. HALL

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1 the conversation with him did you?

2 A. No, sir.

3 Q. And to your knowledge, she didn't call the police, you
4 all went on to bed, right?

5 A. Yes, sir.

6 Q. When you - When you got through talking to your daddy,
7 you knew he was concerned about you and ██████████ and ██████████
8 didn't you?

9 A. Yes, sir.

10 Q. And he had told you that he was going to - he was
11 going to talk to your momma one more time, right?

12 A. Yes, sir.

13 Q. And then about you all and being in the house with her
14 and her boyfriend, right?

15 A. Yes, sir.

16 Q. And, in fact, you told your daddy on the recording
17 that Chip and his nephew, they had been at the house that
18 day, right?

19 A. I know they had been there a few times, but I don't
20 know if I was exactly referring to that day.

21 Q. All right. You didn't give him any indication that -
22 You didn't tell him Chip was there that night, did you?

23 A. Uh-uh.

24 Q. And, because, in fact, Chip was not there was he?

25 A. No, sir. I don't think so.

██████████: CROSS BY MR. HALL

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- 1 Q. He was - he wasn't in - He wasn't in your room was he?
- 2 A. No, sir.
- 3 Q. And in fact during the phone conversation, you got a
- 4 little bit aggravated, because your daddy talked so much,
- 5 you know, you said, "Daddy, you just won't listen," right?
- 6 A. Yes, sir.
- 7 Q. And at this point in that conversation with him, he
- 8 did listen to you for a while, right?
- 9 A. Yes, sir.
- 10 Q. And you told him that you love him and your momma?
- 11 A. Yes, sir.
- 12 Q. And that's - That's the hard thing about being here,
- 13 right?
- 14 A. Yes, sir.
- 15 Q. When your daddy came in, he never touched you or
- 16 threatened you, did he?
- 17 A. No, sir.
- 18 Q. And he never touched or threatened ██████████ did he?
- 19 A. No, sir.
- 20 Q. And you - he never - To your knowledge, he never
- 21 threatened or touched ██████████
- 22 A. No, sir.
- 23 Q. And you didn't - you didn't see him when he - And as
- 24 far as your momma, as far as you know, he never touched her
- 25 did he?

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1 A. I didn't see that part.

2 Q. So anything you know about what happened in there is
3 because your momma told you, right?

4 A. Uh-huh. Yeah. Him - her and my - one of my younger
5 brothers.

6 Q. Does your daddy - Your daddy gets into this thing, he
7 likes to send messages to people, doesn't he?

8 A. Well, what do you mean?

9 Q. Well, he'll say stupid stuff to try to get messages to
10 people, right?

11 A. Sometimes, yes.

12 Q. So would it be - Would it be fair to say when he's
13 having that conversation with you and he's trying to send a
14 message to your momma --

15 SOLICITOR EPTING: Your Honor, I'm going to object
16 to the -

17 THE COURT: Yeah, and I sustain the objection. She
18 can't know what his intentions were.

19 MR. HALL: I understand.

20 Q. And when you went out the door, you went out the
21 backdoor, right?

22 A. Yes, sir.

23 Q. When you went out the door and your daddy said - I
24 think you testified- your daddy said - when you said
25 calling the police he goes, "██████████ really, the police?" Is

██████████: CROSS BY MR. HALL

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1 that what he said?

2 A. Yes, sir.

3 Q. And he was standing there at the backdoor then, right?

4 A. He was about where my room door is.

5 Q. All right. And so at that point, you could see your
6 momma standing up in the den?

7 A. I could see her - I could see her - Where I was, I
8 could see maybe part of her, but I couldn't see all of what
9 she was doing, none of that. I could - I could see her
10 arm, so I could see her standing up and then I couldn't see
11 her no more after that, and I remember that's when I told
12 Daddy what I did.

13 He turned around. Before he turned around, I looked
14 over my shoulder and when I looked over my shoulder, my
15 youngest brother was standing behind me.

16 Q. He was in the hall behind you?

17 A. He was - he was about maybe two, three feet away from
18 his room.

19 Q. Okay. All right. So that would be at the -- his is
20 at the end of the hall, so he was at the end of the hall
21 behind you, you're standing at the door and you could see
22 part of your momma in the den, right? I just wanted to
23 make sure that when you saw her, she was standing up trying
24 to get them out, tell them to leave, get out of the house,
25 right?

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REDIRECT BY SOLICITOR EPTING

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1 A. She - At that point, she was looking for her phone to
2 call the police.

3 Q. And - and then you went out the door?

4 A. I sent my brother out the door.

5 Q. All right. And you and your momma, you all have
6 talked about this a lot since June, hadn't you?

7 A. We don't like to talk about it a lot.

8 Q. You and your momma did talk to the police about it
9 afterwards, right?

10 A. Yes, sir.

11 Q. And you - when you talked - But you do talk to your
12 momma. Your mama has talked to you about coming to court,
13 right?

14 A. She has told me that we were.

15 Q. All right. Thank you. I have no further questions.

16 THE COURT: Redirect?

17 SOLICITOR EPTING: Very briefly, Your Honor.

18 REDIRECT EXAMINATION

19 ██████████ BY SOLICITOR EPTING:

20 Q. ████████ Mr. Hall was asking you some questions about
21 your daddy being a big talker and talking a lot, loud, all
22 that kind of stuff ---

23 A. Yes, sir.

24 Q. --- and I believe you said he was a big talker or is a
25 big talker; is that correct?

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- 1 A. Yes, sir.
- 2 Q. When you were talking with him that night, was he big
- 3 talking on the phone that night, too?
- 4 A. Kind of.
- 5 Q. But at some point, he said something that caused you
- 6 to start recording this conversation?
- 7 A. Yes, sir.
- 8 Q. And, again, remind the jury of why you started the
- 9 recording.
- 10 A. He said something to the effect of you're going to -
- 11 MR. HALL: Your Honor, this has been asked and
- 12 answered. I don't believe that's proper for redirect.
- 13 SOLICITOR EPTING: It's in response -
- 14 THE COURT: I think it's in response to the quote big
- 15 talker questions, so I will allow it.
- 16 Q. What caused you to record, ██████████
- 17 A. He said something to the effect of, "I'm going do - I
- 18 might do something that you all might hate me for a really
- 19 long time for.
- 20 Q. At that point, did you think he was big talking?
- 21 A. I - At that point, I wasn't sure, but I wanted to be
- 22 on the safe side and make sure. I wasn't sure exactly
- 23 where he was going to go with it. I just wanted to make
- 24 sure if he did go anywhere with it, I had it.
- 25 Q. And five hours after that conversation, he shows up at

██████████: REDIRECT BY SOLICITOR EPTING
LIEUTENANT TANNER DAVIS: DIRECT BY SOLICITOR HOLLAND

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1 your house?

2 A. Yes, sir.

3 Q. With a sword?

4 A. Yes, sir.

5 SOLICITOR EPTING: No further questions, Your Honor.

6 THE COURT: Mr. Hall?

7 MR. HALL: Nothing further, Your Honor.

8 THE COURT: All right. You can step down. Appreciate
9 your time. You can be excused. Thank you.

10 (WITNESS LEAVING WITNESS STAND.)

11 THE COURT: Call your next witness.

12 MS. HOLLAND: The State calls Tanner Davis.

13 (WHEREUPON, TANNER DAVIS,

14 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

15 MADAM CLERK: Thank you.

16 DIRECT EXAMINATION

17 LIEUTENANT TANNER DAVIS BY SOLICITOR HOLLAND:

18 Q. Please state your name for the record.

19 A. Tanner Davis.

20 Q. And where are you employed?

21 A. I work for the Clover Police Department.

22 Q. And how long have you been with Clover?

23 A. Seven and a half years.

24 Q. Is that the extent of your law enforcement experience?

25 A. Yes, ma'am, it is.

1 Q. What's your current rank?

2 A. I'm a Lieutenant.

3 Q. Okay. What are your current duties?

4 A. I'm the Lieutenant of investigations. I oversee,
5 delegate, and conduct investigations myself.

6 Q. So in addition to being a Lieutenant you also are kind
7 of a detective?

8 A. Yes, ma'am. We're small.

9 Q. What sort of training and experience do you have as a
10 law enforcement officer?

11 A. I attended the South Carolina Criminal Justice Academy
12 where I received my basic certification and since that
13 time, I've attended numerous basic and advanced training
14 classes, all of which I can't recall by memory.

15 Q. Okay. We've talked a lot about Micky Passmore in this
16 case who is not being tried here today. Are his charges
17 currently pending?

18 A. Yes, ma'am. They are still pending.

19 Q. He is subject to being called to trial just like Ricky
20 Passmore?

21 A. Yes, ma'am. That's correct.

22 Q. Let's talk about how - How did you first become
23 involved in this case?

24 A. The morning following the incident I arrived to work
25 and was greeted by the officers, Officer Hawkins and

LIEUTENANT TANNER DAVIS: DIRECT BY SOLICITOR HOLLAND

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1 Sergeant Miller, who were involved with the case. They
2 brought to me the facts of the case and I got involved from
3 that point.

4 My second detective that I had at the time, who is no
5 longer with us, he was assigned to certain duties and we
6 further investigated the case from that point.

7 Q. Okay. What did you do specifically?

8 A. I went to the jail and spoke with the Passmore
9 brothers as well as serving them with their warrants and I
10 also spoke with Ms. Coleman and listened to the cell phone
11 messages and the recordings and retained those.

12 Q. And you spoke about a second detective. Who was that?

13 A. Detective Lizzell.

14 Q. Okay. What did he do?

15 A. He also interviewed them. He conducted interviews
16 with the children that I believe he recorded. He also
17 spoke with the Passmore brothers and I believe Ms. Rogers,
18 who was found to be the driver of the car.

19 Q. And obviously he is not here. Where is he?

20 A. He now works for the Berkeley County Sheriff's Office.

21 Q. And when did he leave the Clover Police Department?

22 A. Before the first of the year. Some time around
23 December. No, it was before that. October.

24 Q. And why did he leave?

25 A. His wife got a much better job offer there in Berkeley

1 County.

2 Q. Okay.

3 A. And so he followed her there.

4 Q. Okay. Did you ever go to the incident location?

5 A. I did.

6 Q. Where is that located?

7 A. It's in the City of Clover.

8 Q. Okay. Is that within York County?

9 A. Yes, ma'am.

10 Q. Okay. And have you had any - Have you handled the
11 evidence at all, the physical evidence?

12 A. I have.

13 Q. Okay. What did you do with that evidence?

14 A. The items I sent to - Some of the items were sent to
15 the forensic service unit here at York County Sheriff's
16 Office.

17 Q. And you used to work for the forensic services unit.
18 Correct?

19 A. Yes, ma'am, I did that prior.

20 Q. Describe what they do.

21 A. They handle the tangible evidence, searching for
22 fingerprints, DNA, more subtle work to attempt to identify
23 offenders of crimes.

24 Q. Okay. Did you specifically handle the rifle that was
25 bring --

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1 A. I took it to the forensics unit so that they could
2 process it. Yes, ma'am.

3 Q. And who does that rifle belong to?

4 A. Micky Passmore.

5 Q. Okay. And did you take the evidence to have it
6 fingerprinted?

7 A. Yes, ma'am.

8 Q. Were any fingerprints lifted?

9 A. No, ma'am.

10 Q. Is that common?

11 A. It is. It is often determined by the surface or the
12 condition of the item.

13 Q. Were the items swabbed for DNA.

14 A. They were.

15 Q. And were those tested?

16 A. They were not.

17 Q. Can you describe what it's like to be DNA tested in
18 South Carolina?

19 A. Not --

20 Q. Is it a lengthy process?

21 A. It is very - it's a difficult process.

22 Q. Okay. And why were those not tested?

23 A. Mr. Micky Passmore had already claimed the ownership
24 of the gun so there was no need. We already knew who they
25 belonged to and quite certain we would find their DNA on

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1 it.

2 Q. So you would expect some of his DNA to be on their own
3 property?

4 A. Yes, ma'am.

5 Q. Okay.

6 SOLICITOR HOLLAND: Beg the Court's indulgence.

7 (PAUSE.)

8 SOLICITOR HOLLAND: Please answer any questions Mr.
9 Hall may have.

10 LIEUTENANT DAVIS: Yes, ma'am.

11 CROSS-EXAMINATION

12 LIEUTENANT TANNER DAVIS BY MR. HALL:

13 Q. Lieutenant Davis, so Detective Mozelle did most of the
14 actual field investigation; is that right?

15 A. More than I, yes, sir. I kind of served as a
16 supplementary role.

17 Q. And so he talked to [REDACTED] [REDACTED] Right?

18 A. Yes, sir.

19 Q. And he recorded that?

20 A. I believe so. Yes, sir.

21 Q. And he talked to [REDACTED] [REDACTED] and he recorded that?

22 A. Yes, sir. I believe so.

23 Q. And whoever you talked to, there are recordings of
24 those. Right?

25 A. Yes, sir. I believe so.

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1 Q. And you said he went to work for the Berkeley County
2 Sheriff Department in Berkeley County, South Carolina?

3 A. Yes, sir. He's still in South Carolina.

4 Q. Still in South Carolina. All right. Thank you.

5 MR. HALL: No further questions.

6 SOLICITOR HOLLAND: Your Honor, that's all we have for
7 this witness.

8 THE COURT: You can step down. As the case agent you
9 will remain with us.

10 (WITNESS LEAVING WITNESS STAND.)

11 THE COURT: Call your next -

12 SOLICITOR HOLLAND: Your Honor, may we take a short
13 break?

14 THE COURT: All right. We'll take a short refresher
15 break.

16 (JURY EXITS COURTROOM AT 11:50 A.M..)

17 (COURT IN RECESS AT 11:50 A.M..)

18 (COURT BACK IN SESSION AT 12:05 P.M..)

19 THE COURT: Thank you. You may take your seats
20 please.

21 State ready?

22 SOLICITOR EPTING: The State is ready, Your Honor.

23 THE COURT: I understand the State is resting?

24 SOLICITOR EPTING: That's correct, Your Honor.

25 THE COURT: And I'll let the State rest on the record

1 when the jury comes back in. We will treat this as the
2 dividing line between the State's case, the end of the
3 State's case and move into motions at this time the
4 Defendant may have and I'll talk to -

5 MADAM COURT REPORTER: Will you get that door? I
6 can't hear.

7 MR. HALL: Your Honor, I do have a motion. I would
8 like to make a motion for a directed verdict on the charge
9 of kidnaping. There is no indication from the facts
10 presented by the State that there was any kidnaping taken
11 the facts presented in the light most favorable to the
12 State. The testimony is that when Mr. Passmore was in the
13 house, that he did push her down, he did not confine her.

14 In fact, the testimony is, is that she got up off the
15 couch and told them to leave, all this by her own testimony
16 for a very short period of time and so that - And when she
17 told them to leave, they did leave. There is not
18 sufficient evidence for a kidnaping elements for it to go
19 to the jury and we ask that the Court direct a verdict on
20 the element of kidnaping.

21 On the element - on the charge of burglary, testimony
22 is, is that he knocked on the door, the door was opened, he
23 came in. He was not told to not come in, he came on in.
24 Hunted - By the State's evidence was hunting for Chip. He
25 didn't touch anybody. He didn't harm anybody. He didn't

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1 commit any crimes. Again we ask the Court for a directed
2 verdict for burglary first degree.

3 Criminal domestic violence: The victim in the case,
4 the only victim in the criminal domestic high and
5 aggravated nature case would be the wife. Definition of
6 household member does not include children. It's a spouse
7 and children are not included in that statutory definition
8 of household member. She did not -

9 THE COURT: That's the only one he is charged with as
10 far as criminal domestic violence. The only victim
11 alleged in the indictment is her.

12 MR. HALL: Right. And --

13 THE COURT: The wife.

14 MR. HALL: Out of abundance of caution, sometimes
15 family members or household members in a general sense - I
16 know I'm sort of arguing some practical to a jury argument.
17 I understand the Court clearly understands the household
18 member in this case is limited to the wife.

19 THE COURT: They won't have any indictments with them
20 in the jury room. You can certainly point out and I probably
21 will in my charge that she is the only victim alleged in
22 that. So I deny - I'm not sure what your motion is on that
23 indictment, that is criminal domestic violence of a high
24 and aggravated nature. What is your motion on that?

25 MR. HALL: Your Honor, for the record we would ask the

1 Court to weigh the evidence and ask for a directed verdict
2 on criminal domestic violence high and aggravated nature
3 for my client.

4 Certainly if the Court directed a verdict on the two,
5 the burglary and kidnaping, then the Court would have to
6 direct a verdict on unlawful possession of a weapon during
7 the commission of a violent crime.

8 THE COURT: Well, I deny all three motions. Criminal
9 domestic violence alleges and the law is and there is
10 certainly evidence of putting the victim, Ms. Coleman, in
11 fear of intimate serious bodily injury and death by using a
12 deadly weapon. I think that a non legal and a legal point
13 of view a deadly weapon, a sword, would be considered a
14 deadly weapon.

15 As to burglary, his testimony if not direct at least
16 substantial circumstantial evidence that he entered without
17 consent. The only reason the door was opened is because
18 the young man felt that it was somebody other than his
19 father and there was no non-consent, that is he wasn't told
20 to stay out. He just barged in and I certainly think
21 that's a jury question.

22 Same is true for the kidnaping. I think the jury with
23 the evidence could determine that it was an unlawful
24 seizure that he did restrict her movement by threats and
25 that she was confined. Even if it was just temporarily,

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1 her freedom of movement was confined. And if it was at
2 least an attempt, although I'm not going to charge attempt,
3 I don't believe, but she was subject to being - she was
4 subject to confinement at least by virtue of his
5 instruction to the brother regarding what to do if she did
6 not obey his command as he went down the hall, so, I deny
7 those motions.

8 And that leaves possession of a weapon during the
9 commission of a violent crime, kidnaping is by law is a
10 violent crime, and I've already commented on the fact that
11 the sword would be considered a weapon so I deny the motion
12 for all - all motions for a directed verdict.

13 Mr. Passmore, could you hear me?

14 MR. PASSMORE: Yes, sir.

15 THE COURT: We've reach a point in the trial where you
16 have a right to present a defense if you wish. You do not
17 have to present any witnesses or present a defense because
18 by our law you are presumed innocent of these charges, and
19 the State must prove your guilty beyond a reasonable doubt
20 before you can be convicted. So you don't have to present
21 any defense. You may call witnesses if you wish and you
22 may testify if you wish.

23 You have a right to testify. You have a absolute
24 right to remain silent. If you chose to remain silent,
25 that is if you exercise your right to not to testify, I

1 will tell the jury that you have exercised that right.
2 They cannot use that against you in any fashion whatsoever.
3 That they cannot use your exercising your constitutional
4 right to remain silent as any mitigation against you, that
5 is, they cannot hold that against you, they cannot factor
6 into, they cannot discuss it. I will tell them that and I
7 will tell them they cannot factor into their own reasoning,
8 decision making process, the fact that you exercise your
9 constitutional right reminding the jury that you are
10 presumed innocent and you need not prove your innocence the
11 State must prove your guilt beyond a reasonable doubt.

12 Since the evidence has already been produced on
13 defense's behalf, it is not a situation where if you don't
14 present evidence you would be entitled to final argument
15 because there is already evidence in the record on the
16 defense's behalf.

17 Do you understand all that?

18 MR. PASSMORE: You said if I don't present evidence on
19 me, entitled to a last argument?

20 THE COURT: If there is no evidence presented by the
21 defense and there is already evidence, there has already
22 been an exhibit put in.

23 Do you have any questions about any of that?

24 MR. PASSMORE: I'm not sure I fully grasp it enough.
25 I'm not sure what I'm missing.

1 THE COURT: Well, here is what the situation is. If
2 you present any evidence, if you call witnesses, or you
3 testify, or if you put any exhibits into the record, the
4 State gets final argument and that has happened here so the
5 State will get final argument. We're not to that stage yet
6 but I just wanted to call that to your attention.

7 Mr. Hall, you obviously -

8 MR. HALL: Your Honor, and I have discussed that with
9 my client. And ever since I have been representing him, he
10 has indicated a strong desire to present evidence and in
11 fact I informed the court that he intends to testify and -
12 but we have discussed the options of not testifying and not
13 putting up evidence. Mr. Passmore has understood that in
14 my opinion and has always decided that he would be
15 presenting evidence.

16 THE COURT: All right. Mr. Passmore, do you
17 understand that, all of that now?

18 MR. PASSMORE: I think I got it. Yes, sir.

19 THE COURT: Do you have any questions about any of it?

20 MR. PASSMORE: No, sir.

21 THE COURT: Do you plan - It is your decision. It's
22 not mine. It's not your attorney's. It's not your
23 family's. It's not the State's. It's Mr. Ricky Passmore's
24 decision whether to testify or not. Have you reached a
25 decision on that at this point?

1 MR. PASSMORE: Yes, sir.

2 THE COURT: And do you intend to testify or to
3 exercise your right to remain silent.

4 MR. PASSMORE: I intend to testify.

5 THE COURT: Okay. All right. We'll bring the jury
6 back in and go to about 1:15 or 1:30.

7 Bring in the jury.

8 (JURY REENTERS COURTROOM AT 12:20 P.M..)

9 THE COURT: Ms. Holland.

10 SOLICITOR HOLLAND: Your Honor, the State rests.

11 THE COURT: Members of the jury panel, the State has
12 rested. That means they have finished placing into
13 evidence the evidence they intend to present in their case
14 in chief. Under certain circumstances, they could have a
15 right to later present other evidence, but basically in
16 essence you have heard the State's case.

17 The Defense now has the right to call witnesses and
18 present evidence but has no obligation to do so I'll turn
19 it over to Mr. Hall.

20 MR. HALL: Your Honor, the State would call Ricky
21 Passmore.

22 THE COURT: All right. Please come up and be sworn.

23 MR. HALL: I'm sorry. Defense would call Ricky
24 Passmore.

25 THE COURT: Stop right there please.

RICKY PASSMORE: DIRECT BY MR. HALL

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1 MADAM CLERK: Raise your right hand, place your left
2 hand on the Bible.

3 (WHEREUPON, RICKY PASSMORE,
4 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

5 MADAM CLERK: Thank you. Please have a seat.

6 MR. HALL: Ricky, you may need to speak or turn that
7 microphone where when you speak you can be heard.

8 MADAM COURT REPORTER: The chair won't move, Mr.
9 Passmore.

10 MR. PASSMORE: Okay.

11 DIRECT EXAMINATION

12 RICKY PASSMORE BY MR. HALL:

13 Q. Ricky, would you state your full name, please?

14 A. Ricky Eugene Passmore.

15 Q. How old are you, Ricky?

16 A. Forty-six.

17 Q. And where do you live?

18 A. I was living at 35 Railroad Avenue in York.

19 Q. All right. And when you say you were living there,
20 that was on June the 19th of last year, you were living on
21 Railroad Avenue in York. Right?

22 A. Yes, sir.

23 Q. And who was living there with you?

24 A. Me, Tabitha, Mickey Passmore and Rebecca Rogers.

25 Q. And when you say Tabitha, you would mean your

1 girlfriend, Tabitha?

2 A. Yeah.

3 Q. All right. So two brothers and their girlfriends?

4 A. Yeah.

5 Q. And how long have you lived in York County?

6 A. Since I was nineteen.

7 Q. And you've been convicted twice of offenses that carry
8 more than a year haven't you?

9 A. Yes, sir.

10 Q. And on June the 19th, can you tell the jury what
11 happened on June the 19th of last year?

12 A. You want me to start with the conversation with [REDACTED]

13 Q. Let's start with ---

14 A. I had a ---

15 Q. Let's start with the conversation -- you've heard the
16 -- that recording.

17 A. On June the 19th, I spent all day, me and my brother,
18 cutting firewood, stacking firewood, burning brush. I had
19 a conversation with [REDACTED] that evening that ya'll heard. A
20 conversation where she was telling me for what seemed like
21 the hundredth time how they didn't like Chip and didn't
22 want him or his friends around the house.

23 Me and Julia had spoke about this. Had several
24 conversations. We agreed that she would keep him away from
25 the kids. I told her, "I don't care what you do with him,

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1 But I think it'd be best to keep him away from the kids."

2 She agreed during our conversation and everything was
3 fine. Well, then, like you heard on that recording, [REDACTED]
4 started telling me how Chip was sleeping over there and
5 bringing some of his little crack thugs over there. Chip
6 is a street name for crack rock, 'cause it chips off in
7 pieces. Julia knows --

8 SOLICITOR EPTING: Your Honor, I object. He hasn't
9 established his basis of that knowledge for street names of
10 any drugs whatsoever.

11 THE COURT: I sustain the objection.

12 Just disregard the reference of Chip being somehow
13 connected to crack cocaine.

14 Go ahead.

15 Q. All right. So ---

16 A. Anyway.

17 Q. --- go ahead.

18 A. Anyway, [REDACTED] and them had been telling me how they
19 didn't want him around and we had agreed that she wouldn't
20 have him around. Well, Julia some how or another got in a
21 financial bind, insurance lapsed on her car. They come out
22 there and took her tag and if I'm not mistaken, they
23 revoked her drive's license. Now, she couldn't go and meet
24 this guy, because we had agreed that she would meet him --
25 she -- let me get this straight. She told me -- I asked

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1 her in the conversation I'm talking about, I said, "Julia,
2 why are you doing this, you can't tell me you love him."
3 She said, "No, I don't love him, but I need my bills paid."

4 And I asked her, I said, "Well, there's plenty of
5 white men out there that would help you pay your bills, why
6 didn't you find one of them?" She said, "Because white men
7 ain't shit," and I said, "Okay. Is this what you're
8 telling our son?" I mean, imagine this. This conversation
9 went on. By the end of the conversation, she agreed that
10 she'd keep him away.

11 [REDACTED] starts calling me informing me that she wasn't
12 keeping him away. The last conversation is the one you all
13 heard. Like you heard in that conversation, I told [REDACTED]
14 "I'm going to try one more time to talk to your momma."

15 At the time that conversation took place, that car
16 that we were in was sitting in the driveway with a flat
17 tire. We had no way to pump it up. The car was old. A
18 Jed Clampett car.

19 But that little dude sitting right there with them
20 glasses came over, them two right there to watch movies
21 with [REDACTED] while I was having that conversation. While I
22 was having that conversation with [REDACTED] on the phone, they
23 had a tire pump in the car that you plug in the cigarette
24 lighter. They pumped the tire up and bam, an unexpected
25 ride, so I went to talk to [REDACTED] - Julia.

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1 I called three time - no, twice. I called once and
2 told [REDACTED] left a message that Mickey and Becky were
3 bringing me over there, that I would be over there as soon
4 as they got back from the store to talk to their mother. I
5 called again in route to Clover. I told them I'm almost
6 there to talk to your momma. If I had been going over
7 there with the intention of hurting Chip, I would not have
8 called and gave Julia time to have law enforcement waiting
9 on me when I got there. I would not have called and gave
10 them a warning so he could have some his little armed thugs
11 waiting on me when I got there. I was going on ---

12 SOLICITOR EPTING: Your Honor, I object to him adding
13 editorial comments about Chip's friends being thugs.

14 THE COURT: I overrule the objection. He's got his
15 opinion as to that obviously.

16 Q. Wait, tell me who - how - When you left Railroad
17 Avenue, who was - who left Railroad Avenue with you?

18 A. Becky was driving and Mickey was in the passenger side
19 up front. It was their car. They were giving me a ride.
20 I don't have a car.

21 Q. And what happened after you all got in the car? You
22 got the tire pumped up, then what happened?

23 A. After we got the tire pumped up, Mickey and Becky went
24 to the store for something. That's when I called [REDACTED] back
25 and told her they was gone to the store, when they got

1 back, we'd be headed that way to talk to Julia, because I
2 told [REDACTED] I'd try to talk to her momma one more time.

3 I didn't want to fuss and fight with Julia. I wanted
4 Julia to work with me and keep this guy away from my kids.

5 Q. All right.

6 A. People want to sit here and call me a racist. I got
7 nothing against a black person that don't hurt white
8 people, nothing. But I do have some issues with things
9 that's happened in my life, such as my mother being gang-
10 raped.

11 SOLICITOR EPTING: Objection, Your Honor.

12 THE COURT: Yeah, I sustain the objection.

13 Q. All right. Let's go ahead and tell what happened when
14 you and Mickey and Rebecca got in the car?

15 A. We went to Clover.

16 Q. All right.

17 A. We went to Clover. I called halfway there and told
18 Julia and then I was almost there to talk with their
19 mother. I did not try to creep up in the middle of the
20 night because it was dark. It was the only opportunity I
21 had. I had like a week to go. I was supposed to be in
22 child support court. I had all ideas I was going to the
23 chain gang, because I was dead broke. I didn't have the
24 money to pay them. This was the last opportunity I was
25 going to have to try to get Julia to work with me and keep

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1 him away from our kids. I told --

2 Q. Go ahead. What happened when you got to Clover?

3 A. We pulled up in front of the house, the trailer, right
4 up to the curb. We didn't park down the road trying to
5 sneak through no shadows, hide around back or none of that
6 whoo-whoohere come a burglar thing. We pulled up right
7 beside the curb up under a security light right in front of
8 all the neighbors. I got out and walked up and knocked on
9 the door.

10 Q. And --

11 A. Well ---

12 Q. Go ahead.

13 A. --- let me - let me - I looked in the window. Julia
14 was asleep in her normal place on the couch. That alone
15 told me that Chip was not there, because it's a two-bedroom
16 trailer and the kids have the bedrooms unless somebody
17 wants to say there is reason to think that Julia would let
18 him sleep in the bed with one of the kids, that told me he
19 wasn't there before I ever even knocked on the door, much
20 less entered.

21 Q. All right. What happened when you knocked on the
22 door?

23 A. When I knocked on the door, [REDACTED] came to the door.
24 There was lights coming from down the hall. The living
25 room, the kitchen, there was no lights on. There was

1 enough light coming from down the hall. [REDACTED] bedroom
2 light was on but her door was closed. The bathroom door
3 was open. The light was on. The hall light was on.
4 [REDACTED] bedroom light was on and his door was opened, too,
5 so there was enough light coming in there for me to see.
6 [REDACTED] come up and looked at me.

7 Julia and [REDACTED] got to the door at the same time, right
8 about the same time. [REDACTED] went to open the door. Julia
9 grabbed him and said, "Wait a minute, [REDACTED] See who it is
10 first." She said, "Who is it?" I said, "It's me, Ricky."
11 [REDACTED] said, "It's Daddy." Julia said, "Okay, [REDACTED]" and
12 turned and started walking back toward the couch. [REDACTED]
13 opened the door and let me in.

14 I walked in. [REDACTED] went back to his bedroom and was
15 doing whatever he was doing back there. I'm assuming
16 playing video games or something. I don't know. Julia
17 started digging her hand down in the cushion on the couch.
18 I assumed she was looking for her cigarettes, because [REDACTED]
19 will sneak and smoke them, so when she sleeps on the couch,
20 she has to stick them down in the cushion if she wants to
21 have any left in the morning.

22 Q. Did you have a sword with you?

23 A. Yes, I did.

24 Q. Why did you have a sword?

25 A. I carried the sword with me to send Chip a message. I

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1 told [REDACTED] that if it come, if it come to it then I would
2 get violent with him to keep him away from my children. I
3 was trying to keep it from coming to that by sending him a
4 message. [REDACTED] told me that he had been sleeping over
5 there.

6 Now, if I'm seeing a woman who has an ex, who has
7 children by another man, and I know this man is subject to
8 show up at anytime with God knows what in his hand, I'm not
9 going to sleep. I'm not going to be hanging around that
10 house and I'm going to tell her, you got to come to me.
11 You got to come to my house. So I was sending him a
12 message to stay away from my kids. I was trying to keep it
13 from coming to a physical confrontation between me and him.
14 I could have just waited on him to be there and show up
15 when he was.

16 Q. And so you had - Where was the sword when you went in?

17 A. In my right hand.

18 Q. What happened when you stepped inside the door?

19 A. Julia asked me how I got out that way. I told her
20 Mickey and Becky brought me. I called you twice and told
21 you we were on the way over here. She said, "What are you
22 going out this way?" I said, "I come to talk to you about
23 your boy and our agreement for you to keep him away from
24 the kids." She said, "He ain't here." I said, "He was
25 here. He's been here, sleeping here, and he brought more

1 thugs with him."

2 Q. And then what happened?

3 A. She said, "Well, he ain't here now!" At that point, I
4 think I said it again, "He was here, Julia, and we agreed
5 you wouldn't have him here around the kids." And --

6 Q. Did you ever push her?

7 A. No, I didn't push her. She was digging for her
8 cigarettes on the couch or I assumed her cigarettes. I
9 didn't see what she was digging for. But she said, "Well,
10 he ain't here now," and I started down the hall. I told --
11 I said something about the kids. No, she said, "I'm not
12 going to talk to you about him!" That's what she said. I
13 said, "Well, fine, talk to the kids about him," because
14 they were telling me as you heard on that recording, they
15 were telling me they didn't want him there. It's not like
16 they were telling me we like him, Daddy, we want him here,
17 he's a good person. That's not what they were telling me.
18 So I went over there with backing them up -

19 Can I sit this right here?

20 I went over there with backing them up in my mind.

21 Q. And - and --

22 A. So I went to wake them up. I wanted them to come in
23 the living room and tell their mother what they were
24 telling me.

25 Q. And so who - Whose room did you go to first?

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1 A. I stopped at [REDACTED] room first.

2 Q. And what did you do there?

3 A. [REDACTED] door has a crack in it about like that.

4 (WITNESS DEMONSTRATED.)

5 A. Now, I know [REDACTED] has a habit of sleeping in her bra
6 and panties, so I did not open her door like they said I
7 did, and I hope that God will put me in Hell with his own
8 hands if that's - if I ain't - if I'm lying to you. I did
9 not open her door. I looked through the crack. I see -
10 could see she was covered up. I could see this much of
11 her. I knocked on the door and said, "[REDACTED] get up and
12 meet me in the living room." I went down the hall to wake
13 [REDACTED] up. I went in there --

14 Q. And did you wake [REDACTED] up?

15 A. Yes, I did.

16 Q. All right.

17 A. But I think he went back to sleep, because he was
18 groggy when he opened his eyes.

19 Q. And then what happened?

20 A. I went back to the other end of the hall. Right when
21 I got to the other end of the hall, [REDACTED] come out of her
22 bedroom and the first thing she did, she never asked me
23 what was going on or nothing. The first thing she did was
24 scream, "Call the cops, [REDACTED] I said, "The damn cops,
25 [REDACTED] really? Are you serious? You called me over here to

1 speak up for you and you call the cops and you won't even
2 ask me what's going on?" I said, "Okay."

3 At that point, I got aggravated at [REDACTED] I said,
4 "Okay. I see what's up here. You handle it. I'm out,"
5 and I started walking toward the door. Julia and Mickey
6 were out on the front porch. Julia was smoking a cigarette
7 out there talking to Mickey. When I come out the door I
8 heard her say, "Yes, Mickey, but for right now, I need you
9 all to leave." I stopped and started to say something to
10 her. Mickey interrupted and said, "If you going with us,
11 come on, man, we leaving." I said, "Hold on a minute, I'm
12 coming." He started walking toward the car. I said,
13 "Julia, you going to keep him away from here, away from
14 these young'uns?" She said, "No."

15 I said, "You going to let the kids come stay with us?"
16 She said, "No!" I said, "Okay, Julia. Have it your way,
17 but when I come back, you remember who turned their back
18 first. Now, tell your boy I'll be back to see him." And
19 then I started walking toward the car. Julia stood there
20 on that porch smoking that cigarette with that look on her
21 face watching us drive off, because I looked back at her.

22 Q. And when you say, "We drove off," who was driving when
23 you left?

24 A. Becky.

25 Q. And who else was in the car?

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1 A. And Mickey.

2 Q. Do you remember about how long it was from the time
3 you knocked on the door until the time you went out of the
4 house?

5 A. I tell you this, if it was a minute-and-a-half, it
6 wasn't two minutes. That's just how quick that happened.
7 I did not go there to stay there. I never - They said I
8 was opening doors and flipping on lights. I never opened
9 one door on or inside of that residence. The only door I
10 opened up that night was the back driver's side door of
11 that Lincoln and when I got out and when I got back in.
12 That is the only doors I opened on Trinity Street.

13 Q. Did you ever touch anybody?

14 A. No, not a soul.

15 Q. Did you ever threaten anybody with the sword?

16 A. No, I did not. That sword was specifically to send
17 Chip a message and when I was walking down the hall, Julia
18 hollered and asked me either who or what -

19 I'm just going to say it like she said it, Your Honor.
20 "Who or what that fucking sword is for?" I said, "That's
21 for your boy when I catch him around my kids. Now, you
22 make sure you go back and tell him that." So she knew that
23 sword was not for her. She knew he would get the message
24 that I was sending him and that he wouldn't be hanging
25 around that house. He'd have to tell her -- he'd tell her

1 you come to my house and that's the reason she told them
2 all she told them on me. She sat there and lied to them
3 police and told them that so she could have me in jail
4 where he could feel safe to come back over there.

5 Q. And - And then when you got in the car, what did ya'll
6 do after that?

7 A. We left.

8 Q. Had you ever - Did the police ever stop you?

9 A. Yeah, they did.

10 Q. Where was that?

11 A. If I remember right, it was Alexander Love Road.

12 Q. That'd be out near the Bi-Lo?

13 A. Yeah, in York.

14 Q. Okay. And you got - They got you out of the car then,
15 right?

16 A. Yes, sir.

17 Q. And you've seen what's been marked State's Exhibit
18 Twenty-nine.

19 A. Yes, sir.

20 Q. What are those?

21 A. That is my property. That is a pair of metal
22 knuckles.

23 Q. All right. And where were they?

24 A. They were in my left front pocket.

25 Q. And why do you carry --

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1 A. Because that - This is what I was wearing. I wanted
2 to wear exactly what I had on that day for this jury to
3 see. This is what I had on. Me and my brother had been
4 out in the back yard chopping firewood, cutting firewood,
5 stacking firewood and burning brush. I had bags of ice in
6 the freezer froze solid. I had that on my hand earlier
7 that day breaking the ice up to go in my tea. I put it in
8 my pocket. During the course of the day when we stopped
9 drinking - that night when we were burning the last of the
10 brush and stopped drinking ice tea, we started drinking a
11 few beers. I forgot it was in my pocket.

12 Q. So you --

13 A. But I do carry that but that particular day, it was in
14 my pocket because I was breaking blocks of ice with it.

15 Q. You never brought those out when you were at Julia's?

16 A. No, sir.

17 Q. All right. And I'm going - You've seen the - And
18 you've heard the testimony on this rope. Do you know
19 anything about this rope, Number Twenty-seven, State's
20 Exhibit?

21 A. Yes, sir. That rope belongs to Mickey Passmore. It
22 was in the car. I think they were showing footage of the
23 car with a sword in the backseat.

24 Q. Right.

25 A. You seen that big mess looked basically like a bag of

1 trash or something sitting there. That was a tent in the
2 back or a makeshift tent where we had been to the river and
3 they had that strung between two trees and had that over it
4 ---

5 Q. All right.

6 A. --- 'cause it was raining. It started raining on us.
7 That's why that was in the car.

8 Q. And then State's Exhibit 28, what is that?

9 A. That is a pool ball mace. I made that - I'm going to
10 lie and say seven years ago. I made that for Julia so she
11 could carry it across the parking lot of the store at
12 night, the grocery store, because she didn't have a gun. I
13 wanted her to have something in her hand.

14 Q. And you - Did you ever get it out of the car that
15 night?

16 A. No, sir, I did not. I didn't even know it was in the
17 car.

18 Q. And you saw a picture and saw this rifle. Whose rifle
19 was that?

20 A. That's Mickey's rifle.

21 Q. And where was it?

22 A. It was in the trunk of the car.

23 Q. And would it be fair to say that this car is sort of
24 like a - maybe like a four-wheel storage shed?

25 A. That's exactly what it is, and they was living partly

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1 out of it. Half of everything they owned was in that car.

2 Q. And whose car was it?

3 A. It was Mickey and Becky's car.

4 Q. But none of - Did you put any of that stuff in the car
5 that night?

6 A. The only thing I put in that car that night was that
7 sword.

8 Q. And what about the base.- the bat?

9 A. No, that's Mickey and Becky's bat. I think it's
10 actually Becky's but both of them claim it. From what I
11 understand, she's had that bat for years and it stays in
12 there. It's always been in that car. I guess, they figure
13 it's better to have it and not need and need it and not
14 have it.

15 Q. And you were arrested that night; is that right?

16 A. Early that morning, yeah.

17 Q. Early that morning, that next morning.

18 A. 6:40, I believe the paperwork says was when the arrest
19 happened.

20 Q. Is there anything else you want to tell this jury?

21 A. Julie Coleman said that I come in the house with that
22 sword stuck down in the back of my overalls. I don't know
23 if we're allowed to show it, but the traffic stop video
24 will show when I was arrested fifteen minutes later, that's
25 how I was wearing these overalls just like I wore them all

1 day cutting firewood.

2 (WITNESS STOOD AND DEMONSTRATED.)

3 A. You could not have stuck a sword in the back of that,
4 it would have fell down your leg and been dragging up the
5 steps. You can watch that video, it'll show you when they
6 got me out of the car fifteen minutes later, that strap was
7 still undone. I did not have that sword. They're trying
8 to paint a picture of me drawing the sword and creating a
9 Ninja Turtle threat or something, I guess, but that's not
10 the case. I had it in my hand.

11 Q. And did you ever waive the sword around?

12 A. No, I did not. I wasn't threatening anybody with that
13 sword. If - Listen, if I had wanted Julia Coleman to sit
14 on a couch in fear, I assure you, I could have accomplished
15 that. I would not have needed the help of Mickey Passmore,
16 as she said, and especially with a sword in my hand. She
17 says that I made her sit on a couch, yet she admits that
18 she was outside smoking a cigarette. Hold on a minute.
19 There was several other things that they said.

20 SOLICITOR EPTING: Your Honor, I believe under this
21 format, Mr. Hall needs to ask Mr. Passmore a question.

22 THE COURT: Yeah. Just ask --

23 Just wait, Mr. Passmore, and you'll be asked
24 questions.

25 Q. Mr. Passmore, did you ever - You didn't break anything

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1 when you were in the house did you?

2 A. No, sir. I did not go over there to break anything.
3 I did not go over there to harm anybody. If you were
4 listening to that recording that the Solicitor played, I
5 stated that I would talk to Julia one more time for the
6 children. When I woke the children up, I did that for
7 three reasons really. I wanted the children to see the
8 sword and relay the message to Chip. I wanted the children
9 to tell their mother what they had been telling me about
10 not wanting him there, and I wanted the children to see me
11 do what I told them I would do and do my best to talk with
12 their mother. Well, that's why I woke them up.

13 I was not intending for them to leave with us that
14 night or anything. Julia Coleman not only had any - not
15 only did she not have any fear of me that night, she had no
16 reason to have any fear of me. If a total stranger had
17 come in her house with a sword, then I can understand her
18 saying she was scared, but during the course of ten years
19 that I was with Julia, she gave me every reason in the
20 world to ring her bell and I never done it. She had no
21 reason to believe I was going to do it that night.

22 Q. And when you were standing outside on the porch
23 knocking on the door, and I believe your testimony that you
24 saw her sleeping on the couch, did you enter the house
25 intending to harm Chip?

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CROSS BY SOLICITOR EPTING

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1 A. No.

2 Q. Why?

3 A. Because I knew he wasn't there. I knew he was not
4 there. If I had got there and this guy had actually been
5 there that night, then what would have - would or would not
6 have happened at that point would have been depending
7 entirely on him. I was not trying to ruin the rest of my
8 life. I was trying to stop it from coming to a point to
9 where I had to as I told them in that recording, to
10 sacrifice myself and give up the rest of my life to protect
11 my children which I would have done if it come to that, but
12 it had not come to that, and I was trying to talk to her to
13 get - to stop it from coming to that.

14 Q. So was - Would it be fair to say this was that one
15 last time to talk to Julia?

16 A. Yes, that's what I went over there for to reason with
17 her before I finally had to say, okay, [REDACTED] now I need
18 ya'll to call me and let me know when he's there, then I'm
19 going to come to him.

20 MR. HALL: Thank you. Answer any questions that the
21 Solicitor has.

22 CROSS-EXAMINATION

23 RICKY PASSMORE BY SOLICITOR EPTING:

24 Q. You went over there to reason with her; is that
25 correct?

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- 1 A. Yes, I did.
- 2 Q. Five o'clock in the morning?
- 3 A. Yeah, it was the only time I had a ride.
- 4 Q. Mickey Passmore was your twin?
- 5 A. Yeah.
- 6 Q. Armed with a Samurai sword?
- 7 A. Who was armed with it?
- 8 Q. You?
- 9 A. Yeah, I had a sword.
- 10 Q. Is that not correct?
- 11 A. I had a sword.
- 12 Q. And while you quibble on when it came out, you
- 13 actually say that you had it in your hand the entire time;
- 14 is that correct?
- 15 A. Yeah.
- 16 Q. Entered the door, sword in your hand?
- 17 A. Yeah.
- 18 Q. Walking around the house sword in your hand?
- 19 A. Yeah.
- 20 Q. To send a message?
- 21 A. Yeah.
- 22 Q. What's your message?
- 23 A. For Chip to stay away from my kids.
- 24 Q. Or what?
- 25 A. Or what? Leave it up to him to decide or what.

1 Q. Where's the sword play into that?

2 A. Where?

3 Q. Yeah. How? How does a sword play into any of that?

4 A. It's sending a psychological message for him to stay
5 away from my children. He has no right around my children.
6 I don't want him around my children, and my children were
7 telling me they did not want him around them. Like I said,
8 it's not like they were telling me we like him, he's a
9 great guy, leave him alone, Daddy.

10 Q. Uh-huh. So the message, then, was that you were going
11 to kill Chip?

12 A. No, the message was please stay away from my children
13 before this escalates any further.

14 Q. And the sword helped you to communicate that?

15 A. Well, it would tell me to stay away from a man's
16 house.

17 Q. This wasn't a man's house, though, wasn't it?

18 A. Julia Coleman authorized me as the protector and
19 defender of that home. On several occasions, she even told
20 me that I was - No, how she put it, "My home is your home."
21 There was an occasion where a man threatened to blow her
22 house up. She did not contact law enforcement, Clover
23 Police to report that. She called - She contacted Ricky
24 Passmore and reported that and had me on standby to protect
25 her house.

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1 Q. Fair to say, Chip was a sore point in your
2 relationship with Julia?

3 A. A sore point?

4 Q. Uh-huh.

5 A. I --

6 Q. That's putting it mildly, isn't it?

7 A. I did not - Just like I told [REDACTED] on that recording
8 you just heard. I don't care what him and [REDACTED] - Julia do
9 on their own. Me and Julia had an agreement that he would
10 do it up the road, stay away from my kids. I have talked
11 to many people who know this guy and every one of them say
12 he's a crack dealer. The whole town ain't lying on him.

13 Q. Do you have any evidence of that?

14 A. I think my lawyer said something to me about a record,
15 a small record of some sort.

16 Q. No evidence then?

17 A. Yeah. My belief.

18 Q. Your belief?

19 A. Yeah.

20 Q. That's your evidence?

21 A. Based on what people in the community told me about
22 him who know him.

23 Q. You go to this house at five o'clock in the morning.
24 Julia has told you several weeks prior that you were not
25 allowed there; isn't that right?

1 A. No, she did not. That's a lie and I hope God will
2 snatch me off this chair and put me in Hell with his own
3 hands. That is not - that is not true.

4 Q. You say that's a lie?

5 A. That's a lie. Julia Coleman never ---

6 Q. So back --

7 A. --- told me I wasn't welcome at her house.

8 Q. And you say that you know that Chip was not there that
9 day; is that right?

10 A. I know he wasn't there. Even if I hadn't known it for
11 a one hundred percent certainty on the way, I knew it when
12 I looked in that door and seen Julia asleep on that couch.
13 There was no Chip on a pallet on the floor. I don't even
14 think it's a full-sized couch. I think it's like a love
15 seat and she takes the whole thing up, so he ain't on a
16 pallet. I'm assuming that there's enough sense left in
17 her head that she ain't letting him sleep in there with the
18 kids so that right --

19 Q. Is it your testimony today that you did not want a
20 confrontation with Chip?

21 A. Do what now?

22 Q. Is it your testimony that you did not want a
23 confrontation with Chip?

24 A. Yes, it is.

25 Q. That's your testimony?

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1 A. Yes, it is.

2 Q. You didn't want it? You've heard the play -- the
3 audio recording, have you not?

4 A. Yeah.

5 Q. Do you remember the part where you're asking [REDACTED] to
6 tell you when Chip is there?

7 A. Yeah.

8 Q. And do you remember telling her why you wanted to know
9 that Chip was there?

10 A. Yeah.

11 Q. Enlighten the jury, why was that?

12 A. Why?

13 Q. Uh-huh.

14 A. Because I believe I said in that recording that I
15 would come over there and take him out or something to that
16 effect.

17 Q. Correct. You would come over there and take him out.
18 I believe your exact words were, and correct me if I'm
19 wrong, "You would go over there and show him who the real
20 man was." Who the real man of the house was; isn't that
21 right?

22 A. That's right. I remember saying that.

23 Q. Even though this is Julia Coleman's house?

24 A. Julia Coleman told me I was the man of that house.

25 Q. But ya'll hadn't been together for quite some time?

1 A. Not for lack of trying on Julia Coleman's part.

2 Q. Uh-huh. But she's been with Chip for approximately a
3 year?

4 A. Julia usually goes with three or four people at a time
5 and lies to all of them.

6 Q. And we got --

7 A. Believe me, I know.

8 Q. And we got your word for that here today in Court?

9 A. Well, if you'd have gave me advanced notice, I'd have
10 brought you a hundred people up here to tell you that.

11 Q. How long has this case been scheduled for trial, sir?

12 A. Well, I have not been in exactly in a prime position
13 to assist too much.

14 Q. Months?

15 A. Huh?

16 Q. Months?

17 A. A month?

18 Q. Months?

19 A. This case has been going on like two months.

20 Q. Uh-huh. That's not enough time for you to -- could
21 have gather up whatever witnesses you needed?

22 A. Not in my position. I've been in jail over here for
23 ten months without bond.

24 Q. It offended you that Julia Coleman brought an African-
25 American male into the house?

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1 A. Julia Coleman can do what she wants to, but I didn't
2 want him around my kids. My kids were telling me just like
3 you heard on that recording, they didn't want him around
4 them.

5 Q. Didn't you say that part of the reason that you
6 believed this black man was in your house, this African-
7 American, was to get to your daughter?

8 A. Exactly. You think he's looking at Julia.

9 Q. And what evidence do you have at that?

10 A. He's looking at the - What evidence do I have?
11 Because I know plenty of them. I've listened to them talk.

12 Q. You've listened to them talk?

13 A. Yes.

14 Q. By them you mean?

15 A. I mean, street thug African-Americans. I know how
16 many times I cannot tell you I've heard, "Yeah, white
17 girl," this, "Yeah, white girl," that, and just because I
18 recognize that, you want to call me a racist.

19 Q. And it's your testimony today that you called over
20 several times? You were letting them know that you're
21 coming over a five o'clock in the morning?

22 A. Yeah.

23 Q. Is that a usual thing for you to do, show up at the
24 house at five a.m.?

25 A. Well, in our social circle, which Julia has been a

1 part of for years, we never had to set appointments to come
2 to each other's house. Julia's been to my house several
3 times. I've been to her house and never one time was we
4 required to call ahead. I did that just for the sake of
5 doing it, to let them know I was coming.

6 Q. Don't you think it would have been better to wait till
7 more decent hours ---

8 A. I did not have a car.

9 Q. --- perhaps when Julia is off at work?

10 A. I could have done that if I had my own car. I took
11 the only ride I had and that tire on their car, in a few
12 hours, would be leaked back down flat.

13 Q. But this has to be a face-to-face conversation,
14 correct?

15 A. With Julia?

16 Q. Absolutely.

17 A. Why not? It's legal.

18 Q. Because you want her to see that sword, don't you?

19 A. No, I want Chip to know that sword was there.

20 Q. You want Chip to know that sword -

21 A. Julia knows I wouldn't hurt her with it for nothing in
22 the world. I don't - I'm not in love with Julia, but I
23 still don't want to see nothing bad happen to her.

24 Q. Your testimony today is that you don't think Julia
25 would be scared of you coming to her house at five o'clock

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1 in the morning with a sword?

2 A. Julia has never been scared of me in her life and if
3 she was scared as she says, why did she tell me while I was
4 standing there with a sword in my hand, "No, I'm not going
5 to keep him away from your kids. No, I'm not going to let
6 the kids go live with you. Who or what is that fucking
7 sword for, Ricky?" If she was so cared, why would she stand
8 there and defy me like that?

9 Q. Well, that's your version.

10 A. I'm going to tell you why, 'cause she knew it, she
11 knew full-well that sword wasn't for her.

12 Q. Well, that's your version of it, Ricky, isn't it?

13 A. That's mine, God's, Julia's if she'd tell the truth.

14 Q. Your version. That's [REDACTED] version, too, from so far
15 as what she heard, is it not?

16 A. [REDACTED] said a whole lot of things up here. I don't know
17 exactly what point you talking about right now.

18 Q. We'll move on from that. You say all these items -
19 What did you call this again?

20 A. I called that a pool ball mace. That's what I called
21 it when I made it.

22 Q. Pool ball mace.

23 A. And I made it for Julia to carry in her pocketbook ---

24 Q. Created this yourself?

25 A. --- across grocery store parking lots, because she

1 stopped at night, because things do happen to females in
2 grocery store parking lots.

3 Q. And when was this created?

4 A. When?

5 Q. Uh-huh.

6 A. I said earlier I'll lie and say seven years. I can't
7 be exact.

8 Q. I got you. Got you. You did say that. Would not
9 mace be a more effective deterrent, mace spray?

10 A. Well, you are familiar with what an old mace is. It's
11 a handle with a chain and a steel ball and spikes on it
12 like the Gladiator's use.

13 Q. Is it not true this is part of a series?

14 A. No, that's the only one I made.

15 Q. This is the only one in existence?

16 A. Check the handle out. It came off of one of Julia's
17 pots when I made it and she pitched a fit.

18 Q. And this is usually kept in your house wouldn't you
19 say?

20 A. Yeah, I kept it in the house.

21 Q. But it wasn't that night, was it?

22 A. That night it was in the car, obviously, even though I
23 didn't know it was in the car.

24 Q. Some mystery person just threw this in your car?

25 A. Well, let's clarify this right here. From the last

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1 time [REDACTED] says that she saw that in the house until the
2 night in question was what, weeks? I don't know which one
3 of the kids coming around took that out and was playing
4 with it, how it ended up in the car, I don't know.

5 Q. Where were you sitting in the car when you left the
6 house?

7 A. Behind Becky who was driving.

8 Q. On the driver? See the pictures where that was
9 located?

10 A. Yeah.

11 Q. Is it not true that would have been pretty much right
12 at your feet?

13 A. No, 'cause my feet were in this floorboard.

14 Q. And it's found right here in that floorboard?

15 A. That was in that floorboard ---

16 Q. Correct.

17 A. --- under a whole bunch of stuff it look like to me.

18 Q. Visible in the photo, though, correct?

19 A. And as ya'll pointed out, it was dark. I didn't have
20 a flashlight looking in the floorboard. I wouldn't have
21 seen it down there anyway.

22 Q. And that's not the end of either, because there was
23 something else found next to that, right?

24 A. I don't know what you mean.

25 Q. Do you know what I'm talking about?

1 A. What was found?

2 Q. The sword?

3 A. I've never denied carrying the sword with me.

4 Q. No, you haven't?

5 A. I've never denied and, matter of fact, when they
6 pulled us over he asked me, "Do you have a sword in the
7 car?" I said, "Yes, I do."

8 Q. A sword found right next to where that was found
9 within a foot, wouldn't you say, based on the pictures?

10 A. The same floorboard. When I come out, the car was
11 sitting in front of the house, I opened the door up,
12 throwed the sword in there. The tent was right there. I
13 walked around to the other side of the car, got in and said
14 go.

15 Q. So this pool ball mace which you can see it is usually
16 kept in your house is in the car that night, right?

17 A. I don't know how long it'd been in that car. It
18 didn't go in that car that night.

19 Q. And when --

20 A. It went in that car prior to that night and prior to
21 that day if you ask me, it had to, 'cause that whole day it
22 wasn't but four people there: me, Mickey, Becky and Tab
23 ---

24 Q. How --

25 A. --- and neither one of us put it in there that day.

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1 Q. However long it had been there before, it was there
2 that night?

3 A. So.

4 Q. Do you deny that?

5 A. The whole car was there that night --

6 Q. Do you admit it or not? Was it in the car that night?

7 A. The whole car was there that night, but it ain't a
8 weapon. We didn't try to run over nobody with it.

9 Q. Do you have another name for this weapon?

10 A. I might have had a nickname for it at one time. One
11 time I called it a redneck doorbell, 'cause I hung it on a
12 nail by the door and you can grab that pool ball and boom,
13 boom, boom on the door with it.

14 Q. Any other --

15 A. I had a lot of names for that thing over the years.

16 Q. Any other nicknames that would be of relevance for
17 this thing?

18 A. Oh, yeah. I heard her say earlier that I called it a
19 nigger beater or something like that. That is a lie.

20 Q. That's a lie?

21 A. If I said that, I will tell you I said that, 'cause I
22 don't care if you don't like the fact that I don't like
23 certain people.

24 Q. Uh-huh.

25 A. I don't care.

1 Q. And these --

2 A. But like I said, I do not have anything against black
3 people who do not hurt white people.

4 Q. These knuckle - these brass knuckles. I'm calling
5 them brass - it could be any other material - with the
6 skulls on the end of it. It's your testimony here today
7 that these were in your pocket, right?

8 A. Yeah, the left front pocket.

9 Q. In your pocket when you went to the house that night,
10 right?

11 A. Yeah.

12 Q. So not only did - were you armed with a sword, but
13 you're armed with these --

14 A. Now, you can use the word armed.

15 Q. --- but these weren't intended as a - these weren't
16 intended as a weapon, not that night, right, 'cause you ---

17 A. That sword wasn't intended as a weapon ---

18 THE COURT: Mr. --

19 A. --- that night either.

20 THE COURT: Mr. Epting, you tend to ask him a
21 question, and then make a comment before he has a chance to
22 answer. Please let him answer.

23 SOLICITOR EPTING: Certainly.

24 Q. Anything else?

25 A. That or that sword wasn't intended as a weapon as a

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1 night. That was in my pocket completely for slip of mind.

2 The sword was intended to send a message.

3 Q. And if I got your testimony earlier right, it was for
4 punching ice?

5 A. Yeah.

6 Q. Did I get that right?

7 A. Yeah.

8 Q. Would you not concede there are better tools to break
9 up ice than brass knuckles?

10 A. Well, Tab keeps a hammer on top of the refrigerator,
11 but I busted a freezer like that one time, so I don't use
12 hammers or ice picks or butcher knives or her pair of
13 scissors out of her sewing box or none of that crap no
14 more. That right there was laying on top of the
15 refrigerator easily right there at hand. I put it on boom,
16 boom, boom. I broke up ice, fixed my tea, put it in my
17 pocket.

18 Q. Punch it with your hand?

19 A. You ever punched a big block of ice with your bare
20 hand? That's like punching a boulder, man. My hands are
21 getting older now. I ain't no spring chicken no more.

22 Q. And you say that's more efficient than another tool
23 which perhaps would not involve you punching your hand in
24 the ice?

25 A. I wasn't punching forward. I was doing this.

1 (WITNESS DEMONSTRATED.)

2 Q. What was the custody situation between yourself and
3 [REDACTED] and --

4 A. The custody situation?

5 Q. Uh-huh. Concerning [REDACTED] [REDACTED] and [REDACTED]

6 A. I am not sure I follow what you're asking. I mean ---

7 Q. Did you ---

8 A. --- me and Julia have never had a custody dispute over
9 the kids.

10 Q. Where do they usually stay?

11 A. With their mother.

12 Q. Julia?

13 A. [REDACTED] he usually stays with my mother.

14 Q. But [REDACTED] and [REDACTED] usually stay with Julia, correct?

15 A. Yeah.

16 Q. Would you admit that it is unusual for you to show up
17 at five a.m. to try to pick them up?

18 A. No.

19 Q. Would you -

20 A. Well we've never - like I said, we've never had to --
21 in our social circle, which Julia is a part of and has been
22 for years, it's been socially acceptable. It gets
23 aggravating sometimes when somebody shows up at two o'clock
24 in the morning, "Hey boy, come on," and want to talk to
25 you. It gets aggravated, but it's been socially acceptable

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1 among our social circle.

2 Q. Take me through the events of that night again. You
3 get your car started. The car is having some trouble; is
4 that right?

5 A. It had a flat tire on it.

6 Q. A flat tire and maybe some engine problems?

7 A. You had to pop the hood, unhook a little whatever you
8 call it and do some stuff with the battery. That was their
9 car.

10 Q. And you drove over?

11 A. No, I did not drive. Becky drove.

12 Q. You rode?

13 A. Yeah, I rode.

14 Q. And may be - I'll try to be more exact with that.
15 Becky drove?

16 A. Yeah.

17 Q. Mickey rode front passenger, am I right? You're
18 backseat driver's side passenger?

19 A. Yeah.

20 Q. Ya'll drive out there and park the car; is that right?

21 A. Yeah.

22 Q. Get out. You claim that you announced yourself?

23 A. I did.

24 Q. How did you announce yourself?

25 A. I said, "It's me, Ricky. Open the door and let me

1 in."

2 Q. Have a sword in your hand at that time?

3 A. Yeah.

4 Q. And you claim you were just let in?

5 A. That's the truth.

6 Q. You walk in --

7 A. The door wasn't forced open. I didn't use that crowbar
8 you all got over there to get in.

9 Q. Brandishing the sword?

10 A. You can call it brandishing. I had it actually like a
11 walking cane in my hand.

12 Q. You deny saying anything threatening in any way, shape
13 or form to Julia Coleman?

14 A. Uh-huh.

15 Q. And never told her to sit down?

16 A. No.

17 Q. Never told her that if she moved she died?

18 A. No.

19 Q. What's Mickey doing while you're walking around
20 brandishing the sword?

21 A. At some point, Mickey had come in the door behind me.
22 I didn't see exactly when he came in.

23 Q. Did you go in and you checked on --

24 A. I was looking at Julia?. Huh?

25 Q. You go and you check on Julia -- and [REDACTED]

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1 A. Check on her?

2 Q. Uh-huh.

3 A. No, I went and knocked on her door and woke her up,
4 and I did not open her door. I knocked on her door and
5 told her to get up. Then, I went down the hall into [REDACTED]
6 and [REDACTED] room. [REDACTED] was asleep on the bunk - top bunk
7 bed. I woke him up. Time I got down the hall, right at
8 the end of the hall and turned back around, [REDACTED] came out
9 of her bedroom and hollered, "Call the cops, [REDACTED] [REDACTED]
10 said, "Really, [REDACTED] And she said "Yes, really, [REDACTED]
11 and out the door he went, so I'm assuming at that point -
12 he could see me standing in the hall. He knew I wasn't
13 hurting anybody.

14 Q. But [REDACTED] had no reason to be afraid of you, right?

15 A. No.

16 Q. No reason whatsoever?

17 A. No.

18 Q. [REDACTED] had no reason to be afraid of you, right?

19 A. [REDACTED] based what she --

20 Q. No reason?

21 A. When she hollered, "Call the law. Call the cops,
22 [REDACTED]" she based that solely on that conversation me and
23 her had earlier, but it sounded to me like - and I know
24 [REDACTED] when [REDACTED] smokes a little weed. It sounded to me like
25 [REDACTED] was high and a little laid back in that conversation

1 and maybe when she woke up in her groggy state and seen me
2 with that sword, she didn't remember me telling her in that
3 conversation you all heard, "I'm going to try to talk to
4 your momma one more time." Maybe if she'd have remembered
5 that she wouldn't have hollered, "Call the cops, [REDACTED] and
6 overreacted.

7 Q. So [REDACTED] shouldn't have been afraid according to you?

8 A. He wasn't afraid until she hollered and scared him.
9 They ain't nobody else scared him. He was just fine until
10 she hollered and scared him.

11 Q. But because [REDACTED] yelled, he was terrified all of the
12 sudden at the drop of a hat?

13 A. He couldn't see -- he could see me. He could -- he
14 knew I wasn't harming anybody. She caught me and him both
15 off-guard when she come out of there and screamed that.
16 I'm assuming at that point that he couldn't see his mother
17 or Mickey. I'm assuming at that point, he thought Mickey
18 was in the living room or around the corner somewhere
19 hurting his mother, but that wasn't the case. They were
20 standing out on the porch smoking a cigarette and talking.

21 Q. [REDACTED] runs?

22 A. Yeah, he jetted.

23 Q. [REDACTED] stays?

24 A. Yeah.

25 Q. At least for a little bit, right?

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1 A. Yeah. Wasn't there long.

2 Q. What happens then?

3 A. What happened? I asked [REDACTED] "The cops really? The
4 damn cops, really, are you serious? Why did you do that?"
5 She told me she didn't want nobody to get hurt around here
6 tonight." And I said, "Well, neither do I, [REDACTED] This
7 sword ain't for you. It's for Chip." She said, "I told
8 you Chip ain't here." I said, "I know damn well he ain't
9 here. This Chip's -- this sword's so he'll get the message
10 not to come back, which is what you told me you wanted.
11 You could have at least asked me what was going on before
12 you just walked out of that bedroom and hollered, "Call the
13 cops, [REDACTED]"

14 Q. And you're basing your knowledge of Chip not being
15 there based on one look through a window, through the side
16 window?

17 A. No, I'm basing it on the fact that [REDACTED] told me, as
18 you heard in that recording, "When Chip and his nephew were
19 here earlier," that told me he was not there.

20 Q. Uh-huh. When you talked on the phone, right?

21 A. Yeah, that recording you all played.

22 Q. It's about five hours before this incident occurred,
23 right?

24 A. Say it again?

25 Q. That was about five hours before this incident?

1 A. That's what you all say. I wasn't keeping up with the
2 time. Like I said, I was dog tired that day.

3 Q. Drinking a little bit?

4 A. Yeah, I drank probably about three beers, three
5 twenty-two ounce. I was two hundred and sixty pounds then.
6 Three twenty-two ounce don't do nothing for a two hundred
7 and sixty pound country boy.

8 Q. So based upon that conversation and upon you peeking
9 through the window, you know Chip's not there; is that
10 right?

11 A. It made me believe he wasn't there, because as crazy
12 as Julia is, I don't believe she'd let him sleep in one of
13 the two bedrooms with the kids and when he wasn't sleeping
14 with her and he wasn't on a pallet right there and he
15 wasn't in the kitchen, I don't see him out here on the
16 porch nowhere and he's not there.

17 Q. And you've said several times during your testimony
18 that Julia Coleman would have no reason to fear you; is
19 that right?

20 A. Absolutely none.

21 Q. And that's always been true?

22 A. Yeah. She's gave me every reason in the world to want
23 to ring her bell. You believe me she has tested me many
24 times.

25 Q. But you never have?

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1 A. No.

2 Q. Assault rifle in the car, would you agree?

3 A. Yeah, there was a rifle in the car.

4 Q. Loaded?

5 A. I'm not sure if it was loaded or not.

6 Q. It's not your weapon, right?

7 A. No, it's not mine.

8 Q. It's Mickey's?

9 A. Matter of fact, the reason it was in the car is
10 because I told Mickey he couldn't keep it in the house.

11 Q. A crowbar?

12 A. He told me - Yeah, there was over two hundred tools in
13 that car. But they got a crowbar out of there and a sheet
14 rock tile -- trowel. I guess we were going to finish the
15 ceilings for them before we left or something. I don't
16 know what that's about.

17 Q. So let's get the tally. Crowbar in the car, correct,
18 yes or no?

19 A. Yeah, there was a crowbar in the car.

20 Q. Bat in the car?

21 A. Yes, there was a bat in the car. The crowbar was in
22 the car because Micky - if they had looked up under that
23 Lincoln, if anybody's in here that's ever owned a Lincoln,
24 it had air bags under it. They call it the Lincoln curse,
25 'cause those air bags will rot. They'll leak down. The

1 car sets down and Mickey had went to "You Pull It" junkyard
2 and got some big heavy-duty springs and put under that car.
3 That's why that crowbar was in that car.

4 Q. Well, it looks in there does it, because we got the
5 crowbar, we got the bat, rope in the car. We've already
6 heard your explanation for the rope. Brass knuckles --

7 A. Can I ask you what was I going to do with that rope?

8 THE COURT: Well, he asks the questions.

9 A. Okay. Well, I'm sorry.

10 Q. Brass knuckles in your pocket, Ninja sword in the car.
11 That was a sharp sword, wasn't it?

12 A. Sharp as I could get it to prune tree limbs in the
13 yard. If you look at it, it's got tape around the handle.
14 That's how the handle got broke. I was using it to prune
15 tree limbs.

16 Q. You were chopping trees with it? Uh-huh.

17 A. Yeah. That's how the handle got broke on it.

18 Q. The mace or whatever name you have for it, that was
19 also in the car; is that right?

20 A. Yes, it was, apparently.

21 Q. More bullets to the gun that was in the car; is that
22 right?

23 A. I never saw one bullet. I wasn't looking for bullets.
24 I didn't have a gun or bullets on my mind and like I said,
25 it was dark.

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1 Q. And didn't you say earlier it was loaded?

2 A. I don't even think - I don't even think the dome light
3 worked in that car. No, I said I don't know if it was
4 loaded or not.

5 Q. You've heard the tape that was played?

6 A. Yeah.

7 Q. The audio tape of you and [REDACTED]

8 A. Yeah.

9 Q. You stated that you had problems with Chip being
10 around your children?

11 A. Yeah, I do have a problem with that.

12 Q. You said that if Julia Coleman was dating a white man,
13 you wouldn't have that problem?

14 A. Not as bad.

15 Q. Not as bad?

16 A. Not as bad.

17 Q. You stated that you had - that you felt personally
18 disrespected by her bringing this - I'll use my words, not
19 yours, African-American man around your children; is that
20 right?

21 A. No, I did not state that I felt personally
22 disrespected. I believe if you will listen to that
23 conversation, I made it clear that I was concerned for my
24 children.

25 Q. I believe your words, and correct me if I'm wrong,

1 were that it made you feel "lower than a piss ant?"

2 A. I said men are born with a natural instinct in them to
3 protect their women, and when they do not stand up and do
4 that, it makes them feel less than a man. It makes them
5 feel like a piss ant and start making them feel worthless,
6 and that is what [REDACTED] - When she first brought him -- when
7 [REDACTED] first found out that she was dating a black dude, [REDACTED]
8 flipped out. [REDACTED] called me on the phone telling me about
9 it. So I called Julia and talked to her about it. "Julia
10 you know just like you said or you all said, [REDACTED] got
11 some little issues going on in his mind. He's having a
12 hard enough time. Why add this stress to it?"

13 Q. You told --

14 A. You're telling me white man ain't shit was her exact
15 words to me. Now, you telling my son this? What kind of
16 psychological scripting are you doing to my son's mind
17 right now?

18 Q. You told [REDACTED] that you were going to lay it all on the
19 line for them?

20 A. I would lay it all on the line for them anytime.
21 That's what I'm supposed to do.

22 Q. By killing Chip?

23 A. If it had came to that. Like I said in that
24 recording, if it comes to that. It had not come to that.
25 The meeting - I went to meet with Julia Coleman was to stop

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1 it from escalating to that point, but if I had to meet this
2 man face-to-face in order to protect my children, that's
3 exactly what I would have done.

4 Q. So it's your testimony that this de-escalation you
5 wanted to happen between then would be best accomplished by
6 you showing up there armed with a Ninja sword, is that your
7 testimony?

8 A. Say that again.

9 Q. You wanted to de-escalate things you said?

10 A. I wanted to escalate things?

11 Q. De-escalate?

12 A. Yeah, I wanted things to stay normal. I didn't want
13 it to reach a point to where I had to give up my life to
14 protect my children, but if it come to that, I would have
15 done that.

16 Q. So you bring a sword to the house that night?

17 A. So what?

18 Q. Do you find that weapons tend to de-escalate things?

19 A. Do I find -- well, now, look here. I tell you what,
20 if you bring a boy home that come up here and ask for your
21 daughter's hand on a date and you sitting here cleaning a
22 .12-gauge on the porch when you say have him -- or have her
23 home by ten o'clock, yeah, that's probably going to de-
24 escalate things. He's probably going to say yes, sir, and
25 have her home about 9:30.

1 Q. And do you think that was the equivalent of what you
2 did that night?

3 A. Yeah.

4 Q. Brandishing a sword ---.

5 A. I sure do.

6 Q. --- in front of your children?

7 A. I wasn't brandishing a sword. My kids have seen me
8 with all kind of stuff in my hand. They know I won't mean
9 them any harm.

10 Q. At five o'clock in the morning?

11 A. My kids have seen me up all hours of the day and
12 night.

13 Q. They're surprised to see you that morning?

14 A. No, they weren't.

15 Q. They weren't?

16 A. No.

17 Q. Didn't [REDACTED] yell to call the cops when she saw you
18 there with that sword?

19 A. Yeah.

20 Q. Is it fair to say she was surprised?

21 A. I don't think she was surprised. I told her I was
22 coming. I called and I know she got the two messages I
23 called, because it was on one of your police recording we
24 listened to, "He called twice and told us he was coming."

25 Q. You said that you would give Julia Coleman one last

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1 time?

2 A. I said I will talk - to try one last time to talk to
3 your momma.

4 Q. Then, what did you say?

5 A. After that, I would want - I need her to call me and
6 let me know when he was there, and then when I come in the
7 door, it'd be a whole different story.

8 Q. When the role goes down?

9 A. When the role goes down, that's what I said.

10 Q. You'd be there with like-minded people?

11 A. I never one time mentioned Mickey Passmore being
12 involved in that role whatsoever, his car being involved or
13 nothing else. I never called anybody's name.

14 Q. You said when the role goes down that you would be
15 there with like-minded people?

16 A. Now, I never used the word like-minded people.

17 Q. Well, the jury has the tapes. They can determine
18 that. "And they would not be playing?"

19 A. They're objective would be to protect [REDACTED] [REDACTED] and
20 [REDACTED].

21 Q. Uh-huh. And finish up that, what did you say then?

22 A. "Everybody else is expendable and can be put down."

23 Q. "Everybody else is expendable and can be put down."

24 A. Which is exactly what I was trying to avoid by sending
25 that message on the night in question. What you're talking

1 about was intended for another time in the future when Chip
2 was there, and only if it came to that, and only if
3 somebody called me and let me know he was there. There is
4 a whole lot of only-ifs in there.

5 Q. "Expendable but can be put down." Am I correct in
6 believe ---

7 A. To protect my children.

8 Q. --- am I correct in believing that that means that you
9 were going to kill them?

10 A. That means that they would be - I would remove that
11 threat from my children.

12 Q. Permanently?

13 A. Either which way. I mean, and like I said earlier,
14 that would be entirely up to that individual when me and
15 him saw each other.

16 Q. Do you deny going through that house?

17 A. If he stood there and told me, no, I ain't going to
18 stay away from your kids, then I ain't going to sit here
19 and told you that wouldn't have got a little ugly.

20 Q. Uh-huh. So if he'd had been there that night, you
21 would have killed him, is that your testimony?

22 A. Nope, that is not my testimony.

23 Q. You'd have just said hey, look at this cool sword I
24 got, stay away from my kids?

25 A. No, I probably wouldn't have said that either, but

RICKY PASSMORE: CROSS BY SOLICITOR EPTING

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1 he'd have got the message that I didn't want him around my
2 kids.

3 Q. What would you have done?

4 A. I cannot say that, because the situation did not
5 arise.

6 Q. You had no plan?

7 A. No plan. My only plan was to send him a message and
8 speak to Julia.

9 Q. And a carload full of weapons?

10 A. Carload full of weapons? I had them knuckles by
11 accident ---

12 Q. Uh-huh.

13 A. --- and that sword as a message. All the rest of that
14 right there is irrelevant to me. That was not my car.
15 That's not my property, that's theirs.

16 Q. You had access to it, did you not?

17 A. I never at any point had possession or control of
18 anything other than that sword and those knuckles.

19 Q. You rode with them, did you not?

20 A. So what?

21 Q. You rode with --

22 A. Mickey had a pocketknife in his pocket. I rode in the
23 same car with it.

24 Q. You did? And the weapons were found at your feet,
25 some of the weapons?

1 A. No, they weren't. They were found over there under
2 all that stuff ya'll seen there.

3 MR. HALL: Your Honor, this has all been asked and
4 answered.

5 THE COURT: Yeah, I - Let's move on. We're going in
6 circles here.

7 SOLICITOR EPTING: I beg the Court's indulgence.

8 (PAUSE.)

9 SOLICITOR EPTING: Your Honor, I have no further
10 questions at this time.

11 THE COURT: Redirect?

12 MR. HALL: No redirect.

13 THE COURT: All right. And you can step down. Thank
14 you.

15 MR. PASSMORE: Thank you, Your Honor.

16 (WITNESS LEAVING WITNESS STAND.)

17 THE COURT: Let me see counsel up here just a minute.

18 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
19 THE JURY AT 01:10 P.M..)

20 THE COURT: Members of the jury panel, I think it's
21 probably best to break for lunch now till 2:30, so I'm
22 going to let you go for lunch until 2:30. We'll see you
23 back and we'll try to start as promptly at 2:30 as we can.

24 Have a pleasant lunch.

25 (JURY EXITS COURTROOM FOR LUNCH RECESS AT 01:12 P.M.)

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1 THE COURT: Counsel, we need to start working on the
2 charge so if any of you have any request to charge if you
3 will hand them up before we start back.

4 MR. HALL: Let me have one more word.

5 (PAUSE.)

6 SOLICITOR EPTING: Your Honor, I do believe we have
7 some request.

8 THE COURT: Anything else, Mr. Hall, before we break
9 for lunch?

10 MR. HALL: No. And I don't have any objection to
11 their request. The Court can certainly decide and as far
12 as any request from the defense I assume the Court will
13 define the definition for household member under the
14 statute.

15 THE COURT: Right.

16 MR. HALL: And that's the only thing out of the
17 ordinary that I'd - And that is in fact an ordinary part of
18 the charge.

19 THE COURT: What's the position from the State and the
20 Defense as to lesser included's? Think about that over
21 lunch too.

22 MR. HALL: That I think the main issue would be the
23 lesser included burglary would possibly be a trespassing.
24 I'll be honest with you, I think the presence of a knife
25 removes that that is not really a factual basis for

1 trespassing with the presence of a deadly weapon.

2 THE COURT: And I think maybe the same goes for
3 criminal domestic violence of a high and aggravated nature
4 to simple criminal - criminal domestic violence is the
5 lesser included but we'll think about it. Both of you give
6 your thoughts.

7 Thank you. Have a pleasant lunch.

8 SOLICITOR EPTING: Thank you, Your Honor.

9 (COURT IN LUNCH RECESS AT 01:15 P.M..)

10 (COURT BACK IN SESSION AT 02:45 P.M..)

11 THE COURT: Thank you. Take your seats.

12 Is the State ready?

13 SOLICITOR HOLLAND: Yes, Your Honor.

14 THE COURT: Is The Defense ready?

15 MR. HALL: The Defense is ready.

16 THE COURT: All right. And you have one witness I
17 understand?

18 MR. HALL: That's correct.

19 THE COURT: Okay. Bring in the jury.

20 (JURY REENTERS COURTROOM AT 02:46 P.M..)

21 THE COURT: All right. Mr. Hall.

22 MR. HALL: The Defense would call Rebecca Rogers.

23 MADAM CLERK: Raise your right hand and place your
24 left hand on the Bible.

25 . (WHEREUPON, REBECCA ROGERS,

REBECCA ROGERS: DIRECT BY MR. HALL

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1 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

2 MADAM CLERK: Thank you. Please have a seat.

3 DIRECT EXAMINATION

4 REBECCA ROGERS BY MR. HALL:

5 Q. Ms. Rogers, I need to ask you to speak up so the
6 microphone will pick up your so that the jurors can hear
7 your voice. Would you tell us your name?

8 A. Rebecca Rogers.

9 Q. And, Ms. Rogers, where were you living back in -- on
10 June the 19th of last year?

11 A. At 35 Railroad Avenue in York.

12 Q. And who was living there with you?

13 A. Ricky Passmore, Tabitha Passmore and Mickey Passmore.

14 Q. And Tabitha would be Ricky's girlfriend?

15 A. Girlfriend.

16 Q. And tell us where do you work?

17 A. I work at Wal-Mart.

18 Q. And had you worked that day, June the 19th? Do you
19 remember?

20 A. Let's see. I was scheduled to work the 19th. We were
21 actually - but I did work the 18th.

22 Q. All right. So the day before. And so the 19th would
23 have been an early morning, Wednesday morning. You -- what
24 you're telling the jury is you worked on Tuesday ---

25 A. Yes, sir.

REBECCA ROGERS: DIRECT BY MR. HALL

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1 Q. --- the 18th? Do you remember what time you got off
2 work?

3 A. I really don't.

4 Q. And on the -- and do you remember what time you went
5 to bed that night?

6 A. I was probably -- I laid down to watch a movie before
7 dark I would say, and I fell asleep.

8 Q. All right. And at some point, did Ricky or Mickey
9 Passmore wake you up?

10 A. I was awakened about 3:00 a.m., 2:30-3:00. Well,
11 probably before that, Mickey had woke me up wanting to go
12 get some more beer and I wouldn't go, 'cause I was
13 sleeping.

14 Q. All right.

15 A. And then around 2:30-3:00 o'clock somewhere along
16 those lines, I -- he -- they woke me back up and wanted to
17 go pick up Ricky's children from Clover.

18 Q. All right. And why did they have to wake you up to do
19 that?

20 A. Because I had the car, the license and I was sober.

21 Q. Okay. And whose car is it?

22 A. It was my car.

23 Q. I was your car. And what kind of car do you have?

24 A. I'm sorry, I don't remember. A Lincoln.

25 Q. It was a Lincoln.

REBECCA ROGERS: DIRECT BY MR. HALL

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1 A. A Lincoln Town car.

2 Q. And old Lincoln Town car?

3 A. Uh-huh.

4 Q. We'll get back to that in just a minute. And so they
5 don't drive? They can't drive, right?

6 A. Right.

7 Q. And so they get you up. What did you do?

8 A. I -- I didn't even get dressed. I went in my pajamas.
9 We went to the convenience store in York. I had to put air
10 in the tire, 'cause I had to put air in it twice a day. We
11 put \$20 worth of gas in the car, bought beer and went to
12 Clover.

13 Q. And tell me about the car, how do you start the car?

14 A. We go under the hood. We have to connect a little
15 gray box. I don't know what it is really and hook the
16 battery cables back up to it and Mickey does something
17 under there and I turn the key and it starts.

18 Q. Okay. And you -- and then -- and is this a 1992
19 Lincoln Town car?

20 A. I think it was.

21 Q. And you have -- what you have a slow leak in the tire?

22 A. Yes.

23 Q. Is there anything else peculiar about the car?

24 A. We had to turn it off the same way we started it. You
25 have to go under the hood and go in reverse.

1 Q. And anything about the brakes?

2 A. Mostly did not have brakes. I had to put brake fluid
3 in the car every day. If it got completely empty, it took
4 two or three days for it to build back up for me to have
5 brakes.

6 Q. Okay. And so did ya'll take anything and put it in
7 the car when ya'll left?

8 A. No, not that I'm aware of. I didn't put anything in
9 the car but myself.

10 Q. All right. And so you were driving. Who else --
11 where was Ricky and Mickey?

12 A. Mickey was beside me in the passenger seat and Ricky
13 was in the backseat.

14 Q. And you stated that you stopped at the convenience
15 store?

16 A. Right.

17 Q. After you left the convenience store, what did you do?

18 A. We went to straight to Clover.

19 Q. Where did you go in Clover?

20 A. To Julia Coleman's home.

21 Q. Is that at [REDACTED] Trinity Street?

22 A. That's what I was told. I never knew the address. I
23 just knew how to get to her home.

24 Q. Okay. And is that a -- and do you remember where you
25 parked?

REBECCA ROGERS: DIRECT BY MR. HALL

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1 A. I parked right in front of her mobile home.

2 Q. What happened when you parked your car there?

3 A. Ricky got out of the car. Well, wait, let me back
4 track a second. My brake lights got stuck in the on
5 position on the way, and so when Ricky got out of the car,
6 I asked Mickey, "I said what's he doing? I got to get this
7 car off the road?" He said, "Let me go see." Ricky
8 knocked on the door, the door opened, Ricky went in, Mickey
9 went in, and I was trying -- my brakes lights were hooked
10 with a toggle switch and my toggle switch had broken off,
11 and I was trying to get my brake lights to go in the off
12 position, 'cause I couldn't ride down the road with my
13 brake lights on.

14 Q. So did you see -- did you see how Ricky -- did Ricky go
15 in first?

16 A. Yes.

17 Q. And then where was Mickey when Ricky went in?

18 A. He went in shortly behind him. I think Ricky had
19 already gone in the door before Mickey made it to the
20 porch, the steps.

21 Q. And so about how far from the -- if you're looking at
22 the back of the courtroom, about how far are you from the
23 door of the house?

24 A. I would say maybe halfway to the benches back there.

25 Q. You tell me where to stop?

1 A. About there, maybe.

2 Q. You're sitting in the car and this is the porch on the

3 trailer?

4 A. Yeah.

5 Q. All right. Did you see who opened the door?

6 A. No, I didn't.

7 Q. Did you see if Nicky -- did Ricky knock?

8 A. I wasn't paying attention to be honest.

9 Q. But you saw the door open ---

10 A. Right.

11 Q. --- and them go in? Did you hear anything at that

12 point?

13 A. Well, what I heard was after Julia came out on the

14 porch, she was standing there with Mickey on the porch.

15 Q. Well, we'll get to that in just a minute.

16 A. Okay.

17 Q. So when they first went in, you didn't hear anything

18 then?

19 A. No.

20 Q. And then what did you do in your car at that point?

21 A. I was still messing with my toggle switch.

22 Q. How long was it before you looked up and saw anything

23 if you did?

24 A. When I heard Mickey and Julia talking on the porch,

25 'cause the window was down. I could hear. I looked up to

REBECCA ROGERS: DIRECT BY MR. HALL

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1 see what was going on and Julia standing there on a porch
2 smoking a cigarette in a agitated manner telling Mickey,
3 and pardon my language, "I ain't got time for this shit, I
4 got to go to work."

5 Q. All right. Well, let's back up just a minute. The
6 car, your car window, does it roll down?

7 A. No, we push and pull it up by hand.

8 Q. And so was -- and when you got to Julia's was it up or
9 down?

10 A. It was down.

11 Q. All right. It was down then. Okay. And about how
12 long had you been there until you saw Julia and Mickey on
13 the porch?

14 A. It had to be less than two minutes.

15 Q. All right. Now, could you -- and when did you -- when
16 you saw -- how long after that when you saw Mickey and
17 Julia on the porch was it before you saw Ricky?

18 A. Thirty seconds.

19 Q. All right.

20 A. He told me, "We got to go. Let's go."

21 Q. All right. We'll come back to that just a minute.
22 Can you stand up and show us how Julia was acting?

23 A. She was here. Say Ricky - Mickey was here on the
24 porch. She was smoking her cigarette swinging her arm
25 around, "I ain't got time for this shit, I've got to go to

1 work," smoking her cigarette.

2 Q. And what happened next?

3 A. Mickey said, "All right. Let's go."

4 Q. And then did they leave?

5 A. Yeah.

6 Q. All right. And did they -- and so Ricky and Mickey
7 came and got in the car?

8 A. Uh-huh.

9 Q. Did you see what, if anything, Julia did after that?

10 A. No, I didn't.

11 Q. Did you hear Ricky or Mickey or Ricky say anything
12 about the children?

13 A. Oh, yeah. I heard one of them. I don't know if it
14 was Mickey or Ricky ask, "Are you going to let [REDACTED] come
15 with us?"

16 Q. Did you hear Julia's answer?

17 A. I didn't hear an answer, but [REDACTED] didn't come with us
18 either so.

19 Q. All right. Did you ever see Ricky get out of the car
20 with a sword?

21 A. No, I did not.

22 Q. And did he -- did he -- and, certainly, did he get out
23 with anything and did you see him get out with anything?

24 A. I did -- all I saw was them get out of the car.

25 Q. All right. And you -- the same thing with Mickey, you

REBECCA ROGERS: DIRECT BY MR. HALL
CROSS BY SOLICITOR HOLLAND

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1 didn't see anything in his hand?

2 A. No.

3 Q. Now, tell me why did you not get out of the car?

4 A. Because you would have to go through the trouble,
5 opening my hood, turn the car off. I'm not going to leave
6 my car running on the side of the road in a neighborhood
7 that I'm not familiar with. I mean, it's just too much
8 trouble.

9 Q. All right.

10 MR. HALL: Answer any questions the State may have for
11 you.

12 CROSS-EXAMINATION

13 REBECCA ROGERS BY SOLICITOR HOLLAND:

14 Q. Good afternoon, Ms. Rogers. You live with Ricky and
15 Mickey Passmore, correct?

16 A. Right.

17 Q. Were you aware that Julia was in a relationship with
18 an African-American man?

19 A. No, I wasn't.

20 Q. You weren't at the time. Okay.

21 Now, it's your testimony today that you guys were
22 going there to pick up the kids?

23 A. Right.

24 Q. Okay. Were you aware - I know you said you didn't see
25 the Ricky with the sworn, but were you aware that it was

1 in your car?

2 A. No, I wasn't.

3 Q. So he would have had to put that in the car before you
4 got involved, correct?

5 A. Correct.

6 Q. So it's possible they were put in - They, obviously,
7 were putting stuff in your car before you were involved?

8 A. No, not stuff. No, you can't say they put stuff.

9 Q. Uh-huh. Well, they had to put something in your car
10 before you got involved, correct?

11 A. Apparently, a sword.

12 Q. So you had no idea that that sword was in the car at
13 the time?

14 A. No, I didn't.

15 Q. And you did not see Ricky get out with it at all?

16 A. No, I didn't.

17 Q. And you stated you had to stop by the convenience
18 store to put air in your tire, correct?

19 A. Uh-huh.

20 Q. Do you know what convenience store?

21 A. It was - I don't know the name of it. It's the one up
22 at WalMart at York.

23 Q. Okay.

24 A. The Kangaroo or Mark - not a - Kangaroo.

25 Q. Up here in York?

REBECCA ROGERS: CROSS BY SOLICITOR HOLLAND
REDIRECT BY MR. HALL

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1 A. Yeah.

2 Q. Okay. So when you woke up, your car was flat - your
3 tire was flat, correct?

4 A. No, it wasn't all the way flat, but I'd been going
5 through this for weeks to put air in my tire twice a day
6 and I was good.

7 Q. But it didn't have enough air for you to get to Clover
8 at the time?

9 A. No.

10 SOLICITOR HOLLAND: I beg the Court's indulgence for
11 just one moment.

12 (PAUSE.)

13 Q. And - And, Ms. Rogers, I know you said you stayed in
14 the car the whole time, correct?

15 A. Uh-huh.

16 Q. So you have no idea what happened in that house,
17 correct?

18 A. Right.

19 Q. Thank you very much.

20 THE COURT: Redirect?

21 REDIRECT-EXAMINATION

22 REBECCA ROGERS BY MR. HALL:

23 Q. Stuff in the car. You all - A lot of stuff in your
24 car on the 19th?

25 A. Yes, there was - We half lived in my car; we half

1 lived with Ricky and Tab. Sometimes we stayed with my
2 mother, 'cause we had lost everything we had. We had lost
3 our home. The car was - We lived out of that car a lot.

4 Q. All right. Thank you.

5 MR. HALL: No further questions.

6 THE COURT: Re-cross?

7 SOLICITOR HOLLAND: Nothing, Your Honor.

8 THE COURT: All right. You can step down and be
9 excused. We appreciate your time.

10 (WITNESS LEAVING WITNESS STAND.)

11 THE COURT: Mr. Hall.

12 MR. HALL: Your Honor, that's the Defense case.

13 THE COURT: Anything in rely?

14 SOLICITOR HOLLAND: Your Honor, can we just have a
15 few-minute break. I hate to do this after such a short
16 witness, but could we just have a few minutes?

17 THE COURT: All right. We'll take a short break.

18 The State rested, now the Defense is resting, and
19 we're to the point where I've got to kind of see what's
20 next.

21 (JURY EXITS COURTROOM AT 03:00 P.M..)

22 SOLICITOR EPTING: May it please the Court.

23 THE COURT: Yes, sir.

24 SOLICITOR EPTING: Your Honor, we, the State does have
25 one reply witness, a [REDACTED] [REDACTED].

██████████: DIRECT BY SOLICITOR EPTING

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1 THE COURT: All right. Let's bring the jury back in.

2 (JURY RE-ENTERS COURTROOM AT 03:05 P.M..)

3 THE COURT: The State.

4 SOLICITOR EPTING: Your Honor, in rebuttal, the State
5 would call ██████████.

6 THE COURT: All right. If you'll have him come up
7 here and show him where to be sworn in.

8 MADAM CLERK: All right.

9 (WHEREUPON, ██████████
10 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

11 MADAM CLERK: Please have a seat.

12 DIRECT EXAMINATION

13 ██████████ BY SOLICITOR EPTING:

14 Q. Good afternoon.

15 A. Good afternoon.

16 Q. Could you please state your name for the record?

17 A. ██████████.

18 Q. And what relation to you are - or what relation are
19 you to the Defendant in this case, Ricky Passmore?

20 A. I am his son.

21 Q. You're his son. I want to ask - I only have a couple
22 of questions for you and I want to ask you about a question
23 -- I beg the court's indulgence.

24 I want to ask you about something that occurred on
25 June 19th at your house on ██████████ Trinity Street. Do you

██████████: DIRECT BY SOLICITOR EPTING

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1 remember that night?

2 A. Yes, sir.

3 Q. At some point, did your daddy come in your trailer?

4 A. Yes, sir.

5 Q. Could you please tell the jury about that?

6 A. Well, he came into my house and when the door slammed,
7 I woke up and he came in my room and starting saying,
8 "██████████, you letting a M F'ing nigger up in your house," and
9 he left the room.

10 Q. Did you hear anything said after the door slammed?

11 A. Yes. He - I heard - I didn't hear the entire thing,
12 but I did hear, "You move, you die."

13 Q. You heard, "You move, you die?"

14 A. Yes.

15 Q. Did you recognize that voice to be a male or female,
16 boy or girl?

17 A. Male.

18 Q. Male. And did you recognize that voice to belong to
19 anybody in particular?

20 A. No.

21 Q. All right. That's all the questions I have for you,
22 ██████████. Now, Mr. Hall, the Defendant's attorney in this
23 case may have some questions for you. Please answer any
24 questions he might have.

25 CROSS-EXAMINATION

██████████: CROSS BY MR. HALL

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1 ██████████ BY MR. HALL:

2 Q. Hey, ██████████ My name is Mr. Hall. I'm going to ask
3 you just a couple of questions.

4 A. Okay.

5 Q. How old are you, ██████████

6 A. I am ten.

7 Q. You're ten. So what grade are you in?

8 A. I'm in the fourth.

9 Q. In the fourth grade. And you've talked about when
10 your daddy came to your house up in Clover back in June.

11 Did you talk to the police about what happened?

12 A. Yes.

13 Q. And your mama wrote out a statement for you, right?
14 But she wrote that, didn't she?

15 A. Yes.

16 Q. And what you're telling the jury today is that you
17 were asleep when your daddy came to the house, right?

18 You sleep in the back room. Who sleeps in the room
19 with you?

20 A. Me and my brother share a room.

21 Q. You and your brother shared a room. And when you were
22 back there and you were asleep, what you've told this jury
23 is what your daddy said was after you woke - after he had
24 come to your room, right?

25 A. Yes, sir.

██████████: CROSS BY MR. HALL

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1 Q. Did your mama tell you that's what he said?

2 A. No, sir.

3 Q. He didn't. Did - When he was out there, did - where
4 was ██████████ when you heard that? Do you know where ██████████ was?

5 A. I think she was in the living room.

6 Q. She was in the living - You don't really know where
7 she was - Do you know where she was?

8 A. Well, not exactly the --

9 Q. All right. And you've talked to - Have you talked to
10 your mama about this case?

11 A. A few times.

12 Q. A few times? All right. And, again, when you - when
13 the - when you talked to the police, your momma wrote that
14 statement, right?

15 A. Yes, sir.

16 Q. Okay.

17 MR. HALL: Thank you.

18 SOLICITOR EPTING: Nothing further from the State,
19 Your Honor.

20 THE COURT: Thank you, you may stepped down and be
21 excused.

22 (WITNESS LEAVING WITNESS STAND.)

23 THE COURT: Anything else from the State?

24 SOLICITOR EPTING: Nothing else, Your Honor.

25 THE COURT: All right. Members of the jury panel, I

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1 know you feel like you going in and out and you are, but we
2 have now reached the point where we have some short matters
3 to take up and when you come back in, both sides have
4 rested, so the attorneys will present their closing
5 arguments. They're different from the opening statements,
6 because now they will be trying to convince you why the
7 evidence should lead you to a certain verdict based on the
8 law that I will charge to you after they make their closing
9 arguments. So I'm going to let you go in just for a quick
10 refresher, and we've got a little bit of work to do, but
11 we'll take a short refresher and then we'll bring you back
12 in for closing arguments.

13 (JURY EXITS COURTROOM AT 03:11 P.M..)

14 MR. HALL: And, Your Honor, at this time, the Defense
15 would renew all the previous motions.

16 THE COURT: I - My ruling is the same. I believe
17 there is evidence both direct and substantial
18 circumstantial evidence from which a jury could make a
19 determination that the State has proven Mr. Passmore's
20 guilty of unanimous - of one or more of the charges for
21 which he is - one or more of the offenses which he is
22 charge. So let's take a real short refresher break which I
23 know the jury is and when we come back in, we'll be ready
24 for arguments and charge.

25 We have verdict forms if you want to look at them over

1 break.

2 (COURT IN RECESS AT 03:12 P.M..)

3 (COURT BACK IN SESSION AT 03:26 P.M..)

4 THE COURT: All right, bring in Mr. Passmore.

5 (DEFENDANT RICKY PASSMORE REENTERS COURTROOM.)

6 THE COURT: Any comments on the Verdict Form?

7 MR. HALL: Nothing from the Defense, Your Honor.

8 SOLICITOR HOLLAND: Nothing for the State.

9 THE COURT: Okay. And, of course, on the kidnapping,
10 that would go in and I've got - they put the verdict on
11 back of -

12 SOLICITOR HOLLAND: Okay.

13 THE COURT: -- the back of that. And, Ms. Stephanie
14 will help me remember.

15 All right. Bring in the jury.

16 (JURY ENTERS COURTROOM AT 03:27 P.M..)

17 THE COURT: Members of the jury panel, as I told you,
18 you will now hear the closing arguments, first from Mr.
19 Hall on behalf of Mr. Passmore, and then from the State,
20 then I will charge you the law.

21 During their presentation as the attorneys may
22 represent to you their view or they'll certainly represent
23 to you their view, but they may cite testimony, so you
24 remember witness so-and-so testified X, Y, and Z. I'm sure
25 they will be accurate as they can on that but if they were

CLOSING STATEMENT: BY MR. HALL

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1 to inadvertently misstate some testimony, you remember what
2 the witness said, because they're not - the attorneys are
3 not witnesses.

4 They also know what I'm going to tell you about the
5 law. We've gone over that. One of the things we did while
6 you were out of the room. So they know what legal
7 principals I intend to tell you, to charge. If they tell
8 you I will charge you something and I don't, again, it
9 would not be intentional, it would be inadvertent. It
10 doesn't apply. It only applies if it comes from me.

11 MR. HALL: May it please the Court?

12 THE COURT: Yes.

13 MR. HALL: Well, you've heard the term "redneck rant"
14 and you've actually heard from the mouth of Julia Coleman
15 about stupid redneck propaganda or redneck rant.

16 Well let me give you another term. Redneck divorce.
17 Redneck divorce is a way to get rid of your spouse,
18 boyfriend, children's momma quick and easy. Come to
19 criminal court, talk to the police. It's called a redneck
20 divorce if you want to get somebody out of your life.
21 That's what this case is about, a redneck rant and a
22 redneck divorce.

23 This case is about Julia Coleman versus Ricky
24 Hassmore. It's ugly, it is embarrassing. We have to sit
25 here and listen to this family's life, how they live,

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1 things they do, the words that they choose, the values that
2 they choose. It's ugly and it's embarrassing, but that's
3 the nature of redneck rants and redneck divorces. And I
4 submit to you it's ugly and it's embarrassing as those
5 things are, it is not against the law.

6 Let's look at Julia Coleman's testimony in this case
7 of Julia Coleman versus Ricky Passmore. Julia comes to the
8 stand and she tells us what happened. And she never says
9 she's scared. She never says she's afraid. She never says
10 that she's upset except when the Solicitor goes, "You're
11 afraid" or when the Solicitor says, "You were scared?"
12 "Yes, yes."

13 She was mad. She's still mad. Her testimony is that
14 she heard the first part of that very offensive recording
15 and what was her response? Her words, "It was stupid, it
16 was propaganda." What she actually said was that the
17 recording was propaganda. The conversation he was having
18 with his son, [REDACTED] at the end of the hall was stupid, but
19 when you put them altogether, it's a stupid redneck
20 propaganda.

21 What does she do when Ricky comes in? They start
22 cursing each other. She's searching for her phone. She
23 eventually stands up, smokes a cigarette before going out
24 on the porch. Tells Ricky Passmore and Mickey Passmore to
25 get out. Says, "I ain't got time for this shit, I got to

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1 go to work."

2 The car is stopped. I guess we call it a car. It may
3 - The proper term may be a four-wheel storage building. In
4 fact, without being too offensive, a redneck storage
5 building, which Julia Coleman and Mickey Passmore were
6 living in it sometimes, living in and out of it because --
7 or not Julia Coleman, Rebecca Rogers and Mickey Passmore,
8 because they didn't have a place to live. The car is full
9 of stuff - junk. Junk that normal people may not
10 necessarily have, but their junk, their belongings.

11 The State brings a lot of that stuff in here to try to
12 tell you that this was some plan to load up the car with
13 all of this stuff to go up to Clover to start a war.

14 Now, Ricky Passmore told you what he had. He had this
15 long knife, or a sword, to send his message. Use your
16 common sense. He and Mickey Passmore and Rebecca Rogers
17 did not get into a 1992 Lincoln Town car that you have to
18 crank by opening the hood and connecting wires and putting
19 the hood down and the tires going down and it has a slow
20 leak that you have to pump up twice a day and the toggle
21 switch that operates the brake light doesn't work,
22 kidnappers and burglars who are planning what they want you
23 to say, planning some big event don't carry that and do it
24 that way.

25 That's not what this case is about. It's not about

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1 burglary. It's not about kidnapping. It's not about
2 Criminal Domestic Violence of a High and Aggravated Nature.
3 It's about Julia Coleman versus Ricky Passmore here in
4 Criminal Court. A redneck divorce. The State reaches and
5 reaches and reaches and reaches and reaches and reaches to
6 make it something that it's not, but it is not a burglary,
7 it's not a kidnapping, it's not a Criminal Domestic
8 Violence of a High and Aggravating Nature.

9 In a little bit, the Solicitors are going to get up
10 and they'll probably tell you what the law is. If they
11 don't, certainly the Judge will tell you what the law is
12 that you have to - that you'll consider when you're in your
13 deliberations. And the first is that my client, Ricky
14 Passmore, is charged with burglary first degree, and he
15 will tell you that a person is guilty of burglary in the
16 first degree if the person enters a dwelling without
17 consent and with intent to commit a crime in the dwelling.

18 And then it goes on to say one of the elements of
19 burglary first degree is to be armed with a deadly weapon.
20 And there's other parts about physical bodily injury, those
21 kind of things and that's not in there.

22 But when the Judge reads you that and you must keep
23 this in mind, intent is a - is an important part of this
24 case. It's extremely important, because admittedly, Ricky
25 Passmore went to Clover at five o'clock in the morning on

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1 June the 19th and he went to the house with this long knife
2 and he went in.

3 Now, one, his testimony is, is that he knocked on the
4 door, the door was opened and he went in. Pardon the
5 expression, but sort of a redneck entrance. The door was
6 opened, he went in with his knife to send his message.

7 Now, he's testified clearly what his intent was. It
8 was not to commit a crime. He testified that when he was
9 standing outside, he knew Chip was not there. How did he
10 know Chip was not there? He had had this conversation with
11 his daughter, the rant with his daughter earlier, she said
12 they'd been there earlier that day. You saw the picture
13 and you can look at the picture of the front door to that
14 mobile home and he's standing on the door, you can see
15 through the window. What does he see? Julia Coleman
16 asleep on the couch. Where is Julia Coleman say she was
17 when the knock was on the door? Asleep on the couch.
18 Where were the children? She said [REDACTED] was in the back of
19 the house, [REDACTED] was in the back in his room asleep and
20 [REDACTED] was playing some type of video games. He could look
21 through the window. He knew Chip wasn't there. He had no
22 intent to go in and commit any crime. Certainly, his
23 intent was, and he accomplished it, to send this message
24 out of concern for his children, yet another redneck way of
25 communicating. That's not a crime.

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1 The State must prove his intent beyond a reasonable
2 doubt, and then that - the Judge is going to tell you that
3 reasonable doubt is the kind of doubt that would cause a
4 man - a reasonable person to hesitate to act. In this
5 case, we've got Julia Coleman's testimony. We've got Ricky
6 Passmore's testimony. And I submit to you that the
7 testimony of - you know, the State calls this ten-year-old
8 little boy, a ten-year-old little boy, they call a
9 ten-year-old little boy to come up here and testify in a
10 case between a momma and a daddy. A ten-year-old little
11 boy has to come take this stand, and then testify to what
12 his momma had written in a police statement.

13 Secondly, the Judge is going to talk to you about
14 kidnapping. Kidnapping is a little more complicated. It
15 says that - the kidnapping statute says, "Whoever shall
16 unlawfully seize, confine and inveigle, decoy, kidnap,
17 abduct, or carry away any other person by any means
18 whatsoever without authority of the law is guilty" and then
19 the Judge is going to prove to you that each - that the
20 elements of kidnapping must be proven beyond a reasonable
21 doubt.

22 Now, there's a dispute about whether my client pushed
23 his wife down. Julia says that she[sic] pushed him[sic]
24 down. He says that he didn't. The pushing down on a couch
25 is not an element of kidnapping. In fact, what we - what

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1 we've learned from Julia Coleman, herself, she didn't stay
2 on the couch. He didn't put the - There is no testimony
3 about him putting a sword up to her. There was a lot of
4 this back and forth about words and cursing, but what did
5 she do? She got up during this minute, minute-and-a-half
6 episode, according to Rebecca Rogers, had a cigarette in
7 her mouth standing on the porch, "I ain't got time for this
8 shit, go to work -- I got to get to work." And they - What
9 did they do? They left. She was not kidnapped.

10 The Judge is going to tell you about Criminal Domestic
11 Violence of a High and Aggravated Nature. And that is
12 defined as an assault upon a household member. Now, he's
13 going to explain to you and you'll have - And he's going to
14 explain to you the law of household member to be guilty of
15 Criminal Domestic Violence does not mean children that are
16 afraid. It means that a spouse or someone who you have
17 children in common if the definition of Criminal Domestic
18 Violence, if they are in, in this case, fear of eminent -
19 fear of serious bodily injury or death, then the person
20 that put them in that fear can be found guilty of Criminal
21 Domestic Violence of a High and Aggravated Nature.

22 So, and you have to remember that you've got to be
23 thinking about Julia Coleman, Julia Coleman, Julia Coleman
24 versus Ricky Passmore.

25 Now, let's again look at Julia Coleman's actions as

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1 far as any fear or of any bodily injury and, again, as I
2 told you a little bit earlier as she was on the stand, the
3 Solicitor said the words afraid. The Solicitor said the
4 words confined. The Solicitor said the words fearful. Not
5 Julia Coleman. And I submit to you when you look and judge
6 her actions and the way she told what happened on the - on
7 this stand today that what Julia Coleman is today, and was
8 on June the 19th, is a mad woman. Not a fearful, scared
9 woman of her husband who runs his mouth and spits out
10 propaganda and has done it for years and years and years.
11 She didn't call the police. She didn't call the police
12 after she heard the rant, the twenty-minute recorded rant.
13 She didn't call the police when he showed up at her door.

14 And then he's going to tell you about possession of a
15 weapon during the commission of a violent crime and
16 certainly, without a burglary or in this case without a
17 kidnapping, which he's not guilty of, you cannot find him
18 guilty of possession of a weapon during the commission of a
19 violent crime. That doesn't mean he didn't - You're not to
20 decide when you go back there, all right, did Ricky
21 Passmore have a big ole knife or a sword with him? We need
22 to decide whether he had one. That's not an issue. He had
23 it. He admitted that he had it.

24 And so just the fact that he had it with him does not
25 make him guilty of either burglary or Criminal Domestic

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1 Violence of a High and Aggravated Nature or kidnapping and
2 the Judge will inform and tell you that his intent is what
3 matters. We can determine his intent by what he said, and
4 then we can also determine what it appeared his intent was
5 by the reactions of Julia Coleman when he was in her house.

6 Now, certainly, you would have to - We would have to
7 all agree that that's not a proper way to resolved marital,
8 or in this case, family disputes bringing a sword to send a
9 message. We're not here telling you that that's what
10 people ought to do. However, just because you do it does
11 not mean you've violated the laws of this state and are
12 guilty of a burglary or a kidnapping or Criminal Domestic
13 Violence of a High and Aggravated Nature.

14 But the Judge is going to tell you there are two other
15 charges that you could find him guilty of if you decided
16 that it - if you decided that was justice in this case and
17 that is the crime of Criminal Domestic Violence which
18 states that it is unlawful to - in this case to offer to
19 cause physical harm or injury to persons own household
20 member, the mother of his children, with present ability
21 under circumstances reasonably creating fear of imminent
22 peril. So even if you - even if you believed that there is
23 some amount of fear, because he came into the house, you
24 can still find him guilty of Criminal Domestic Violence.

25 And then lastly, he's going to charge you with

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1 trespassing which states that it basically, and ya'll
2 probably know this, that if somebody, you've warned them
3 not to come on your property and they come anyway, you give
4 them that warning, then they do it, then that's trespassing
5 and in this case, there was testimony from Julia Coleman
6 that said that she told him not to come back and my client
7 says he never -- he never got that message and -- but you
8 can find him guilty of trespassing for going to his wife's
9 house or the house where his children was.

10 Ricky got on the stand. He told you his intent. He
11 knew that Chip was not there and in his redneck way was
12 sending a message, don't come around my children. Sending
13 a message through his wife. A terrible way to communicate
14 it, but that's what he was communicating.

15 You know, divorces, separation, child support, family
16 issues are not pleasant. There is a proper place for
17 those, but it's not in General Sessions Court. It's not in
18 Criminal Court in this case.

19 As I told you in the beginning redneck rants and
20 redneck divorces are ugly, they're embarrassing, they're
21 not pleasant, and this hasn't been pleasant, this has been
22 embarrassing. Ten-year-old children put on the stand. But
23 the actions of Ricky Passmore on the night of January 19th
24 did not rise to a level of a very serious, extremely
25 serious crimes that he's charged with.

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1 Ricky Passmore asks that you return a just verdict in
2 this case and that is not guilty. Thank you.

3 SOLICITOR EPTING: May it please the Court.

4 THE COURT: Yes, sir.

5 SOLICITOR EPTING: Defense counsel.

6 Redneck rants, redneck divorce, redneck storage
7 buildings, redneck entrances. These are all kinds of buzz
8 words, cute little phrases. Makes him sound almost like a
9 cartoon character, doesn't it?

10 Ladies and gentlemen, I ask myself how much of a
11 cartoon character Ricky Passmore seemed when he walked
12 through Julia Coleman's door and asked in a threatening
13 tone, "Where's Chip," and pulled out that sword and turned
14 to her and said, "Bitch, you move, you die." Nothing cute
15 about that.

16 What this was was not a redneck entrance; it was not a
17 redneck divorce. It was a burglary. It was Criminal
18 Domestic Violence. It was a kidnapping and it was the use
19 of a weapon during a violent crime. Julie Coleman is a mad
20 woman. Who can blame her after what happened that night?

21 And, ladies and gentlemen, during my presentation,
22 this is a very important case to the State as I'm sure it's
23 a very important case for the Defense, so I'm going to be
24 referring to my notes. I'm going to use a PowerPoint to
25 help to collect my thoughts, and I thank you ahead of time

1 for your attention.

2 The first question, what are we here to determine?
3 We're not here to determine whether Ricky Passmore is a
4 racist. That's not a divorce. We're not here to determine
5 whether he's a good or a bad person. Trials would be
6 endless if that was the case. The only thing we're here to
7 determine is whether he is guilty of the crimes with which
8 he is charged. What happens after that and what he is
9 sentenced to, if anything, is completely in the Judge's
10 providence. That's - You're to put that out of your mind.
11 The only question, did he commit the crimes, we have to
12 prove to the highest legal standard, beyond a reasonable
13 doubt.

14 There are several definitions as lawyers love to
15 define things several different ways. I'm sure you all
16 can empathize with that. One of those definitions is as
17 stated by Mr. Hall. A reasonable doubt is one that causes
18 you to hesitate to act, but what does that really mean?
19 Because we do not have to prove our case or any case beyond
20 any doubt. If that were the case, we would never win a
21 case, 'cause they are very, very, very few things in life
22 that you can know with zero doubt, zip doubt.

23 Another definition that I believe the Judge will
24 instruct you on is with a proof beyond a reasonable doubt
25 is proof that leaves you firmly convinced in the

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1 Defendant's guilt. And, ladies and gentlemen, I submit to
2 you after all the evidence is in, and after you've heard
3 these arguments, you will be firmly convinced that Ricky
4 Passmore is guilty beyond a reasonable doubt as charged.
5 You will be firmly convinced.

6 What must we prove? We know the standard. We know
7 what we're looking at here. We're just looking at the
8 charges. We know what level we have to prove them to, so
9 what must we prove? Let's start with the first charge,
10 Criminal Domestic Violence of High and Aggravated Nature.
11 That constitutes one, assault, or threat of an assault on a
12 household member or somebody that you have a child in
13 common with which would make that household member fear
14 serious bodily injury or death.

15 What is assault? It's threat of eminent harm with the
16 capability of doing so. I've heard it described as the
17 raising a stick within striking distance of a person that
18 puts you in fear of me hurting you, and I have the ability
19 to do it, because I'm close enough.

20 What evidence have we provided? You heard the tape
21 that goes to his intent on what exactly he planned on doing
22 when he was getting there. We have heard testimony from
23 the Defendant, from Julia, and from [REDACTED] that these are his
24 children living in this residence and that they are
25 children had by Julia, so she's a house - so she qualifies

1 under the CDV statute.

2 We heard Hawkins tell what happened. We heard Julia
3 tell what happened. He entered the house; he pulled out
4 the sword and within striking distance, points to her and
5 says, "If you move, you die." How's a reasonable person to
6 take that? It's a threat. It's a threat to do harm. The
7 implication is he's going to hurt you with a sword and
8 Julia had testified that he was within striking distance
9 when he said that. That's all the elements of assault, so
10 an assault did occur.

11 The victim, Julia, and the Defendant, Ricky Passmore
12 had at least one child in common. Did she fear serious and
13 bodily injury to them? Well, what's he using to threaten
14 her, a sword? If you get struck with a sword, it's
15 reasonable - a reasonable person knows that could very well
16 kill you.

17 Think about the time of night. It's five o'clock in
18 the morning. Think about Ricky's demeanor. Is he saying
19 it calmly? Not according to the testimony we've heard.
20 He's extremely upset. "You move and you die." Not sit
21 there while I go take care of some things. Not, don't you
22 move. "You move and you die." How did the children react
23 to that? The question is what would a reasonable person
24 think when they heard that threat made. How would the
25 children react? Under Officer Hawkins' testimony when he

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1 spoke with those children, white-faced, terrified. "My
2 daddy is in the house threatening to kill my mother with a
3 sword." Certainly, they believed the threat was real so
4 why shouldn't you? So CDV HAN proved.

5 An assault occurred with a deadly weapon. In this
6 case, the sword. The victim, Julie, had at least one child
7 with in common. Julia had reason to believe that she was
8 going to be injured based upon the Defendant's words, as
9 well as his conduct inside the house.

10 We move onto kidnapping, what it's not. A lot of
11 times people hear kidnapping and when I was doing this, I
12 thought this myself. You think baby stolen and a ransom
13 note. You think somebody shoved into the trunk of a car,
14 taken away. You get a ransom note in the mail; this is
15 what you have to pay to get your loved one back. That's
16 not the law in South Carolina. In South Carolina in our
17 jurisdiction, we value our freedom to move, our freedom to
18 move about with interference very highly and anytime
19 somebody by threat of force or by use of force restricts
20 that freedom, that's kidnapping.

21 What evidence have we shown? You heard it on the
22 tape. He's all - He's got all kinds of ill-will towards
23 Julia on the tape. He's going to put her in the ground.
24 He's going to do all kinds of bad stuff to her. He's going
25 to show her the exact same amount of mercy that he's going

1 to show that nigger in the house which is none.

2 We had Julia's testimony. He walks in the house,
3 pulls out the sword and goes to her, "Bitch, you move, you
4 die." She testified that at some point, she even tries to
5 stand back up to kind of confront him and say get out, you
6 know, and do all that and what? He pushes her back down.
7 He actually pushes her back down on the couch. [REDACTED]
8 testified to the same thing. She saw it. Against her own
9 father there on the stand, she testified to that. She saw
10 it with her own eyes. Based on the evidence we've shown,
11 firmly convinced he kidnapped her. He restricted her
12 movement.

13 Burglary first, and I imagine this will be the
14 remaining ground of battle in this case. Strictly speaking
15 we have several elements just like we have on the other
16 case. First element, "Entry without the consent of the
17 homeowner." As the owner of a house, that's a person who
18 can decide who comes in and comes out. They got a lot of
19 power. You get to decide who can come in and you get to
20 decide who can't come in. If somebody enters into a
21 dwelling which is a place where people live and if you have
22 an intent to commit a crime, then at that point you've
23 committed a burglary. The only question becomes what kind
24 of burglary. In this case, it's a burglary of first degree
25 based upon aggravating circumstances. "It occurred during

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1 the hours of darkness." I think that's undisputed that it
2 was dark outside when this happened. I think it's also
3 undisputed that when Mr. Passmore entered the house, he was
4 armed. I say "a" when he come up there, but according to
5 his testimony, probably two weapons, 'cause he had the
6 sword which according to him, he's banting it about which
7 according to Julia, he pulled out.

8 Don't forget about the brass knuckles. He has those
9 on when he was arrested. Those are in evidence. And, of
10 course, it has to occur in York County or else it would be
11 heard in Chester or it'd be heard in Lancaster, some other
12 place. There's a couple of elements that are very, very
13 easy. Obviously, this was a dwelling. There's no -
14 There's no dispute that [REDACTED] [sic] and her children lived
15 there. That's what constitutes a dwelling. People live
16 there and they call it home.

17 Obviously, this occurred in York County. We have
18 the address. We've had multiple people testify that this
19 was, in fact, in York County. Entry without consent seems
20 to be the thing that's been argued about the most. How do
21 we know entry was without consent in this case? What was
22 the understanding of Ricky's ability to be at the house
23 based upon prior dealings? What'd Julie testify? That at
24 some point shortly before this, approximately a week or a
25 week-and-a-half, Ricky asked to come over there to see the

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1 children. Do you all remember when Julia testified to
2 "Nah-uh, no way. You cannot come over." He came over
3 there with the understanding that he was not allowed to be
4 there.

5 Which kind of informs the next thing, 'cause when
6 did they show up? Are we really given to believe that
7 because whomever he's riding with has a crappy car that the
8 only time he can show up at this house is five o'clock in
9 the morning? Witnesses testified that him showing up that
10 early would have been extremely unusual, extremely unusual,
11 and I submit to you that it was unusual in this case for a
12 reason, 'cause they wouldn't be expecting him then.

13 Anyone called ahead? Well, Ricky says he called
14 ahead, but anyone else? Anyone else here in this courtroom
15 to testify that he called ahead to try to make sure that
16 they knew he was coming? Anyone announce themselves? Does
17 anyone ID themselves at all? Again, that depends on who
18 you believe. Ricky, the sole person in all this courtroom
19 that says yes, we did announce our self. Anyone else?
20 They never heard a voice. As a matter of fact, Julia says
21 that her son who was closest to the door and mistook that
22 for her African-American boyfriend, Chip, and that's why
23 she told him to crack the door open to see who it was.

24 What - That's a grammar mistake. Please forgive me.
25 What do they show up with? Much has been made about the

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1 weapons in the car and the reason that we presented that
2 evidence to you is because science is not yet at a point
3 where we can determine what's in somebody's mind by putting
4 them in some type of device where we can read their mind.
5 And we determine what somebody's thinking, what somebody's
6 planning, what's in their heart by extrinsic things,
7 because that's the only way we can know how. The words
8 they say. The actions they take. The things they have
9 with them.

10 What did they have in that car? I submit to you that
11 they had more of an amount of weapons in that car, and I
12 submit to you that it is just a mind-boggling coincidence
13 for them to have all of these weapons, the brass knuckles,
14 the menacing weapon, this sword, this assault - And this
15 loaded assault rifle, this bat, this crowbar, this length
16 of rope. All those things, just coincidently in the very
17 car that you're taking to your ex-wife's house at 5:00 a.m.
18 in the morning, knowing she doesn't want you there, knowing
19 that you have an antagonistic relationship with her
20 boyfriend, what are the odds?

21 What does Ricky do inside first thing? Well,
22 according to his testimony the first thing is the sword.
23 He comes in with a sword. Compare that to Rebecca's
24 testimony, his witness. She never saw a sword. Isn't that
25 interesting? That she was watching the door, saw them let

1 him in, which in their defense would possibly eliminate
2 entry without consent, but she didn't see him with a sword.
3 That big old long sword that I held out in front of you
4 when we entered it into evidence, isn't that interesting?
5 So either her perception is terrible or she is saying
6 something in court to try to help out somebody that she
7 loves. We put a great deal of faith in your like-minded
8 and I'll leave you to parse that out.

9 He pulls out a sword and what's the first thing he
10 says, "Where's Chip?" He wants you to believe that he
11 knows Chip isn't there. He knows he's not there, because
12 [REDACTED] did say, "Chip's not here." But think again, that
13 call was five hours before he actually showed up there.
14 What guarantee does he have that Chip was not here? I
15 would submit to you that he believes there is a substantial
16 possibility that Chip could be there or else why is he
17 saying, "Where's Chip?" Why's he coming in with a sword?
18 Why did he bring all those weapons? Why did he bring
19 backup in the person of his brother, Mickey? Why, if he
20 believed that Chip absolutely was not there?

21 Who can give - Who can give someone permission to be
22 in the house? Is it as simple as an open door? I'd submit
23 not. I'd submit it's the homeowner, being the person who
24 pays the bills, being the person who owns the house can
25 decide who comes in and who stays out. It's a fundamental

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1 principal of property law. Who's the homeowner in this
2 case? Because as much as Ricky would like to say on the
3 stand that this is his house 'cause his children are in
4 there, Julie Coleman pays the bills; that's her house. She
5 has the power to decide who stays and who goes, who can
6 come in and who can't.

7 And she was clear when she testified that Ricky
8 Passmore was not allowed in that house and, ladies and
9 gentlemen, I submit to you Ricky knew it, and that's why he
10 didn't announce himself when he was at the door. He knows
11 he doesn't have permission to be in the house, so he shows
12 up at the house in darkness at 5:00 a.m. and never
13 announces himself, 'cause he knows if he says it's Ricky
14 Passmore, she's going to either call the police or she's
15 going to deadbolt the door. He's never getting in.

16 He never asked permission to enter or covering the
17 audio call in more detail, but think back to it now. He
18 rolled up in the house just like he said he was going to
19 do. Think of the time distance between the call where he
20 said he was going to roll up in the house, five hours.
21 Five hours, long enough for him to drink and to stew and
22 get angrier and angrier and angrier that he is allowing
23 this black man to be around his children.

24 What do we have to prove to intent - to show that he
25 intended to commit a crime inside? This has been covered

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1 over similar to what I already talked about. Science isn't
2 there yet. What you say, what you do and what you have.
3 Let's listen to what he says.

4 (AUDIO PUBLISHED TO THE JURY).

5 SOLICITOR EPTING: It personally offends him. He is
6 weak and worthless, because he cannot stop his wife from
7 bringing this black man in front of his children. He feels
8 an essential duty to protect women and children in
9 particular.

10 (AUDIO PUBLISHED TO THE JURY).

11 SOLICITOR EPTING: Part of the reason that he feels so
12 inferior is because he believes, and I don't intend to do
13 him any dishonesty, that his children are upset.

14 (AUDIO PUBLISHED TO THE JURY).

15 SOLICITOR EPTING: Males are somebody that needs to
16 stand up and fight against a nigger assault, but his
17 children are too young to do it or too scared to do,
18 because their mother is dating the person in question. I
19 will submit to you this puts in his mind that he has to do
20 something about it.

21 (AUDIO PUBLISHED TO THE JURY).

22 SOLICITOR EPTING: Does that sound like he's trying to
23 de-escalate? Does that sound like he's trying to just give
24 a warning shot that's going to just let this guy know that
25 he's not cool with it and to back off? He wants to

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1 escalate. He wants to surreptitiously be told when this
2 black man is going to be over there so that he can show him
3 who the man of the house is. What does your common sense
4 tell you that means?

5 (STATE'S EXHIBIT NINE PUBLISHED TO THE JURY.)

6 SOLICITOR EPTING: And what will he do to anyone that
7 stands in his way? Keeping in mind that this call was made
8 five hours before.

9 (STATE'S EXHIBIT NINE PUBLISHED TO THE JURY.)

10 SOLICITOR EPTING: "Everybody else is expendable and
11 can be put down." What does that tell you about his mind
12 set when he goes to the house, not only in the house but
13 before when he's trekking through there. When he's
14 gathering up these things in his car? Is it not reasonable
15 to believe he might use this to put somebody down if they
16 get in the way, or this, or that gun he had in the trunk at
17 the time, or the sword that he actually brought into the
18 house? He's talking about putting people in that house
19 down if they get in his way, and he's coming in the house
20 armed with a deadly weapon. That's how you know what he
21 intended to do before he went to the house.

22 (STATE'S EXHIBIT NINE PUBLISHED TO THE JURY).

23 SOLICITOR EPTING: I submit that he'll do anything he
24 can to end that situation with Julia and with Chip her
25 African-American boyfriend, even if it means killing Chip,

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1 even if it means killing Julia.

2 We don't look at any one fact in this case. We look
3 at the facts together. He made that phone call five hours
4 before this happened. Five hours later, he shows up at the
5 house armed on his person with a sword and not twenty feet
6 away in the car waiting for him with all these other
7 weapons.

8 (STATE'S EXHIBIT NINE PUBLISHED TO THE JURY).

9 SOLICITOR EPTING: He put it on the line. What does
10 your common sense tells you that - tell you that means?
11 Does that mean that he's going to - he expected to walk
12 away from this and if he's not expecting to walk away from
13 that incident why? I would submit to you that a common
14 sense reader, like-minded hearing of that is that he's
15 planning on doing something to their mother, or to the
16 boyfriend, that's going to put him out of their lives.
17 He's going to put it on the line. Or, as he says in the
18 next clip, sacrifice himself.

19 (STATE'S EXHIBIT NINE PUBLISHED TO THE JURY).

20 SOLICITOR EPTING: Sacrificing himself by putting an
21 end to that situation. Common sense, what does that tell
22 you he plans on doing? He's gonna do something in that
23 house that's going to one, end the situation and two,
24 sacrifice Ricky Passmore.

25 How does he describe his visit if that speaks to his

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1 frame of mind?

2 (STATE'S EXHIBIT NINE PUBLISHED TO THE JURY).

3 SOLICITOR EPTING: He's going to show up there with
4 several people who he says are like minded. Did he show up
5 alone that night? No. He showed up with his twin brother.
6 Who could be more like minded than your twin? He is
7 describing exactly what he did five hours later. I know I
8 don't usually describe a social visit as when the role goes
9 down or when I roll up over into someone's house.

10 Aside from intent, you look at the things they
11 carried. All those weapons. Ladies and gentlemen, I
12 submit to you that is not a social visit. That is not a
13 social visit, nor is that, nor is that, nor is that, nor is
14 that, nor is that, and nor is that. The one instrument he
15 brings, all of these things known to his daughter [REDACTED] all
16 very commonly kept in the house against more coincidences.
17 All these are kept in the house except for maybe the bat
18 and the crowbar, which they sometimes take fishing. They
19 don't take the brass knuckles fishing. They don't take the
20 assault rifle fishing nor the sword, nor what they
21 described as a "nigger beater" yet all of those things are
22 present in the car that night. We don't look at anything
23 in a vacuum. We look at the totality.

24 Weapons are at the ready. Remember the testimony of
25 where - of where Ricky Passmore was seated? Backseat

1 driver. Where is that sword found? Backseat. Here's a
2 close-up. Sword, pool ball mace and the edge of the bat
3 all ready at the reach.

4 Ladies and gentlemen, that sword was described by the
5 police over the radio as possibly an old sword. I would
6 submit to you, if the Court allows, to test the edge on it
7 very carefully, 'cause it's sharp. It's certainly not a
8 normal sword.

9 What would happen if Chip was there? Why is that
10 relevant? Well, when we're looking at burglaries, we're
11 questioning what was in their heart when they went through
12 the door without permission? What did they intend as they
13 walked through the threshold? You hear from Ricky's own
14 mouth that if Rick[sic] had a been there, it very well
15 could have killed him. What would he have done? Let's tie
16 it back to the tape.

17 (STATE'S EXHIBIT NINE PUBLISHED TO THE JURY).

18 SOLICITOR EPTING: I will submit to you that we're all
19 very lucky that Chip was not in the house that night.

20 When is the crime of burglary completed? As soon as
21 the person enters into the house with the intent to commit
22 a crime in their heart. It's completed as soon as he
23 stepped through that door with the weapon with the intent
24 to commit a crime, whether that crime means he kidnap
25 Julia, whether that crime being he commit CDV HAN against

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1 Julia. Whether that crime be to take the children out of
2 the house unlawfully. Whether it be to scare Chip
3 unlawfully. As soon as he entered the house with that
4 intent with that weapon in the hours of darkness, the
5 burglary was completed. He entered without consent. He
6 knew he wasn't welcome there by the homeowner and, again,
7 that's consistent with everything that the State testified
8 to, everything.

9 He didn't announce himself and it was too dark for
10 them to see. They actually thought it was Chip. Why
11 didn't he announce himself, 'cause they knew they wouldn't
12 let him in? He knew he wasn't allowed to get in there. He
13 showed up unannounced and armed and intending to commit a
14 crime inside and for the purpose of burglary any crime will
15 suffice.

16 Armed with a weapon, entry without consent in the
17 hours of darkness, intent to commit a crime. It's the
18 residence of Julie Coleman in York County. They are not
19 there just to get the kids. They're not there just to send
20 a message.

21 I stated before, we pay - place great value and great
22 weight in your common sense as jurist. That's how our
23 judicial system works. You heard Ricky Passmore testify
24 that he was kind of marching around this apartment just
25 explained the sword as a sign of fear to Chip, who he

1 claims he knew for a fact would not be there. Does that
2 make sense to you? Given everything else we know, given
3 all the weapons that they have in the car, given all the
4 things that he said on that recorded phone call that scared
5 his daughter, his blood daughter bad enough that she
6 recorded it and showed it to her momma.

7 No, ladies and gentlemen, much, much more than a
8 redneck rant. Much more than a redneck divorce. Much,
9 much more than any cute phrase we can put on it. The roll
10 went down. Let's call it like it is. The roll that he
11 talked about on that tape went down and he showed up with
12 like-minded people to scare Julia, to try to find Chip and
13 if Chip was in the house, to harm him and possibly kill
14 him. He had a weapon when he did this. That's undisputed.
15 He had that sword.

16 It's your turn to fulfill your oath. All the
17 evidence is in. Mercifully, I'm going to be able to sit
18 down. I'm not going to be talking to you anymore and
19 pretty soon this case is going to be in your hands. Just
20 because you hesitate to act does not mean that you have to
21 find the Defendant guilty. Just because you have doubt in
22 your mind doesn't mean that you have to find the Defendant
23 not guilty. I would submit to you a hundred percent of the
24 Defendants that are convicted are convicted with some
25 doubt. Your doubt must be a reasonable doubt in order to

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1 find him not guilty.

2 An old attorney in our office used to say there are
3 used to say there are chairs in the deliberation room for a
4 reason. If you had to hesitate to act on every case, then
5 you wouldn't even have time to sit down. It would be
6 irresponsible not to hesitate on any case that you're
7 deliberating on because you got to think about it. It's an
8 important decision. You wouldn't hesitate before buying a
9 house, before buying an expensive car, before deciding
10 which college to go to. All of those are important
11 decisions. This an important decision. Do hesitate. Go
12 over the evidence. Share your doubts. Share what you
13 think are the strengths of the case. Sit down in those
14 chairs, deliberate, but at the end, don't lose sight of the
15 totality of the case.

16 Ladies and gentlemen, the totality of the case, the
17 truth of this case screams as to Ricky Passmore's guilt.
18 And at the end of deliberations, I'm confident you will
19 return the only verdict in this case that is just and it
20 speaks the truth, the real truth. Not a catch phrase, the
21 truth, and that's guilty on all counts as charged.

22 I thank you for your time and your service.

23 THE COURT: Members of the jury panel, I appreciate
24 the attention that you have given to the witnesses, to the
25 attorneys and to me. Now it is time for me to charge you

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1 the law that you are to apply to the facts as you
2 determine them to be.

3 Mr. Passmore is charged with burglary in the first
4 degree; kidnaping; possession of a weapon during the
5 commission of a violent crime that being kidnaping, and
6 criminal domestic violence of a high and aggravated nature.
7 I will explain the elements of those to you in a few
8 moments.

9 I emphasize to you that the fact that the charges have
10 been made; the fact that Mr. Passmore was arrested; the
11 fact that he was indicted; and the fact that he is on trial
12 is not evidence and you cannot base a finding of guilt on
13 that. That's just the way our system works. Nor does the
14 fact that he is on trial create any presumption of guilt.
15 I will talk to you more about that in just a moment.

16 These indictments which you will have in the jury room
17 are simply the formal paperwork by way of which one is
18 charged; by way of which one knows what they are charged
19 with; and by way of which ultimately the jury's unanimous
20 verdict will be enrolled.

21 Each of these charges as I mentioned yesterday stand
22 on their own. That is, you look at each charge and examine
23 the facts; apply the law as to that charge but the one
24 exception I mentioned yesterday. And that is if you find
25 that the State has failed to prove Mr. Passmore guilty of

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1 kidnaping beyond a reasonable doubt, you would not even
2 consider the possession of a weapon during the commission
3 of a violent crime because you would have found that he did
4 not commit the violent crime of kidnaping. Burglary is not
5 included as a violent crime in our law.

6 To the charges Mr. Passmore has entered pleas of not
7 guilty. His pleas of not guilty place on the State the
8 burden of proving his guilty beyond a doubt, beyond a
9 reasonable doubt, not beyond all nor every doubt.

10 This presumption of innocence is not a mere legal
11 theory or a mere legal phrase. It is a substantial right.
12 It is a bedrock right of our judicial system.

13 The presumption of innocence attaches to an individual
14 at the time they are arrested and remains with them as
15 their case is processed through our court system.

16 The presumption of evidence in Mr. Passmore's favor
17 remains with him at this moment and remains with him as you
18 deliberate.

19 The presumption of innocence in his favor is removed
20 if and when, and only if and when, you find that the State
21 has proven his guilt as to a charge beyond a reasonable
22 doubt.

23 A reasonable doubt has been described and defined by
24 our courts as the kind of doubt that would cause a
25 reasonable person to hesitate to act. Proof beyond a

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1 reasonable doubt is proof that leaves you firmly convinced
2 of someone's guilt.

3 There are very few things in our world that we can
4 know with absolute certainty and our law does not require
5 absolute certainty in a case such as this.

6 If based on your consideration of the evidence, you
7 are firmly convinced that Mr. Passmore is guilty of one or
8 more of the offenses, you would find him guilty of that
9 particular offense.

10 If on the other hand you think there is a real
11 possibility that he is not guilty of a particular offense,
12 you would give him the benefit of that reasonable doubt and
13 find him not guilty. He is entitled to all reasonable
14 doubts you have in regard to the facts in this case.

15 I will remind you that I am the sole judge of the law
16 in this case and you must take, accept and apply the law as
17 I charge it. This is true even if you think I charge the
18 law in error or if you think the law should be different.
19 Your oath requires you to take, accept and apply the law as
20 I charge it.

21 You are not to infer from anything I say or do or have
22 said or done as being an indication of an opinion of mine
23 on the facts. Our law does not allow a trial judge to
24 formulate or express to a jury any opinion on the facts.
25 You are the sole judges of the facts. It is solely up to

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1 you to examine the evidence and give to the evidence the
2 effect, the value, the weight and the truth you believe the
3 evidence should have.

4 In doing this you may believe one witness as opposed
5 to several; several witnesses as opposed to one. You may
6 believe all or part or none of a witness' testimony. Use
7 your common sense, your sense of logic, your sense of
8 reason. Use your experiences in life as you analyze the
9 evidence.

10 As judges of the facts that I mentioned yesterday, you
11 also must judge their - the witnesses' who have testified
12 believability, their credibility.

13 In assessing credibility, use the things I've just
14 talked about. Just the things that you find in your day to
15 day life as being indicators of truthfulness and you can
16 use further indicators. How a witness acts on the stand,
17 that is their demeanor. Are they hesitant or
18 straightforward in responding to questions. Is their
19 testimony consistent or inconsistent.

20 Consider the opportunity a witness had to know those
21 things to which the witness testified. And you can
22 consider whether a witness has any bias or prejudice, that
23 is whether a witness wished to help or hurt one side or the
24 other.

25 Mr. Passmore was asked if he had two prior offenses

1 which carried in excess of one year or more in jail and he
2 said he did. That is no evidence that can be used against
3 him regarding these offenses. You only consider prior
4 offenses of a defendant when examining their believability;
5 not as to their guilt in regard to the particular charges.

6 There are generally in cases such as this, two types
7 of evidence presented, direct and circumstantial evidence.

8 Direct evidence is the testimony of someone who claims
9 to have actual knowledge of a fact, such as an eye witness,
10 is evidence which immediately establishes the facts sought
11 to be proven.

12 Circumstantial evidence is a proof of a chain of facts
13 and circumstances which indicate the existence of a fact.
14 Circumstantial evidence is evidence which immediately
15 establishes collateral facts from which the main fact may
16 be inferred. Circumstantial evidence is based on inference
17 and not on personal knowledge or personal observation.

18 Our law makes absolutely no distinction between the
19 weight or value to be given to either direct or
20 circumstantial evidence.

21 Our law does not require a greater degree of certainty
22 in circumstantial evidence as compared to direct evidence.

23 What you should do is weigh all of the evidence.
24 After weighing all the evidence you are not convinced of
25 Mr. Passmore's guilty beyond a reasonable doubt as to an

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1 offense, you would find him not guilty.

2 The first charge I am going to go over is burglary.
3 Now as to burglary and criminal domestic violence of a high
4 and aggravated nature, they are what we call lesser
5 included offenses. They are not like the possession of a
6 weapon during the commission of a violent crime which is
7 actually charged in count two in the indictment.

8 These offenses which are not charged but by law are
9 second tier offenses which you can consider. I describe
10 this as a set of steps.

11 At the top would be the initial crime, that is the
12 charge for which Mr. Passmore is on trial, but our law has
13 a step-down offense which you may, if you determine
14 appropriate, consider that it's lesser - a lesser degree or
15 fall, like a step going down.

16 As to burglary and criminal domestic violence of a
17 high and aggravated nature, there are lesser included
18 offenses. You would only consider those if you determine
19 that the State has not proven the charged offense beyond a
20 reasonable doubt and you would only consider those to the
21 degree that you believe they have been proven beyond a
22 reasonable doubt.

23 Mr. Passmore is charged with first degree burglary.
24 Here the State must prove beyond a reasonable doubt that
25 Mr. Passmore entered a dwelling without consent.

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1 A dwelling is any building or portion of a building in
2 which a person ordinarily sleeps. The State must show
3 there was an entering, that is that Mr. Passmore actually
4 went into the dwelling or some part of it. No force need
5 to be used to gain entry. Literally entry is the act of
6 going into a place.

7 In addition to entry, the State must prove beyond a
8 reasonable doubt that the defendant intended to commit a
9 crime, either a felony or a misdemeanor, at the time of the
10 entry.

11 The mere entry into a dwelling without consent is not
12 burglary. If Mr. Passmore entered the dwelling without
13 consent and intended to commit a crime at the time of the
14 entry, it is burglary, even if the intent was abandoned
15 later after the entry. It does not matter whether the
16 intended crime was or was not committed.

17 Intent may be shown by acts and conducts of a
18 defendant and other circumstances which you may naturally
19 and reasonably infer intent.

20 Finally, the State must prove beyond a reasonable
21 doubt as to the charge of burglary that the defendant, Mr.
22 Passmore, entered or remained in the dwelling in the night
23 time. Night time is the period between sunset and sunrise
24 during which there is not enough daylight to recognize a
25 person's face except by artificial light - moonlight.

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1 Now as to burglary, there is a lesser, that's a step-
2 down I mentioned earlier, called trespassing.

3 Trespass is a lesser included offense. One is guilty
4 of trespass when they enter upon the lands or home of
5 another without consent of the landowner after being told
6 by the landowner not to come upon their land or into their
7 home.

8 To prove - To find Mr. Passmore guilty of either
9 burglary or the lesser included trespass, you must be
10 convinced that the evidence supports that beyond a
11 reasonable doubt.

12 The next charge I'm going over is kidnapping. Mr.
13 Passmore is charged with kidnapping. Again, the State must
14 prove beyond a reasonable doubt that Mr. Passmore knowingly
15 and unlawfully seized or confined another person without
16 authority of law. To do anything unlawfully or without the
17 authority of law is to do it willfully and against the law.

18 Knowingly means that it is done with knowledge,
19 consciously. It is not something that is done accidentally.
20 Seize means to take hold of suddenly or forcibly. And
21 confine means to limit one's or restrict one or includes
22 one within boundaries or to shut or keep that person in.

23 The State does not have to prove both a seizure and
24 confinement. Instead, the State has proven beyond a
25 reasonable doubt that the defendant did either one of those

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1 as to the alleged victim, you would find the defendant -
2 you must find the defendant committed one of those, either
3 seized or confined the victim, but you need not find them
4 both. If you find one beyond a reasonable doubt, you may
5 find that the defendant committed a kidnapping.

6 And Mr. Passmore is also charged with the offense of
7 possession during the commission of a violent crime. Here,
8 you must first find the defendant guilty of either
9 committing or attempting to commit a violent crime. Here,
10 kidnapping is a violent crime.

11 The State must also prove that at that time Mr.
12 Passmore was in possession of a weapon. A knife and a
13 sword, which is a form of a knife, means - under our law it
14 is a weapon and it means an instrument or tool with a sharp
15 cutting blade which can be used to inflict, cut, slash or
16 wound. So if you find the defendant guilty of kidnapping,
17 then you may consider whether or not he is guilty of having
18 possession of a weapon during the commission of the
19 kidnapping.

20 The third indictment is that criminal domestic
21 violence of high and aggravated nature. Here, the State
22 must prove beyond a reasonable doubt that the defendant
23 caused physical harm and injury to a member of his own
24 household or that he altered or attempted to cause physical
25 harm or injury to a member of his own household with at the

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1 time having the apparent present ability to cause harm or
2 injure under circumstances which would reasonably create a
3 fear of imminent danger.

4 Household members include former spouses, and
5 individuals with whom a defendant has a child in common.

6 Now as to the charge of criminal domestic violence of
7 a high and aggravated nature, I told you what criminal
8 domestic violence means. There is the lesser included
9 offense of simple criminal domestic violence, but he is
10 charged with criminal domestic violence of a high and
11 aggravate nature, which means that in addition to being
12 criminal domestic violence, that is causing physical harm
13 or injury with present ability to cause harm or injury and
14 creating imminent fear, in order to find Mr. Passmore
15 guilty of that offense, as a high and aggravated offense,
16 the State must prove an aggravated circumstance. They must
17 prove that there was an assault and battery of a high and
18 aggravated nature. That is, that he must - the act must
19 have been accompanied by circumstances of aggravation.

20 An assault occurs when someone attempts to or offers
21 to commit a violent injury upon another with the present
22 ability to complete the attempted injury.

23 An assault is the intentional creation of a reasonable
24 fear of immediate bodily harm. It is not necessary that
25 the attempted injury or harm actually take place for it to

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1 constitute an assault. The example I always use is that if
2 I'm standing close enough to you and I rear back my fist in
3 a rude and angry manner, close enough to strike you, and I
4 inflict the fear in you that I will strike you, that is an
5 assault.

6 A battery is the unlawful touching of another person
7 by a person who has committed an assault, and following
8 through or completion of an assault.

9 A battery is applying force or using force to another
10 in a rude, angry or resentful manner without legal
11 justification for doing so. My earlier example if I draw
12 back and I put you in fear and I follow through and I
13 actually make contact with you however slight, if I have
14 touched you I committed a battery.

15 Now the State must prove as to both criminal domestic
16 violence of a high and aggravated nature and as to the
17 lesser offense of criminal domestic violence, that the
18 alleged victim was at the time a household member as I
19 defined it and was put in fear of imminent danger.

20 Circumstances of aggravation include the use of a
21 deadly weapon. As to the charge of criminal domestic
22 violence of a high and aggravated nature, I told you that
23 you can consider yet that offense and the lesser offense of
24 simple criminal domestic violence.

25 Now, I did not mention to you when I charged you the

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1 law on kidnapping that a kidnaping does not have to be any
2 personal or monetary gain or for any illegal purpose. A
3 kidnapping may occur for any reason, not necessarily for
4 ransom, it only requires the seize and confinement as I
5 defined that for you earlier.

6 Now the defendant is also charged with the possessing
7 a weapon during the commission of the violent crime of
8 kidnapping and I explained that to you and I defined for
9 you what constitutes a deadly weapon which includes a
10 knife.

11 Now, as you consider this verdict to return, I
12 instruct you that your verdict must be unanimous. All
13 twelve jurors must agree on the verdict. Once all twelve
14 have agreed, Mr. Foreman, you will write the verdict and
15 I'll go over the verdict forms in just a minute.

16 I have forms with two of the indictments and one is
17 the kidnaping indictment. It simply has two counts of one
18 on the back of the indictment itself.

19 If you have any questions while you are deliberating,
20 please write them down and send them out by way of the
21 bailiff. I will consider them, I will go over them with
22 the attorneys and I will determine how to respond.

23 I can bring you back in and charge you on the law if
24 you wish me to go over any part or all of the law. It may
25 be when you send out a question that I can write an answer

1 to that question on the piece of paper itself and return it
2 to you.

3 And if I do that, Mr. Foreman, keep that and turn it
4 in with the evidence because it has to be part of the
5 record. We can play testimony back if you need to hear
6 testimony.

7 Your verdict may not be based on sympathy, passion,
8 prejudice or matters outside the record.

9 In just a moment I'm going to let you go to the jury
10 room but I instruct you not to start deliberating yet. You
11 must follow to the letter the charge that I have give to
12 you so I have to check with the attorneys to make sure I
13 have charged you correctly.

14 If I have made an error in my charge, I will bring you
15 back in and correct it. If I have not, the bailiff will
16 bring in to you the exhibits and the indictments and the
17 verdict forms and instruct you to start deliberating.

18 When you have reached a verdict, knock on the door and
19 tell the bailiff. I may be doing some other things, but I
20 will send for you as promptly as I can.

21 Now as to criminal domestic violence of a high and
22 aggravated nature, I have a verdict form. There are three
23 options. They are in no particular order other than the
24 fact that I always put them in this order. That means that
25 one does not have any higher import than do the other two.

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1 I simply have to put them in some order and this is the
2 order I put them in.

3 If you find the defendant guilty of criminal domestic
4 violence of a high and aggravated nature as charged, you
5 would put a check in front of the line that says that, the
6 top line. The second line you would use if you find the
7 defendant guilty of the lesser included offense of what I
8 will call simple criminal domestic violence. The third
9 line says we find the defendant not guilty and you would of
10 course mark that if the State has failed to prove Mr.
11 Passmore as to either criminal domestic violence of a high
12 and aggravated nature, or simple criminal domestic
13 violence, and you have found him not guilty and you would
14 put an X there or a check there, sign it and date it, today
15 is April the 1st.

16 Burglary in the first degree is very similar. It has
17 three options. We find the defendant guilty of Burglary in
18 the first degree and that is the charge. If you find the
19 State has failed to prove that but has proven Mr. Passmore
20 guilty of the lesser included offense of trespass, as I
21 have defined that for you, you would put an X or a check in
22 front of the second line. And if the State has failed to
23 prove Mr. Passmore guilty of either, you would use the
24 third line to say we find the defendant not guilty.

25 As to kidnapping, it is a little different. I do not

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1 have a form attached to it but on the back you will see a
2 word - the word verdict, Mr. Foreman, down in the bottom
3 left hand corner. Under there I have written count one and
4 count two. There is a place for you to sign and a place
5 for you to date.

6 Count one is kidnaping; count two is the weapon
7 charge. Whatever the verdict is as to those charges, you
8 would write. If the State has failed to prove Mr. Passmore
9 guilty of kidnaping, you would of course write the word,
10 one word not guilty. Two words if the State has failed has
11 failed to prove him guilty beyond a reasonable doubt of
12 kidnaping as to count one, you would put not guilty and
13 that would automatically mean count two would be not
14 guilty.

15 If on the other hand you find the State has proven him
16 guilty of kidnaping as to count one, you would write the
17 one word guilty beside count one. And then you would
18 consider count two and determine whether the State has
19 proven that and either write not guilty if the State has
20 failed to prove beyond a reasonable doubt or guilty if the
21 State has proven it beyond a reasonable doubt.

22 Ms. Tweet and Mr. Privette, I'm going to ask you two
23 to stay in here while the jury goes to the jury room and
24 I'm going to excuse the jury for a few minutes. Do not
25 start deliberating. I have to go over my charge with the

1 attorneys.

2 (COURT EXITS COURTROOM AT 04:45 P.M...:

3 THE COURT: I will be with you two.

4 Anything from the State?

5 SOLICITOR HOLLAND: Your Honor, I could have missed
6 it, I didn't hear criminal intent. But I could have missed
7 it.

8 MR. HALL: You did charge on intent under burglary
9 provision when you explained burglary intent. You did
10 charge that portion. You did not give a general --

11 THE COURT: I usually don't but I will.

12 SOLICITOR HOLLAND: You didn't have to. I just didn't
13 now if you typically did. That was the only thing.

14 THE COURT: And which one were you concerned about?

15 SOLICITOR HOLLAND: There was none specifically. I
16 just wanted to make sure out of abundance of caution. If
17 one is not needed, then that's fine with me. I just asked
18 out of abundance of caution. But if Dan feels like this is
19 sufficient I'm fine with mine.

20 MR. HALL: You - certainly an element, statutory
21 element of burglary first degree with the intent to commit
22 a crime and you usually define intent in that portion of
23 the charge.

24 SOLICITOR HOLLAND: I'm fine. If he's fine then I'm
25 fine with it.

1 THE COURT: Anything else?

2 SOLICITOR HOLLAND: Nothing further.

3 THE COURT: All right.

4 SOLICITOR EPTING: Your Honor, how would you like to
5 handle the rifle going back? It does have - It has no
6 ammunition. It has been made safe, but it does have a
7 bayonet attached to it that can be -

8 THE COURT: All right. We'll leave the rifle here and
9 if the bailiffs will take the exhibits back and tell them
10 if they want to examine the rifle we will send it back.

11 Any objection to that, Mr. Hall?

12 MR. HALL: No, sir.

13 THE COURT: Any objection from the State?

14 SOLICITOR HOLLAND: No objection.

15 THE COURT: Just put a note if you want these played.

16 (ALTERNATES DISMISSED AT 04:47 P.M..)

17 THE COURT: All right, Madam Solicitor, do you all have
18 some work for us?

19 SOLICITOR HOLLAND: I can check and see.

20 THE COURT: All right. I want to thank - This does
21 not have to be on the record.

22 (COURT AT EASE AT 04:48 P.M..)

23 (JURY NOTE AT 06:15 P.M..)

24 (COURT BACK IN SESSION AT 07:02 P.M..)

25 THE COURT: Thank you. You may take your seats.

THE VERDICT:

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1 The jury has indicated they have reached verdicts.

2 Of course I do not know what the verdicts are but I
3 will go ahead and tell everybody that's here that whatever
4 the verdict is, if you think you are not going to be able
5 to take it in and digest it without making a scene, so to
6 speak, you better go ahead and leave now, because the Court
7 will no tolerate any outbursts. And if there are any
8 outbursts, I can assure you that anybody doing that is
9 gonna be spending thirty days in the county jail.

10 I'm not saying that as a threat, but we have to have
11 decorum here so whatever the verdict is the Court will not
12 tolerate any outbursts. So if you don't think you can
13 handle the verdict, whatever it may be, now would be the
14 time to leave.

15 We do have a verdict. We will have the jury brought
16 in. Anything before the jury comes in?

17 SOLICITOR HOLLAND: Nothing from the State, Your
18 Honor.

19 MR. HALL: Nothing from the Defense.

20 THE COURT: Okay. Bring the jury in.

21 (JURY REENTERS COURTROOM AT 07:05 P.M..)

22 THE COURT: Mr. Foreman, I understand the jury has
23 reached verdicts in the case.

24 MR. FOREMAN: Yes, sir, we have.

25 THE COURT: If you'll hand them to the Bailiff, he'll

THE VERDICT:

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1 hand them up to me.

2 MR. FOREMAN: Well, sir, I need to finish the
3 paperwork.

4 THE COURT: Oh, I'm sorry. I thought when I got your
5 message - Well, you can go back. We'll take the jury -

6 I'll let the jury go back and when you finish the
7 paperwork, let the Bailiff know.

8 MR. FOREMAN: Okay.

9 THE COURT: I'll let the whole jury go back. I'm
10 sorry.

11 MR. FOREMAN: Okay. Can I make sure somebody - I'm
12 doing - I'm writing these down correct? I mean, doing the
13 right thing on these forms.

14 THE COURT: Well, do them like I instructed you to do
15 ---

16 MR. FOREMAN: Okay.

17 THE COURT: --- and if there is any problem with them,
18 we will address it, but you need to do it -- if you
19 remember my instructions, you need to go ahead and do it
20 and then if it's not done exactly right, we'll work on that
21 afterwards.

22 MR. FOREMAN: Okay. Yes, sir. I can do that.

23 THE COURT: Okay. Everybody go back out.

24 (JURY EXITS THE COURTROOM AT 07:07 P.M..)

25 THE COURT: I don't anticipate this will take him very

THE VERDICT:

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1 long, we'll just remain in session at ease.

2 (JURY RE-ENTERS THE COURTROOM AT 07:09 P.M..)

3 THE COURT: Mr. Foreman, if you will hand the verdicts
4 to the Bailiff, he will bring them up to me.

5 MR. FOREMAN: Thank you, sir.

6 THE COURT: Thank you. You can be seated.

7 (VERDICTS RECEIVED UP BY THE COURT.)

8 THE COURT: All right. I think these are fine.

9 I would go ahead and tell the attorneys that the jury
10 did not actually use the verdict forms but rather wrote the
11 verdicts on the indictments, but they appear to be in
12 order. After they are announced, I will certainly let
13 everybody look at them to see if they have any issues, but
14 they appear to me to be in perfect order, so I'll let the
15 Clerk announce the verdicts.

16 MADAM CLERK: Indictment 2013-GS-46-2903, the State
17 versus Ricky Eugene Passmore, Indictment for burglary in
18 the first degree, verdict guilty, signed by the Foreperson
19 dated today's date.

20 Indictment 2013-GS-46-2902, the State versus Ricky
21 Eugene Passmore, Indictment for Criminal Domestic Violence
22 of a High and Aggravating Nature, verdict not guilty, sign
23 by the Foreperson dated today's date.

24 Indictment 2014-GS-46-219, the State versus Ricky
25 Eugene Passmore, Indictment for kidnapping, verdict not

THE VERDICT:

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1 guilty signed by the Foreperson and dated today's date.

2 Indictment 2014-GS-46-219A, the State versus Ricky
3 Eugene Passmore, Indictment for possession of a weapon
4 during the commission of a violent crime, verdict not
5 guilty signed by the foreperson dated today's date.

6 Ladies and the gentlemen of the jury, if that be your
7 verdicts so say ye all by raising your hand.

8 Let the record show all jurors affirmed this verdict.

9 (ALL JURORS AFFIRMED.)

10 THE COURT: Anything from the State before the jury is
11 dismissed?

12 SOLICITOR HOLLAND: Nothing, Your Honor.

13 THE COURT: Anything from the Defense before the jury
14 is dismissed?

15 MR. HALL: Nothing from the Defense, Your Honor.

16 THE COURT: All right. Members of the jury panel, we
17 appreciate your help. I'm going to allow you to leave for
18 the evening and report back - I'm sorry, call back tomorrow
19 after one and you will receive instructions about what to
20 do next. I think everything is in order, is that?

21 MADAM CLERK: I was going to get him to date them.

22 THE COURT: Okay. All right. We'll get the -- The
23 Clerk will step out with you into the library and get you
24 to date them.

25 But everybody have a pleasant evening and call back

THE SENTENCE:

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1 tomorrow after one. Thank you so much for your help in
2 this case.

3 (JURY DISMISSED AT 07:12 P.M..)

4 THE COURT: I'd ask, I'd assume everybody is satisfied
5 with the verdict. Although they didn't use the verdict
6 forms, they did write the verdicts appropriately in the
7 right place and where the verdict is indicated. And while
8 we had the jury in, I asked if anybody have any issues.
9 Nobody indicated they did, so the jury unanimously did.

10 Anything from the State at this time before we bring
11 -- begin the sentencing?

12 SOLICITOR HOLLAND: Nothing prior to sentencing.

13 THE COURT: Anything from you, Mr. Hall?

14 MR. HALL: Your Honor, may I, just out of a abundance
15 of caution, might I look at the verdict form and the
16 indictment on the burglary?

17 THE COURT: Yeah. Well, there was no verdict form on
18 the burglary?

19 MR. HALL: That's what - Right.

20 THE COURT: Yes, there was. Yes, there was. And you
21 - They didn't fill that out.

22 SOLICITOR HOLLAND: Just they didn't fill it out and
23 they wrote it on the indictment.

24 MR. HALL: Yeah, I'd just like to see the indictment.

25 THE COURT: Any issues, Mr. Hall?

THE SENTENCE:

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1 MR. HALL: No, sir.

2 THE COURT: Well, we will be glad - I don't see any of
3 the victim's family still here. I'd be glad to hear from
4 any of the victims if they wish to address the Court
5 regarding sentencing. I presume the State has a sentencing
6 sheet prepared ---

7 SOLICITOR HOLLAND: I do.

8 THE COURT: --- and I'll be glad to hear from Mr.
9 Hall. Any motions first.

10 MR. HALL: Your Honor, I would just renew all of my
11 previous motions and then it does seem a little bit odd
12 that they found him guilty of the burglary first degree
13 which requires an intent to commit a crime and then they
14 found him not guilty of all the other crimes that were
15 attached. That seems to be inconsistent with the element
16 they were charged with and that's really the proper form is
17 not a judgment notwithstanding the verdict, but in light of
18 that make the motion.

19 THE COURT: I deny that, your motion. I don't see
20 it's inconsistent. Apparently, the jury could have thought
21 he went there after Chip and went and took the sword and
22 was going after Chip and Chip wasn't there, so the burglary
23 statute says and they're - the charge very clearly says
24 that if you go in with the intent even if you abandon it or
25 it's not accomplished so I don't see there's any

THE SENTENCE:

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1 inconsistencies in the verdict.

2 I can't tell you what the jury - how the jury reached
3 their decision, but I certainly can tell you that that is a
4 valid observation that one thing that could have been
5 considered in determining. And, of course, also whether -
6 Well, in any event, and it didn't - there was evidence it
7 took place in the nighttime, so I deny any motions
8 regarding the guilty verdict on the burglary.

9 All right, do you want to bring around Mr. Passmore.

10 (DEFENDANT APPROACHED THE BAR.)

11 THE COURT: Anything from the State involving the
12 sentencing? What, he has two prior assault and batteries
13 that were -

14 SOLICITOR HOLLAND: Your Honor, he has a very
15 significant prior record if you would like for me to read
16 it.

17 THE COURT: Please.

18 SOLICITOR HOLLAND: The victims did not pass on any
19 information. Ms. Coleman had to go to work, unfortunately.
20 I obtained when I first got this case a transcript of a
21 plea from Mr. Passmore from 1990. It was a second degree
22 sexual offense. That was in North Carolina. He is a
23 registered sex offender. In 2003, he was sentenced on an
24 ABHAN. At that time, that would have been common-law
25 ABHAN. In 2007, he was sentenced on the sex offender

THE SENTENCE:

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1 registry. In 2008, on violation of sex offender registry.

2 Going back to 1987, he was charged with breaking and
3 entering on a boat. That was a felony in North Carolina.
4 There is also a felony larceny that same year. Attempting
5 to break and enter in 1987. Injury into personal property
6 in 1987.

7 1990 is the second degree sexual offense which I
8 already referenced. And I believe he received a ten-year
9 sentence on that and that was in 1990.

10 In 1996, he had a DUI. In '97, a simple assault and
11 battery. It has a notation it's from Georgia of family
12 violence.

13 In 1999, carry a pistol without a license, carrying a
14 pistol by a convicted felon. I believe that might be the
15 same charge.

16 In 2003, we have the ABHAN that I referenced.

17 2006, the violation of sex offender registry that I
18 referenced. The same thing in 2008.

19 1988, DUI. 1990, trespassing carrying a concealed
20 weapon. Giving false information to police in 1999.

21 Your Honor, that's the extent of his record. I would
22 like to just point out for the Court that Mr. Passmore was,
23 I believe, eligible for life without parole. I chose not
24 to do that since he was facing life already on this
25 burglary first charge, but I given - I believe given that

THE SENTENCE:

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1 second degree sexual offense from the research we did when
2 the case came in that that would have qualified as a most
3 serious offense and would have qualified under the two
4 strikes rule, so we just ask that you sentence him
5 appropriate according to that.

6 THE COURT: Okay. All right. Mr. Hall?

7 MR. HALL: Your Honor, as my client stated to the
8 Court, he's forty-six years old. He has four children, one
9 grandchild. You certainly heard all the facts of the case.
10 I'd ask that the Court consider giving him the fifteen-year
11 sentence that require on the burglary first degree. He's
12 going to be close to sixty years old when he gets out.
13 Certainly, his view would be as a sixty-year-old man is
14 going to be a lot different than if he was twenty being
15 convicted of same offense. He's spent 286 days in jail
16 awaiting disposition of his charges and, Your Honor, I
17 believe he would like to address the Court.

18 THE COURT: Mr. Passmore.

19 MR. PASSMORE: I don't know what to say, you know. I
20 don't know what to say, Your Honor. I don't feel like I
21 did anything wrong. The only thing I tried to do was
22 protect my children. Julia Coleman never told me I wasn't
23 welcome in her house like she testified. I did not enter
24 her house in a - with criminal intent. I did not enter her
25 house in a forceful way. When she told me to leave, I

THE SENTENCING:

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1 left. I don't know what else to say, Your Honor.

2 THE COURT: Well, I think you made the problem, and I
3 certainly understand how you feel, but you made the
4 problem. And what you started off by saying is that you
5 don't feel like you did anything wrong and that's
6 apparently what your life has been like. You've done a
7 lot, covered a lot of ground, probably harmed some people.
8 You got a pretty extensive record. The sentence is thirty
9 years. Give you credit for 286 days. Thank you.

10 MR. HALL: Thank you, Your Honor.

11 THE COURT: We're adjourned until ten in the morning.

12 (COURT ADJOURNED AT 7:35 P.M..)

13 (END OF TRANSCRIPT OF RECORD.)
14
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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 31st day of March and the 1st day of April, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda Nelson
Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE:

June 9 / 2014

FORM 5

STATE OF SOUTH CAROLINA)

County of York)Ricky Eugene Passmore)

Full name and prison number (if any) of Applicant)

S.C.D.C.
v. #315667)

State of South Carolina)

2017CP4600505
IN THE COURT OF COMMON PLEASAPPLICATION FOR
POST-CONVICTION RELIEF2017 FEB 16 PM 1:41
RECEIVED
CLERK OF COURT
YORK COUNTY, SCINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention York Co. Detention Center
Hwy 5 York, S.C.
2. Name and location of Court which imposed sentence York Co. GS-Court
Hwy 5 York, S.C.
3. Name(s) of co-defendant(s) (if any) Micky Dale Passmore,
Rebecca Diane Rogers
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-46-2-9-0-3
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 4-1-2014. 30 years S.C.D.C.
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Public Defender Dan Hall appealed.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Appellate Court. Direct appeal.
- ii. S.C. Court of appeals. Rehearing
- iii. Petition for certiorari
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. Denied
- iii. Denied
- (c) the date of each such result:
- i. 3-2-16
- ii. 4-21-16
- iii. 10-20-16
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Multiple U.S. Constitutional violations, including
 (b) but not limited to. Amend #6, 14, Due Process violation
 (c) Brady violations, Denial of Right to Trial by Jury.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Ineffective Assistance of Counsel
 (b) Lack of Jurisdiction, Failure to complete court.
 (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? See Pg. 2
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
 ii. _____
 iii. _____
 iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective assistance of counsel, Const. Rights
 (b) violations. Procedurally Barred by appeal.
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Misrepresented
 (b) your trial, if any? Misrepresented
 (c) your sentencing? Misrepresented
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NOT SURE
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction. which you filed?
NOT SURE

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. I was misrepresented by Dan Hall of The
York Co. Public Defenders office, and The
 ii. State of S.C.
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. _____
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

To have current conviction Ruled unlawful
and vacated.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of York)

VERIFICATION

I, Ricky Eugene Passmore, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Ricky E. Passmore

SWORN to and subscribed before me this _____
 day of _____, _____.

 Notary Public (L.S.)

My Commission Expires: _____

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Ricky Eugene Passmore, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Ricky E. Passmore
Applicant

SWORN or affirmed to and subscribed before me this
13 day of February, 2017.

[Signature]
Notary Public

My Commission Expires: 9/16/2026

FILED-RECEIVED
 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF YORK 2017 JUN 12 PM 3:14) THE SIXTEENTH JUDICIAL CIRCUIT

Ricky Eugene Passmore, #315667, DAVID HAMILTON 2017-CP-46-0505
 C.C.C.P. & G.S.
 YORK COUNTY, SC

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on February 16, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. In August 2013, the York County Grand Jury indicted Applicant for burglary in the first degree (2013-GS-46-2903) and criminal domestic violence of a high and aggravated nature (2013-GS-46-2902). Applicant was subsequently indicted in January 2014 for kidnapping (2014-GS-46-209) and possession of a weapon during the commission of a violent crime (2014-GS-46-219). Daniel Hall, Esquire represented Applicant. Assistant Solicitor Jessica Holland, Esquire prosecuted the case. On March 31 and April 1, 2014, Applicant proceeded to trial before the Honorable John C. Hayes, III. The jury found Applicant guilty as indicted on the charge of burglary in the first degree and not guilty on the other charges. Judge Hayes sentenced Applicant to imprisonment for a term of thirty years.

Applicant filed a timely notice of appeal. Chief Appellate Defender Robert Michael Dudek, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of

Appeals affirmed Applicant's conviction on March 2, 2016. State v. Passmore, Op. No. 2016-UP-097 (S.C. Ct. App. filed March 2, 2016). Applicant filed a petition for writ of certiorari to the South Carolina Supreme Court on June 13, 2016. The Supreme Court denied the petition on October 20, 2016. The remittitur was sent on October 25, 2016.

Attached to this Return and incorporated by reference are the records of the York County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Multiple U.S. Constitutional violations including but not limited to Amend #6, #14, Due Process violations, Brady violations, denial of right to trial by jury."
3. "Lack of Subject Matter Jurisdiction"

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All

claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

V.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VI.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claim of ineffective assistance of counsel.

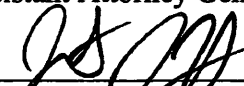
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JUSTIN HUNTER
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
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June 8, 2017

STATE OF SOUTH CAROLINA
 COUNTY OF YORK

FILED-RECEIVED

2017 JUN 12 PM 3:14

IN THE COURT OF COMMON PLEAS

DAVID HAMILTON

2017-CP-46-0505

C.C.C.P. & C.S.

RICKY PASSMORE, #315667 YORK COUNTY, SC

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent,

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ashley A. McMahan
 Mac | Vance Attorneys, LLC
 PO Box 5501
 West Columbia, SC 29169

DATED this the 8th day of June, 2017.

Jennifer Jennison
 Jennifer Jennison, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-46-0505

RICKY E. PASSMORE)
vs.) TRANSCRIPT OF RECORD
STATE OF SOUTH CAROLINA)

AUGUST 1, 2018
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE WILLIAM MCKINNON

APPEARANCES:

STEPHEN W. FOWLER, ESQUIRE
CHARLESTON, SOUTH CAROLINA

ATTORNEY FOR THE APPLICANT

JULIA A. COLEMAN, ASSISTANT ATTORNEY GENERAL
COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE STATE

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
Ricky Passmore				
By Mr. Fowler	7			
By Ms. Coleman		50		
By Mr. Fowler			57	
Jessica Holland				
By Ms. Coleman	62			
By Mr. Fower		66		
Daniel Hall				
By Ms. Coleman	70			
By Mr. Fowler		87		
By Ms. Coleman			101	
By Mr. Fowler				103

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

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
A-1	Fingerprint report		27
A-2	Affidavit of Julia Coleman		34

1 THE COURT - Yes, ma'am.

2 MS. COLEMAN - Good morning, Your Honor. My name
3 is Julie Coleman appearing on behalf of the Attorney
4 General's office, and we have one case on the docket for
5 today. Michael Sgori was continued already, so that leaves
6 us with Ricky Passmore.

7 THE COURT - Okay.

8 MS. COLEMAN - This is Ricky Eugene Passmore vs.
9 The State of South Carolina, docket number 2017-CP-46-505.
10 Applicant is presently confined in The South Carolina
11 Department of Corrections pursuant to orders of commitment
12 of the York County Clerk of Court. In August, 2013, the
13 York County Grand Jury indicted applicant for first degree
14 burglary and criminal domestic violence of a high and
15 aggravated nature. Applicant was subsequently indicted in
16 January of 2014 for kidnapping and possession of a weapon
17 during the commission of a violent crime. Daniel Hall,
18 Esquire, represented the applicant on the charges.
19 Assistant Solicitor Jessica Holland, Esquire, prosecuted
20 the case. On March 31st and April 1st, 2014 applicant
21 proceeded to trial before The Honorable John C. Hayes, III.
22 The jury found applicant guilty as indicted of first degree
23 burglary and not guilty on the other charges. Judge Hayes
24 sentenced applicant to imprisonment for a term of 30 years.
25 Applicant filed a timely notice of appeal. Chief Appellate

1 Defender, Robert Michael Dudek, Esquire of the Office of
2 the Appellate Defense perfected the appeal. The South
3 Carolina Court of Appeals affirmed applicant's conviction
4 on March 2nd, 2016. Applicant then filed the petition for
5 writ of certiorari to The South Carolina Supreme Court on
6 June 13th, 2016, and The Supreme Court denied the petition
7 on October 20th, 2016. The remittitur was issued October
8 25th, 2016. Applicant filed a timely application for post-
9 conviction relief on February 16th, 2017 alleging he was
10 being held in custody unlawfully based on the following
11 allegations: Ineffective assistance of counsel, multiple
12 U.S. Constitutional violations, including but not limited
13 to, the Sixth Amendment, Fourteenth Amendment, due process
14 violations, Brady violations and denial of right to trial
15 by jury and lack of subject matter jurisdiction. The State
16 filed its return on June 8th, 2018, and applicant is
17 present today and represented by Mr. Stephen Fowler.

18 THE COURT - All right, Mr. Fowler?

19 MR. FOWLER - Yes, sir. A couple of things I'd
20 like to bring to the Court's attention if at all possible.
21 My client has indicated that he has some paperwork that he
22 would like to take to the stand. His shackles are a little
23 tight, and what he has indicated to me and I was wondering
24 if it would be acceptable if they could be loosened up just

1 a little bit so that he could go through his paperwork
2 while on the stand?

3 THE COURT - And, lieutenant is that doable ---

4 LIEUTENANT HAGER - See this gentleman back here.

5 THE COURT - Is that -- is that doable without
6 compromising security issues?

7 SCDC OFFICER - It is.

8 THE COURT - Okay.

9 MR. FOWLER - Thank you, Your Honor.

10 THE COURT - I mean you can do it without risking
11 security? So am I asking is it okay if you can loosen them
12 a little bit?

13 SCDC OFFICER - I can loosen them up.

14 THE COURT - Okay.

15 (WHEREUPON, SHACKLES ARE LOOSEMED BY OFFICER.)

16 MR. FOWLER - And this is only during, obviously,
17 during the time that we're in the courtroom.

18 THE COURT - Right.

19 COURT REPORTER - I ask that Mr. Fowler speak up.
20 He's kind of soft spoken.

21 MR. FOWLER - I will speak up.

22 COURT REPORTER - Thank you.

23 MR. FOWLER - And one other thing, Your Honor. I
24 was in an automobile accident last September and sometimes
25 I have a problem standing up for long periods of time, and

RICKY PASSMORE - DIRECT BY MR. FOWLER

7

1 I'd like to ask the Court, with no disrespect to the Court,
2 if I could be able to sit down while I ask questions of my
3 client or any of the witnesses?

4 THE COURT - Certainly. No problem.

5 MR. FOWLER - Thank you, Your Honor.

6 I'd like to call Mr. Ricky Passmore to the stand,
7 Your Honor.

8 RICKY PASSMORE, AFTER BEING FIRST DULY SWORN,
9 TESTIFIES AS FOLLOWS -

10 DIRECT EXAMINATION

11 BY MR. FOWLER -

12 Q Mr. Passmore, could you spell -- say and spell your
13 name for the Court?

14 A My last name?

15 Q Your full name, because I think Ricky can be spelled -
16 --

17 A R-i-c-k-y P-a-s-s-m-o-r-e.

18 Q Fantastic. All right, and you understand why we're in
19 Court today. Correct?

20 A Yeah.

21 Q All right. This is a post-conviction relief matter.
22 Correct?

23 A Yeah.

24 Q And you and I have spoken about this matter previously
25 than today. Correct?

RICKY PASSMORE - DIRECT BY MR. FOWLER

8

1 A Yeah.

2 Q Okay. And I presented you the information that the
3 attorney general has sent me. Is that correct?

4 A Yeah.

5 Q And you've had some time to look over that. Is that
6 correct?

7 A Well, in the past -- yeah.

8 Q Okay. We spoke last week about this, and we talked
9 about your ineffective assistance of counsel statement in
10 your application. Is that correct?

11 A Yeah.

12 Q And ineffective assistance of counsel, you and I went
13 over a lot of different things. Is that correct?

14 A Yeah.

15 Q So that's kind of a broad term, isn't it, ineffective
16 assistance of counsel?

17 A Yeah.

18 Q But we want -- but we want to present to the Court
19 some specific things that you and I spoke about. Is that
20 correct?

21 A Yeah.

22 Q Okay. Let me ask you this question. You brought this
23 to my attention, that you have a medical condition that you
24 feel is relevant to this Court and your previous Court
25 appearance. Is that correct?

1 A Yeah, I have a -- a problem focusing on -- like then
2 I'm sitting here looking at something, I have to write
3 stuff down so I can see it. I have a problem keeping it in
4 my mind. You know, mind scrambles. I'll be looking at one
5 thing, and my mind will be somewhere else.

6 Q Has that been diagnosed previously?

7 A I'm under treatment for it.

8 Q Okay.

9 A I don't know what they calling it, but I'm under
10 treatment for it.

11 Q I think you mentioned to me earlier there was --
12 that's in your medical records or SCDC records. Is that
13 correct?

14 A Yes, sir.

15 Q How is it noted in your SCDC records?

16 A Out-patient mental health.

17 Q Okay. Does it get more specific than that to your
18 knowledge?

19 A Well, I know they diagnosed one time -- they diagnosed
20 me with -- I can't remember what the diagnosis was now.

21 Q Well, do you think that's relevant to -- to the -- to
22 the transcript that was back in March and April of 2014?
23 Was that a -- was that a issue then?

24 A Yeah.

25 Q Okay. How so?

RICKY PASSMORE - DIRECT BY MR. FOWLER

10

1 A Cause it causes me to have a problem putting facts
2 together, making -- you know, it makes it difficult for me
3 to say what I'm trying to say.

4 Q Did you bring that to your attorney's attention ---

5 A No, I didn't. I didn't tell him about that.

6 Q Okay. Did he inquire -- did he ask you about any
7 mental -- mental health problems you may have had?

8 A No, he -- No, he didn't, not that I recall.

9 Q In retrospect, do you think he should have?

10 A Well, I can't really say if I give him any reason to
11 think he should have.

12 Q But he didn't ask the Court or the prosecution to put
13 you through any mental health diagnosis before trial, did
14 he?

15 A No.

16 Q Do you think in retrospect he should have?

17 A Well, probably, yeah.

18 Q Why's that?

19 A Maybe I could've got treatment before trial, you know.

20 Q You think -- you think that would've helped out with
21 your case?

22 A I would like to tried it to see.

23 Q Okay. Do you think it was your attorney's

24 responsibility to -- to see if you could be diagnosed or

25 have some kind of mental health examination before trial?

1 A Yeah.

2 Q And do you think that hurt your chances at trial not
3 being diagnosed at that time?

4 A Probably, yeah.

5 Q How so?

6 A Because like I said, if I've been -- if I'd have see'd
7 (sic) somebody and got treatment for the problem, maybe I
8 could've put facts together a lot, you know, better, pay --
9 you know, focus more on what was being said to me, what
10 wasn't being said.

11 Q So, in effect, you -- I don't want to put words in
12 your mouth, but how -- how did that -- so you think that
13 mental health issue might have been a problem in your case.
14 Correct?

15 A Yeah.

16 Q And are you saying that your attorney should've took
17 steps to bring that to the Court's attention at that time?

18 A Well, the truth is, I didn't really bring it to his
19 attention. I mean I can't sit here and ---

20 Q But even if you did, do you think it was his
21 responsibility to maybe check into it?

22 A I reckon so.

23 Q All right. You and I spoke last week, and you
24 mentioned several items that you feel fits under the
25 ineffective assistance of counsel. Correct?

RICKY PASSMORE - DIRECT BY MR. FOWLER

12

1 A Yes, sir.

2 Q And one of those issues ---

3 MR. FOWLER - And, Your Honor, I've been going off
4 the transcript of record March 31st to April 1st, 2014 in
5 York, South Carolina, case number 2013-GS-46-02902. That's
6 what the attorney general's office has provided to me, and
7 at this time I'd like to make sure that the Court -- or ask
8 the Court, -- and I believe it's part of the record anyway
9 -- but I'd like to ask the Court to take judicial notice of
10 this transcript.

11 MS. COLEMAN - I have no objection. That's part
12 of the record, and it's in the Judge's packet before the
13 Court today.

14 THE COURT - Okay. It's in record.

15 MR. FOWLER - Thank you, Your Honor. Just doing
16 that for clarification purposes for the record.

17 Q You mentioned that at the -- on page 22 there was an
18 issue that you feel was not done correctly. Is that
19 correct?

20 A Yeah, uh, ---

21 MR. FOWLER - May I approach the witness, Your
22 Honor?

23 THE COURT - You May.

24 Q Specifically, Mr. Passmore, at the bottom -- and I'll
25 -- I'll go up and show to you in just a moment, but

1 specifically it was at the bottom of page 21, the top of
2 22. Is that correct?

3 A Yeah, I remember the page number. I just ---

4 Q Are you able to read something into the Court's record
5 here?

6 A Yeah.

7 Q Okay. Starting on line 24 at the bottom of page 21 it
8 says Mr. Hall. Could you pick it up there, and I'll give
9 you the second page in a moment?

10 A Right here?

11 Q Yes, sir.

12 A It says, Your Honor, as far as my motion in limine,
13 it's a standard motion, a number one motion to ---

14 Q And if you'll read through number 3 on that page, 22.

15 A Determine if the State has complied with Rule 5 and
16 Brady and to insure that they have and they have been
17 forthcoming with everything.

18 Q Okay. Now, you and I spoke about this last week. Is
19 that correct?

20 A Yeah.

21 Q And you said there was an issue at the top of page 22.
22 Is that correct?

23 A Yeah.

RICKY PASSMORE - DIRECT BY MR. FOWLER

14

1 Q All right, what -- and you just read this into the
2 record. What -- what was the problem with the top of page
3 22 in your -- in your view?

4 A If you read it, the Judge never required them to
5 answer the question. When they asked -- when -- when the
6 State -- if you look back in the transcript, when the State
7 said that they wanted verification that we had complied,
8 Mr. Hall gave verification, but when we made a motion for
9 the same verification, they never replied. They never said
10 that they complied with it, and the Court moved forward. I
11 think the Court shouldn't have moved forward past that
12 point. I feel -- you know, I feel like the Court didn't
13 have jurisdiction to move past that point without them
14 verifying on the record that they had complied with my
15 rights.

16 Q So you're saying that that question that was brought
17 up at the top of page 22, that was never answered in the --
18 -

19 A No. Read the transcript. They never answered it.

20 Q Okay. And you feel -- and you feel like that had a
21 negative impact on your case. Correct?

22 A Well, ---

23 Q It hurt your case ---

24 A --- I feel like it shouldn't have went past right
25 there. I feel like the Court should've required them to

1 answer, verified that they had complied with my rights
2 before the trial.

3 Q And that was on page 22, so it was right at the front
4 of your trial. Is that correct?

5 A Yeah.

6 Q Okay. Did they ever -- to the best of your knowledge,
7 did they ever provide any documentation saying that they'd
8 complied with discovery?

9 A They never answered it.

10 Q Okay. They never answered it in any way.

11 A Just like we never even made the motion.

12 Q How would extra discovery have helped you in this
13 matter?

14 A Say it again.

15 Q You said that the State did not confirm that they
16 complied with discovery. Correct?

17 A Yeah.

18 Q Okay. If they had have complied with discovery or if
19 they had confirmed that, how would that have made things
20 better for you possibly? I mean ---

21 A Well, the thing is, there was evidence favorable to me
22 that I'm not sure at this point that whether Mr. Hall got
23 it or whether they didn't give it to him, but I know it was
24 obtained because it was mentioned here in the courtroom by
25 Solicitor Holland in pre-trial, and it was mentioned by

RICKY PASSMORE - DIRECT BY MR. FOWLER

16

1 Lieutenant Tanner Davis of Clover Police in his testimony,
2 and I testified to its existence. The jury never got to
3 see that.

4 Q All right, well, let's -- let's break that down for
5 just a second. You're saying that -- if I'm correct in
6 what you just said, you're saying that there was discovery
7 favorable -- favorable to you ---

8 A Yes, sir.

9 Q --- that was never presented to the jury. Is that
10 correct?

11 A Yes, sir, several pieces.

12 Q Okay. Briefly, and then we can expand on them in your
13 testimony, what are some of those things that you feel
14 never -- parts of discovery that you feel never got to the
15 jury?

16 A Well, one, the State claimed that I went through the
17 residence, opened every door in the residence and flipped
18 on every light switch. The jury never got to hear that
19 they fingerprinted every door knob and every light switch
20 and not one of my fingerprints was on any of them. I
21 testified that I did not search that house looking for
22 anybody. Well, there were fingerprint records to support
23 my testimony. Mr. Hall had those records and did not
24 present them in my defense. Okay. They testi -- I
25 testified that I called twice. The State was painting a

1 picture of me trying to sneak up under cover of darkness
2 and catch somebody. I told them I called twice in route
3 and told the people I was coming. I wasn't trying to slip
4 up on anybody to commit any crime. Well, they painted the
5 picture during the trial that I was lying. Okay. Well, it
6 turns out that the officer, Officer Lieutenant Tanner
7 Davis, made reference to those voice messages at trial, and
8 Mr. Hall never followed up on that. He never questioned
9 him, what messages are you talking about. He just let it
10 go and let their claim that I never called to announce
11 myself stand as the uncontested truth. That caused me
12 great harm.

13 Q Was there any other discovery favorable to -- you
14 mentioned two things, so ---

15 A Yes. They were painting a picture too. Their claim
16 was that me and my brother were involved in a conspiracy to
17 go and harm somebody. Well, one, like I testified to, if I
18 was involved in a conspiracy to come to your house and harm
19 you or anybody, I wouldn't have called you twice in route
20 and told you I was coming so you could have the SWAT or the
21 Army or whoever waiting on me when I got there. Wait a
22 minute. I lost my train of thought. See, that's what I'm
23 talking about right there.

24 Q Yes, sir.

25 A Um, ---

RICKY PASSMORE - DIRECT BY MR. FOWLER

18

1 Q But -- well, let me just recount ---

2 A Yeah, ask the question again.

3 Q Yeah, I apologize. Let me just -- I asked discovery
4 favorable to you that was left out. Okay? And so far --
5 and I'll rehash this one more time -- you said -- you
6 touched -- it was alleged that you touched every door,
7 there was nothing proving that.

8 A That was the fingerprint report that was favorable to
9 me.

10 Q You said that it was portrayed that you perhaps went
11 under darkness but you called ahead of time ---

12 A That was the -- yeah, the voice mails that were
13 favorable to me, ---

14 Q Okay.

15 A --- and uh, Julia's statement. Their alleged victim -
16 - me and Mr. Hall listened to a police recording that was
17 from his body cam the way it sounded when we was listening
18 to it. The minute those police got to her residence on the
19 night in question, Ms. Coleman, you can hear her clearly on
20 that police recording, tell them, Mickey and Becky said or
21 did nothing wrong. Okay? That right there recording
22 should've been used in my favor, because it killed the
23 conspiracy theory that the State founded their case on to
24 satisfy criminal intent element of first degree burglary.
25 Okay. And addition to that, Mr. Hall listened to that. He

1 knew without a doubt them police had no authority at that
2 point whatsoever to arrest Mickey or Becky or take any
3 property out of their car. If she had made an allegation
4 against them, they'd had authority to do something, but she
5 had cleared them of anything, and the police still took
6 them in custody, still illegally confiscated their property
7 and used it against me. Mr. Hall knew this. Before trial
8 Ms. Coleman wrote an affidavit, signed an affidavit and
9 stated in article 5 of that affidavit ---

10 MS. COLEMAN - Objection to hearsay.

11 A --- Mickey Passmore said or done ---

12 MR. FOWLER - Your Honor, uh, this is -- I'm just
13 trying to kind of get a summary of each of the things that
14 he feels has been left out that he could address, and I'll
15 go back into these a little bit more specifically. I'll
16 just -- I'll -- I'd like to ask him to finish up this kind
17 of summary section and ---

18 THE COURT - I'm going to allow the question
19 without a jury -- Mr. Fowler, I mean I -- can you as the
20 lawyer tell me what claims are -- what the claims are here?

21 MR. FOWLER - Yes, sir, I can and ---

22 THE COURT - I mean with specificity as far as --
23 I mean -- not just ineffective assistance but, you know,
24 what you're arguing.

RICKY PASSMORE - DIRECT BY MR. FOWLER

20

1 MR. FOWLER - And he's going over this, Your
2 Honor, and -- when it was prepared, I -- you know, he's
3 indicated that there was discovery that was left out that
4 his attorney should have -- there was -- which includes
5 each one of these, Your Honor, and also he's indicating
6 that there's an affidavit out there that we would like to
7 address at a later time that was not brought to the Court's
8 attention. At this point he's -- he's responding to my
9 question of what discovery was left out flowing from the
10 top of page 22 where Mr. Passmore, my client, indicates
11 that the State did not adequately address that issue at
12 trial, so that's kind of where I'm going. At the top of 22
13 they did not indicate that all discovery was presented.
14 Mr. Passmore right now is going over several things that
15 apparently were discoverable or in the file that were not
16 presented to the Court.

17 THE COURT - Is this an allegation of a Brady
18 violation or is this a allegation that Mr. Hall had
19 documents he didn't present to the jury?

20 MR. FOWLER - It's my understanding that Mr. Hall
21 had the -- and my client can obviously indicate that
22 probably better than I can, but he's indicated that Mr.
23 Hall had them but did not present them to ---

24 MR. PASSMORE - And in regards to ---

25 MR. FOWLER - Oh, uh, (sic) ---

1 MR. PASSMORE - Okay.

2 MR. FOWLER - Which goes under ineffective
3 assistance of counsel in my opinion, Your Honor.

4 THE COURT - Okay.

5 Q And, Mr. Passmore, because of this we want to make
6 sure that we get to the point on some things, and you've
7 mentioned, you know, sometimes the focus maybe is not
8 there, but you mentioned several things that were discovery
9 favorable to you that was not presented. Are you
10 indicating -- and to ask the judges' questioning, are you
11 indicating that your attorney, Mr. Hall, had these items
12 and he did not present them to the jury or did he not
13 present them adequately to the jury or how did he ---

14 A Mr. Hall had the copy of the affidavit from Julia
15 Coleman to which completely destroyed the State's
16 conspiracy theory, ---

17 Q So you're ---

18 A --- and he had -- what I'm not sure is a Brady
19 violation or not is the two voice mail messages. I'm not
20 sure he got those.

21 Q Okay. All right. So -- so far we've talked about --
22 you mentioned at least four different things on the stand.
23 Okay? The lack of fingerprints, you know, under dark --
24 the calling ahead of time, the lack of conspiracy and

RICKY PASSMORE - DIRECT BY MR. FOWLER

22

1 Julia's affidavit -- Julia Coleman's affidavit. Those are
2 four things you've mentioned. Correct?

3 A Yes, sir.

4 Q Is there anything else that you feel fits under this
5 category?

6 A Yeah, I feel -- I advised Mr. Hall for ten months
7 leading up to trial what my testimony would be. My
8 testimony was, I went over to Ms. Coleman's under the
9 belief that the dude was not there to talk to -- to ---

10 Q That who was not there?

11 A The guy they called Chip, whatever his name was.

12 Q Okay.

13 A --- was not there so I could speak to Ms. Coleman.

14 Q Okay. So all right ---

15 A I told -- I told Mr. Hall that that's what my
16 testimony would be. Well, in his opening statement, one of
17 the first things he said was, he went to Clover, he went to
18 Ms. Coleman's house to see if he could find Chip. That
19 completely abandoned me at trial right there and left me in
20 the presence of three prosecutors with no defense, and what
21 he did right there was shifted the burden of proof off of
22 the State and threw it on me. Now, ---

23 Q All right, let -- let -- all right, let -- we'll get
24 to that with the Court's indulgence in a moment. Is there
25 anything else you said that was discoverable that would not

1 -- that he had and did not present or the State did not
2 verify?

3 A Just bear with me here a minute, man. I ain't got
4 nowhere to put nothing. Repeat that question again.

5 Q Well, was there -- and we'll -- if you can't find it,
6 we'll go through each one of these in just a moment, but
7 was there anything else that you felt like he did not
8 present to the jury or to the Court in your favor on this -
9 - that was not discover -- that ---

10 A Well, yeah, Rebecca Rogers wrote a statement and in
11 the statement -- and right here is a copy of it -- she said
12 ---

13 MS. COLEMAN - Objection to hearsay.

14 A --- that when we were in route to Clover ---

15 MR. FOWLER - Okay, ---

16 A --- one of the kids called on Mickey's phone ---

17 MS. COLEMAN - Your Honor, ---

18 MS. COLEMAN - Objection to hearsay.

19 A Huh?

20 THE COURT - I'm going to overrule that.

21 A Huh?

22 Q Go ahead.

23 THE COURT - You can testify.

24 A I can go ahead? All right, she said in her statement
25 -- and Mr. Hall had a copy of this statement -- she said in

RICKY PASSMORE - DIRECT BY MR. FOWLER

24

1 her statement that one of the kids called -- which would've
2 been at the residence I was heading to -- and said -- and
3 talked to me on Mickey's phone and she heard me say, we
4 just entered Clover, we'll be there soon. This -- this
5 helped kill the State's claim of criminal intent trying to
6 sneak up under cover of darkness on somebody, and Mr. Hall
7 had Rebecca Rogers on the stand and he never questioned her
8 about that. Now, he just let the States (sic) claim that I
9 was trying to sneak up on somebody with criminal intent
10 stand as the uncontested truth, and that hurt me.

11 Q All right. Just briefly, anything else that you feel
12 like is relevant at this point in terms of outlining what
13 your issues are?

14 A I'd have to ---

15 Q Think you listed six, but go ahead.

16 A I'd have to go through here.

17 Q Well, you and I spoke about it and I think we've --
18 you've discovered some of these things. Let's talk about
19 this individually briefly. You mentioned earlier that you
20 said that the State claimed that you touched doors and ---

21 A Yes, sir.

22 Q Okay.

23 A They claimed that I went through the residence, turned
24 on every light switch and opened every door searching for

1 the guy. This claim was to support their criminal intent
2 element. Again, uh, ---

3 MR. FOWLER - May I approach the witness, Your
4 Honor.

5 THE COURT - You may.

6 A They fingerprinted every doorknob and every light
7 switch. My prints was on nothing. What's the odds on
8 that?

9 Q All right, this is something that you presented to me
10 earlier. Is that correct?

11 A Yes, sir.

12 Q Okay. Is this what you're referring to?

13 A Yes, sir, that's fingerprint reports.

14 Q Okay, and it's a two-page report. Correct?

15 A Yes, sir.

16 Q All right, who is it done by?

17 A It's -- says RO -- I'm assuming that means responding
18 officer -- met with Lieutenant Tanner Davis ---

19 Q Well, you don't have to read from it, but who -- who
20 was it done by?

21 A It was done by York County Forensic Services Unit.

22 Q Okay.

23 MR. FOWLER - Do you have any objection to this
24 coming in? It's a document I think that was in discovery.

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1 MS. COLEMAN - Sure. And, Your Honor, if he would
2 just lay the foundation as it was in the discovery, you
3 know, where it came from, how he knows what it is.

4 MR. FOWLER - Okay.

5 MS. COLEMAN - Thank you.

6 MR. FOWLER - So if I may approach again, Your
7 Honor.

8 THE COURT - You may.

9 Q So you -- this is something that you have knowledge
10 of. Is that correct?

11 A When?

12 Q When did you get that document?

13 A When I wrote the public defender's office and asked
14 for a copy of the file. That's ---

15 Q When did you do that, roughly?

16 A Last year.

17 Q Okay, so it was after your trial. Correct?

18 A Yeah.

19 Q All right. Now, so you obtained this document from
20 whom?

21 A York County Public Defender's office.

22 Q And when did you obtain it? You -- anyway, you
23 obtained it after the trial. Correct?

24 A Yes, sir.

1 Q Okay. And it was in the discovery evidence that was
2 presented to you from the attorney general's office. Is
3 that correct?

4 A Yes, sir.

5 MR. FOWLER - All right. Your Honor, I'd like to
6 enter this into evidence.

7 MS. COLEMAN - No objection. Thank you.

8 THE COURT - Without objection.

9 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
10 APPLICANT'S 1.)

11 Q So we're not retrying the facts of your case here, but
12 what we're talking about is how you're -- how your attorney
13 did or did not use this. Is this -- to reiterate, is this
14 something that you saw during your trial, or when did you
15 first see this document, the ---

16 A Which one you got?

17 Q --- one that we're talking now, the report?

18 A The fingerprint report?

19 Q Yes, sir.

20 A When it came to me in the mail at Broadriver
21 Correction.

22 Q Okay, so you're saying that you did not have this
23 during your trial. Correct?

24 A No, sir, I didn't have anything.

25 Q Did your attorney go over that with the jury?

1 A No. He didn't present this in my favor at all.

2 Q Okay. Do you think he should have?

3 A Yes, sir, I do. I mean what's the ---

4 Q Now, let me -- why do you feel like he should've done
5 ---

6 A Because the State claimed that I went through
7 searching somebody's house looking for somebody to do
8 bodily harm to them. They claimed -- and even presented
9 people on the stand to claim that I went through there,
10 turned on every light switch, turned every doorknob, York
11 County comes in and fingerprints -- what's the odds of me
12 touching every light switch and every doorknob in your
13 house and not one of my fingerprints being on any of them,
14 and I testified that they were lying. I never searched
15 anybody's house.

16 Q So do you feel like this should've been brought to the
17 ---

18 A Yes, sir, I do.

19 Q --- Court's attention ---

20 A Yes, sir, I do.

21 Q --- and -- Okay. And once again, you're saying your
22 attorney did not do that. Is that correct?

23 A No, sir, he didn't.

24 Q Okay. Do you feel like that was harmful to you?

1 A Yes, I do. I feel like that very -- I mean it was
2 very helpful to the prosecution. It was effective for them
3 and ineffective for me.

4 Q You mentioned -- moving on to another topic, you
5 mentioned that you called ahead of time. Is that correct?

6 A Yes, sir, twice.

7 Q Who -- was that brought -- was that brought up at your
8 trial at all or ---

9 A The only -- I brought it up and Lieutenant Tanner
10 Davis eluded to -- when he stated on the stand, I met with
11 Ms. Coleman, got the cell phone messages -- that's the two
12 calls I made -- and the recording. Holland, Solicitor
13 Holland on the record -- it's on the record -- in pre-trial
14 told the Judge, we have the recordings of Ricky, but we
15 don't have any of Mickey. That's -- that's in the record
16 in pre-trial. So, yeah, they admitted that they had them,
17 but I never heard Mr. Hall say that he had them. That's
18 why I said with that particular thing right there, I'm not
19 sure if we're looking at a Brady violation or an
20 ineffective assistance of counsel, but -- but I guess we
21 could call it ineffective assistance of counsel, too,
22 because I told them, like I said, repeatedly, you know.
23 And we listened -- we listened to a recording of a police
24 interview with Detective Mozelle (phonetic) interviewing
25 Tara Passmore and Julia Coleman in their home the day after

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1 the alleged incident, and you could clearly hear it was
2 Tara or Julia one on the recording say, he called twice
3 more that night. Now, Mr. Hall heard this recording right
4 with me, so he knew there were some messages out there, and
5 I feel like he should've -- he should've done something to
6 get a hold to them if he didn't get a hold to them.

7 Q So -- so you're saying that Attorney Hall did not --
8 at that time did not adequately present those to the Court.
9 Is that correct?

10 A He didn't present them to the Court at all.

11 Q And you feel like that would've been helpful in your
12 case?

13 A Yes, sir, and the fact that he didn't present it to
14 the Court, Solicitor Epting used in his closing statement
15 when he said, who says he called, he's the only person in
16 here that says he called. Well, the solicitor had just
17 admitted in pre-trial that they had the recordings, and he
18 lied to that jury when he said, who said he called. He's
19 the only one said that made it out like I was lying and Mr.
20 Hall didn't object to that.

21 Q Okay. Now, you said something to the effect earlier
22 that you and your brother, Mickey, had conspiracy charges
23 against you. Is that correct?

24 A They were founding their case on a conspiracy theory.
25 Now, Mickey's lawyer, Pete Nosal, I think his name was, he

1 moved for a severance. His claim was that if they used a
2 recording of me talking to my daughter on the phone as
3 evidence of a conspiracy between me and him and then I
4 didn't take the stand, he would be deprived of his Sixth
5 Amendment right to face his accuser. The Court agreed and
6 severed, and then the same -- the same recording plus
7 Mickey's illegally confiscated property out of his car --
8 because remember what I told you, Julia Coleman advised
9 police as soon as they got to her house that Mickey and
10 Becky done nothing wrong, yet police took them into custody
11 eight miles up the road and took property out of their car
12 and claimed it as evidence of a conspiracy against me --
13 was used against me. Mr. Hall never called Mickey Passmore
14 to the stand, so, therefore, I didn't get to face my
15 accuser while they used his property against me.

16 Q And the conspiracy charge was against you and Mickey
17 Passmore. Is that correct?

18 A Say it again.

19 Q The charge of conspiracy was against you and Mickey.
20 Is that correct?

21 A Yeah. I don't know that they actually -- it seemed to
22 me in the very beginning that they actually charged us, but
23 Judge Hayes asked -- when Solicitor Holland in pre-trial
24 was saying something about getting the recording in against
25 Mickey in a separate trial as a statement of co-defender

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1 (sic), Judge Hayes said, I don't see either one of them
2 charged with conspiracy, Holland said they weren't actually
3 charged, the police never charged them, and I never direct
4 indicted them. The Court's question was, well, then how
5 can it be a statement of co-conspirator if they're not
6 charged with conspiracy, and she, you know, along that
7 lines, but ---

8 Q Were you convicted of conspiracy?

9 A No, sir. The charges -- well, you -- like you read,
10 ---

11 Q Right.

12 A --- it was -- the conspiracy -- they were -- what they
13 did, instead of charging us with conspiracy, they founded
14 their case on a theory of conspiracy in order to satisfy --
15 like Mr. Nosal said in the transcript, in order to satisfy
16 the criminal intent element of first degree burglary.

17 Q And you feel -- and you're indicating that your lawyer
18 did not attack that conspiracy issue correctly. Correct?

19 A No, he didn't. He had multiple chances to attack that
20 and didn't.

21 Q Okay. And you've gone over some of those here.
22 Correct?

23 A Yeah.

24 Q All right. You mentioned earlier that there was a
25 Julia Coleman affidavit. Is that correct?

1 A I mentioned what now?

2 Q A Julia Coleman affidavit?

3 A Yeah.

4 MR. FOWLER - May I approach, Your Honor.

5 THE COURT - You may.

6 Q Is this the document that you were referring to?

7 A Yes, sir, it is.

8 Q All right. Tell me a little bit about that document.

9 What is that -- and it appears -- is it clocked in on -- in
10 a Court document?

11 A This was filed with the clerk's office on -- in 2014 -
12 - February 5th, 2014 at -- looks like 8:19 a.m.

13 Q Now, was this is in your case, or was this in someone
14 else's case? Was this document filed -- was this filed in
15 your case? It is correct, right?

16 A This -- Mickey's lawyer filed this.

17 Q Okay.

18 A And right here in article 5 ---

19 Q Well, hold on a second. So he filed it, but is it in
20 -- it's in your discovery. Is that correct?

21 A Yeah. I got this from the public defender's office.

22 Q Okay, so that's documentation that you got from the
23 public defender's office.

24 A Yeah, I got this from the public defender's office
25 when I wrote and asked for a copy of the file.

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1 Q And it is apparently clocked in with the Court.

2 Correct?

3 A Yes, sir, filed with the clerk's office.

4 Q And you mentioned the date earlier. When did you get
5 that, roughly what time period?

6 A When did I get this?

7 Q Yes, sir.

8 A I -- man, I -- I honestly can not tell you when it was
9 that I wrote the public defender's office.

10 Q But it was ---

11 A Yeah, it was ---

12 Q It was after your trial. Correct?

13 A It was -- yeah, it was well after the trial.

14 MR. FOWLER - Okay. Your Honor, I'd like to enter
15 this into evidence.

16 MS. COLEMAN - No objection.

17 THE COURT - Without objection.

18 MR. FOWLER - Thank you, Your Honor.

19 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
20 APPLICANT'S EXHIBIT NUMBER 2.)

21 MR. FOWLER - And that's Applicant's Exhibit 2.)

22 Q Now, you brought to my attention number 5 on this
23 affidavit. Is that correct?

24 A Yes, sir.

25 Q Could you read that to the Court?

1 A Yes, sir. Number 5 says, Mickey did nothing wrong in
2 my house that night, and I do not believe he had the intent
3 to commit a crime in my house. This was ---

4 Q Hold on just a second.

5 MR. FOWLER - May I approach the bench, Your
6 Honor.

7 THE COURT - (Indicting yes)

8 MR. FOWLER - These are the two documents that
9 have been entered into evidence so far. I apologize for
10 not giving you one earlier.

11 Q So, but you're Ricky Passmore. Correct?

12 A Yes, sir.

13 Q All right, now, what -- and that says Mickey Passmore
14 did nothing wrong. Is that correct?

15 A Yes, sir.

16 Q All right, so how does that relate to your case?

17 A Because the State was claiming that me and Mickey were
18 in conspiracy together, and they took a recording from me
19 and my daughter, and they took his property out of his car
20 to support this and used it all against me. Well, this
21 statement right absolutely slayed their conspiracy claim,
22 and it was not presented in my behalf during the trial.

23 Q Do you feel like it should've been?

24 A Yes, sir, I do.

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1 Q Okay. And your lawyer did not do that. Is that
2 correct?

3 A No, sir, he did not.

4 Q Anything else about that affidavit that you feel is
5 relevant at this time? You drew attention to section 5.
6 Correct? That's a very important part. Right?

7 A Yes, sir.

8 Q All right.

9 A I feel like based on this, if nothing else, -- Mr.
10 Hall had Julia Coleman on the stand. He should've
11 questioned her about this. He could've killed that intent
12 claim right there.

13 Q Did he ask her about that affidavit?

14 A No, he did not.

15 Q Did that statement -- did her affidavit contradict her
16 testimony in Court? Did it -- did that contradict her
17 testimony in Court at any ---

18 A Contradict her testimony?

19 Q Yes, sir.

20 A No, she never testified about Mickey.

21 Q Okay. But you're saying that the affidavit supports a
22 lack of conspiracy charge. Correct?

23 A Yes, sir.

24 Q All right. If there's nothing else about that -- you
25 mentioned earlier that there was a -- that your attorney

1 said something -- Attorney Hall at that time said something
2 to the effect of -- in his opening statement to go and see
3 if we found Chip or ---

4 A Yes, sir, he ---

5 Q Just -- let me get me out and then you can articulate
6 it. So you're saying in the opening statement he said that
7 you went to go see Chip or whoever was at the house, other
8 than the female. Correct?

9 A Yes, sir.

10 Q Okay. How did that hurt your case?

11 A I told Mr. Hall, and I've got copies here if you want
12 to put them into evidence of letters that I wrote him -- I
13 got those copies back in the packets from the public
14 defender's office when I wrote and asked for the file -- I
15 repeatedly told him that I went over there under the
16 understanding from a conversation with my daughter that the
17 dude was not there.

18 Q Okay, and you said the dude. Now, are you referring
19 to Chip?

20 A I'm talking about Chip.

21 Q Okay.

22 A Um, I went over there with the understanding he was
23 not there. In his -- in Mr. Hall's opening statement, he
24 told the jury that I went over there to see if I could find
25 Chip, which directly refuted what he knew my testimony was

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1 gonna be. In other words, what he did right there was
2 abandon me in opening statement in open Court.

3 Q Did he ever go over with you why he said that?

4 A Why he said it?

5 Q Right. You're saying that he said something about ---

6 A No, I -- I told him -- when he come set back down at
7 the table, I said, uh, Mr. Hall, you just went against me
8 right there, you just supported their criminal intent
9 element of burglary. And he said, what do you mean, and,
10 you know, during recess, we went back there and we talked
11 about it, and he said he would straighten it out in
12 closing, but he never mentioned it.

13 Q Okay.

14 A What he did is in his opening statement he said that I
15 went -- he refuted what he knew my testimony was going to
16 be, which made me look like a liar on the stand, and to my
17 way of thinking, very possibly caused the jury to infer
18 that at some point I had told him that I went looking for
19 that guy or he seen some sort of evidence to that is why he
20 said it.

21 Q So you feel -- so you feel that his opening statement
22 hurt your chances ---

23 A Yes, sir, it did. It directly supported the State's
24 claim of intent to say that I went over there looking for
25 that guy when I went over there under the understanding

1 that he was not there. Then in -- then in his closing
2 argument, he contradicted his self again and said he went
3 over there because he thought the guy wasn't there. Well,
4 now, this makes my lawyer look inconsistent, and it makes
5 me look like a liar in the middle.

6 Q So you feel like him saying that at the beginning of
7 the trial kind of clouded the jury's view on this?

8 A Well, yeah. It would've clouded mine if I'd have been
9 sitting in the jury box. I'd have said, well, you know,
10 especially when the defendant got on the stand and said he
11 went over there under the understanding that the guy wasn't
12 there. I'd say, wait a minute, now, I just heard his
13 lawyer say that he we went over there looking for that guy.
14 That lawyer had to hear that somewhere; he didn't hear it
15 from me; he heard it from the solicitor's office.

16 Q You mentioned earlier -- if there's nothing else on
17 that topic, you mentioned a Rebecca's Roger's, -- is that
18 correct? -- a statement from her that clears you of
19 criminal intent.

20 A Yes, sir.

21 Q You said that earlier.

22 A Yes, sir.

23 Q Tell me a little bit about that.

24 A Do you want this back?

25 Q No, you can keep it.

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1 A Rebecca Rogers signed -- I can't pick it up. Rebecca
2 Rogers signed a statement, and in that statement she said -
3 - thank you, sir -- she said ---

4 Q Well, don't quote from it, but just tell me a little
5 bit about what -- what it was.

6 A In here she made mention of me telling the kids, Tara
7 on the phone, we just entered Clover, we'll be there soon.
8 Okay, this would've supported my testimony that I called
9 twice in route. Mr. Hall never presented this. He never
10 questioned Becky about it on the stand, and the Solicitor
11 Epting used the fact that he didn't against me in his
12 closing argument.

13 Q But you're saying that Ms. -- and that was before the
14 trial -- is that correct? -- that all that document --
15 that she brought that to his attention?

16 A Yeah. She wrote this when she was arrested.

17 Q Okay. All right, ---

18 A Unlawfully arrested, because Ms. Coleman had told them
19 that they did nothing wrong.

20 Q Okay. How -- but -- and just to clarify and
21 summarize, so you're saying that Ms. Rogers made statements
22 that were contradictory -- that would've -- strike that --
23 that would've helped you. Is that correct?

24 A Yes, sir.

25 Q And that was not brought to the Court's attention?

1 A No, sir, at all.

2 MR. FOWLER - All right.

3 Your Honor, may have just a moment to look at my
4 notes, please.

5 THE COURT - You may.

6 (WHEREUPON, BRIEF PAUSE)

7 Q In our discussion previously you said that there was a
8 door in Tara's bedroom. Is that correct?

9 A Yes, sir.

10 Q Okay, tell -- and I don't want to put words in your
11 mouth, but tell the Court a little bit about what you said
12 to me and what your ---

13 A Uh, Tara claims that I busted her bed ---

14 Q And who is -- hold on a second. Who is Tara?

15 A Tara is my daughter by Ms. Coleman.

16 Q Okay.

17 A She claimed that searching for this guy in the house,
18 to support their intent element, she claimed that I busted
19 her bedroom door open, and in the record she says, I
20 remember when the door slung open, it bumped my bed, and it
21 woke me up. Well, her bed is on the opposite wall from the
22 door. I'd a had to take it off the hinges and slam across
23 the room to make it bump her bed. There was a picture in
24 one of their exhibits of that room that would've proved

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1 that the bed was on the other side of the wall. That
2 wasn't presented.

3 Q Do you think your attorney should've gone into that a
4 little bit?

5 A Yes, sir. She was flat out lying.

6 Q Okay. Did he contradict that or try to contradict it
7 at the trial?

8 A No. Not that -- not that I saw.

9 Q You mentioned something about a foggy window that
10 somebody ---

11 A I -- I stated on the ---

12 Q Tell us a -- hold on a second. Just to add some
13 background, you're saying that there was an issue at trial
14 about a foggy window ---

15 A Yes, sir.

16 Q --- that your attorney did not go over adequately
17 you'd said to me earlier ---

18 A Yes, sir.

19 Q --- that you could verify here. Tell me a little bit
20 about that.

21 A Uh, I stated on the stand that -- I believe my exact
22 words were, if I had not believed on the way over to Ms.
23 Coleman's that her alleged boyfriend was not there, I
24 would've known it when I looked in the window and saw Ms.
25 Coleman asleep on the loveseat, because I know the two

1 bedrooms belong to the kids, so that -- when I looked in
2 that window, that, too, told me that he wasn't there, and I
3 stated on the stand that's before I crossed the threshold.
4 The law says I have to cross the threshold with criminal
5 intent for it to be a burglary first. Well, and they was
6 saying that the window was fogged up, said Cody couldn't
7 see who it was out the window, the window was fogged up,
8 and he thought it was the boyfriend at the door. Well, no,
9 he didn't think that; he knew it was me. Well, then less
10 than two minutes later a police officer shows up, and what
11 does he testify to on the stand? I looked in the window,
12 that same window, and saw Ms. Coleman. Not only did he see
13 Ms. Coleman standing at the kitchen counter, he could see
14 her well enough that he claimed that there was fear in her
15 face, yet you telling me that window was fogged up and I
16 couldn't see through it enough to assess the situation in
17 the room two minutes before.

18 Q So, you're saying -- did your attorney address that?

19 A Nope, he didn't bring that up.

20 Q Okay. Do you feel like he should have?

21 A Yes, sir, I do.

22 Q Okay.

23 A This man's a total stranger to this residence; I'm
24 not. And if he can look in the window and assess the
25 situation and it two minutes behind. Huh, come on.

1 Q All right. We mentioned several things in our
2 conversations and today on the stand, but -- and we're kind
3 of winding up this, but you mentioned that there was a tape
4 in Court, and you feel like the solicitor may have done
5 some -- entered ---

6 A Yes, that tape ---

7 Q And I want to be -- I want to be careful here. What
8 tape are you referring to?

9 A I'm referring to recorded conversation of me and my
10 daughter, Tara Passmore.

11 Q Okay, and was that on the night of the alleged
12 incident or ---

13 A Yes, sir.

14 Q Okay. And you're saying the solicitor, the
15 prosecution basically presented that at trial?

16 A Yes. They presented approximately 20 minutes of a 45
17 minute to one hour tape recording, and they edited every
18 part of it out of there favorable to me where I made it
19 very clear that I didn't want any trouble with anybody,
20 that the only thing I was going to do was try and talk to
21 Ms. Coleman. They edited every part of it out before they
22 played it in Court. I brought this to Mr. Hall's attention
23 prior to trial. He said or did nothing.

24 Q Let me just be clear on what you're saying here. Are
25 you saying that they -- you feel like they edited the tape,

1 or are you saying that they did not play portions of the
2 tape favorable to you?

3 A Whichever one they did, they didn't -- I feel like if
4 you're going to play the tape, then play the tape. Let's
5 hear the parts of it favorable to me, too, but they didn't.
6 They kept that out. They didn't want the jury to hear
7 that.

8 Q Did your attorney address that to the Court?

9 A No, he didn't.

10 Q Did you talk with him about that?

11 A Yes, sir, I did.

12 Q What did you tell him?

13 A I told him I wanted every part -- if they was going to
14 play it, then play every part of it.

15 Q Did he -- and he didn't address that issue with the
16 Court?

17 A Nope.

18 Q In your application you state failure to complete the
19 Court. What did you mean by that?

20 A I read two federal court rulings. I can't think of
21 them right off the top of my head, but I got them wrote
22 down, where it said that a Court can lose jurisdiction to
23 proceed early in the matter for its failure to complete the
24 Court. So based on what I read on those two federal court
25 rulings, I look back and I said, well, huh, this man did

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1 nothing to suppress illegally obtained evidence against me
2 and his opening statements completely supported their
3 intent claim, then the Court was not complete, because it's
4 supposed to be complete with counsel as effective
5 assistance of counsel for my defense. And what he done was
6 not for my defense; it was for the prosecution.

7 Q Well, let -- let me ---

8 MR. FOWLER - If I may approach, Your Honor.

9 A That's why I wrote that on there.

10 Q Okay. You brought to my attention two specific pages
11 in the transcript that the Court has taken judicial notice
12 of, and it's in the record, pages 50 and 256, and I'm
13 presenting those to you here now. What -- what on those
14 pages did you indicate to me earlier that might relevant or
15 is relevant here today in Court?

16 A Mr. Hall -- this is from page 50 -- is Mr. Hall's
17 opening statement. He was explaining that me and Mickey go
18 up -- or let me see -- go up and knock on the door; the
19 door is opened and Ricky went in to check on his children,
20 that and to see if he could find Chip. That was a lie. I
21 told him for ten months prior to trial that I went over
22 there under the understanding that Chip was not there to
23 speak with Julia without him being involved in the
24 conversation. Okay?

25 Q So, ---

1 A And he completed refuted what he knew my testimony was
2 going to be at trial in his opening statement. Then when
3 you go over here ---

4 Q Okay, hold on a second. So, let's wind up on page 50.
5 So you're saying that's -- is that the particular portion
6 of the ---

7 A Yes, that's where he completely abandoned me right
8 there. What he did right there in my opinion is shifted
9 the burden of proof from the State and put it on me.

10 Q Okay. And let's go to page 256. Can you read what
11 you felt was relevant there in this matter?

12 A Yeah, Mr. -- Solicitor Epting stated -- and he used
13 those very words in his closing to the jury. When he said
14 we went over there ---

15 Q What line are you -- what line are you ---

16 A I'm on line 12.

17 Q Okay, line 12.

18 A --- to try to find Chip, and if Chip was in the house,
19 to harm him or possibly kill him.

20 Q Okay.

21 A I did not go over there so try to find Chip, but Mr.
22 Hall said in his opening statement that I went over there
23 to try to find Chip and then Epting played on it and used
24 it against me in closing. That is complete ambush. That's
25 completely unfair.

1 Q So you're saying what was said on page 50 came back to
2 haunt you on -- by your attorney ---

3 A Yes, it did.

4 Q --- came to haunt you on page 256.

5 A Yes, it did.

6 Q You mentioned multiple constitution violations in your
7 application. Is there -- and you've gone over some of
8 those today -- correct? -- on the -- what you indicated
9 completing your case. Correct?

10 A Yes, sir.

11 Q Failure to complete the Court. So you've gone over --
12 we've gone over much of the things that we -- we've gone
13 over what you and I have discussed previously and what you
14 have indicated is relevant to this case today. Is that
15 correct?

16 A (No response)

17 Q Is there anything else -- and we've gone over several
18 things for the Court to review and think about. Is there
19 anything else that you'd like to bring the Court's
20 attention to on anything else that's relevant in this
21 matter?

22 A Well, I believe I wrote on there denial of my right to
23 trial by jury, and ---

24 Q Yes, you did.

1 A --- the reason I wrote that on there is because I had
2 a right to -- to have the jury hear all the facts and try
3 the case on all the facts, even the ones favorable to me.
4 They did not present those to a jury, thereby denying me my
5 right to a trial by a jury. That's why I put that on
6 there.

7 MR. FOWLER - If I may approach one more time.

8 THE COURT - You may.

9 Q Lines 10 and 11 of this application. I think we've
10 gone over each one of them, but is there anything else
11 you'd like to say about those two sections of your
12 application?

13 A I put on there lack of jurisdiction, and the reason I
14 put that on there is because I felt like the Court lost
15 jurisdiction to proceed when it did not require the State
16 to confirm on the record that it had complied with my
17 rights under Brady. I personally -- I felt like the Court
18 lost jurisdiction to proceed past that point. Now, I could
19 be wrong, but I put that there just in case I was right,
20 you know.

21 Q Anything else, Mr. Passmore?

22 A Not that I can think of right off the top of my head.

23 MR. FOWLER - That concludes our direct
24 examination. Please answer any questions the attorney
25 general may have.

RICKY PASSMORE - CROSS BY MS. COLEMAN

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1 MS. COLEMAN - Thank you.

2 Good morning, Mr. Passmore.

3 MR. PASSMORE - Good morning.

4 CROSS EXAMINATION

5 BY MS. COLEMAN -

6 Q My name is Julia Coleman, too, ---

7 A Okay, uh oh.

8 Q -- so that's very confusing, so just to clarify for
9 the record, every time this morning you've mentioned Ms.
10 Coleman or Julia Coleman, you're talking about your ex-
11 wife. Is that right?

12 A Yes, that's correct.

13 Q Okay. Just wanted to clear that up. How many times
14 did you meet with your attorney? Do you remember about how
15 many meetings you've had?

16 A I have no idea.

17 Q Okay. Was it several?

18 A Yeah, it was -- it was several. He came by, I got to
19 say, more than any other one I ever had over there.

20 Q Yeah. So you felt like you had a good chance to talk
21 to him about your case?

22 A Well, he would come by and it wouldn't be but like a
23 five minutes meeting, and it wouldn't really be about much,
24 just, you know, things are the same, things along -- you
25 know, along that lines.

1 Q But did you have a chance to go through the discovery
2 with your attorney?

3 A Yes, we went through police videos. We went through
4 some traffic stop videos, and we went through recordings.

5 Q So as far as you know he showed you and discussed with
6 you everything that he had. Right?

7 A Well, now, I don't know if he talked about everything
8 he had. I never saw that police report, that fingerprint
9 report until I got it from the public defender's office in
10 the mail, so I don't know if he showed me every --
11 obviously he didn't. I never saw any phone records until I
12 got them in the mail, so, no, he -- I got to say he didn't
13 show me everything.

14 Q Okay. Did you discuss your defense with your
15 attorney?

16 A Well, I told him what my testimony was going to be as
17 far as my defense. I also told him that I wanted him to
18 file a motion to suppress that video -- or video -- that
19 audio recording out of evidence as unfairly prejudicial.

20 Q So you didn't tell him that you wanted him to play the
21 tape. Is that right?

22 A Yeah, after -- when I knew they were going to play it
23 Court, I said if they're going to play it in Court -- we
24 had several -- they played it at every time we come in the
25 courtroom, and every time something else favorable to me

RICKY PASSMORE - CROSS BY MS. COLEMAN

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1 was gone off it, so I told -- I said, wait a minute, why
2 are they taking favorable -- what's favorable to me in that
3 conversation off of there. I said, if they going to play
4 it, play the whole thing, if they ain't, then file a motion
5 against it, because that ain't right, and it ain't fair.

6 Q So, you told him that and y'all discussed that?

7 A Yeah. Matter of fact I got a copy right here where I
8 told him that in writing, and he sent me a copy of it back,
9 or well, he didn't. I got it from the public defender's
10 office in the package they sent me when I wrote them.

11 Q Now, you -- one of your first allegations that you
12 talked about today was your -- your mental health issue and
13 how you have trouble focusing. Did you know what was going
14 on during your trial?

15 A Well, now ---

16 Q Like did you understand the evidence against you and
17 knew what was happening in Court?

18 A Uh, -- did I know what was going on? Yeah, pretty
19 much on -- on my level, but now, on F. Lee Bailey's level
20 probably not, you know,

21 Q Did you understand all your discussions with your
22 attorney? Was there anything you didn't understand?

23 A Yeah, the best of my knowledge, yeah.

1 Q And if you -- if there was ever a time when you didn't
2 really know what was going on, did you ever ask him to stop
3 and explain it or let him know you didn't ---

4 A I don't recall. I remember us talking about certain
5 points we would hear in the police videos, and I would tell
6 him, I want this played, I want this brought out, but none
7 of it was ever brought out.

8 Q Okay. Now, you were never indicted for conspiracy.
9 Right?

10 A Well, like I said, the paperwork we got early on said
11 conspiracy on it, but then by the time it actually come in
12 front of Judge Hayes and Judge Hayes questioned that,
13 Solicitor Holland said we were never charged with it, but
14 the paperwork said we were. Matter of fact, Mickey's
15 lawyer, Mr. Pete Nosal, told the Judge in Court he was
16 charged with conspiracy, and the Judge at prelim threw that
17 out on Mickey.

18 Q But were you charged with conspiracy?

19 A Yeah, from my understanding of my paperwork, ---

20 Q Okay.

21 A --- but she said in -- in pre-trial that we weren't.

22 Q But they did not go to trial on conspiracy. Right?

23 A No.

24 Q Okay.

RICKY PASSMORE - CROSS BY MS. COLEMAN

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1 A But they -- what they did was claim conspiracy and
2 stockpiled -- they had that whole floor covered -- they had
3 a sheetrock trial down there, tools that men use every day
4 and called them weapons that they took out of Mickey and
5 Becky's car after being told by alleged victim, Julia
6 Coleman, that Mickey and Becky done nothing wrong. They
7 had no reason to take anything out of her car.

8 Q Now, you chose to testify at trial. Right?

9 A I did. Yeah, I did.

10 Q Why'd you do that?

11 A Why?

12 Q (Indicating yes)

13 A Because I wanted to tell my side of the story.

14 Q And you got to do that. Right?

15 A Yeah, ---

16 Q So you told the jury ---

17 A --- the best I can remember.

18 Q --- exactly what happened. Right?

19 A Told jury what?

20 Q You told the jury exactly what happened according to
21 you. Right?

22 A Yeah.

23 Q So they got to hear all of that. Right?

24 A (No response)

1 Q And you told them that when you came to the house, you
2 said you weren't looking for Chip. Right?

3 A Yeah, I told them that.

4 Q So they heard it.

5 A (No response)

6 Q Now, you --

7 MS. COLEMAN -- --- and I won't go into this too
8 much, because it's hashed out in the transcript quite a
9 bit, Judge, on cross examine -- cross examination of Mr.
10 Passmore, ---

11 Q --- but you've testified several times today that you
12 always told your attorney that you knew Chip wasn't going
13 to be at the house. Is that right?

14 A Yeah.

15 Q Then why did you come into the house and ask where
16 Chip was?

17 A I didn't. That was a lie.

18 Q Why did you bring a samurai sword?

19 A To -- same reason police walk around with a pistol on
20 their side. It sort of lets people that want to do no good
21 know that they will meet with resistance, you know, sort of
22 a psychological message, ---

23 Q And you testified ---

24 A --- a psychological shield between him and my children

25 ---

RICKY PASSMORE - CROSS BY MS. COLEMAN

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1 Q So you ---

2 A --- just to let him know in case he got anything
3 messed up in his head they had backup.

4 Q All right.

5 A You know, nothing -- nothing wrong with that.

6 Q You testified that you brought that sword to send a
7 message to Chip. Is that right?

8 A Yes, I did.

9 Q Okay. But it's your testimony today that you knew
10 Chip wasn't going to be there when you got there.

11 A Yeah.

12 Q Okay.

13 A I believed it. I thoroughly believed he wasn't, and
14 once I looked in the window, there was no doubt; he wasn't
15 there. And that was before I ever knocked on the door at
16 all. And to be a burglary first, I have to actually cross
17 the -- by my understanding of that law, I have to actually
18 cross that threshold with criminal intent to constitute a
19 burglary first.

20 MS. COLEMAN - Nothing further. Thank you.

21 THE COURT - Any re-direct?

22 MR. FOWLER - Yes, Your Honor.

23 RE-DIRECT EXAMINATION

24 BY MR. FOWLER -

1 Q The attorney general's office asked you if you'd been
2 through the discovery, and you indicated that you went
3 through the discovery that he provided, that your attorney
4 provided to you. Is that correct?

5 A I -- I didn't get anything before trial. What I went
6 through -- what I went through was what I got from the
7 public defender's office ---

8 Q But -- yeah, let me -- hold on just a second. Let me
9 ask -- ask it this way. He went over some documents with
10 you before your trial. Correct?

11 A I don't recall going over ---

12 Q You say you went over some police videos or something.
13 Correct?

14 A He showed me -- he showed me a copy when he come to
15 visit me one time of Julia's statement, her affidavit --
16 right? -- and I said good, that's good, and he acted kind
17 of happy about it, so, you know, I figured we was on the
18 same page right there and that, you know, he'd bring this
19 up at trial, but he never did.

20 Q But you're also saying that after the trial you wrote
21 the public defender's office. Is that correct?

22 A Yes, sir.

23 Q And you received information that he did not go over
24 with you. Is that correct?

25 A Yes, sir.

1 Q And that information could've been discoverable before
2 trial. Is that correct?

3 A Yes, sir.

4 Q Okay. You mentioned a motion to suppress on cross
5 examination. Tell me a little bit about that. Did your
6 attorney make either a oral motion to the Court or paper
7 motion to suppress that voice mail or audio that you were
8 talking about?

9 A I think it was a verbal motion, but he may have had a
10 piece of paperwork in his hand -- I can't remember -- but
11 the motion -- well, he said -- they were planning on
12 playing what portion of the recording of me and my daughter
13 that they would play in Court, and he said that he -- he
14 was making a motion for a severance because if they played
15 it and then I didn't take the stand, then his client would
16 be deprived of his confrontation right, his ---

17 Q Okay. Well, let's just be clear. You talked earlier
18 on cross exam about a motion to suppress, and you're saying
19 -- my understanding was that you wanted that audio to be
20 suppressed ---

21 A Yes, I -- I told him that I wanted it to be suppressed
22 out of evidence as unfairly prejudicial.

23 Q And did he -- did he do that? Did he ---

24 A No, he didn't.

1 Q So to be clear, you're saying he did not file any kind
2 of or make any kind of motion to suppress.

3 A No, sir, he didn't. I've a copy of his motions in
4 limine, and it's got all his motions that he made down
5 there, and that's not one of them, and I was standing right
6 beside him; I know he didn't make the motion.

7 Q You mentioned on cross examination that was mentioned
8 about your mental health. Right? And we indicated earlier
9 that he -- that your attorney never asked for you to be
10 tested in any way. Is that correct?

11 A No, sir, he didn't.

12 Q Okay. And also on cross examination there was a
13 discussion about conspiracy. And you're saying that you
14 were -- if I'm correct -- help me out here -- you're saying
15 you were -- you were initially charged with conspiracy. Is
16 that correct?

17 A The warrant -- the warrants -- I don't know if I got
18 it in there or not ---

19 Q Well, just -- just tell me ---

20 A The warrant said kidnapping slash conspiracy. The
21 bond papers and stuff I got said kidnapping, conspiracy to
22 commit kidnapping -- I wish I knowed you were going to ask
23 me that, I'd have brought them, but ---

RICKY PASSMORE - RE-DIRECT BY MR. FOWLER

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1 Q Well, I guess my question here is, you initially
2 thought that you were being charged with some form of
3 conspiracy. Correct?

4 A Yeah, they ---

5 Q And you went -- did you go to trial thinking that you
6 ---

7 A We went to a preliminary hearing, and the Judge threw
8 the conspiracy charge out on Mickey. Well, that naturally
9 killed the conspiracy charge on me, because they had --
10 they was claiming that me and him were in a conspiracy
11 together.

12 Q Well, was -- did the Court ever legally define that
13 because it was dropped on Mickey it was dropped on you?

14 A No, I never heard anybody say that. That's just me
15 talking right there, but -- but the State built its case --
16 I mean you read from the -- from open -- from pre-trial in
17 the record all the way to closing, their whole case, they
18 said conspiracy, conspiracy, conspiracy, and -- between me
19 and Mickey -- and covered that floor with Mickey's property
20 to support that theory. That had absolutely nothing to do
21 with nothing.

22 MR. FOWLER - No further questions, Your Honor.

23 THE COURT - Any re-cross?

24 MS. COLEMAN - No re-cross. Thank you.

1 THE COURT - Mr. Passmore, you can have a seat
2 back in the chair there. We're going to take a ten minute
3 break. Take a ten minute break. Court will be in recess.

4 (WHEREUPON, RECESS TAKEN)

5 THE COURT - Mr. Fowler, call your next witness.

6 MR. FOWLER - Pardon me, Your Honor?

7 THE COURT - Call your next witness.

8 MR. FOWLER - May I speak with my client for just
9 a moment.

10 (WHEREUPON, DISCUSSION IS HELD OFF THE RECORD
11 BETWEEN MR. FOWLER AND MR. PASSMORE OUT OF THE HEARING OF
12 EVERYONE WHICH WAS NOT REPORTED.)

13 MR. FOWLER - Your Honor, after discussion with my
14 client, we would have no further witnesses at this time.

15 THE COURT - And, Mr. Fowler, probably should've
16 done this at the beginning. I'll put on the record that my
17 brother is an attorney in the public defender's office
18 here. So I don't think he had any involvement in this
19 case, but ---

20 MR. FOWLER - Just -- may I speak with my client?

21 THE COURT - You may.

22 (WHEREUPON, DISCUSSION IS HELD OFF THE RECORD
23 BETWEEN MR. FOWLER AND MR. PASSMORE OUT OF THE HEARING OF
24 EVERYONE WHICH WAS NOT REPORTED.)

JESSICA HOLLAND - DIRECT BY MS. COLEMAN

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1 MR. FOWLER - Your Honor, I've discussed that with
2 my client and we can go forward with -- not a problem.

3 THE COURT - Okay.

4 MS. COLEMAN - Yes, Your Honor, the State calls
5 Solicitor Jessica Holland.

6 JESSICA HOLLAND, AFTER BEING FIRST DULY SWORN,
7 TESTIFIES AS FOLLOWS -

8 MS. COLEMAN - Good morning, Ms. Holland.

9 MS. HOLLAND - Good morning.

10 DIRECT EXAMINATION

11 BY MS. COLEMAN -

12 Q And if you will, please state your name and spell your
13 last name for us.

14 A My name is Jessica Holland, H-o-l-l-a-n-d.

15 Q Thank you. Where are you currently employed?

16 A The Sixteenth Circuit Solicitor's office in York.

17 Q And how long have you been employed there?

18 A It will be 11 years in October.

19 Q Okay. Were you involved with the case of Ricky
20 Passmore?

21 A I was.

22 Q Okay. Did you prosecute the case?

23 A I did.

24 Q Were you first chair on this case?

25 A I was.

1 Q Okay.

2 MR. FOWLER - Your Honor, at this time I'd like to
3 object to this witness being called. It's my understanding
4 this is about the relationship between my client and his
5 attorney at the time, and unless the solicitor has some
6 facts, personal knowledge about the relationship between my
7 client and his attorney at the time, we would like to
8 object to her being called as a witness and testifying
9 before the Court.

10 MS. COLEMAN - And, Your Honor, I -- I would just
11 call this witness in response to -- in direct response to
12 his Brady violation applications about whether, you know,
13 what discovery she turned over and whether anything was
14 withheld, as well as his indictments in this case.

15 THE COURT - Objection overruled.

16 MS. COLEMAN - Thank you, Judge.

17 Q Ms. Holland, so you prosecuted this case. Correct?

18 A I did.

19 Q Okay. Was Mr. Passmore originally indicted with
20 conspiracy?

21 A He was charged with conspiracy to commit kidnapping,
22 which is a separate charge. I cannot remember the statute
23 number, but it is a separate charge. It's not typical
24 criminal conspiracy.

1 Q Okay. And was that -- did you proceed to trial on
2 that charge?

3 A I actually indicted him for kidnapping, and we
4 dismissed the conspiracy to commit kidnapping charge.

5 Q Okay. Now, the applicant today has alleged several
6 Brady violations and there was a bit of question during his
7 testimony about whether they were turned over or not,
8 whether his attorney had them or not. Did you turn over
9 discovery, Rule 5 materials and Brady materials to the
10 applicant?

11 A Yes, ma'am, I did. I turned over everything that I
12 had in my file. I'm not sure why he believes that, but,
13 yes, I did turn over everything.

14 Q And was this one instance of turning everything over,
15 or was it an on-going discovery?

16 A It was on-going as we -- you know, as -- I believe
17 there was reference to an affidavit that was obtained
18 later. It was an on-going process.

19 Q To your knowledge, was there anything withheld that
20 would've been favorable to Mr. Passmore?

21 A Not to my knowledge.

22 Q Okay. He testified specifically today about a -- a
23 report about a lack of fingerprints in the residence. Do
24 you recall this report?

1 A I vaguely recall it being contained in the initial
2 discovery.

3 Q Okay. So was this turned over to ---

4 A It would've been turned over in the initial discovery
5 packet.

6 Q To Mr. Hall, his attorney?

7 A Yes.

8 Q Okay. Were there ever any recordings to your
9 knowledge of the voice mails that Mr. Passmore claims he
10 left on his wife's phone before the crime?

11 A We had a substantial amount of digital evidence,
12 phones that were ripped, 911 calls, things like that. I
13 remember there being reference to phone calls. I cannot
14 remember if I had those recordings. I have no recollection
15 or I could not tell you what they said.

16 Q Now, the main recording here was the -- a phone call
17 to his daughter, Tara. Is that right?

18 A Yes.

19 Q Okay. Did you turn this over to trial counsel?

20 A I did.

21 Q Was it ever edited in any way?

22 A I have no recollection of ever editing it. I was
23 provided a call that was roughly about 20 to 21 minutes
24 long. I never recall editing it in any way.

JESSICA HOLLAND - CROSS BY MR. FOWLER

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1 Q What was the State's theory of applicant's intent to
2 commit a crime within the dwelling?

3 A Largely based on that phone call. In the phone call
4 he is very clearly about what his intent is going to the
5 house. Julia Coleman was dating an African American man
6 who has been referred to as Chip, and I apologize, I don't
7 remember his name, but um -- and that he intended to go to
8 the house to deal with that situation, and he was armed at
9 that time.

10 MS. COLEMAN - Okay. Nothing further. Thank you.

11 THE COURT - Mr. Fowler?

12 CROSS EXAMINATION

13 BY MR. FOWLER -

14 Q What date did you turn over those -- that discovery?

15 A I -- I could not tell you. If I looked at my file, I
16 could potentially define a date, but I cannot tell you at
17 this time.

18 Q But you stated it was not one time, it was an on-going
19 discovery.

20 A I believe -- yeah, there was an on-going process.

21 Q But you can't provide the dates of that.

22 A No, sir, I cannot.

23 Q Okay. Also, -- and you said nothing was -- did you
24 say nothing was withheld to his attorney? Is that correct?

25 A No, I gave his attorney everything.

1 Q Okay. Do you know what his attorney turned over to
2 him?

3 A Oh, I would -- I'm not privy to any of their
4 conversations.

5 Q So you don't know what the relationship was between my
6 client and his attorney. Correct?

7 A Not other than what was evident at trial.

8 Q Okay. In terms of the phone call -- well, strike
9 that.

10 MR. FOWLER - If I may have just a moment.

11 THE COURT - (Indicating yes)

12 Q So you indicated that you were aware of some kind of
13 telephone call that was played at Court. Is that correct?

14 A The recording of the phone call between Tara Passmore
15 and Ricky Passmore?

16 Q Right.

17 A Yes.

18 Q Do you know how long that was?

19 A It was roughly 20 to 21 minutes long.

20 Q But you don't know specifically, do you?

21 A It was roughly 20 to 21 minutes long. I cannot tell
22 you how many seconds it was.

23 Q Was that -- well, -- was that -- what -- 20 to 21
24 minutes, was that what was played at Court?

25 A That is the call I was provided.

1 Q Okay.

2 A It was never edited.

3 Q So you don't know, but the call might've been longer.

4 A I -- I would be speculating. I -- I don't believe
5 their entire phone call was recorded. It could be possibly
6 that they were on the phone for longer, but the recording I
7 had was that length.

8 Q So you're saying that there's additional -- there
9 could've been a longer phone call out there that was not
10 provided to my client or my client's attorney.

11 A No, I'm saying that his daughter recorded a portion of
12 that phone call that they had. I am unsure of how long the
13 total phone call was.

14 Q Okay.

15 MR. FOWLER - If I may have just a moment, Your
16 Honor.

17 THE COURT - Certainly.

18 (WHEREUPON, BRIEF PAUSE)

19 Q You recall at trial that mention (sic) -- that you
20 mentioned that there were recordings, more than one
21 recording, that could've been offered?

22 A I apologize. I need you to be more specific.

23 Q Was there just one telephone call that you were
24 familiar with or was there multiple?

1 A There was the telephone call between Ricky Passmore
2 and Tara Passmore, which is obviously a critical piece of
3 evidence for us. Other recordings as far as digital
4 evidence that I -- I mean I know there was body cameras and
5 things -- not body cameras -- audio recordings and things
6 like that that Mr. Passmore referenced. I do not -- I
7 remember some reference to the phone calls he made on the
8 way there, but I cannot remember those recordings
9 specifically. This was over four years ago.

10 Q Okay, but you're testifying today as to what you had,
11 so --

12 MR. FOWLER - Okay, no further questions, Your
13 Honor.

14 THE COURT - Any re-direct?

15 MS. COLEMAN - No re-direct.

16 THE COURT - Thank you, Ms. Holland.

17 MS. COLEMAN - State calls Daniel Hall.

18 DANIEL HALL, AFTER BEING FIRST DULY SWORN,

19 TESTIFIES AS FOLLOWS -

20 MS. COLEMAN - Good morning.

21 MR. HALL - Good morning.

22 MS. COLEMAN - And it's now Judge Hall. Is that
23 correct?

24 MR. HALL - Yes.

25 MS. COLEMAN - Do you mind for the sake of ---

DANIEL HALL - DIRECT BY MS. COLEMAN

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1 MR. HALL - Just call me Mr. Hall today or Dan
2 Hall.

3 MS. COLEMAN - Okay, thank you. To avoid
4 confusion today.

5 DIRECT EXAMINATION

6 BY MS. COLEMAN -

7 Q How long have you been practicing law?

8 A Since 1988.

9 Q And is that primarily criminal law?

10 A Most of that time criminal law, yes.

11 Q Were you appointed or retained in this case?

12 A I was appointed. I was a public defender.

13 Q Do you recall when you were appointed or about how
14 long you represented him before his trial?

15 A An investigator -- and I'm going to refer to the notes
16 I took from the file -- an investigator from the public
17 defender's office met with Mr. Passmore on June the 27th of
18 2013, which at that point the public defender's office
19 would've been appointed. I met with him -- at some point
20 in time between then and July 25th I was assigned the case.
21 I met with him on July the 25th, 2013.

22 Q Do you recall from your notes or just from your memory
23 about how many times you met with the applicant before his
24 trial?

25 A I met with him at least 19 times.

1 Q And he went to trial at the end of March, 2014. Is
2 that right?

3 A Actually the case was called for trial twice. It was
4 -- we started the trial with jury selection on January the
5 28th, 2014. We were prepared for trial then and it snowed,
6 and the case was continued. We -- it was called for trial
7 two weeks later on February the 10th. We didn't get to
8 jury selection, but it snowed again, and so -- but we were
9 prepared at that time as well, and then eventually it was
10 called for trial on March 31st.

11 Q Did you have enough time to prepare this case for
12 trial?

13 A Yes, I did.

14 Q Did the applicant cooperate with you during the course
15 of your representation?

16 A He was always very cooperative.

17 Q Did you file any Brady or Rule 5 motions?

18 A I filed a Rule -- Brady Rule 5 motion.

19 Q To your knowledge, were there any Brady violations in
20 this case or anything withheld from you?

21 A They -- the solicitor's always very forthcoming
22 everything and -- and it appeared that everything that they
23 had been provided by law enforcement I had, and, in fact, I
24 think as far as the motion in limine or at trial when there
25 was a discussion about had the State complied, as well as I

DANIEL HALL - DIRECT BY MS. COLEMAN

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1 remember, my response in looking at the transcript just a
2 little bit ago, that I agreed that they had provided all,
3 and so there was no need for a response from the State.
4 Typically in trial if attorneys, in essence, consent or
5 agree that the other party has complied or -- you've
6 already resolved the motion in limine, that I agreed that
7 they had -- that they had complied.

8 Q If they had not complied or if there was anything
9 missing at that point, what would you have done?

10 A I would've either -- depending on what I believed that
11 they had left out or not complied, then I would've either
12 asked for a continuance and an opportunity to review the --
13 whatever that information or either possibly had to file a
14 motion to compel at that moment, but that did not appear to
15 be the case.

16 Q Did that, in your opinion, create any jurisdictional
17 issues for the Court?

18 A No.

19 Q Did you review the discovery material with Mr.
20 Passmore?

21 A Yes, and I indicate that -- I -- on -- the first time
22 I met with him June the -- I mean July the 25th of 2013, I
23 gave him copies of everything that I had been provided.
24 Every time I met with him after that, he always had a --
25 that packet -- or I assumed that packet -- and lots of

1 other information that he had gathered in time that he
2 would -- that he would give me. He was always well-papered
3 every time we met.

4 Q There's some discussion earlier about Mr. Passmore's
5 mental condition, and he -- he claims he has some kind of
6 illness that keeps him from focusing. Did he ever mention
7 any of this to you at the time you represented him?

8 A No. I always -- he was always very thoughtful. He
9 always -- he understood my questions and certainly was able
10 to articulate to me very clearly how he saw the case and
11 what he wanted to do.

12 Q In your opinion, did you see any reason to have him
13 evaluated for competency?

14 A No.

15 Q Did he ever tell you he didn't understand anything?

16 A There were -- yeah, there were times when we may
17 discussing terms, legal issues, that he would say I don't
18 understand, and I would try to help him to understand that.

19 Q Can you please just briefly summarize the facts of
20 this case for the Court and what the State was alleging Mr.
21 Passmore had done?

22 A On the night of the -- well, I guess around midnight
23 of the night before the incident, what was presented to me
24 was that Mr. Passmore called his teenage daughter in
25 Clover. At the time she was living with her mother and two

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1 younger brothers, possibly a African American male may have
2 been living with them or in and out of the house at the
3 time. When he called her that night, unbeknownst to him at
4 the time, she recorded -- his daughter recorded that
5 conversation. After that conversation, he and his brother
6 and his brother's girlfriend at some point in the night --
7 as well as I can remember -- 4:00 or 5:00 o'clock in the
8 morning decided to go to Clover, went to Clover to her
9 house, to her trailer. He and his brother got out of the
10 car. The girlfriend, Rebecca Rogers, stayed in the car.
11 When they went to the door, he announced who he was, and
12 then there was a -- the factual dispute was whether he was
13 either went in with permission or whether without
14 permission, so as Mr. Passmore always indicated that he had
15 the freedom to go in and out of his house -- it was normal
16 for him to go in and out of his ex-wife's house uninvited,
17 because his children were there and the statements by the
18 children and -- at least one of the children -- and his
19 wife was that he was not allowed to go in, but however, the
20 door -- it did not seem to be any evidence that he forced
21 the door open, but at some point the door -- the door was
22 either unlocked and he went in or they opened the door and
23 then he went in, and as soon as they did, he pulled out a
24 samurai sword out of the back of his bib overalls and began
25 waiving it around in the house, went down the hall of the

1 trailer, had some words with his ex-wife. The children ran
2 out the door to a neighbor's house, called the police. His
3 -- basically his wife said, you know, I'm tired of this, I
4 got to go to work, he left and then he and his brother --
5 and when the police were called, they responded. They were
6 given a description of the car they were driving, who they
7 -- the people thought were in the car, and that car was
8 stopped, oh, five or six miles down the road, and that's
9 when Mr. Passmore and his brother and the driver were all
10 placed in custody and under arrest.

11 Q What kind of evidence did the State present to support
12 these allegations?

13 A Well, again there -- there really wasn't a -- there
14 wasn't a question of fact. In fact, Mr. Passmore never --
15 as far as the facts of the case, what I just recited to you
16 didn't seem to -- there were -- you know, there would've
17 been issues about -- and he doesn't have an issue about
18 which way the door would've opened in his daughter's
19 bedroom or particular things that were said or not said,
20 but there was no dispute -- there was no factual dispute
21 that it was Ricky Passmore, that he had gone into the house
22 at that time of night and that he had a sword with him and
23 -- and then some time -- a short time later left, so the
24 State's theory was that he -- that he by forcing his wife -
25 - their theory was that he had forced his wife and kept --

1 kept her against her will on the couch was the basis for
2 the kidnapping charge. The dom -- criminal domestic
3 violence high and aggravated nature charge was -- their
4 theory seemed to be that the brandishing of the sword and
5 the threats to her -- that their -- their allegations were
6 he threatened to kill her if she moved, that that would've
7 been the basis for the domestic violence of high and
8 aggravated nature. The possession of a weapon during the
9 commission of a violent crime, the -- seemed to be the
10 theory was that because he had the sword and that they also
11 had the burglary charge, that that was the basis for the
12 domestic violence high and aggravated nature. The theory
13 on the burglary charge is that he entered a residence in
14 the nighttime with the intent to commit a crime, and so
15 they -- the theory was that he went there with the sword,
16 made threats, and that was the basis for the burglary first
17 degree.

18 Q Was there evidence presented through testimony that
19 Mr. Passmore when he came into the house told the victim,
20 Julia Coleman, that if she moved from the couch she would
21 die?

22 A She said that. Julia Coleman said that.

23 Q Did the children say that as well?

24 A You know, I don't remember. I -- I think the daughter
25 was asleep in the room, and she didn't -- she heard words,

1 but I don't think she heard specific words, and I don't
2 recall; I don't remember. I think both the sons testified
3 at trial, and I don't remember what they said at trial, but
4 it would be in the transcript.

5 Q Was there testimony presented that Mr. Passmore came
6 in and asked where Chip was, which is the boyfriend?

7 A Yes, that was -- the State's testi-- testimony from
8 the State. Right.

9 Q So what was the State alleging that Mr. Passmore
10 entered the house to do, the crime that he intended to
11 commit therein?

12 A I think the allegation was that he was hunting Chip
13 and that he was -- that he was -- and even under the -- the
14 difficulty in defending the burglary -- the jury found him
15 not guilty on the other three charges. The difficulty of
16 burglary was that intent can be implied by the actions of
17 the defendant, so even if he didn't say anything, I think
18 their theory was that him coming in with the sworn, a
19 deadly wea -- what they -- what they couch as a deadly
20 weapon into the house in the nighttime without their
21 permission -- again, Mr. Passmore was clear he believed he
22 had permission, but their theory was that he didn't have
23 permission -- those were all a question of fact for a jury
24 to determine, and so there -- there was a -- it appeared to
25 me that there were facts, at least certainly it appeared

1 that there were facts that went to the jury, that the jury
2 base whether they determine he was guilty of the burglary.
3 That was the difficult -- the children running out of the
4 house crying, calling the police, saying, daddy's in the
5 house with a sword, was difficult to try to defend. We --
6 my strategy was that to call -- that to couch it as in this
7 appeared to be a real disagreement between Ricky and his
8 ex-wife, and he had no intent to harm anybody, and that, in
9 fact, he didn't harm anybody. And this is -- his wife was
10 very casual about what happened while he was there, and
11 that was -- I think that was her testimony, and yet, the
12 jury still determined -- it appears that the jury
13 determined there was an issue about the intent and they
14 believed -- I don't know what they ultimately couched their
15 decision on, but that was the real issue as to whether he
16 had any intent to commit a crime.

17 Q Was there also evidence presented that was collected
18 from the car that he and his brother and his brother's
19 girlfriend had?

20 A Yes. Yeah.

21 Q What evidence was that?

22 A They searched the car, and they found a shotgun in the
23 trunk, two pool balls attached by either leather or some
24 type of cord to a stick, and I think they found some brass

1 knuckles on my client. I forgot what the -- but, yeah,
2 they searched the car; they found other stuff.

3 Q And that would in the transcript. Right?

4 A Yes.

5 Q Now, the phone call that Mr. Passmore made to his
6 daughter that she recorded that night, did that come into
7 evidence at trial?

8 A It did.

9 Q What were the contents of that phone call generally?

10 A As well as I can remember, it was about 20 minutes,
11 and it's a conversation he's having with his daughter about
12 his ex-wife's having an African American boyfriend in the
13 house, the -- how Mr. Passmore ---

14 MR. FOWLER - Your Honor, I -- I'd like to object
15 to this. This kind of goes into the facts of the case, and
16 it doesn't go into his relationship with him and with my
17 client in terms of going over discovery, what his role was
18 at Court. You know, I think this gets a little bit more
19 into the facts of the case as opposed to his performance as
20 my client's attorney at the time.

21 THE COURT - She's asking him to summarize the
22 evidence. Is your argument that's irrelevant?

23 MR. FOWLER - My question is what he did as his
24 attorney in terms of presenting evidence to him, in terms
25 of going over the evidence with him and presenting his case

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1 at Court. The facts of the case, in my opinion, are
2 irrelevant here in a lot of ways, because it doesn't relate
3 to his performance as the attorney for my client at the
4 time.

5 THE COURT - Isn't the evaluation of his
6 performance predicated on what the facts were?

7 MR. FOWLER - Well, I mean I -- it was a long
8 summary there that he got into, so I mean I think some of
9 it perhaps was irrelevant. If he can answer the question
10 specifically -- I think there was a question about the
11 daughter or what have it (sic) -- if it could just be
12 narrowed to the scope, I think that would be a little bit
13 more relevant here.

14 THE COURT - I'm going to overrule the objection.

15 MS. COLEMAN - Thank you.

16 Q So ---

17 A It was 20 minutes of conversation with his daughter
18 expressing great displeasure about the ex-wife's
19 relationship with this African American boyfriend.

20 Q What was your opinion on this phone call?

21 A It was embarrassing, and I told the jury that it would
22 be embarrassing that they would hear. Mr. Passmore and I
23 talked about it in detail. The first time it was played
24 publicly at a preliminary hearing, and -- and Mr. Passmore
25 indicated then that he wanted the Court to hear every word

1 of it. My -- the way -- my strategy in dealing with that
2 was -- in fact, I called it a redneck rant, and I went over
3 that with Mr. Passmore before Court, that that's what I --
4 how I would term it, and it's just really sort of the way
5 Mr. Passmore talks and carries on life, and that's the way
6 I tried to approach that to the jury, that he really didn't
7 mean any harm by the -- by the phone conversation with his
8 daughter, but -- but to -- but in spite of that, it's still
9 pretty embarrassing.

10 Q Did you have any legal basis to move to suppress this
11 phone call?

12 A It certainly -- the State's position was that it was
13 important to show motive and intent why he went there. I
14 discussed that with Mr. Passmore. It, as well as I can
15 remember, that he always felt like in his words were that
16 that phone conversation was the truth and expressed the
17 truth, and he never objected to anybody hearing that --
18 that recording, and even in light of that, I don't -- I
19 believe it would've been futile to make a motion to exclude
20 it, and so, no, I did not make a motion to exclude the --
21 the conversation at trial.

22 Q Did Mr. Passmore ever ask you to file a motion to
23 suppress it?

24 A I don't remember that if he did.

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1 Q What was your defense at trial? And you've already
2 discussed a little bit about the redneck rant strategy.

3 A That this was a dispute between he and his wife. He
4 didn't harm anybody, didn't mean to harm anybody. This is
5 sort of a normal way they talked and resolved issues, and
6 that he had not committed a crime.

7 Q Did you do any investigation in this case?

8 A I went to the -- to the house with an investigator. Of
9 course, I was not allowed in. It's in Clover. It's about
10 a block behind where the wife worked at a convenient store
11 at the time. I did go interview his brother, Mickey
12 Passmore, with an investigator at his house out in the Lake
13 Wylie area. Those were the only two times I left the
14 office to conduct any kind of investigation.

15 Q Did the applicant testify at trial?

16 A Yes.

17 Q What were your discussions about him taking the stand?

18 A What I tell every -- what I would tell every client is
19 that they have a right to remain silent, and if they
20 exercise that right, then the Court would tell a jury not
21 to even consider that in determining whether they are
22 guilty or not, because the burden's on the State to prove
23 their guilt beyond a reasonable doubt. I did tell him that
24 -- that if he had an explanation, it might be important for
25 the jury to hear that. He never indicated any desire to

1 not testify. Mr. Passmore was always very forthright and
2 indicated that he wanted to tell his side of the story and
3 I -- I warned him. I mean I warned him. From a trial
4 strategy standpoint, the jury probably needed to hear
5 something from him, because again the facts were pretty --
6 you know, the -- it all boiled down to intent on the
7 burglary and then, of course, the Court informed him of his
8 right to remain silent, but he wanted to testify.

9 Q Now, there were -- the applicant testified today about
10 several pieces of evidence that you did not use at trial,
11 and I'll go through a few of them specifically, and if you
12 need to see them, I think they're Court's exhibits; I can
13 hand them to you.

14 A All right.

15 Q But first there was a report about fingerprint
16 evidence that was collected from the house. Did you -- do
17 you recall ---

18 A I had those, and I just looked again in the file.
19 They were in the file. In fact, I'd highlighted one of
20 them, and those would have been in the packet that I gave
21 him, and I don't know what -- he said he didn't have
22 anything until he got it from the public defender's office
23 on request. I don't know what happened to his packet of
24 stuff that he had every time we met, but, yeah, I had those
25 fingerprint records. What they were is that somebody had

1 dusted for prints and they couldn't -- they couldn't find
2 any. I mean there's a lot of explanations for that.
3 Sometimes it's often just the way someone touches an object
4 and doesn't leave -- it smears or doesn't leave a print.
5 On the other hand, there was not a factual dispute about
6 him being in the house, not a factual dispute about him
7 going down the hall and back of the house.

8 Q Why did you choose not to use this evidence?

9 A It seemed to me have no merit -- would have no bearing
10 on the outcome of the case. You know, if -- whether --
11 whether he touched light switches or other doorknobs, the
12 ques -- the fact was he was in the house.

13 Q Applicant's number 2 is the statement of Julia
14 Coleman. Are you familiar with that document?

15 A I am.

16 Q Did you have that in your discovery materials?

17 A I did.

18 Q Why did you choose not to use that at trial?

19 A Well, she testified, and I don't believe there was
20 anything that would have -- that I would've been able to
21 impeach her with in that document.

22 Q And was that document primarily about Mickey's
23 actions?

24 A Yes.

25 Q Okay. Did you think that was relevant to ---

1 A No.

2 Q Okay. There's also a statement he testified today
3 about that was given by Rebecca, which is the brother's
4 girlfriend.

5 A Right.

6 Q Do you recall that statement?

7 A I do. She testified at trial as well, and I don't
8 believe there's anything in that -- in that statement that
9 would have impeached -- in fact, I think what she said at
10 trial was very helpful to him, was very helpful in the
11 domestic violence charge especially.

12 Q And, finally, there were some phone calls. Applicant
13 alleged that he called Julia Coleman twice on his way over
14 to the house. To your knowledge, were there any recordings
15 of those phone calls or voice mails ---

16 A I don't remember that. I do -- there was a phone log
17 in the file of Mickey's phone, but I don't remember hearing
18 or seeing any recordings of -- I mean I could be wrong
19 about saying I'm on my way or we're coming.

20 Q If you had had any recordings of those, would you have
21 chosen to use them at trial?

22 A I'm not sure. Depending on what they would say, what
23 they -- the fact that he said he was coming -- seem -- the
24 facts when they got there he testified is -- when he looked
25 in the door, she was on the couch asleep, so it did not

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1 appear that -- except the -- I think the son was --
2 appeared to be awake. There may have been a light on in
3 the house, so I don't know whether -- but again, that
4 didn't seem to be very determinative of it one way or
5 another being the issue in the case.

6 Q And when Mr. Passmore testified at trial, did he
7 testify about these phone calls he made to the jury?

8 A I don't remember.

9 Q Okay. Looking back now, is there anything that you
10 wish you had done differently in this case in your defense?

11 A Um, you know, every time you look back on a trial, you
12 -- there's things that you -- I mean there's no perfect
13 trial. I could've pro -- I mean I could've talked more to
14 the jury about, you know, trying to couch it as a trespass
15 instead of a burglary. I touched on that a little bit. I
16 don't know whether that would've changed the outcome of the
17 case or not, because it wasn't a -- there wasn't a --
18 again, there was never a -- really no factual disputes in
19 the case. It was all about what he intended to do on the
20 intent on a burglary, and it was just extremely difficult
21 to get over the fact that he still had a -- had a sword
22 when he went in the house and that the kids ran out of the
23 house scared, and when they called the police, you could
24 hear their -- the fear in their voices. I don't think
25 there's anything major that I would've done differently.

1 Q Okay. And at the time of the trial, in your opinion,
2 were you -- were you doing everything you felt was
3 necessary to try this case?

4 A Yes.

5 MS. COLEMAN - Okay. Nothing further. Thank you.

6 THE COURT - Mr. Fowler?

7 CROSS EXAMINATION

8 BY MR. FOWLER -

9 Q Mr. Hall, you've been in the courtroom all day today
10 at the beginning, since the beginning of this trial.

11 A I have, yes.

12 Q And you've heard Mr. Passmore earlier testify. Is
13 that correct?

14 A I did.

15 Q Okay. And some of the things I -- you mentioned on
16 direct examination, but you're familiar with the
17 Plaintiff's Exhibit 1, the York --

18 MR. FOWLER - May I approach?

19 Q --- the York County Forensic's Service Unit. Correct?

20 A Let me take a look at it.

21 Q Sure. This is Exhibit 1.

22 A Yes, this is the one I had -- that was in my file, and
23 I had highlighted portions of it.

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1 Q Okay. And earlier you mentioned that he was in the
2 house, so there was no need to go over the fingerprints.
3 Is that correct?

4 A There didn't appear to be -- if they'd found
5 fingerprints or didn't find fingerprints, that I didn't see
6 any -- really any relevance one way or another about the
7 fingerprints.

8 Q But it was a accusation against him that he went all
9 over the house looking for people. Is that correct?

10 A Well, it's a trailer, and he admitted he went down the
11 hall. I lived in a trailer for about a year, and a
12 trailer's hall is not but about 20 feet long, so from my
13 practical experience, I mean it really -- it wouldn't have
14 made -- he was in the trailer. Whether -- whether if
15 somebody was lying about him touching every door or cutting
16 on every light or not cutting on every light, seemed to be
17 something that really would have no effect on the trial at
18 all.

19 Q But it was -- but it was a accusation that they --
20 that the prosecution made against him -- correct? -- that
21 he did go through every -- or go through every room in the
22 house?

23 A I don't remember that. And there again, it's a
24 trailer. There's not but three or four rooms in a trailer,

1 so it's not like he went up and down the stairs in a big
2 house. .

3 Q It's my understanding that he called the house ahead
4 of time. Is that correct?

5 A He called -- of course, he called at midnight when he
6 talked to his daughter and I -- as well as I can remember,
7 I do believe he told me that he had called -- or used
8 Mickey's phone to call some time between there and the time
9 he actually got to the house.

10 Q Now, were -- were any of those telephone calls used --
11 well, first of all, were they recorded?

12 A I don't remember. I didn't look through the file
13 thoroughly enough to ---

14 Q But those were calls that basically told -- said that
15 he was coming over. Is that correct?

16 A I don't remember that. I mean I would have no reason
17 to doubt that Mr. Passmore would have called. I mean that
18 -- I think that would've been a normal thing of what he
19 might do.

20 Q He said on direct examination earlier that he and his
21 wife had a -- had a relationship where he could come over -
22 - or his ex-wife rather -- where he could come over fairly
23 regularly unannounced. Is that correct?

24 A That's what he said. I mean that's not what she said,
25 but that's what he said.

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1 Q So it was a -- it's a situation where they still had
2 some kind of relationship apparently where he can come over
3 and not be ---

4 A That's what Mr. Passmore said. Again, the wife did
5 not say that.

6 MR. FOWLER - If I may have a moment.

7 THE COURT - Certainly.

8 (WHEREUPON, BRIEF PAUSE)

9 Q All right. On page 145 of the transcripts it mentions
10 lines 9 through 11 and I also spoke -- and you can take a
11 look at it. Lines -- it's underlined in that version --
12 lines 9 through 11, and it talks about recordings. Could
13 you read that to the Court, please.

14 A It says I went -- I don't now who this is, but whoever
15 answered the question said, I went to the jail and spoke
16 with the Passmore brothers as well as serving them with
17 their warrants, and I also spoke with Ms. Coleman and
18 listened to the cell phone messages and the recordings and
19 retained those.

20 Q Okay. So what recordings I -- do you believe that
21 they were talking about?

22 A Well, they had the recording of the call to his
23 daughter. There were several recordings of the -- you
24 know, of interviews of the wife and children. I think

1 there might've been a recorded conversation of Rebecca
2 Rogers but ---

3 Q Were all those -- were copies or were those -- those
4 recordings, the cell phone messages and all the things that
5 were audio in this case, were those presented to my client
6 as discovery before the trial?

7 A Yes. I mean I have -- I don't have my file up here
8 with me, but on -- in fact, there were two days where we
9 met -- there were several times when I had him brought up
10 here to the holding area here between Court -- during
11 Court, because it's easy to do -- and we listened to -- we
12 listened to every recording.

13 Q Okay. But -- but in terms of the cell phone
14 recording, you're saying that he went -- that you went over
15 that with him?

16 A When you're talking about -- there's still some
17 conversation today about two calls ---

18 Q Yes.

19 A --- from Mickey's phone to say we're coming, I don't
20 remember those two specifically. If I did, I don't
21 remember.

22 Q It's been discussed here that there was some charge of
23 conspiracy, and I think it might've been clarified or went
24 into by the earlier witness, but what was the charge of
25 conspiracy that he was alleged of initially?

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1 A I was never aware of a conspiracy charge.

2 Q No freestanding conspiracy charge. Was there any
3 freestanding conspiracy charge or was it tied to any other
4 charge?

5 A I was never aware of any conspiracy charge. I do know
6 that his brother was charged; Rebecca Rogers was charged.
7 His brother was a co-defendant, and he was charged with --
8 he was also charged with the burglary, and I forgot what
9 else. Those were not dismissed at the time of trial.

10 Q So expanding the scope here a little bit, was his
11 brother charged with conspiracy to your knowledge?

12 A I -- I don't remember that. I do know that Mr. Nosal
13 sent in his motion -- he had motion where he alleged
14 conspiracy to commit kidnapping. I -- I don't -- but I
15 don't remember a warrant -- I mean there was nothing
16 specific about conspiracy.

17 Q Okay.

18 A He was never indicted for conspiracy. The indictment
19 -- what he went to trial on was burglary first degree,
20 kidnapping ---

21 MR. FOWLER - If I may approach, Your Honor.

22 THE COURT - You may.

23 Q If you could read line 13 from -- I believe that's
24 Solicitor Holland speaking -- line 13 on page 14 of the
25 transcript.

1 A There is evidence that they are engaged in conspiracy.
2 In addition, Ricky Passmore in his phone call attempts to
3 elicit his daughter, Tara, into the conspiracy by saying,
4 you call me and let me know.

5 Q Okay. So that's at the front of the transcript. Is
6 that correct?

7 A That's what it looks like.

8 Q All right, so there -- there seems to be at least some
9 inclination of conspiracy ---

10 A Oh, I'm sure they would allege a conspiracy. If I was
11 prosecuting a case and I had co-defendants, I'd use the
12 word conspiracy and say they were all in it together if I
13 was going to try them all together. That doesn't
14 necessarily mean they were legally charged with conspiracy,
15 but yeah, you could argue to the jury that they were
16 conspiring to commit a -- to commit a crime. That's sort
17 of the way I took all that. They were co-defendants.

18 Q Right. Okay, well, just for clarification purposes,
19 on line 12 -- 7 through 9 on page 12, if you could read
20 that.

21 A Your Honor, he was originally charged with burglary in
22 the first degree along with conspiracy to commit
23 kidnapping. That's with Mr. Nosal's client.

24 Q Okay.

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1 A And I don't -- I don't remember if Ricky was charged
2 with that or not. I don't remember seeing a warrant, but I
3 do know that he did not go to trial on ---

4 Q Well, I guess my question is, if the other -- if the
5 other defendant was charged with conspiracy, wouldn't it
6 make sense that Mr. -- Rick (sic) Passmore was charged with
7 conspiracy as well at some point?

8 A I -- well, I -- you know, it takes more than one
9 person to be in a conspiracy. Whether somebody actually
10 took out warrants on him for that, I don't know. I don't
11 remember.

12 Q Okay. On the affidavit of Julia Coleman, which is
13 Exhibit 2, are you familiar with this document?

14 A Let me see it.

15 MR. FOWLER - May I approach.

16 THE COURT - You may.

17 Q And this is 2.

18 A Yes, I -- I'm familiar with that.

19 Q Okay. What role did she play in this -- in this case?

20 A Who? Rebecca Rogers?

21 Q Jul -- well, the affidavit of Julia Coleman. What --
22 how was Julia Coleman not involved in this matter? She has
23 an affidavit here.

24 A Well, he's (sic) his wife.

1 Q Right. So -- and she testified at trial. Is that
2 correct?

3 A Yes.

4 Q All right. Did you bring up anything about this
5 affidavit to her on her testimony? Did you go over the
6 affidavit with her?

7 A No, because I felt like that it was more damaging to
8 my client because the affidavit said, Ricky pushed me back
9 onto the couch, told me to sit down and said, you move,
10 bitch, you die. Ricky told his brother she don't move,
11 then proceed through my house looking for my current
12 boyfriend, woke up the children then left. He stopped on
13 the porch to tell me, you turned your back on us, bitch,
14 you remember that. I thought that was pretty prejudicial,
15 to my client, and I was happy for it not to come in.

16 Q So you didn't ask her anything about that. Correct?

17 A No.

18 Q And you didn't ask her about paragraph 5 there about
19 Mickey did nothing wrong.

20 A No, because if I had, it would possibly have opened
21 the door to the entire affidavit coming in.

22 Q In terms of the opening statement that you made, my
23 client earlier indicated on direct examination that you
24 indicated that he went looking for Chip, and I believe this

1 is on page 50 of the transcript. Is that -- was that a
2 misstatement by you?

3 A Um, ---

4 Q And I can direct you to page 50 and page 256 ---

5 A It probably was.

6 MR. FOWLER - If I may approach.

7 A I know. I've seen it.

8 Q Okay.

9 A Yeah, it probably was. I mean he was always adamant
10 that he -- that he was not going looking for the boyfriend.
11 The difficult thing sometimes as a trial lawyer is you have
12 all these things in your mind, you know what the State's
13 going to argue, that -- that they're going to -- that you
14 know in your mind that the State's going to argue he went
15 looking for the boyfriend and all this evidence shows that
16 he went looking for the boyfriend, and so you struggle
17 with, all right, what do I say to try to be sure that I
18 maintain credibility on behalf of my client, and so I did
19 struggle with that he -- he always insisted he was not
20 going to look for the boyfriend. From a trial perspective,
21 as a trial lawyer's perspective, you're sitting there
22 trying to figure, now wonder if 12 people are going to
23 believe this or not? And whether he says it or not -- and
24 there seemed to be overwhelming evidence from the State
25 that that might not be the case, that he did go looking for

1 the boyfriend. And so I think part of the way -- when I
2 went through my -- when I did my opening, if I had stuck
3 completely true to what Mr. Passmore wanted me to do, I
4 would not have said that, and so that probably was a
5 mistake to that degree. On the other hand, trying to
6 maintain as much credibility as we could of the jury is
7 probably why it came in, but as y'all said earlier and
8 looked through the record, I did -- he stated in his direct
9 and then again in my closing, I indicated several times
10 that he had no intent and was not looking for the
11 boyfriend, and he testified that he did not believe that
12 the boyfriend was there.

13 Q We touched on several topics earlier today with my
14 client. One of the things was the recordings. And let's
15 go back to that if you don't mind. Can we touch on that?
16 Did you file any kind of motion to suppress any kind of
17 recording in this case?

18 A No, I didn't, because Mr. Passmore was always
19 insistent that that recording was the truth, and he wanted
20 -- he wanted everybody to hear the whole truth.

21 Q But now there was -- Mr. Passmore did indicate that
22 there was perhaps a discretion in what the Court heard and
23 what the length -- the full length ---

24 A I -- what was played in Court at the preliminary
25 hearing, what was played in Court during trial was exactly

DANIEL HALL - CROSS BY MR. FOWLER

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1 what I had been provided. I had no -- I had no indica --
2 the date -- I have no indication that there was something
3 that was edited out or changed. What I was provided by the
4 State was played in its entirety at the preliminary hearing
5 and played in its entirety at the trial.

6 Q Touching on his mental health issues or apparent
7 mental health issues, Mr. Passmore earlier indicated that
8 he has been diagnosed by The South Carolina Department of
9 Mental Health as having some kind of focus issues. Is
10 that correct? Did you hear that earlier?

11 A I couldn't tell whether that The Department of Mental
12 Health or whether the Department of Corrections has given
13 him something to deal with what he believes are issues.

14 Q Okay. But you never took it upon yourself to have him
15 diagnosed before trial with any ---

16 A There did not -- there did not appear to be any mental
17 issues that would require a Court ordered mental
18 evaluation.

19 Q Who determined that?

20 A Well, I made that determination as his attorney. I
21 did not ask the Court for a mental evaluation, because he
22 did -- I believe it would've been insincere on my -- on my
23 part to ask for it, because he never demonstrated any
24 inability to understand what was going on or articulate

1 what he believed was a defense and to talk about the facts
2 of the case.

3 Q But you did indicate that -- and I believe you said
4 this earlier on direct -- that he had what you called a
5 redneck rant. Is that correct?

6 A Yes.

7 Q Okay, so that -- so a redneck rant like that didn't
8 lead you to believe that he might have some issues that
9 could be diagnosed?

10 A No, I've heard a lots of those.

11 MR. FOWLER - If I may have a moment, Your Honor.

12 THE COURT - You may.

13 (WHEREUPON, BRIEF PAUSE TAKEN)

14 MR. FOWLER - Um -- if I may have just a moment.

15 (WHEREUPON, BRIEF PAUSE TAKEN)

16 Q All right, just one final question about the Julia
17 Coleman affidavit. You said you didn't push that because
18 you thought it might bring in other issues. Correct?
19 You didn't push that to the Court or to the jury because it
20 might bring up ---

21 A I thought it was -- from a trial standpoint, I thought
22 it was better that that affidavit not be introduced to the
23 jury because -- there -- I would not have the ability to
24 allow parts of it in without the potential of the whole

DANIEL HALL - CROSS BY MR. FOWLER

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1 going in. The whole going in, I, as a trial strategy
2 believe it would be extremely prejudicial to my client.

3 Q Even though in section 5 it talks about Mickey doing
4 nothing wrong and that ---

5 A Well, you always have to weigh at trial what may help
6 you or what may hurt you, and if the potential for harm far
7 outweighs the potential for good, then you don't get it in.
8 That particular number 5 dealt with simply Mickey's role.
9 I did -- was able to show the jury that even though she
10 made lots of statements, that at trial she admitted she was
11 not alarmed, and in fact, she was smoking a cigarette on
12 the porch when he left, and I think that was a factual
13 basis by which a jury to determine he was not guilty of a
14 criminal domestic violence of a high and aggravated nature.
15 Think had that affidavit all come in, the prejudice to him
16 would have been -- could've -- would've far outweighed any
17 benefit, and so, no, I did not -- I did not want that in.

18 MR. FOWLER - Your Honor, I've spoken with my
19 client and we have no further questions at this time.

20 THE COURT - Thank you, Mr. Fowler.

21 Any re-direct?

22 MS. COLEMAN - Just briefly, Your Honor.

23 RE-DIRECT EXAMINATION

24 BY MS. COLEMAN -

1 Q Mr. Hall, you -- he pointed out a moment ago in your
2 opening statement where you said that applicant was looking
3 for Chip at the house. Do you recall that?

4 A Yes.

5 Q Did you adjust your argument on this issue in your
6 closing argument?

7 A I did.

8 Q Okay. And how did you change that?

9 A Well, just testified that -- I mean not testified -- I
10 believe I argued that the evidence was that he was not
11 looking for Chip. In fact, he had testified that he was
12 not looking for Chip, and he was simply there to send a
13 message and that he had no intent to harm anybody. I think
14 I told the jury that he, in fact, didn't harm anybody, and
15 so that was the -- that was -- yes, that's what I told
16 them.

17 Q In your opinion, do you think that maybe corrected the
18 issue in that opening statement to the jury where you said
19 that he was looking for Chip?

20 A Well, you know, statements are not -- the jury's
21 instructed that opening statements or closing statements
22 are not evidence in the case, and I think juries understand
23 that. It was certainly -- the State certainly had evidence
24 to try to show that he was there. That became a question
25 of fact about whether he was there to -- with the intent to

1 harm Chip or hunting for Chip, and so that was my attempt
2 to at least have the jury to say, hey, look, he wasn't
3 really hunting for Chip, he was just there to send a
4 message, but, you know, I don't know how the jury --
5 certainly the State used every opportunity that they could
6 through witnesses to say he had this problem with Chip and
7 that he was there hunting him, so it becomes a factual
8 issue for the jury to deal with. I did my best to try to
9 clear that up in my closing.

10 Q And along those lines, you testified a moment ago that
11 you believed the State had overwhelming evidence of his
12 intent to commit a crime. Is that still your opinion?

13 A Well, when I -- I didn't say overwhelming evidence. I
14 say there was certainly sufficient evidence for them to
15 present that to a jury, and there was still the issue of
16 him going in the house at 5:00 o'clock in the morning, in
17 the house with a sword. You know, those are un -- those
18 are the facts of the case that are not in dispute, and he
19 went up and down the hall, and he waived the sword around.
20 That's hard for -- that's difficult for regular jurors to
21 get around that.

22 Q But you do not believe it was overwhelming evidence?

23 A I don't ---

24 Q How would you characterize it?

1 A --- think it makes any difference what I believe;
2 It's what the jury believed. I -- but, yes, I would
3 characterize that was a very difficult factual issue to be
4 able to explain to a jury that he was -- that there was --
5 there was no intent. That is a pretty unusual occurrence
6 for people with a gun or a sword or anything to go into a
7 house at 5:00 o'clock in the morning with their children
8 there. I think we did the best we can to try to deal with
9 it.

10 MS. COLEMAN - Thank you. Nothing further.

11 THE COURT - Any re-cross?

12 RE-CROSS EXAMINATION

13 BY MR. FOWLER -

14 Q You talked briefly about the -- on re-direct you
15 talked -- it was mentioned about evidence obtained in this
16 case. Was there -- did you motion the Court to prove that
17 any of this evidence was illegally obtained? Was any kind
18 of ---

19 A Again, I think that would've -- I mean when you're
20 talking about the evidence in the car, there -- I believe
21 again if I had made a motion to suppress that evidence,
22 that would've been an insincere motion, because the facts
23 were that the police had a report of a -- their knowledge,
24 they had a serious violent offense that just took place,
25 had a vivid description of the vehicle and the occupants,

1 and so when they stopped the car, it was -- the occupants
2 were the people that they'd gotten the report who had been
3 at the house, and so I did not believe that there was a
4 legal basis by which to challenge the stop or the search.

5 Q And the gun that was obtained -- wasn't there a gun
6 obtained in the search?

7 A Yes.

8 Q Okay, was it my client's, Mr. Passmore's?

9 A No, it was his brother's.

10 Q Okay. So did the jury hear about that gun in the
11 trial?

12 A They did.

13 Q Okay. And also the looking for Chip matter, do you
14 feel like it was inconsistent that you opened -- your
15 opening statement with that and then changed the course
16 apparently in the middle of the trial? I think you stated
17 that you were -- that he was looking for Chip in your
18 opening statement and then later on ---

19 A Well, it depends on whether you -- when it started to
20 change course, whether he -- even if he had not been
21 looking for Chip, if that had been an undisputed fact that
22 he -- that he was not looking for Chip, there was still
23 evidence that a jury could have determined that there was
24 intent by his other actions, so whether that would've been
25 -- whether I had said, ladies and gentlemen of the jury, he

1 wasn't looking for Chip, he was going there to send a
2 message, there were still lots of factual issues where a
3 jury could determine intent. That was not the sole or the
4 only thing that would determine, in my opinion, that
5 would've been the basis for determining criminal intent.

6 MR. FOWLER - If I may have a moment, Your Honor.

7 A So in other words, I don't think it would've made any
8 difference one way or another.

9 (WHEREUPON, BRIEF PAUSE IN RECORD)

10 Q Last question. Was there any kind of tape that Julia
11 said -- Julia Coleman said that Mickey did nothing wrong?
12 Were you familiar with that?

13 A I don't remember. I don't recall. There could have
14 been, and she may have said that in her interview. I don't
15 remember, but again ---

16 Q But you didn't bring that to the Court's attention if
17 it was.

18 A I did not -- if it was, I don't know what the
19 relevance would have been. Mickey wasn't on trial.

20 MR. FOWLER - If I may have a moment.

21 (WHEREUPON, BRIEF PAUSE IN RECORD)

22 MR. FOWLER - After consulting with my client,
23 Your Honor, no further questions.

24 THE COURT - Yes, ma'am?

25 MS. COLEMAN - Nothing further, Your Honor.

1 THE COURT - Any objection to excusing Mr. Hall?

2 MR. FOWLER - If I may have a moment.

3 (WHEREUPON, BRIEF PAUSE IN RECORD)

4 MR. FOWLER - Your Honor, after discussing this
5 with my client, it's acceptable.

6 MR. HALL - Thank you.

7 MS. COLEMAN - The State has no further witnesses.

8 THE COURT - Counsel, do you want argument?

9 MR. FOWLER - Yes, Your Honor.

10 Your Honor, I've had several conversations with
11 Mr. Passmore. Today he has gone over in Court various
12 things that he has mentioned to me previously and that he
13 feels is important to this case, Your Honor. By Mr. Hall's
14 own testimony, certain things that my client felt were
15 important such as the light switch and the documentation,
16 Exhibit 1, that was not brought to the Court's attention in
17 its entirety, Your Honor. The Julia Coleman affidavit,
18 that kind of, we believe, shut down the conspiracy argument
19 or any conspiracy argument. That was not brought out
20 thoroughly.

21 THE COURT - Mr. Fowler, there are plenty of other
22 theories for a crime that could've been committed, aren't
23 there? I mean that's predicated on the fact that the only
24 possible crime that fits the burglary elements is a
25 conspiracy, but couldn't the jury have easily found that he

1 was -- that the intent was to home Chip when he entered the
2 house?

3 MR. FOWLER - Yes, sir.

4 THE COURT - So what is the relevance of the
5 affidavit? I don't follow that.

6 MR. FOWLER - Well, Your Honor, after discussions
7 with my client, it's my opinion that that -- that is one
8 area of the law that would've been turned down by the jury
9 if it was pro -- if it was done correctly, and apparently
10 it was not, but, Your Honor, my client on the stand today
11 has gone through meticulously various elements that he
12 feels was not done properly. We feel this meets the
13 Strickland vs. Washington burden, Your Honor, and that if
14 it was not met -- that if -- because of his attorney's
15 performance, in my opinion, was deficient and based on what
16 my client said in the re-direct of Mr. Hall, that he is in
17 the situation that he is in now. He's been very passionate
18 to me about this. He's provided a lot of information and
19 he's very knowledgeable, and we feel like the Court -- we
20 ask for a decision in our favor, Your Honor.

21 THE COURT - Thank you, Mr. Fowler.

22 Yes, ma'am?

23 MS. COLEMAN - Thank you, Your Honor.

24 The State would ask you to deny post-conviction
25 relief on the basis that the applicant's failed to meet his

1 burden of proving any of his allegations today. Brady
2 violations, there was no evidence or proof to support his
3 claim that anything was withheld from trial counsel or from
4 the applicant during the trial. The solicitor testified
5 everything was turned over. He has not demonstrated
6 anything was missing. The allegation about the recording
7 of the phone call being edited, the solicitor directly
8 testified that was not the case. Any of the -- the
9 materials that applicant claims trial counsel should have
10 used in his favor at trial either weren't relevant to the
11 case or would've harmed the applicant more than helped him,
12 and trial counsel offered a valid strategy in choosing not
13 to present those items or present them in the way that he
14 did. Trial counsel testified that the applicant was
15 adamant about certain things, such as letting the jury and
16 the Court hear the phone call to his daughter, Tara, and
17 not moving to suppress those, which is a direct
18 contradiction to what the applicant testified today. He
19 also testified the applicant was adamant about testifying
20 at trial and taking the stand to tell his version of the
21 story. Your Honor, I believe the transcript shows that
22 this case was tried very fully; the jury heard evidence
23 from both sides and made their decision based on everything
24 that was presented, and I don't think trial counsel
25 could've done anything more that would amount to a

1 deficiency under Strickland vs. Washington or prejudiced
2 based on the evidence that was presented, so I'd ask you to
3 deny PCR.

4 Thank you.

5 THE COURT - Thank you, Ms. Coleman.

6 Anything in reply, Mr. Fowler?

7 MR. FOWLER - Um, -- no, Your Honor.

8 THE COURT - Thank you very much, counsel. I'll
9 take this matter under advisement.

10 MS. COLEMAN - Thank you.

11 THE COURT - Court will be in recess.

12 (END OF TRANSCRIPT)

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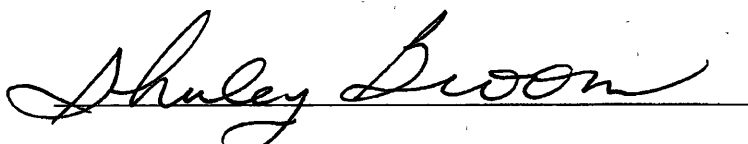
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C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 109 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Ricky E. Passmore vs. State of South Carolina, as taken by me in Court of Common Pleas for the Sixteenth Judicial Circuit on August 1, 2018, and provided by me this the 27th day of October, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.

A handwritten signature in cursive script, reading "Shirley Broom", is written over a horizontal line.

Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

York County Forensic Services Unit

Investigator's Report

Jurisdiction: Clover P.D.

Incident #: 13-00542

Date of Incident: 6/20/13 Disp. Time: 1:10 PM Arrival Time: 1:25 PM Depart Time: 1:50 PM

Incident Type: Aggravated Assault/ Kidnapping

Type of Location: Residence

Location of Incident:

Clover

S.C.

Victim(s): Julie Coleman

D.O.B.

Suspect(s): Passmore, Ricky & Micky

D.O.B.

Report Type: Scene Processing

Narrative

R/O met with Lt. Tanner Davis at the above location in reference to an aggravated assault and kidnapping incident that occurred on 6/19/2013. Lt. Davis stated that the two suspects entered the residence through the front door and forced their way into the first bedroom on the left upon entering the hallway. R/O took digital photographs of the scene. R/O used black powder on the front door area to process for latent prints. R/O was able to develop and lift a partial palm print on the panel to the right of the door knob. R/O then processed the bedroom door for latent prints with negative results.

R/O compared the latent lift to the ten-print and palm print cards to suspects Ricky Eugene Passmore (DOB 12/22/1967) and Micky Dale Passmore (DOB 12/22/1967) with negative results. This was confirmed by Investigator B. Bagwell. The latent palm print is AFIS quality.

A digital photo disc was turned into Clover PD evidence control. The latent lift will be retained in the FSU LP files.



Make: Model: Color: ID #:

Make: Model: Color: ID #:

Initial Reporting/Investigating Officer

Environment

Davis

Day

Forensic Investigator (R/O)

Date

Inside

Hoffman, Kevin

6/21/13

Comments

Approving Officer

Date

6/21/13

**York County Forensic Services Unit
Investigator's Supplemental Report**

Jurisdiction: Clover P.D.

Incident #: 13-00542

Date of Incident: 6/20/13

Arrival Time:

Depart Time:

Incident Type: Aggravated Assault / Kidnapping

Report Type: A.F.I.S. Examination

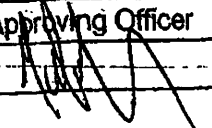
Location of Incident:

Clover

S.C.

Narrative

On 6/27/13, R/O entered the latent prints from the above case into SCAFIS with negative results. The latent prints will be retained by the Forensic Services Unit.

Forensic Investigator (R/O)	Date	
Bagwell, Brian	6/27/13	
Approving Officer	Date	
	6/27/13	

STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF GENERAL SESSIONS
) SIXTEENTH JUDICIAL CIRCUIT
)
)
)

STATE OF SOUTH CAROLINA

Mickey Dale Passmore,

DEFENDANT.

) AFFIDAVIT OF JULIA C. COLEMAN
)
)
)
)

I, Julia C. Coleman, being first duly sworn do state for my affidavit as follows:

1. I am a resident of Clover, South Carolina. I am over eighteen (18) years of age and am fully competent.
2. On the night of June 19, 2013, Rickey Passmore ("Rickey"), the father of my 3 children, came to my house. Rickey knocked on the door. Cody answered the door. Rickey came in brandishing a sword without my consent. Rickey pushed me back onto the couch, told me to sit down and said "you move bitch you die." Rickey told his brother "She don't move," then proceeded through my house looking for my current boyfriend, woke up the children, then left. He stopped on the porch to tell me "you turned your back on us bitch, you remember that."
3. Then Rickey and his twin brother, Mickey Passmore ("Mickey") left in Mickey's car. Cody had at some point run out the back door to call police.
4. Mickey apologized to me while Rickey was searching my house and said he "didn't know Rickey was going to do this." and I believed him. I got up from the couch and told Mickey I was leaving, and he put his hands up and said, "I'm not stopping you." Mickey entered my house immediately after his brother.
5. Mickey did nothing wrong in my house that night, and I do not believe he had the intent to commit a crime in my house.

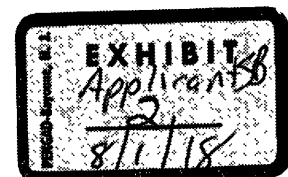
Further the Affiant sayeth not.

Julia C. Coleman
Julia C. Coleman

Sworn to and subscribed before me this 4th day of February, 2014.

[Signature]
Notary Public
My commission expires: 02/15/2021

CERTIFIED TRUE COPY
2014 FEB 15 AM 8:29
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC



STATE OF SOUTH CAROLINA RECEIVED IN THE COURT OF COMMON PLEAS
COUNTY OF YORK SIXTEENTH JUDICIAL CIRCUIT

2016 SEP 14 AM 8:31

Ricky Eugene Passmore, #315667

2017-CP-46-0505

Applicant YORK COUNTY, SC

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on February 16, 2017. Respondent submitted its Return on June 8, 2017. An evidentiary hearing was convened on August 1, 2018, at the York County Courthouse. Applicant was present at the hearing and was represented by Steven W. Fowler, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

The Court had before it the records of the York County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. In August 2013, the York County Grand Jury indicted Applicant for burglary in the first degree (2013-GS-46-2903) and criminal domestic violence of a high and aggravated nature (2013-GS-46-2902). Applicant was subsequently indicted in January 2014 for kidnapping (2014-GS-46-209) and possession of a weapon during the commission of a violent crime (2014-GS-46-219). Daniel Hall, Esquire represented Applicant. Assistant Solicitor Jessica Holland, Esquire prosecuted the

case. On March 31 and April 1, 2014, Applicant proceeded to trial before the Honorable John C. Hayes, III. The jury found Applicant guilty as indicted on the charge of burglary in the first degree and not guilty on the other charges. Judge Hayes sentenced Applicant to imprisonment for a term of thirty years.

Applicant filed a timely notice of appeal. Chief Appellate Defender Robert Michael Dudek, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on March 2, 2016. State v. Passmore, Op. No. 2016-UP-097 (S.C. Ct. App. filed March 2, 2016). Applicant filed a petition for writ of certiorari to the South Carolina Supreme Court on June 13, 2016. The Supreme Court denied the petition on October 20, 2016. The remittitur was sent on October 25, 2016.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. "Ineffective Assistance of Counsel"
2. "Multiple U.S. Constitutional violations including but not limited to Amend #6, #14, Due Process violations, Brady violations, denial of right to trial by jury."
3. "Lack of Subject Matter Jurisdiction"

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

V. SUMMARY OF RELEVANT TESTIMONY

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony of Geoffrey Dunn (hereinafter "Trial Counsel") and Assistant Solicitor Leslie Robinson ("Solicitor").

Applicant

At the evidentiary hearing, Applicant testified that he met with his attorney several times before the trial, but they were quick, five-minute meetings. He stated he suffers from a medical condition that causes him to have a problem focusing, and he has to write things down because his mind scrambles. He stated he is currently on a treatment for this condition, and he attends

11/13

outpatient mental health treatments. Applicant testified this condition causes him to have a problem putting facts together. He stated he did not tell Trial Counsel about this condition, and he did not give Trial Counsel any reason to ask about it, but Trial Counsel probably should have had him evaluated anyway. He opined that if he had been evaluated, he could have gotten treatment before the trial and he would have been able to better understand what was going on. However, Applicant testified that he understood everything that was going on before and during his trial.

Applicant testified Trial Counsel was ineffective for failing to have the trial judge require the State to comply with his motion to provide Rule 5 and Brady material before the trial began. He stated Trial Counsel made the motion, but the trial judge did not do anything about it, because everyone assumed the State had complied. Applicant testified there was evidence which was favorable to him that he does not know if Trial Counsel ever received from the State, and if he did receive it, Trial Counsel should have used it at trial and did not. He stated this evidence included documents such as the report of the investigator who searched for fingerprints in the house and did not find any, the voicemail messages from the calls Applicant made to the victim before he came to the house, a statement from the victim, a statement from Rebecca Rogers, and a recording from a body camera.

Applicant testified that Trial Counsel ruined his whole case in his opening statement when he told the jury that on the night of the crime Applicant went over to the victim's house to find Chip, the victim's new boyfriend. He stated this aligned with the State's theory of the case, and by admitting this to the jury, he prejudiced Applicant's case. Applicant testified Trial Counsel had a copy of Rebecca Rogers' statement, and she testified at trial, but Trial Counsel did not use her statement to cross-examine her about Applicant calling the victim on his way to the house. He stated Trial Counsel should have used the fingerprint report to show the jury that Applicant did

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not run through the whole house turning on lights, as the State alleged. He stated the Solicitor withheld voicemail recordings of his phone calls to the victim before the crime, which would have corroborated his testimony at trial.

Applicant testified Trial Counsel should have argued to the jury that the police officer testified he could see the victim through the window of the house when he arrived, so Cody could have seen Applicant through the same window before he let him into the house. He explained that, at trial, the State argued the window was so foggy that Cody could not see who was at the door before he opened it, which showed Applicant entered without consent. Applicant testified the State edited out every part of the tape recording of his phone call to his daughter that was favorable to him, but Trial Counsel did not do anything about it even when he told him about it. He further stated that Trial Counsel did nothing to suppress the illegally obtained evidence against him that was seized upon his arrest in his brother's car. Applicant testified he was denied his constitutional right to a trial by jury, because he has a right to have the jury hear all the facts, and they did not.

Solicitor

Assistant Solicitor Jessica Holland testified that she turned over all Rule 5 and Brady material required of her before the trial of this case. She stated she did not withhold any discovery material. She testified the recording of Applicant's phone call to his daughter was not edited in any way, and the full recording, which was played at trial, was 20 to 21 minutes long. Solicitor Holland testified she did not recall having any recordings of voicemails that Applicant left on the victim's cell phone before the crime.

Trial Counsel

Trial Counsel testified he has been practicing law since 1988, and most of his practice is criminal. He stated he was appointed to this case as an Assistant Public Defender around June 27,

2013. Trial Counsel testified he met with Applicant at least nineteen times before his trial. He stated this case was called for trial twice before it went forward; both times he was prepared to go forward, but the trial was cancelled because of snow. He testified that he reviewed all the discovery material with Applicant and he was not aware of any Brady violations by the State in this case. He stated the State provided all Rule 5 and Brady material to him before the trial, and he and the State agreed on the record when he made his motion that the State had complied, so there was no reason for the trial court to enforce his motion. Trial Counsel testified Applicant did not tell him about any mental health problems, and he saw no indication of a need for a mental evaluation.

Trial Counsel testified the State introduced a recording of a phone call Applicant made to his daughter before the crime, which was terrible evidence and hurt Applicant's case. He stated he saw no legal basis to move to suppress the phone call because it was recorded by Applicant's daughter. He testified that his trial strategy for the phone call was to pass it off as a "redneck rant" to the jury, and argue that he did not mean any harm from the call, but was just ranting out of frustration. He stated he discussed this strategy with Applicant, who agreed with the approach. Trial Counsel testified this phone call showed Applicant's motive, his intent, and his reason for going over to the victim's home on the night of the crime. He testified Applicant thought his statements in the phone call were the truth, and he never objected to anyone hearing the recording. Trial Counsel stated Applicant never asked him to move to suppress the phone call because he wanted the jury to hear the call, and he opined that it would have been futile to move to suppress the call regardless.

Trial Counsel testified his general trial strategy was to argue that this was a disagreement between Applicant and his ex-wife, but Applicant never had any intent to harm anybody, and he did not harm anybody. He attempted to show the jury that this was a marital dispute, and

JAM/b

Applicant's actions were his normal way of resolving issues. He stated there was no question about the facts of the case because Applicant always admitted to being in the victim's house with a sword. He testified the issues came down to whether he was let inside with consent and whether he had the intent to commit a crime within the house. He explained that the victim testified Applicant was not allowed over to her house, but Applicant testified that he was, so it came down to who the jury believed on this issue.

Trial Counsel testified that because there was never a factual dispute about Applicant's presence in the house, there was no reason to use the fingerprint report to show he was not in the house or turning on lights and opening doors as the State alleged. He stated that the report was not relevant and had no effect on the trial at all. Trial Counsel stated that he had copies of the victim's statement and Rebecca Rogers' statement, but there was nothing in either statement to impeach them with, because their trial testimony was similar to their statements. Trial Counsel testified he did not recall any recordings of voicemails Applicant left to the victim before the crime, but if there had been, he would not have used them anyway because he did not believe it helped his case to show Applicant was calling the victim while he was on his way over to her house before the burglary.

Trial Counsel testified all of the recordings of witness interviews were presented to him in discovery, and he and Applicant spent two days listening to every recording before the trial in the holding cell. Trial Counsel further explained that he did not want to use the victim's statement to cross-examine her at trial because it contained information that was more damaging to his client, like her statement that Applicant pushed her down on the couch, so he did not want to put it in at trial.

WAB

Trial Counsel testified that his opening statement about how Applicant went looking for Chip was an attempt to maintain credibility with the jury because, even though Applicant was always adamant that he was not looking for Chip, Trial Counsel believed there seemed to be overwhelming evidence that he was looking for Chip. He stated that he later argued to the jury in his closing argument that the evidence showed he was not looking for Chip. He testified he had no reason to think the phone call recording had been edited or cut from its original form. Trial Counsel testified he had no legal basis to challenge the evidence taken from the car upon Applicants' arrest because the police had a description of the car and its occupants.

Trial Counsel testified that even if the jury found Applicant did not go to the victim's house to look for Chip, there was still evidence that the jury could use to determine Applicant had intent to commit a crime therein. He stated this was not the sole basis of the State's case of intent to commit a crime within the home, so if his argument had been different it would not have made any difference.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice. First, this Court finds Trial Counsel's testimony to be credible and persuasive. Trial Counsel credibly

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testified that his trial strategy was to argue to the jury that Applicant's actions were merely part of a dispute between him and his ex-wife, and this was his normal way of resolving issues, and he meant no harm and caused no harm. He addressed the racist and threatening phone call from Applicant to his daughter as a "redneck rant" that he did not really mean.

Trial Counsel credibly testified Applicant did not want him to suppress the recording of the phone call at trial, and that, even if he had moved to suppress it, the motion would have been meritless, as there was no legal basis to move to suppress the call. This Court finds Trial Counsel was not deficient in failing to move to suppress this phone call, as he was acting according to Applicant's wishes in defending his case. This Court further finds no resulting prejudice from the choice not to move to suppress this recording, as there was no legal basis to suppress the call, and such a motion would not have succeeded. The phone call was recorded by Applicant's daughter on her cell phone, not by law enforcement, so there were no potential "wiretap" violation issues. If Trial Counsel had moved to suppress the phone call as more prejudicial than probative, his motion likely would have been denied, as well, because the phone call was extremely probative of Applicant's motive and intent only five hours before he committed this crime. Applicant has failed to prove either prong of the Strickland test regarding this issue.

This Court further finds Trial Counsel was not ineffective for failing to use the statement of the victim or of Rebecca Rogers to impeach these witnesses at trial, as their trial testimony was fairly consistent with their statements. Trial Counsel credibly testified he strategically chose not to introduce these statements because they contained damaging information about Applicant's involvement with the crime, such as the victim's statement that Applicant pushed her down on the couch, which would have contributed to the State's allegation of kidnapping.

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Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland v. Washington, 466 U.S. 668, 688-689 (1984). "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

There is also no resulting prejudice from Trial Counsel's failure to use these statements to impeach these witnesses, as the statements would not have changed the outcome of the trial. The information in the statements matched the witnesses' trial testimony and was not favorable to Applicant or relevant to his guilt. Applicant has failed to prove deficiency or prejudice from the failure to use these statements.

This Court further finds Trial Counsel was not ineffective for failing to use the fingerprint report to argue that Applicant's fingerprints were not found on the doorknobs or light switches within the house where the State alleged he was running through the house opening doors and turning on lights because Applicant's presence in the house was not a factual dispute at issue in the trial. Applicant testified at trial and admitted to being inside the house with a sword. The real

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issues for the jury to determine were whether he entered the home without consent and with the intent to commit a crime therein. Any evidence showing Applicant might not have been turning on lights or opening doors would not have affected the jury's verdict based on these issues. Accordingly, there is no deficiency or resulting prejudice from the lack of use of this report at trial.

The testimony at the evidentiary hearing showed no evidence of the existence of recordings of any potential voicemail messages Applicant left the victim on his way to her home. Regardless, even if these recordings had existed, Trial Counsel was not deficient for failing to introduce them into evidence to corroborate Applicant's testimony because he articulated a valid trial strategy to avoid these voicemails, as they hurt Applicant's case more than helped. Furthermore, there is no prejudice, as the existence of these voicemails would not have changed the outcome of the case. Applicant asserts it would have shown he did not have the intent to commit a crime within the home, but the evidence presented at trial of Applicant's intent to harm Chip, the victim's new boyfriend, when he arrived at the house is very strong. This Court finds no deficiency or prejudice for this allegation.

In general, this Court finds Trial Counsel was well prepared for this trial and spent a great deal of time meeting with Applicant, explaining the charges and the evidence, and discussing their trial strategy. Trial Counsel credibly testified he met with Applicant at least nineteen times and thoroughly reviewed all discovery materials. Trial Counsel clearly worked with and listened to his client in preparing this trial and executed a defense strategy of passing off Applicant's actions as those of a "redneck" who meant no harm. This Court finds Trial Counsel's representation was well within reasonable professional norms, and he thoroughly represented Applicant to the best of his ability throughout the trial. Applicant has failed to meet his burden of proving anything Trial Counsel could have done differently which would have changed the outcome of the case, and thus

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has failed to prove deficiency or prejudice under any of his allegations of ineffective assistance of counsel. Accordingly, this application is denied and dismissed with prejudice.

CONSTITUTIONAL VIOLATIONS

Applicant alleges several violations of his constitutional rights. These allegations are meritless. Applicant has failed to meet his burden of proving any Brady violations, as the testimony at the evidentiary hearing showed all Rule 5 material and Brady material was given to Applicant and Trial Counsel by the State before the trial. Applicant has failed to show any evidence that was not turned over as required by the rules or Brady. Furthermore, Applicant has failed to prove a violation of his right to effective counsel or his right to a jury trial. The record shows Applicant received a full and fair jury trial and had the opportunity, through counsel, to challenge all witnesses against him and put up a defense to the State's allegations. Accordingly, these allegations are denied and dismissed with prejudice.

LACK OF SUBJECT MATTER JURISDICTION

Applicant's allegation that the trial court lacked subject matter jurisdiction when it failed to ensure the State had complied with his Rule 5 and Brady motion is meritless. An applicant may challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, 363 S.C. 93; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. Applicant has failed to

present any evidence that the convictions he challenges in this application are in a class over which the circuit court does not have the authority to provide. Therefore, this allegation is denied and dismissed without prejudice.

VII. CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 10 day of September, 2018.


WILLIAM A. MCKINNON

Presiding Judge
Sixteenth Judicial Circuit

 _____, South Carolina



STATE OF SOUTH CAROLINA) CERTIFIED TRUE INDICTMENT
COUNTY OF YORK) 2017 FEB 17 AM 9:13

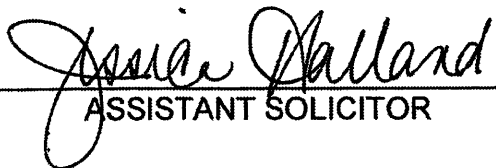
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on August 22, 2013, the Grand Jurors of York County present upon their oath:

BURGLARY IN THE FIRST DEGREE

The Defendant, Ricky Eugene Passmore, did in York County, South Carolina, on or about June 19, 2013, willfully and unlawfully enter the dwelling, located at [REDACTED] Trinity Street, Clover, South Carolina, without consent and with the intent to commit a crime therein. Said entering or remaining did occur during the nighttime hours. All in violation of Section 16-11-311, Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

WITNESSES

CLOVER PD/ Davis

sgb

ARREST WARRANT NUMBER

2013A4620100090

ACTION OF GRAND JURY

TRUE BILL

Sammy Eakin

Foreperson of Grand Jury

Date:

8/22/13

VERDICT

Guilty

Paul Z. Webb

Foreperson of Petit Jury

Date:

4/1/14

DOCKET NO. 2013-GS-46- 02903

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

August 22, Term 2013

THE STATE

vs.

RICKY EUGENE PASSMORE

Indictment for

BURGLARY IN THE FIRST DEGREE

SC Code: 16-11-311

CDR Code: 079

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

Defendant

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

Defendant

Witness:

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